

**CS FOR SENATE BILL NO. 84(JUD)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - FIRST SESSION

**BY THE SENATE JUDICIARY COMMITTEE**

**Offered: 3/28/07**

**Referred: Finance**

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

**REPRESENTATIVES Gardner, Gara, Crawford**

**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; and providing for an effective date."**

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

4 **\* Section 1.** AS 18 is amended by adding a new chapter to read:

5 **Chapter 74. Cigarette Fire Safety.**

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

9 (1) the cigarettes are tested under

10 (A) AS 18.74.030 and satisfy the performance standard in  
11 AS 18.74.030(d); or

12 (B) AS 18.74.040 and satisfy an alternative performance  
13 standard under AS 18.74.040;

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

1 (3) a certification has been submitted by the manufacturer of the  
2 cigarettes under AS 18.74.080.

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

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

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

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

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

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

15 (c) The testing under this section shall be conducted on 10 layers of filter  
16 paper. A complete test trial consists of 40 replicate tests of each cigarette. The  
17 performance standard required by (d) of this section may only be applied to a  
18 complete test trial.

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

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 and 18.74.040 do  
27 not require cigarettes to be tested if the cigarettes are tested for another purpose and  
28 the testing is consistent with this chapter.

29 **Sec. 18.74.065. Testing by state fire marshal.** The state fire marshal may  
30 perform testing of cigarettes to determine compliance with this chapter. If the state fire  
31 marshal or a contractor of the state fire marshal performs testing to determine a

1 cigarette's compliance with the performance standard in AS 18.74.030(d) or an  
 2 alternative performance standard under AS 18.74.040, the testing shall be performed  
 3 under this chapter.

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

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

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

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

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

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

- 30 (1) the brand or trade name on the package;
- 31 (2) the style, such as "light" or "ultra-light";

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

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

17 (1) 15 millimeters from the lighting end; and

18 (2) 10 millimeters from

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

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

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

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

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

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

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

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

15 **Sec. 18.74.130. Marking of cigarette packaging.** (a) The packaging  
 16 containing a brand and style of cigarette that a manufacturer certifies under  
 17 AS 18.74.080 must be marked to indicate compliance with the requirements of this  
 18 chapter. The packaging marking 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 package or wrapping; or

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

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

30 **Sec. 18.74.150. Copies.** A manufacturer who certifies a cigarette under  
 31 AS 18.74.080 shall provide a copy of the certification to each wholesale dealer and

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

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

12 (1) \$10,000 for a first violation;

13 (2) \$25,000 for each violation that is not a first violation.

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

17 (1) \$500 for a first violation in which the total number of cigarettes  
 18 sold or offered for sale does not exceed 1,000 cigarettes;

19 (2) \$2,000 for each violation that is not a first violation and in which  
 20 the total number of cigarettes sold or offered for sale does not exceed 1,000 cigarettes;

21 (3) \$1,000 for a first violation in which the total number of cigarettes  
 22 sold or offered for sale exceeds 1,000 cigarettes;

23 (4) \$5,000 for a violation that is not a first violation and in which the  
 24 total number of cigarettes sold or offered for sale exceeds 1,000 cigarettes.

25 (c) The penalties against

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

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

31 (d) In addition to any other penalty prescribed by law, a person engaged in the

1 manufacture of cigarettes who knowingly makes a false certification under  
2 AS 18.74.080 is subject to a civil penalty of at least \$75,000 for a first violation and a  
3 civil penalty not exceeding \$250,000 for each violation that is not a first violation.

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

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

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

17 **Sec. 18.74.190. Seizure of cigarettes.** (a) If a person is offering for sale or has  
18 made a sale of cigarettes in violation of AS 18.74.010, the state fire marshal, the  
19 department, or a law enforcement agency shall seize and, subject to (b) of this section,  
20 dispose of the cigarettes.

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

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

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

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

1 the regulations adopted under this chapter constitutes a separate cause of action for  
2 which the state fire marshal or attorney general may obtain relief.

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

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

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

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

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

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

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

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

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

31 **Sec. 18.74.260. Sale outside the state.** This chapter may not be interpreted to

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

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

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

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

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

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

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

20 (4) "manufacturer" means

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

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

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

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

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

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

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

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

8       \* **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to  
9 read:

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

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

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

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

19       \* **Sec. 3.** This Act takes effect on the first day of the 13th month after the month in which  
20 this Act becomes law under AS 01.10.070.