

HOUSE BILL NO. 413

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVES JOULE, Gara, Kerttula, Lynn, Olson, Gruenberg

Introduced: 2/1/06

Referred: State Affairs, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the burning capability of cigarettes being sold, offered for sale, or**
2 **possessed for sale; and providing for an effective date."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
5 to read:

6 **LEGISLATIVE FINDINGS AND INTENT.** (a) The legislature finds that

7 (1) cigarettes are the leading cause of fire deaths in the United States each
8 year, claiming 1,000 lives and causing nearly 2,000 injuries and nearly \$400,000,000 in direct
9 property damage;

10 (2) technology exists to significantly reduce the number of fires caused by
11 cigarettes;

12 (3) the states of New York and California have enacted cigarette fire safety
13 statutes that require that cigarettes sold in those states meet a fire safety performance
14 standard;

1 (4) New York state's cigarette fire safety performance standard is based on
 2 decades of research by the National Institute of Standards and Technology, congressional
 3 research groups, and private industry; and

4 (5) cigarettes meeting fire safety performance standards have been found not
 5 to increase the costs to consumers.

6 (b) It is the intent of the Legislature to adopt

7 (1) a cigarette fire safety performance standard that is similar to the standard
 8 that is in effect in California in order to reduce the likelihood that cigarettes will cause fires
 9 that result in deaths, injuries, and property damage;

10 (2) a cigarette fire safety performance standard that has a minimum cost to the
 11 state.

12 (c) The legislature declares that establishing fire safety performance standards for
 13 cigarettes sold in this state in order to protect the health and safety of the people of this state is
 14 within the police powers of this state.

15 * **Sec. 2.** AS 18 is amended by adding a new chapter to read:

16 **Chapter 74. Cigarette Fire Safety.**

17 **Sec. 18.74.010. Requirement for sale.** A person may not sell, offer to sell, or
 18 possess for sale in this state cigarettes unless

19 (1) the cigarettes are tested by the manufacturer under AS 18.74.030
 20 and satisfy the standard in AS 18.74.030(d), are tested under AS 18.74.050 and satisfy
 21 a standard equivalent to the standard in AS 18.74.030(d), or are exempt under
 22 AS 18.74.060;

23 (2) the cigarettes comply with the banding requirement of
 24 AS 18.74.040, if applicable;

25 (3) the cigarettes comply with the marking requirements of
 26 AS 18.74.120 - 18.74.150; and

27 (4) the manufacturer complies with the certification requirements of
 28 AS 18.74.080 - 18.74.100.

29 **Sec. 18.74.020. Exemptions from requirement.** (a) The prohibition in
 30 AS 18.74.010 does not prohibit a person from manufacturing or selling cigarettes that
 31 do not meet the requirements of AS 18.74.010 if the cigarettes are or will be affixed

1 with a tax stamp payment indicator for sale in another state or are placed in packaging
 2 for sale outside the United States. In this subsection, "tax payment indicator" means
 3 the indicator of payment of a tobacco tax, including a stamp, a meter impression, or
 4 another method for indicating the payment of the tax.

5 (b) This chapter does not apply to cigarettes sold by a facility operated by an
 6 agency of the United States, including a facility operated by the uniformed services of
 7 the United States. In this subsection, "uniformed services" has the meaning given in 5
 8 U.S.C. 2101.

9 **Sec. 18.74.030. Testing of cigarettes.** (a) Cigarettes shall be tested under

10 (1) the ASTM International Standard E2187-04, entitled "Standard
 11 Test Method for Measuring the Ignition Strength of Cigarettes"; or

12 (2) a test method established under (b) of this section.

13 (b) The state fire marshal may adopt an ASTM International standard test
 14 method that is adopted by the American Society of Testing and Materials after the
 15 standard test method identified under (a) of this section. The state fire marshal may not
 16 adopt this standard test method unless the state fire marshal makes a finding regarding
 17 the test method. The finding must state that the method does not result in a change in
 18 the percentage of full-length burns exhibited by any tested cigarette when compared to
 19 the percentage of full-length burns that the same cigarette would exhibit when tested
 20 under

21 (1) the standard test method identified under (a)(1) of this section; and

22 (2) the criteria established under (c) - (e) of this section.

23 (c) The testing under this section shall be conducted on 10 layers of filter
 24 paper. A complete test trial consists of 40 replicate tests of each cigarette.

25 (d) When tested under (a) of this section, only 25 percent or less of the
 26 cigarettes tested in a test trial may exhibit full-length burns in order to pass the test.

27 (e) A laboratory that conducts cigarette testing under this section shall
 28 implement a quality control and quality assurance program that ensures the
 29 repeatability of the testing results. The repeatability value may not be greater than 0.19
 30 under (d) of this section. In this subsection,

31 (1) "quality control and quality assurance program" means the

1 laboratory procedures implemented to ensure that operator bias, systematic and
 2 nonsystematic methodological errors, and equipment-related problems do not affect
 3 the results of the testing quality control program;

4 (2) "repeatability" means the range of values within which the repeat
 5 results of cigarette test trials from a single laboratory will fall 95 percent of the time.

6 **Sec. 18.74.040. Banding requirement.** Each cigarette listed in a certification
 7 submitted under AS 18.74.080 that uses lowered permeability bands in the cigarette
 8 paper to achieve compliance with the testing standard in AS 18.74.030(d) must have at
 9 least two nominally identical bands on the paper surrounding the tobacco column. At
 10 least one complete band must be located at least 15 millimeters from the lighting end
 11 of the cigarette. For cigarettes on which the bands are positioned by design, there must
 12 be at least two bands fully located at least

13 (1) 15 millimeters from the lighting end; and

14 (2) 10 millimeters from

15 (A) the filter end of the tobacco column; or

16 (B) the labeled end of the tobacco column of a nonfiltered
 17 cigarette.

18 **Sec. 18.74.050. Alternate test method.** A manufacturer of cigarettes that
 19 cannot be tested by a test method established in AS 18.74.030(a) may use a test
 20 method that is different from the test method established in AS 18.74.030(a) and may
 21 satisfy a standard that is equivalent to the testing standard in AS 18.74.030(d). The
 22 manufacturer may employ that test method and performance standard to certify the
 23 cigarette under AS 18.74.080, but all other applicable requirements of this chapter
 24 apply to the manufacturer of the cigarette.

25 **Sec. 18.74.060. Exemption from testing.** AS 18.74.030 does not require
 26 cigarettes to be tested if the cigarettes are tested for another purpose and the testing is
 27 consistent with AS 18.74.030 - 18.74.050.

28 **Sec. 18.74.070. Maintenance of records.** A manufacturer shall keep data from
 29 testing conducted by the manufacturer to comply with AS 18.74.030 - 18.74.050 on
 30 file for three years after the initial date of certification or for three years after each
 31 recertification required under AS 18.74.100. The manufacturer shall provide the data

1 to the state fire marshal and the attorney general on the request of the state fire
2 marshal or the attorney general.

3 **Sec. 18.74.080. Certification requirement.** A manufacturer shall certify in
4 writing to the state fire marshal that each brand of cigarette listed in the certificate has
5 been tested under AS 18.74.030 and satisfies the testing standard in AS 18.74.030(d),
6 or has been tested under AS 18.74.050 and satisfies a standard equivalent to the
7 standard in AS 18.74.030(d).

8 **Sec. 18.74.090. Contents of certification.** The certification required by
9 AS 18.74.080 must provide the following information for each brand of cigarette
10 listed in the certification:

- 11 (1) the brand;
- 12 (2) the style;
- 13 (3) the length in millimeters;
- 14 (4) the circumference in millimeters;
- 15 (5) the flavor, if applicable;
- 16 (6) whether the cigarette is filtered or nonfiltered;
- 17 (7) a description of the pack; and
- 18 (8) the marking approved under AS 18.74.120.

19 **Sec. 18.74.100. Recertification schedule.** Each brand of cigarette certified
20 under AS 18.74.080 shall be recertified every three years.

21 **Sec. 18.74.110. Provision of copies.** A manufacturer who certifies a brand of
22 cigarette under AS 18.74.080 shall provide a copy of the certification to each
23 distributor or wholesaler to whom the manufacturer sells the cigarette. The
24 manufacturer shall also provide the distributor or wholesaler with sufficient copies of
25 an illustration of the cigarette packaging marking used by the manufacturer under
26 AS 18.74.130 to enable the distributor or wholesaler to give a copy to each retailer to
27 whom the distributor or wholesaler sells cigarettes. A distributor or wholesaler shall
28 provide a copy of the cigarette packaging markings received from a manufacturer to
29 each retailer to whom the distributor or wholesaler sells cigarettes.

30 **Sec. 18.74.120. Certification marking approval.** Before a brand of cigarette
31 may be sold in the state, a manufacturer shall submit its proposed marking to the state

1 fire marshal. The state fire marshal shall approve the marking if the state fire marshal
 2 finds that it complies with AS 18.74.130. Proposed markings shall be considered
 3 approved if the state fire marshal fails to act within 10 business days after receiving a
 4 proposed marking.

5 **Sec. 18.74.130. Contents of certification marking.** The packaging containing
 6 a brand and style of cigarette that a manufacturer certifies under AS 18.74.080 must be
 7 marked to indicate compliance with the requirements of this chapter. The marking
 8 must be in eight-point type or larger and consist of

9 (1) a modification of the universal product code to include a visible
 10 mark printed at or around the area of the code; the mark may consist of alphanumeric
 11 or symbolic characters and must be permanently stamped, engraved, embossed, or
 12 printed in conjunction with the universal product code;

13 (2) any visible combination of alphanumeric or symbolic characters
 14 permanently stamped, engraved, or embossed on the packaging; or

15 (3) printed, stamped, engraved, or embossed text on the cigarette
 16 packaging that indicates that the cigarettes satisfy the requirements of this chapter.

17 **Sec. 18.74.140. Uniformity in marking.** A manufacturer shall use only one
 18 marking for certification and apply this marking uniformly to all packaging and to all
 19 brands marketed by the manufacturer.

20 **Sec. 18.74.150. Modification of marking.** A manufacturer who modifies the
 21 manufacturer's marking shall notify the state fire marshal of this modification and
 22 submit to the state fire marshal a copy of the new marking. The new marking must
 23 comply with AS 18.74.130 and 18.74.140.

24 **Sec. 18.74.160. Penalties for violations.** (a) A manufacturer or another person
 25 who knowingly sells or offers to sell cigarettes other than through retail sale and in
 26 violation of this chapter is subject to a civil penalty not to exceed \$10,000 for each
 27 sale.

28 (b) A retailer, distributor, or wholesaler who knowingly sells or offers to sell
 29 cigarettes in violation of this chapter is subject to

30 (1) a civil penalty not to exceed \$500 for each sale or offer for sale in
 31 which the total number of cigarettes sold or offered for sale does not exceed 50 packs

1 of cigarettes;

2 (2) a civil penalty not to exceed \$1,000 for each sale or offer for sale in
3 which the total number of cigarettes sold or offered for sale exceeds 50 packs of
4 cigarettes.

5 (c) In addition to any other penalty prescribed by law, a person engaged in the
6 manufacture of cigarettes who knowingly makes a false certification under
7 AS 18.74.080 is subject to a civil penalty not to exceed \$10,000 for each false
8 certification.

9 (d) If a person violates a provision of this chapter and a civil penalty is not set
10 for the violation, the person is subject to a civil penalty not to exceed \$1,000 for each
11 violation.

12 (e) The state fire marshal and the attorney general may enforce the penalties
13 established under this section.

14 **Sec. 18.74.170. Defense to action for civil penalty.** It is a defense in an action
15 for a civil penalty under AS 18.74.160 that a distributor, wholesaler, retailer, or
16 another person in the stream of commerce relied in good faith on the manufacturer's
17 certification or marking that the cigarettes complied with the requirements of this
18 chapter.

19 **Sec. 18.74.180. Separate accounting.** The civil penalties imposed under
20 AS 18.74.160 shall be deposited into the general fund and separately accounted for
21 under AS 37.05.142. The legislature may appropriate the money received under this
22 section to the cigarette fire safety fund established under AS 18.74.220.

23 **Sec. 18.74.190. Seizure of cigarettes.** (a) If the state fire marshal or a law
24 enforcement agency of the state discovers that a person is offering or possesses for
25 sale, or has made a sale of, a cigarette in violation of AS 18.74.010, the state fire
26 marshal or the law enforcement agency may seize or dispose of the cigarette.

27 (b) If a cigarette is sold or offered for sale and the cigarette does not comply
28 with the testing standard in AS 18.74.030(d), does not comply with an equivalent
29 standard under AS 18.74.050, or is not exempt under AS 18.74.020 or 18.74.060, the
30 state fire marshal or a law enforcement agency of the state may seize and dispose of
31 the cigarette.

1 (c) Before disposal of a cigarette under (a) or (b) of this section, the state fire
 2 marshal or the law enforcement agency of the state shall provide the person from
 3 whom the cigarette was seized with notice of the seizure and an opportunity for a
 4 hearing regarding the seizure.

5 **Sec. 18.74.200. Other remedies.** The attorney general may bring an action to
 6 restrain violations of this chapter and to obtain other relief that may be appropriate.

7 **Sec. 18.74.210. Inspection of violation site.** (a) The state fire marshal or a law
 8 enforcement agency of the state may inspect a site where cigarettes are sold, offered
 9 for sale, or stored, or any site where there is evidence of a violation of AS 18.74.010.

10 (b) A manufacturer, distributor, wholesaler, or retailer shall permit an
 11 employee of the state fire marshal or a law enforcement agency of the state, on
 12 presentation of the appropriate identification and credentials, to enter into and conduct
 13 an inspection of a building, facility, or other site described in (a) of this section.

14 **Sec. 18.74.220. Cigarette fire safety fund.** (a) The cigarette fire safety fund is
 15 established. The fund consists of appropriations made to the fund.

16 (b) The purpose of the fund is to pay the expenses of the state fire marshal for
 17 implementing and enforcing this chapter.

18 (c) Money appropriated to the fund may be spent for the purposes of the fund
 19 without further appropriation. Money appropriated to the fund does not lapse.

20 **Sec. 18.74.230. Relationship to federal law.** If a provision of this chapter is
 21 preempted by or conflicts with federal law in a particular situation, the provision does
 22 not apply to the extent of the preemption or conflict.

23 **Sec. 18.74.290. Definitions.** In this chapter,

24 (1) "cigarette" means any roll for smoking, made wholly or in part of
 25 tobacco, irrespective of size or shape and irrespective of whether the tobacco is
 26 flavored, adulterated, or mixed with another ingredient, if the roll has a wrapper or
 27 cover made of paper or another material, unless the wrapper is wholly or in the greater
 28 part made of tobacco and the roll weighs over three pounds for each one thousand
 29 cigarettes;

30 (2) "distributor" means a person who distributes cigarettes or who sells
 31 or accepts orders for cigarettes that are to be transported from a point outside this state

1 to a person in this state;

2 (3) "manufacturer" means

3 (A) a person who manufactures or otherwise produces
4 cigarettes, or causes cigarettes to be manufactured or produced, if the
5 manufacturer intends the cigarettes to be sold in the state, including cigarettes
6 intended to be sold in the United States through an importer;

7 (B) the first purchaser who intends to resell in the United States
8 cigarettes that the original manufacturer or maker does not intend to be sold in
9 the United States; or

10 (C) a person who becomes a successor of a person described in
11 (A) or (B) of this paragraph;

12 (4) "offer to sell" means to offer or agree to sell;

13 (5) "pack" means the individual pack, box, or other container in which
14 retail sales of cigarettes are normally made or intended to be made, but does not
15 include a container that contains smaller packaging units of cigarettes;

16 (6) "packaging" includes packs, boxes, cartons, cases, other containers
17 and wrapping;

18 (7) "retailer" has the meaning given in AS 43.50.170;

19 (8) "sale" or "sell" means a transfer, exchange, or barter, in any manner
20 or by any means, or an agreement to transfer, exchange, or barter, and includes

21 (A) giving cigarettes as samples, prizes, or gifts; or

22 (B) exchanging cigarettes for any consideration other than
23 money;

24 (9) "wholesaler" has the meaning given in AS 43.50.849.

25 **Sec. 18.74.295. Short title.** This chapter may be cited as the Alaska Cigarette
26 Fire Safety Act.

27 * **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to
28 read:

29 **TRANSITION.** (a) AS 18.74.010, enacted by sec. 2 of this Act, does not prohibit a
30 distributor, wholesaler, or retailer from selling or offering to sell an inventory of cigarettes
31 existing on July 1, 2007, if the distributor, wholesaler, or retailer establishes that

1 (1) a stamp or meter impression was affixed to the cigarettes under AS 43.50
2 before July 31, 2007; and

3 (2) the inventory was purchased before July 1, 2007, in comparable quantity to
4 the inventory purchased during the same period of 2005.

5 (b) In this section,

6 (1) "distributor," "offer to sell," "retailer," "sell," and "wholesaler" have the
7 meanings given in AS 18.74.290;

8 (2) "tax payment indicator" has the meaning given in AS 18.74.020(a).

9 * **Sec. 4.** This Act takes effect July 1, 2007.