

CS FOR SENATE BILL NO. 84(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered: 3/7/07

Referred: Judiciary, Finance

Sponsor(s): SENATORS OLSON, Elton, Ellis, Davis, Dyson, McGuire, Thomas

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the testing and packaging of cigarettes to be sold, offered for sale, or**
2 **possessed in this state; 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 submitted by the manufacturer of the
4 cigarettes under 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. The
19 performance standard required by (d) of this section may only be applied to a
20 complete test trial.

21 (d) When tested under this section, not more than 25 percent of the cigarettes
22 tested in a test trial may exhibit full-length burns.

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

1 (b) Unless the state fire marshal demonstrates a reasonable basis why the
2 alternative test method should not be accepted under this chapter, the state fire marshal
3 shall authorize a manufacturer to use an alternative test method and performance
4 standard to certify cigarettes for sale in this state if the state fire marshal

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

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

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

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

18 (b) A laboratory that conducts cigarette testing under this chapter shall
19 implement a quality control and quality assurance program that ensures the
20 repeatability of the testing results. The repeatability value may not be greater than
21 0.19. In this subsection,

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

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

28 **Sec. 18.74.060. Testing for another purpose.** AS 18.74.030 and 18.74.040 do
29 not require cigarettes to be tested if the cigarettes are tested for another purpose and
30 the testing is consistent with this chapter.

31 **Sec. 18.74.065. Testing by state fire marshal.** The state fire marshal may

1 perform testing of cigarettes to determine compliance with this chapter. If the state fire
 2 marshal or a contractor of the state fire marshal performs testing to determine a
 3 cigarette's compliance with the performance standard in AS 18.74.030(d) or an
 4 alternative performance standard under AS 18.74.040, the testing shall be performed
 5 under this chapter.

6 **Sec. 18.74.070. Maintenance of records.** A manufacturer shall keep for three
 7 years copies of the reports of all tests conducted on all cigarettes offered for sale. The
 8 manufacturer shall make copies of those reports available to the state fire marshal and
 9 the attorney general on written request.

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

15 (b) If a manufacturer has certified a cigarette under this section and
 16 subsequently makes a change to the cigarette that is likely to alter its compliance with
 17 the performance standard under AS 18.74.030(d) or an alternative performance
 18 standard under AS 18.74.040, the cigarette may not be sold or offered for sale in this
 19 state or sold to a person located in this state until the manufacturer retests the cigarette
 20 under AS 18.74.030 or 18.74.040, the cigarette meets the performance standard under
 21 AS 13.74.030(d) or the alternative performance standard under AS 18.74.040, and the
 22 manufacturer maintains records of the retesting under AS 18.74.070.

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

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

29 **Sec. 18.74.090. Contents of certification.** The certification required by
 30 AS 18.74.080 must provide the following information for each cigarette listed in the
 31 certification:

- 1 (1) the brand or trade name on the package;
- 2 (2) the style, such as "light" or "ultra-light";
- 3 (3) the length in millimeters;
- 4 (4) the circumference in millimeters;
- 5 (5) the flavor, if applicable;
- 6 (6) whether the cigarette is filtered or nonfiltered;
- 7 (7) a description of the package;
- 8 (8) the marking approved under AS 18.74.120;
- 9 (9) the name, address, and telephone number of the laboratory that
- 10 conducted the test, if different than the manufacturer who conducted the test; and
- 11 (10) the date that the testing occurred.

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

19 (1) 15 millimeters from the lighting end; and

20 (2) 10 millimeters from

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

22 (B) the labeled end of the tobacco column of a nonfiltered
 23 cigarette.

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

28 **Sec. 18.74.120. Packaging marking approval.** (a) Before submitting a
 29 certification of a cigarette under AS 18.74.080, a manufacturer shall present its
 30 proposed packaging marking to the state fire marshal for approval. The state fire
 31 marshal shall approve or disapprove the proposed packaging marking. Proposed

1 packaging marking shall be considered approved if the state fire marshal fails to act
2 within 10 business days after receiving a request for approval.

3 (b) Notwithstanding AS 18.74.130, the state fire marshal shall give a
4 preference to proposed packaging marking for a cigarette that is in use and approved
5 for the cigarette under the fire safety standards for cigarettes established by the law of
6 the state of New York, unless the state fire marshal demonstrates a reasonable basis
7 why the proposed packaging marking should not be approved under this chapter.

8 (c) Notwithstanding AS 18.74.130, the state fire marshal shall approve the use
9 of the letters "FSC" for "fire standards compliant" on proposed packaging marking to
10 indicate that the cigarettes comply with the performance standard in AS 18.74.030(d)
11 or an alternative performance standard under AS 18.74.040.

12 (d) A manufacturer may not change its approved packaging marking unless
13 the state fire marshal has approved the modification under this section.

14 (e) A wholesale dealer, an agent, and a retail dealer shall permit the state fire
15 marshal, the department, the attorney general, and the employees of those persons to
16 inspect packaging markings of cigarettes.

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

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

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

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

29 (b) A manufacturer shall use only one packaging marking and apply that
30 packaging marking uniformly to all packaging and to all brands marketed by the
31 manufacturer for sale in this state.

1 **Sec. 18.74.150. Copies.** A manufacturer who certifies a cigarette under
2 AS 18.74.080 shall provide a copy of the certification to each wholesale dealer and
3 agent to whom the manufacturer sells the cigarette. The manufacturer shall also
4 provide the wholesale dealer and agent with sufficient copies of an illustration of the
5 cigarette packaging markings used by the manufacturer under AS 18.74.130 for each
6 retail dealer to whom the wholesale dealer or agent sells cigarettes. A wholesale dealer
7 or an agent shall provide a copy of the cigarette packaging markings received from a
8 manufacturer to each retail dealer to whom the wholesale dealer or agent sells
9 cigarettes.

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

14 (1) \$10,000 for a first violation;

15 (2) \$25,000 for each violation that is not a first violation.

16 (b) A retail dealer who knowingly sells or offers to sell cigarettes in violation
17 of AS 18.74.010 is subject, for each sale or offer to sell, to a civil penalty not to
18 exceed

19 (1) \$500 for a first violation in which the total number of cigarettes
20 sold or offered for sale does not exceed 1,000 cigarettes;

21 (2) \$2,000 for each violation that is not a first violation and in which
22 the total number of cigarettes sold or offered for sale does not exceed 1,000 cigarettes;

23 (3) \$1,000 for a first violation in which the total number of cigarettes
24 sold or offered for sale exceeds 1,000 cigarettes;

25 (4) \$5,000 for a violation that is not a first violation and in which the
26 total number of cigarettes sold or offered for sale exceeds 1,000 cigarettes.

27 (c) The penalties against

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

31 (2) one retail dealer under (b) of this section may not exceed \$25,000

1 for violations occurring during a 30-day period.

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

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

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

14 **Sec. 18.74.180. Separate accounting.** The fee received under AS 18.74.080(c)
15 and the civil penalties imposed under AS 18.74.160 shall be deposited into the general
16 fund and separately accounted for under AS 37.05.142. The legislature may
17 appropriate the money accounted for under this section to the fire prevention and
18 public safety fund established under AS 18.74.210.

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

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

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

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

28 **Sec. 18.74.200. Other remedies.** In addition to any other remedy provided by
29 law, the state fire marshal or attorney general may file an action in superior court for a
30 violation of this chapter, including an action for injunctive relief or to recover costs or
31 damages suffered by the state because of a violation of this chapter, including

1 enforcement costs relating to the specific violation. Each violation of this chapter or of
2 the regulations adopted under this chapter constitutes a separate cause of action for
3 which the state fire marshal or attorney general may obtain relief.

4 **Sec. 18.74.210. Fire prevention and public safety fund.** (a) The fire
5 prevention and public safety fund is established. The fund consists of appropriations
6 made to the fund.

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

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

11 **Sec. 18.74.220. Implementation.** The substance of the fire safety standards for
12 cigarettes established by the law of the state of New York and the implementation of
13 these standards by the state of New York shall be persuasive authority in the
14 implementation of this chapter by the state fire marshal and the attorney general.

15 **Sec. 18.74.230 Review by state fire marshal.** The state fire marshal shall
16 review the effectiveness of this chapter, report the state fire marshal's findings to the
17 legislature every three years on or by January 30 of the reporting year, and, if
18 appropriate, recommend legislation to improve the effectiveness of this chapter.

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

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

25 (b) To determine compliance with this chapter, the state fire marshal and the
26 attorney general may examine the books, papers, invoices, and other records of a
27 person who possesses, controls, or occupies premises where cigarettes are placed,
28 stored, sold, or offered for sale, and the stock of cigarettes on the premises.

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

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

7 **Sec. 18.74.270. Regulation by municipality.** Notwithstanding any other
 8 provision of law, a municipality may not enact or enforce an ordinance or another law
 9 of the municipality that conflicts with this chapter.

10 **Sec. 18.74.280. Relationship to federal law.** This chapter does not apply if a
 11 federal law is enacted that establishes a reduced cigarette ignition propensity standard
 12 and preempts this chapter.

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

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

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

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

21 (4) "manufacturer" means

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

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

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

31 (5) "retail dealer" means a person, other than a manufacturer or

1 wholesale dealer, who sells cigarettes or tobacco products;

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

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

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

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

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

10 (a) Every tobacco product manufacturer whose cigarettes are sold in this state,
11 whether directly or through a distributor, retailer, or similar intermediary or
12 intermediaries, shall execute and deliver on a form or in the manner prescribed by the
13 commissioner a certification to the commissioner, **not** [NO] later than April 30 of each
14 year, certifying, under penalty of perjury, that, as of the date of the certification, the
15 tobacco product manufacturer is **complying with AS 18.74 and is** either a
16 participating manufacturer or is in full compliance with AS 45.53.

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

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

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

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

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

31 (A) for a nonparticipating manufacturer, all escrow payments

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

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

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

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

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

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

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

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

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

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

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

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

31 TRANSITION. (a) AS 18.74.010, enacted by sec. 1 of this Act, does not prohibit a

1 wholesale dealer or retail dealer from selling or offering to sell an inventory of cigarettes
2 existing on the effective date of this Act if the wholesale dealer or retail dealer establishes that

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

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

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

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