

HOUSE BILL NO. 131

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES GATTO, Olson, Doll, Neuman, Kawasaki, Crawford, Kerttula, Wilson

Introduced: 2/14/07

Referred: Labor and Commerce, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the burning capability of cigarettes being sold or 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.** AS 18 is amended by adding a new chapter to read:

7 **Chapter 74. Cigarette Fire Safety.**

8 **Sec. 18.74.010. Requirement for sale.** Except as provided by AS 18.74.060, a
9 person may not sell or offer to sell cigarettes in this state, or sell or offer to sell
10 cigarettes to another person located in this state, unless

11 (1) the cigarettes are tested under

12 (A) AS 18.74.030 and satisfy the performance standard in
13 AS 18.74.030(d); or

14 (B) AS 18.74.040 and satisfy an alternative performance

1 standard under AS 18.74.040;

2 (2) the cigarettes have been marked as required by AS 18.74.130; and

3 (3) a certification has been approved for the cigarettes under
4 AS 18.74.080.

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

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

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

9 (b) The state fire marshal may adopt an ASTM International standard test
10 method that is adopted by the American Society of Testing and Materials after the
11 standard test method identified under (a) of this section if the state fire marshal finds
12 that the method does not result in a change in the percentage of full-length burns
13 exhibited by any tested cigarette when compared to the percentage of full-length burns
14 that the same cigarette would exhibit when tested under

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

16 (2) the criteria established under (c) and (d) of this section.

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

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

21 **Sec. 18.74.040. Alternative test methods.** (a) If the state fire marshal
22 determines that cigarettes cannot be tested by a test method established in
23 AS 18.74.030(a), a manufacturer of the cigarettes shall propose an alternative test
24 method and performance standard for the cigarettes to the state fire marshal. On
25 approval of the proposed test method and a determination by the state fire marshal that
26 the performance standard proposed by the manufacturer is equivalent to the
27 performance standard prescribed by AS 18.74.030(d), the manufacturer may employ
28 the proposed alternative test method and performance standard to certify the cigarette
29 under AS 18.74.080.

30 (b) Unless the state fire marshal demonstrates a reasonable basis why the
31 alternative test method should not be accepted under this chapter, the state fire marshal

1 shall authorize a manufacturer to use an alternative test method and performance
2 standard to certify cigarettes for sale in this state if the state fire marshal

3 (1) determines that another state has enacted reduced cigarette ignition
4 propensity standards that include a test method and performance standard that are the
5 same as those contained in this chapter; and

6 (2) finds that the officials responsible for implementing those
7 requirements have approved a proposed alternative test method and performance
8 standard for particular cigarettes proposed by a manufacturer as meeting the fire safety
9 standards of that state's law under a legal provision comparable to this section.

10 (c) All other applicable requirements of this chapter apply to the manufacturer
11 of the cigarettes tested under this section.

12 **Sec. 18.74.050. Testing laboratories.** (a) Testing of cigarettes under this
13 chapter shall be performed by a laboratory that has been accredited under standard
14 ISO/IEC 17025 of the International Organization for Standardization or by another
15 comparable accreditation standard required by the state fire marshal.

16 (b) A laboratory that conducts cigarette testing under this chapter shall
17 implement a quality control and quality assurance program that ensures the
18 repeatability of the testing results. The repeatability value may not be greater than
19 0.19. In this subsection,

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

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

26 **Sec. 18.74.060. Testing for another purpose.** AS 18.74.030 does not require
27 cigarettes to be tested if the cigarettes are tested for another purpose and the testing is
28 consistent with this chapter.

29 **Sec. 18.74.070. Maintenance of records.** A manufacturer shall keep copies of
30 the reports of all tests conducted on all cigarettes manufactured by the manufacturer
31 for three years. The manufacturer shall make copies of those reports available to the

1 state fire marshal and the attorney general on written request.

2 **Sec. 18.74.080. Certification requirement.** (a) A manufacturer shall submit to
3 the state fire marshal a certification that each cigarette listed in the certification has
4 been tested under AS 18.74.030 and satisfies the performance standard in
5 AS 18.74.030(d), or has been tested under AS 18.74.040 and satisfies an alternative
6 performance standard under AS 18.74.040.

7 (b) If a manufacturer has certified a cigarette under this section and
8 subsequently makes a change to the cigarette that is likely to alter its compliance with
9 the performance standard under AS 18.74.030(d) or an alternative performance
10 standard under AS 18.74.040, the cigarette may not be sold or offered for sale in this
11 state or sold to a person located in this state until the manufacturer retests the cigarette
12 under AS 18.74.030 or 18.74.040, the cigarette meets the performance standard under
13 AS 18.74.030(d) or the alternative performance standard under AS 18.74.040, and the
14 manufacturer maintains records of the retesting under AS 18.74.070.

15 (c) For each cigarette listed in a certification submitted under (a) of this
16 section, a manufacturer shall pay to the state fire marshal a fee of \$250. The state fire
17 marshal may adjust this fee annually to ensure that it defrays the actual costs of the
18 processing, testing, enforcement, and oversight activities required by this chapter.

19 (d) Each cigarette certified under this section shall be recertified every three
20 years.

21 **Sec. 18.74.090. Contents of certification.** The certification required by
22 AS 18.74.080 must provide the following information for each cigarette listed in the
23 certification:

- 24 (1) the brand or trade name on the package;
- 25 (2) the style;
- 26 (3) the length in millimeters;
- 27 (4) the circumference in millimeters;
- 28 (5) the flavor, if applicable;
- 29 (6) whether the cigarette is filtered or nonfiltered;
- 30 (7) a description of the package;
- 31 (8) the marking approved under AS 18.74.120;

1 (9) the name, address, and telephone number of the laboratory that
2 conducted the test, if different than the manufacturer who conducted the test; and

3 (10) the date that the testing occurred.

4 **Sec. 18.74.100. Banding requirement.** Each cigarette listed in a certification
5 submitted under AS 18.74.080 that uses lowered permeability bands in the cigarette
6 paper to achieve compliance with the performance standard in AS 18.74.030(d) must
7 have at least two nominally identical bands on the paper surrounding the tobacco
8 column. At least one complete band must be located at least 15 millimeters from the
9 lighting end of the cigarette. For cigarettes on which the bands are positioned by
10 design, there must be at least two bands fully located at least

11 (1) 15 millimeters from the lighting end; and

12 (2) 10 millimeters from

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

14 (B) the labeled end of the tobacco column of a nonfiltered
15 cigarette.

16 **Sec. 18.74.110. Availability of certifications.** The certification required by
17 AS 18.74.080 shall be made available to the attorney general for purposes consistent
18 with this chapter and to the department for the purpose of ensuring compliance with
19 AS 18.74.080.

20 **Sec. 18.74.120. Packaging marking approval.** (a) Before submitting a
21 certification of a cigarette under AS 18.74.080, a manufacturer shall present its
22 proposed packaging marking to the state fire marshal for approval. The state fire
23 marshal shall approve or disapprove the proposed packaging marking. Proposed
24 packaging marking shall be considered approved if the state fire marshal fails to act
25 within 10 business days after receiving a request for approval.

26 (b) Notwithstanding AS 18.74.130, the state fire marshal shall approve a
27 packaging marking that is in use and approved for the sale of cigarettes in the state of
28 New York under the Fire Safety Standards for Cigarettes established in New York.

29 (c) A manufacturer may not change its approved packaging marking unless
30 the state fire marshal has approved the modification under this section.

31 (d) A wholesale dealer, an agent, and a retail dealer shall permit the state fire

1 marshal, the department, the attorney general, and the employees of those persons to
2 inspect packaging markings of cigarettes.

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

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

11 (2) any visible combination of alphanumeric or symbolic characters
12 permanently stamped, engraved, or embossed on the package or wrapping; or

13 (3) printed, stamped, engraved, or embossed text on the cigarette
14 package that indicates that the cigarettes satisfy the requirements of this chapter.

15 (b) A manufacturer shall use only one packaging marking and apply that
16 packaging marking uniformly to all packaging and to all brands marketed by the
17 manufacturer.

18 **Sec. 18.74.150. Copies.** A manufacturer who certifies a cigarette under
19 AS 18.74.080 shall provide a copy of the certification to each wholesale dealer and
20 agent to whom the manufacturer sells the cigarette. The manufacturer shall also
21 provide the wholesale dealer and agent with sufficient copies of an illustration of the
22 cigarette packaging markings used by the manufacturer under AS 18.74.130 for each
23 retail dealer to whom the wholesale dealer or agent sells cigarettes. A wholesale dealer
24 or an agent shall provide a copy of the cigarette packaging markings received from a
25 manufacturer to each retail dealer to whom the wholesale dealer or agent sells
26 cigarettes.

27 **Sec. 18.74.160. Penalties for violations.** (a) A manufacturer, a wholesale
28 dealer, an agent, or another person who knowingly sells or offers to sell cigarettes
29 other than through retail sale and in violation of AS 18.74.010 - 18.74.070 is subject to
30 a civil penalty not to exceed

31 (1) \$10,000 for a first violation;

1 (2) \$25,000 for each violation that is not a first violation.

2 (b) A retail dealer who knowingly sells or offers to sell cigarettes in violation
3 of AS 18.74.010 - 18.74.070 is subject, for each sale or offer to sell, to a civil penalty
4 not to exceed

5 (1) \$500 for a first violation in which the total number of cigarettes
6 sold or offered for sale does not exceed 1,000 cigarettes;

7 (2) \$2,000 for each violation that is not a first violation and in which
8 the total number of cigarettes sold or offered for sale does not exceed 1,000 cigarettes;

9 (3) \$1,000 for a first violation in which the total number of cigarettes
10 sold or offered for sale exceeds 1,000 cigarettes;

11 (4) \$5,000 for a violation that is not a first violation and in which the
12 total number of cigarettes sold or offered for sale exceeds 1,000 cigarettes.

13 (c) The penalties against

14 (1) one manufacturer, wholesale dealer, agent, or other person under
15 (a) of this section may not exceed \$100,000 for violations occurring during a 30-day
16 period; or

17 (2) one retail dealer under (b) of this section may not exceed \$25,000
18 for violations occurring during a 30-day period.

19 (d) In addition to any other penalty prescribed by law, a person engaged in the
20 manufacture of cigarettes who knowingly makes a false certification under
21 AS 18.74.080 is subject to a civil penalty of at least \$75,000 for a first violation and a
22 civil penalty not exceeding \$250,000 for each violation that is not a first violation.

23 (e) A manufacturer who fails to make copies of reports available under
24 AS 18.74.070 within 60 days after receiving a written request from the state fire
25 marshal or the attorney general is subject to a civil penalty not to exceed \$10,000 for
26 each day after the 60th day that the manufacturer does not make the copies available.

27 (f) If a person violates a provision of this chapter and a civil penalty is not set
28 for the violation, the person is subject to a civil penalty not to exceed \$1,000 for a first
29 violation and a civil penalty not exceeding \$5,000 for each violation that is not a first
30 violation.

31 **Sec. 18.74.180. Separate accounting.** The fee received under AS 18.74.080(c)

1 and the civil penalties imposed under AS 18.74.160 shall be deposited into the general
2 fund and separately accounted for under AS 37.05.142. The legislature may
3 appropriate the money accounted for under this section to the fire prevention and
4 public safety fund established under AS 18.74.210.

5 **Sec. 18.74.190. Seizure of cigarettes.** (a) If a person is offering for sale or has
6 made a sale of cigarettes in violation of AS 18.74.010, the state fire marshal, the
7 department, or a law enforcement agency may seize or dispose of the cigarettes.

8 (b) Before disposal of cigarettes under (a) of this section, the state fire marshal
9 or the department shall

10 (1) provide the person from whom the cigarette was seized with notice
11 of the seizure and an opportunity for a hearing regarding the seizure; and

12 (2) permit the holder of the trademark rights in the cigarette brand to
13 inspect the cigarettes.

14 **Sec. 18.74.200. Other remedies.** In addition to any other remedy provided by
15 law, the state fire marshal or attorney general may file an action in superior court for a
16 violation of this chapter, including an action for injunctive relief or to recover costs or
17 damages suffered by the state because of a violation of this chapter, including
18 enforcement costs relating to the specific violation. Each violation of this chapter or of
19 the regulations adopted under this chapter constitutes a separate cause of action for
20 which the state fire marshal or attorney general may obtain relief.

21 **Sec. 18.74.210. Fire prevention and public safety fund.** (a) The fire
22 prevention and public safety fund is established. The fund consists of appropriations
23 made to the fund.

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

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

28 **Sec. 18.74.220. Implementation.** This chapter shall be implemented in
29 accordance with the implementation and substance of the New York Fire Safety
30 Standards for Cigarettes.

31 **Sec. 18.74.230 Review by state fire marshal.** The state fire marshal shall

1 review the effectiveness of this chapter, report the state fire marshal's findings to the
2 legislature every three years on or by January 30 of the reporting year, and, if
3 appropriate, recommend legislation to improve the effectiveness of this chapter.

4 **Sec. 18.74.240. Regulations.** The state fire marshal may adopt regulations to
5 implement this chapter.

6 **Sec. 18.74.250. Inspections.** (a) The department may inspect cigarettes held by
7 wholesale dealers, agents, and retail dealers to determine if the cigarettes are marked
8 as required by AS 18.74.120 and 18.74.130. If the cigarettes are not marked as
9 required, the department shall notify the state fire marshal.

10 (b) The state fire marshal and the attorney general may examine the books,
11 papers, invoices, and other records of a person who possesses, controls, or occupies
12 premises where cigarettes are placed, stored, sold, or offered for sale, and the stock of
13 cigarettes on the premises.

14 (c) A person who possesses, controls, or occupies premises where cigarettes
15 are placed, sold, or offered for sale, shall allow the state fire marshal and the attorney
16 general to make the inspections authorized by this section.

17 **Sec. 18.74.260. Sale outside the state.** This chapter may not be interpreted to
18 prohibit a person from manufacturing or selling cigarettes that do not meet the
19 requirements of this chapter if the cigarettes are or will be stamped for sale in another
20 state or are packaged for sale outside the United States and the person has taken
21 reasonable steps to ensure that the cigarettes will not be sold or offered for sale to
22 persons located in this state.

23 **Sec. 18.74.270. Regulation by municipality.** Notwithstanding any other
24 provision of law, a municipality may not enact or enforce an ordinance or another law
25 of the municipality that conflicts with this chapter or with a policy of the state
26 expressed by this chapter, whether expressed by inclusion of a provision in this
27 chapter or by exclusion of that subject from this chapter.

28 **Sec. 18.74.280. Relationship to federal law.** If a provision of this chapter is
29 preempted by or conflicts with federal law in a particular situation, the provision does
30 not apply to the extent of the preemption or conflict.

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

1 (1) "agent" means a person authorized by the department to purchase
2 and affix stamps on packages of cigarettes under AS 43.50.500 - 43.50.700;

3 (2) "cigarette" means a roll for smoking of any size or shape, made
4 wholly or in part of tobacco, whether or not the tobacco is flavored, adulterated, or
5 mixed with another ingredient, if the wrapper or cover of the roll is made of paper or a
6 material other than tobacco;

7 (3) "department" means the Department of Revenue;

8 (4) "manufacturer" means

9 (A) a person who manufactures or otherwise produces
10 cigarettes, or causes cigarettes to be manufactured or produced anywhere, if
11 the manufacturer intends the cigarettes to be sold in this state, including
12 cigarettes intended to be sold in the United States through an importer;

13 (B) the first purchaser anywhere who intends to resell in the
14 United States cigarettes that are manufactured anywhere and that the original
15 manufacturer or maker does not intend to be sold in the United States; or

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

18 (5) "retail dealer" means a person, other than a manufacturer or
19 wholesale dealer, who sells cigarettes or tobacco products;

20 (6) "sale" or "sell" means a sale, exchange, barter, and any other
21 manner of transferring the ownership of personal property;

22 (7) "wholesale dealer" means a person who

23 (A) sells cigarettes or tobacco products to retail dealers or other
24 persons for resale; and

25 (B) owns, operates, or maintains cigarette or tobacco vending
26 machines in, at, or on premises owned or occupied by another person.

27 * **Sec. 2.** AS 43.50.460(a) is amended to read:

28 (a) Every tobacco product manufacturer whose cigarettes are sold in this state,
29 whether directly or through a distributor, retailer, or similar intermediary or
30 intermediaries, shall execute and deliver on a form or in the manner prescribed by the
31 commissioner a certification to the commissioner, **not** [NO] later than April 30 of each

1 year, certifying, under penalty of perjury, that, as of the date of the certification, the
 2 tobacco product manufacturer is **complying with AS 18.74 and is** either a
 3 participating manufacturer or is in full compliance with AS 45.53.

4 * **Sec. 3.** AS 43.50.465 is amended to read:

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

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

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

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

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

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

26 **(C) the manufacturer's cigarettes do not comply with**
 27 **AS 18.74;**

28 (3) the commissioner shall update the directory as necessary in order to
 29 correct mistakes and to add or remove a tobacco product manufacturer or brand
 30 families to keep the directory in conformity with the requirements of AS 43.50.460 -
 31 43.50.495;

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

4 * **Sec. 4.** AS 43.50.600 is amended to read:

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

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

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

11 * **Sec. 5.** AS 43.50.700(9) is amended to read:

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

16 * **Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to
 17 read:

18 **TRANSITION.** (a) AS 18.74.010, enacted by sec. 1 of this Act, does not prohibit a
 19 wholesale dealer or retail dealer from selling or offering to sell an inventory of cigarettes
 20 existing on the effective date of this Act if the wholesale dealer or retail dealer establishes that

21 (1) state tax stamps were affixed to the cigarettes under AS 43.50 before the
 22 effective date of this Act; and

23 (2) the inventory was purchased before the effective date of this Act in
 24 comparable quantity to the inventory purchased during the same period of the previous year.

25 (b) In this section, "retail dealer," "sell," and "wholesale dealer" have the meanings
 26 given in AS 18.74.290.

27 * **Sec. 7.** This Act takes effect on the first day of the 13th month after the month in which
 28 this Act becomes law under AS 01.10.070.