

CS FOR HOUSE BILL NO. 413(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 4/12/06

Referred: Finance

Sponsor(s): REPRESENTATIVES JOULE, Gara, Kerttula, Lynn, Olson, Gruenberg, Crawford

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; relating to compliance certifications by tobacco product**
3 **manufacturers, a directory of tobacco product manufacturers, the affixing of stamps to**
4 **cigarette packages, and cigarette tax stamps; and providing for an effective date."**

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

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

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

9 (1) cigarettes are the leading cause of fire deaths in the United States each
10 year, claiming 1,000 lives and causing nearly 3,000 injuries and nearly \$400,000,000 in direct
11 property damage;

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

14 (3) the states of New York, Vermont, and California have enacted cigarette

1 fire safety statutes that require that cigarettes sold in those states meet a fire safety
2 performance standard;

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

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

8 (b) It is the intent of the legislature to adopt

9 (1) a cigarette fire safety performance standard that is consistent with the
10 standards in New York, Vermont, and California in order to reduce the likelihood that
11 cigarettes will cause fires that result in deaths, injuries, and property damage;

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

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

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

18 **Chapter 74. Cigarette Fire Safety.**

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

21 (1) the cigarettes are tested by the manufacturer under AS 18.74.030
22 and satisfy the standard in AS 18.74.030(d), are tested under AS 18.74.050 and satisfy
23 a standard equivalent to the standard in AS 18.74.030(d), or have been tested under
24 AS 18.74.060;

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

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

29 (4) the manufacturer complies with the certification requirements of
30 AS 18.74.080 - 18.74.100.

31 **Sec. 18.74.020. Exemptions from requirement.** (a) The prohibition in

1 AS 18.74.010 does not prohibit a person from manufacturing or selling cigarettes that
2 do not meet the requirements of AS 18.74.010 if the cigarettes are or will be affixed
3 with a tax stamp payment indicator for sale in another state or are placed in packaging
4 that is labeled to indicate the cigarettes are for sale outside the United States. In this
5 subsection, "tax payment indicator" means the indicator of payment of a tobacco tax,
6 including a stamp, a meter impression, or another method for indicating the payment
7 of the tax.

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

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

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

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

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

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

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

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

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

30 (e) A laboratory that conducts cigarette testing under this section shall
31 implement a quality control and quality assurance program that ensures the

1 repeatability of the testing results. The repeatability value may not be greater than 0.19
2 under (d) of this section. In this subsection,

3 (1) "quality control and quality assurance program" means the
4 laboratory procedures implemented to ensure that operator bias, systematic and
5 nonsystematic methodological errors, and equipment-related problems do not affect
6 the results of the testing quality control program;

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

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

16 (1) 15 millimeters from the lighting end; and

17 (2) 10 millimeters from

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

19 (B) the labeled end of the tobacco column of a nonfiltered
20 cigarette.

21 **Sec. 18.74.050. Alternate test method.** If the state fire marshal determines
22 that cigarettes cannot be tested by a test method established in AS 18.74.030(a), a
23 manufacturer of the cigarettes may, if the state fire marshal approves, use a test
24 method that is different from the test method established in AS 18.74.030(a) and
25 satisfy a standard that is equivalent to the testing standard in AS 18.74.030(d). The
26 manufacturer may employ that test method and performance standard to certify the
27 cigarette under AS 18.74.080, but all other applicable requirements of this chapter
28 apply to the manufacturer of the cigarette.

29 **Sec. 18.74.060. Testing for another purpose.** AS 18.74.030 does not require
30 cigarettes to be tested if the cigarettes are tested for another purpose and the testing is
31 consistent with AS 18.74.030 - 18.74.050.

1 **Sec. 18.74.070. Maintenance of records.** A manufacturer shall keep data from
2 testing conducted by the manufacturer to comply with AS 18.74.030 - 18.74.050 on
3 file for three years after the initial date of certification or for three years after each
4 recertification required under AS 18.74.100. The manufacturer shall provide the data
5 to the state fire marshal and the attorney general on the request of the state fire
6 marshal or the attorney general.

7 **Sec. 18.74.080. Certification requirement.** A manufacturer shall certify in
8 writing under oath to the state fire marshal that each cigarette listed in the certificate
9 has been tested under AS 18.74.030 and satisfies the testing standard in
10 AS 18.74.030(d), or has been tested under AS 18.74.050 and satisfies a standard
11 equivalent to the standard in AS 18.74.030(d).

12 **Sec. 18.74.090. Contents of certification.** The certification required by
13 AS 18.74.080 must provide the following information for each cigarette listed in the
14 certification:

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

23 **Sec. 18.74.100. Recertification schedule.** Each cigarette certified under
24 AS 18.74.080 shall be recertified every three years.

25 **Sec. 18.74.110. Provision of copies.** A manufacturer who certifies a cigarette
26 under AS 18.74.080 shall provide an illustration of the cigarette packaging marking
27 used by the manufacturer under AS 18.74.130 to each distributor or wholesaler to
28 whom the manufacturer sells the cigarette and to the commissioner of revenue. The
29 manufacturer shall also provide the distributor or wholesaler with sufficient copies of
30 an illustration of the cigarette packaging markings used by the manufacturer under
31 AS 18.74.130 to enable the distributor or wholesaler to give a copy to each retailer to

1 whom the distributor or wholesaler sells cigarettes. A distributor or wholesaler shall
 2 provide a copy of the cigarette packaging markings received from a manufacturer to
 3 each retailer to whom the distributor or wholesaler sells cigarettes.

4 **Sec. 18.74.120. Certification marking approval.** (a) Before a cigarette may
 5 be sold in the state, a manufacturer shall submit under oath its proposed marking to the
 6 state fire marshal. The state fire marshal shall approve the marking if the state fire
 7 marshal finds that it complies with AS 18.74.130. Proposed markings shall be
 8 considered approved if the state fire marshal fails to act within 10 business days after
 9 receiving a proposed marking.

10 (b) The state fire marshal shall approve a marking that is in use and approved
 11 for the sale of cigarettes in the state of New York unless the state fire marshal
 12 determines that the Fire Safety Standards for Cigarettes established in New York have
 13 changed significantly since June 28, 2004. The state fire marshal shall notify the
 14 commissioner of revenue of the approval under this subsection.

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

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

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

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

27 **Sec. 18.74.140. Uniformity in marking.** A manufacturer shall use only one
 28 marking for certification and apply this marking uniformly to all packaging and to all
 29 cigarettes marketed by the manufacturer.

30 **Sec. 18.74.150. Modification of marking.** A manufacturer who modifies the
 31 manufacturer's marking shall notify the state fire marshal of this modification and

1 submit to the state fire marshal a copy of the new marking. The new marking must
2 comply with AS 18.74.130 and 18.74.140.

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

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

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

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

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

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

22 (e) The state fire marshal, the commissioner of revenue, and the attorney
23 general may enforce the penalties established under this section.

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

29 **Sec. 18.74.180. Separate accounting.** The civil penalties imposed under
30 AS 18.74.160 shall be deposited into the general fund and separately accounted for
31 under AS 37.05.142. The legislature may appropriate the money received under this

1 section to the cigarette fire safety fund established under AS 18.74.220.

2 **Sec. 18.74.190. Seizure of cigarettes.** (a) If the state fire marshal, the
3 commissioner of revenue, or a law enforcement agency of the state discovers that a
4 person is offering or possesses for sale, or has made a sale of, a cigarette in violation
5 of AS 18.74.010, the state fire marshal, the commissioner of revenue, or the law
6 enforcement agency may seize or dispose of the cigarette.

7 (b) If a cigarette is sold or offered for sale and the cigarette does not comply
8 with the testing standard in AS 18.74.030(d), does not comply with an equivalent
9 standard under AS 18.74.050, is not exempt under AS 18.74.020, or has not been
10 tested under AS 18.74.060, the state fire marshal, the commissioner of revenue, or a
11 law enforcement agency of the state may seize and dispose of the cigarette.

12 (c) Before disposal of a cigarette under (a) or (b) of this section, the state fire
13 marshal, the commissioner of revenue, or the law enforcement agency of the state
14 shall provide the person from whom the cigarette was seized with notice of the seizure
15 and an opportunity for a hearing regarding the seizure.

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

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

22 (b) A manufacturer, distributor, wholesaler, or retailer shall permit an
23 employee of the state fire marshal, the Department of Revenue, or a law enforcement
24 agency of the state, on presentation of the appropriate identification and credentials, to
25 enter into and conduct an inspection of a building, facility, or other site described in
26 (a) of this section.

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

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

31 (c) Money appropriated to the fund may be spent for the purposes of the fund

1 without further appropriation. Money appropriated to the fund does not lapse.

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

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

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

12 (2) "distributor" means a person who distributes cigarettes or who sells
13 or accepts orders for cigarettes that are to be transported from a point outside this state
14 to a person in this state;

15 (3) "manufacturer" means

16 (A) a person who manufactures or otherwise produces
17 cigarettes, or causes cigarettes to be manufactured or produced, if the
18 manufacturer intends the cigarettes to be sold in the United States, including
19 cigarettes intended to be sold in the United States through an importer;

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

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

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

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

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

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

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

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

4 (B) exchanging cigarettes for any consideration other than
5 money;

6 (9) "wholesaler" means a person who sells or distributes cigarettes to
7 other persons for resale in the state.

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

10 * **Sec. 3.** AS 43.50.460(a) is amended to read:

11 (a) Every tobacco product manufacturer whose cigarettes are sold in this state,
12 whether directly or through a distributor, retailer, or similar intermediary or
13 intermediaries, shall execute and deliver on a form or in the manner prescribed by the
14 commissioner a certification to the commissioner, no later than April 30 of each year,
15 certifying, under penalty of perjury, that, as of the date of the certification, the tobacco
16 product manufacturer is complying with AS 18.74 and is either a participating
17 manufacturer or is in full compliance with AS 45.53.

18 * **Sec. 4.** AS 43.50.465 is amended to read:

19 **Sec. 43.50.465. Directory of cigarettes approved for sale and importation.**

20 Not later than July 30 of each year, the commissioner shall develop and make
21 available for public inspection a directory listing all tobacco product manufacturers
22 that have provided current and accurate certifications conforming to the requirements
23 of AS 43.50.460 and all brand families that are listed in those certifications, except as
24 follows:

25 (1) the commissioner may not include or retain in the directory the
26 name or brand families of any nonparticipating manufacturer that fails to provide the
27 required certification or whose certification the commissioner determines is not in
28 compliance with AS 43.50.460, unless the commissioner has determined that the
29 violation has been cured to the satisfaction of the commissioner;

30 (2) neither a tobacco product manufacturer nor brand family shall be
31 included or retained in the directory if the commissioner concludes that

1 (A) for a nonparticipating manufacturer, all escrow payments
 2 required under AS 45.53 for any period for any brand family, regardless of
 3 whether listed by the nonparticipating manufacturer, have not been fully paid
 4 into a qualified escrow fund governed by a qualified escrow agreement that has
 5 been approved by the Department of Law; [OR]

6 (B) all outstanding final judgments, including interest on those
 7 judgments, for violations of AS 45.53 have not been fully satisfied for the
 8 brand family and the manufacturer; or

9 (C) the manufacturer's cigarettes do not comply with
 10 AS 18.74;

11 (3) the commissioner shall update the directory as necessary in order to
 12 correct mistakes and to add or remove a tobacco product manufacturer or brand
 13 families to keep the directory in conformity with the requirements of AS 43.50.460 -
 14 43.50.495;

15 (4) every licensee shall provide to the commissioner, and update as
 16 necessary, an electronic mail address for the purpose of receiving any notifications
 17 that may be required by AS 43.50.460 - 43.50.495.

18 * **Sec. 5.** AS 43.50.600 is amended to read:

19 **Sec. 43.50.600. Stamps prohibited on cigarette packages not complying**
 20 **with federal and state laws.** A licensee or the licensee's authorized agent or designee
 21 may not affix a stamp to a cigarette package if the cigarettes

22 (1) may not be acquired, held, owned, imported, possessed, sold, or
 23 distributed in this state under AS 43.50.400 or AS 18.74; or

24 (2) are not in compliance with other state or federal laws.

25 * **Sec. 6.** AS 43.50.700(9) is amended to read:

26 (9) "unstamped cigarettes" means a package containing cigarettes that
 27 is not affixed with the stamp required by AS 43.50.500 - 43.50.700 or is affixed with a
 28 stamp in violation of AS 43.50.600 or in a denomination less than the tax levied
 29 under this chapter.

30 * **Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section to
 31 read:

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

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

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

8 (b) In this section,

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

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

12 * **Sec. 8.** This Act takes effect July 1, 2007.