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HOUSE CS FOR CS FOR SENATE BILL NO. 84(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 5/12/07

Referred: Today's Calendar

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

REPRESENTATIVES Gardner, Gara, Crawford, Lynn, Dahlstrom, Kawasaki, Buch, Meyer, Wilson

A BILL**FOR AN ACT ENTITLED**

1 "An Act relating to the improper sale of tobacco products and to the testing and
 2 packaging of cigarettes to be sold, offered for sale, or possessed in this state; relating to
 3 civil penalties for the improper sale of tobacco products and to suspension of business
 4 license endorsements and the right to obtain business license endorsements where the
 5 suspension is based on the improper sale of tobacco products; relating to citations for
 6 certain offenses related to tobacco; and providing for an effective date."

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

8 * **Section 1.** AS 11.76.100(a) is amended to read:

9 (a) A person commits the offense of selling or giving tobacco to a minor if the
 10 person

11 (1) negligently sells a cigarette, a cigar, tobacco, or a product
 12 containing tobacco to a person under 19 years of age;

13 (2) is 19 years of age or older and negligently exchanges or gives a

1 cigarette, a cigar, tobacco, or a product containing tobacco to a person under 19 years
2 of age; [OR]

3 (3) maintains a vending machine that dispenses cigarettes, cigars,
4 tobacco, or products containing tobacco; or

5 (4) holds a business license endorsement under AS 43.70.075 and
6 allows a person under 19 years of age to sell a cigarette, cigar, tobacco, or a
7 product containing tobacco.

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

9 **Chapter 74. Cigarette Fire Safety.**

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

13 (1) the cigarettes are tested under

14 (A) AS 18.74.030 and satisfy the performance standard in
15 AS 18.74.030(d); or

16 (B) AS 18.74.040 and satisfy an alternative performance
17 standard under AS 18.74.040;

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

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

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

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

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

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

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

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

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

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

8 **Sec. 18.74.040. Alternative test methods.** (a) If the state fire marshal
9 determines that cigarettes cannot be tested by a test method established in
10 AS 18.74.030(a), a manufacturer of the cigarettes shall propose an alternative test
11 method and performance standard for the cigarettes to the state fire marshal. On
12 approval of the proposed test method and a determination by the state fire marshal that
13 the performance standard proposed by the manufacturer is equivalent to the
14 performance standard prescribed by AS 18.74.030(d), the manufacturer may employ
15 the proposed alternative test method and performance standard to certify the cigarette
16 under AS 18.74.080.

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

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

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

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

30 **Sec. 18.74.050. Testing laboratories.** (a) Testing of cigarettes under this
31 chapter shall be performed by a laboratory that has been accredited under standard

1 ISO/IEC 17025 of the International Organization for Standardization or by another
2 comparable accreditation standard required by the state fire marshal.

3 (b) A laboratory that conducts cigarette testing under this chapter shall
4 implement a quality control and quality assurance program that ensures the
5 repeatability of the testing results. The repeatability value may not be greater than
6 0.19. In this subsection,

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

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

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

16 **Sec. 18.74.065. Testing by state fire marshal.** The state fire marshal may
17 perform testing of cigarettes to determine compliance with this chapter. If the state fire
18 marshal or a contractor of the state fire marshal performs testing to determine a
19 cigarette's compliance with the performance standard in AS 18.74.030(d) or an
20 alternative performance standard under AS 18.74.040, the testing shall be performed
21 under this chapter.

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

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

31 (b) If a manufacturer has certified a cigarette under this section and

1 subsequently makes a change to the cigarette that is likely to alter its compliance with
 2 the performance standard under AS 18.74.030(d) or an alternative performance
 3 standard under AS 18.74.040, the cigarette may not be sold or offered for sale in this
 4 state or sold to a person located in this state until the manufacturer retests the cigarette
 5 under AS 18.74.030 or 18.74.040, the cigarette meets the performance standard under
 6 AS 18.74.030(d) or the alternative performance standard under AS 18.74.040, and the
 7 manufacturer maintains records of the retesting under AS 18.74.070.

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

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

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

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

28 **Sec. 18.74.100. Banding requirement.** Each cigarette listed in a certification
 29 submitted under AS 18.74.080 that uses lowered permeability bands in the cigarette
 30 paper to achieve compliance with the performance standard in AS 18.74.030(d) must
 31 have at least two nominally identical bands on the paper surrounding the tobacco

1 column. At least one complete band must be located at least 15 millimeters from the
 2 lighting end of the cigarette. For cigarettes on which the bands are positioned by
 3 design, there must be at least two bands fully located at least

4 (1) 15 millimeters from the lighting end; and

5 (2) 10 millimeters from

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

7 (B) the labeled end of the tobacco column of a nonfiltered
 8 cigarette.

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

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

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

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

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

30 (e) A wholesale dealer, an agent, and a retail dealer shall permit the state fire
 31 marshal, the department, the attorney general, and the employees of those persons to

1 inspect packaging markings of cigarettes.

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

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

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

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

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

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

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

30 (1) \$10,000 for a first violation;

31 (2) \$25,000 for each violation that is not a first violation.

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

4 (1) \$500 for a first violation in which the total number of cigarettes
 5 sold or offered for sale does not exceed 1,000 cigarettes;

6 (2) \$2,000 for each violation that is not a first violation and in which
 7 the total number of cigarettes sold or offered for sale does not exceed 1,000 cigarettes;

8 (3) \$1,000 for a first violation in which the total number of cigarettes
 9 sold or offered for sale exceeds 1,000 cigarettes;

10 (4) \$5,000 for a violation that is not a first violation and in which the
 11 total number of cigarettes sold or offered for sale exceeds 1,000 cigarettes.

12 (c) The penalties against

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

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

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

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

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

30 **Sec. 18.74.180. Separate accounting.** The fee received under AS 18.74.080(c)
 31 and the civil penalties imposed under AS 18.74.160 shall be deposited into the general

1 fund and separately accounted for under AS 37.05.142. The legislature may
2 appropriate the money accounted for under this section to the fire prevention and
3 public safety fund established under AS 18.74.210.

4 **Sec. 18.74.190. Seizure of cigarettes.** (a) If a person is offering for sale or has
5 made a sale of cigarettes in violation of AS 18.74.010, the state fire marshal, the
6 department, or a law enforcement agency shall seize and, subject to (b) of this section,
7 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 and
25 the department for 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.** The substance of the fire safety standards for
29 cigarettes established by the law of the state of New York and the implementation of
30 these standards by the state of New York shall be persuasive authority in the
31 implementation of this chapter by the state fire marshal and the attorney general.

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

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

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

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

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

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

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

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

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

31 (1) "agent" means a person authorized by the department to purchase

1 and affix stamps on packages of cigarettes under AS 43.50.500 - 43.50.700;

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

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

7 (4) "manufacturer" means

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

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

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

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

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

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

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

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

26 * **Sec. 3.** AS 37.05.146(c) is amended by adding a new paragraph to read:

27 (82) fees collected under AS 18.74.080.

28 * **Sec. 4.** AS 43.70.075(d) is amended to read:

29 (d) If a person who holds an endorsement issued under this section, or an
30 agent or an employee of a person who holds an endorsement issued under this section
31 acting within the scope of the agency or employment, has been convicted of violating

1 AS 11.76.100, 11.76.106, or 11.76.107, the department **shall impose a civil penalty**
 2 **as set out in this subsection. However, following a hearing under (m) of this**
 3 **section, and based on evidence admitted at that hearing concerning questions**
 4 **specified in (m)(4) and (6) of this section, the department may reduce by not**
 5 **more than 10 days a suspension under (1) of this subsection, or by not more than**
 6 **20 days a suspension under (2) of this subsection, or increase by not more than 10**
 7 **days a suspension under (1) of this subsection, or by not more than 20 days a**
 8 **suspension under (2) of this subsection. If a hearing is not requested, or if a**
 9 **hearing is requested and the department determines that the evidence admitted**
 10 **does not support increasing or decreasing the suspension, the department** shall
 11 suspend the endorsement for a period of

12 (1) 20 days and impose a civil penalty of \$300 if the person has not
 13 been previously convicted of violating AS 11.76.100, 11.76.106, or 11.76.107 and is
 14 not otherwise subject to the sanctions described in (2) - (4) of this subsection;

15 (2) 45 days and impose a civil penalty of \$500 if, within the 24 months
 16 before the date of the department's notice under (m) of this section, the person, or an
 17 agent or employee of the person while acting within the scope of the agency or
 18 employment of the person, was convicted once of violating AS 11.76.100, 11.76.106,
 19 or 11.76.107;

20 (3) 90 days and impose a civil penalty of \$1,000 if, within the 24
 21 months before the date of the department's notice under (m) of this section, the person,
 22 or an agent or employee of the person while acting within the scope of the agency or
 23 employment of the person, was convicted twice of violating AS 11.76.100, 11.76.106,
 24 or 11.76.107, or a provision of this section or a regulation implementing this section
 25 adopted under AS 43.70.090; or

26 (4) one year and impose a civil penalty of \$2,500 if, within the 24
 27 months before the date of the department's notice under (m) of this section, the person,
 28 or an agent or employee of the person while acting within the scope of the agency or
 29 employment of the person, was convicted more than twice of violating AS 11.76.100,
 30 11.76.106, or 11.76.107.

31 * **Sec. 5.** AS 43.70.075(m) is amended to read:

1 (m) The department may initiate suspension of a business license endorsement
 2 or the right to obtain a business license endorsement under this section by sending the
 3 person subject to the suspension a notice by certified mail, return receipt requested, or
 4 by delivering the notice to the person. The notice must contain information that
 5 informs the person of the grounds for suspension, the length of any suspension sought,
 6 and the person's right to administrative review. A suspension begins 30 days after
 7 receipt of notice described in this subsection unless the person delivers a timely
 8 written request for a hearing to the department in the manner provided by regulations
 9 of the department. If a hearing is requested under this subsection, **an administrative**
 10 **law judge** [A HEARING OFFICER] of the office of administrative hearings
 11 (AS 44.64.010) shall determine the issues by using the preponderance of the evidence
 12 test and shall, to the extent they do not conflict with regulations adopted under
 13 AS 44.64.060, conduct the hearing in the manner provided by regulations of the
 14 department. A hearing under this subsection is limited to the following questions:

15 (1) was the person holding the business license endorsement, or an
 16 agent or employee of the person while acting within the scope of the agency or
 17 employment of the person, convicted by plea or judicial finding of violating
 18 AS 11.76.100, 11.76.106, or 11.76.107;

19 (2) if the department does not allege a conviction of AS 11.76.100,
 20 11.76.106, or 11.76.107, did the person, or an agent or employee of the person while
 21 acting within the scope of the agency or employment of the person, violate a provision
 22 of (a) or (g) of this section;

23 (3) within the 24 months before the date of the department's notice
 24 under this subsection, was the person, or an agent or employee of the person while
 25 acting within the scope of the agency or employment of the person, convicted of
 26 violating AS 11.76.100, 11.76.106, or 11.76.107 or adjudicated for violating a
 27 provision of (a) or (g) of this section;

28 **(4) did the person holding the business license endorsement**
 29 **establish that the person holding the business license endorsement had adopted**
 30 **and enforced an education, a compliance, and a disciplinary program for agents**
 31 **and employees of the person as provided in (t) of this section;**

1 **(5) did the person holding the business license endorsement**
 2 **overcome the rebuttable presumption established in (w) of this section;**

3 **(6) within 5 years before the date of the violation that is the subject**
 4 **of the hearing, did the department establish that the person holding the business**
 5 **license endorsements**

6 **(A) previously violated (a) or (g) of this section;**

7 **(B) previously violated AS 11.76.100, 11.76.106, or**
 8 **11.76.107 at a location or outlet in a location for which the person holds a**
 9 **business license endorsement, or had an agent or employee previously**
 10 **violate AS 11.76.100, 11.76.106, or 11.76.107; this subparagraph does not**
 11 **apply to a prior conviction that served to enhance a suspension period**
 12 **under (d)(2) - (4) of this section; or**

13 **(C) engaged at a location owned by the person in other**
 14 **conduct that was or is likely to result in the sale of tobacco to a person**
 15 **under 19 years of age in violation of AS 11.76.100, 11.76.106, or 11.76.107.**

16 * **Sec. 6.** AS 43.70.075 is amended by adding new subsections to read:

17 (t) Based on evidence provided at the hearing under (m)(4) - (6) of this
 18 section, the department may reduce the license suspension period under (d) of this
 19 section if the person holding the business license endorsement establishes that, before
 20 the date of the violation, the person had

21 (1) adopted and enforced a written policy against selling cigarettes,
 22 cigars, tobacco, or products containing tobacco to a person under 19 years of age in
 23 violation of AS 11.76.100, 11.76.106, or 11.76.107;

24 (2) informed the person's agents and employees of the applicable laws
 25 and their requirements and conducted training on complying with the laws and
 26 requirements;

27 (3) required each agent and employee of the person to sign a form
 28 stating that the agent and employee has been informed of and understands the written
 29 policy and the requirements of AS 11.76.100, 11.76.106, and 11.76.107;

30 (4) determined that the agents and employees of the person had
 31 sufficient experience and ability to comply with the written policy and requirements of

1 AS 11.76.100, 11.76.106, and 11.76.107;

2 (5) required the agents and employees of the person to verify the age
3 of purchasers of cigarettes, cigars, tobacco, or other products containing tobacco by
4 means of a valid government issued photographic identification;

5 (6) established and enforced disciplinary sanctions for noncompliance
6 with the written policy or the requirements of AS 11.76.100, 11.76.106, and
7 11.76.107; and

8 (7) monitored the compliance of the agents and employees of the
9 person with the written policy and the requirements of AS 11.76.100, 11.76.106, and
10 11.76.107.

11 (u) A reduction in the period of suspension under this section may not be
12 granted more than once in a 12-month period for a location or outlet in a location for
13 which the person holds a business license.

14 (v) Notwithstanding (d) of this section, in place of a hearing under (m) of this
15 section, the department and the person holding the business license endorsement may
16 enter into a memorandum of agreement regarding the imposition of a suspension and
17 civil penalties based on a violation of AS 11.76.100, 11.76.106, or 11.76.107. The
18 memorandum of agreement must contain a provision that the person holding the
19 business license endorsement admits or does not contest that a violation of
20 AS 11.76.100, 11.76.106, or 11.76.107 occurred and accepts the imposition of
21 suspension and civil penalty under this section. Based on the memorandum of
22 agreement, the department may reduce the period of suspension. For violations
23 involving AS 11.76.100, 11.76.106, or 11.76.107, the department may not reduce the
24 period of suspension by more than 10 days under (d)(1) of this section or by more than
25 20 days under (d)(2) of this section. The department may not agree to a reduction in
26 the period of suspension more than once in a 12-month time period for a location or
27 outlet in a location for which the person holds a business license endorsement.

28 (w) For purposes of (m)(5) of this section, a conviction for a violation of
29 AS 11.76.100, 11.76.106, or 11.76.107 by the agent or employee of the person who
30 holds the business license endorsement is rebuttably presumed to constitute proof of
31 the fact that the agent or employee negligently sold a cigarette, a cigar, or tobacco, or a

1 product containing tobacco to a person under 19 years of age. The person who holds
 2 the business license endorsement may overcome the presumption by establishing by
 3 clear and convincing evidence that the agent or employee did not negligently sell a
 4 cigarette, a cigar, or tobacco, or a product containing tobacco to a person under 19
 5 years in violation of AS 11.76.100, 11.76.106, or 11.76.107 as alleged in the citation
 6 issued to the agent or employee. The presentation of evidence authorized by this
 7 subsection does not constitute a collateral attack on the conviction described in this
 8 subsection.

9 (x) Notwithstanding (d), (t), or (v) of this section, a period of suspension may
 10 not be reduced for a violation of AS 11.76.100(a)(4).

11 * **Sec. 7.** AS 44.29.094 is amended by adding a new subsection to read:

12 (h) The department shall notify the person who holds the business license
 13 endorsement required by AS 43.70.075(a) that the person's agent or employee has
 14 received a citation for a violation of AS 11.76.100, 11.76.106, or 11.76.107. The
 15 department may make the notification by delivering a copy of the citation or another
 16 document that includes the essential facts constituting the violation charged. The
 17 department shall accomplish the delivery by

18 (1) hand delivery of the citation or other document to a person who
 19 confirms that the person serves in a management or supervisory position at the
 20 location, or outlet in a location, where the alleged violation occurred; or

21 (2) mailing the citation or other document by first class mail to the
 22 person who holds the business license endorsement; the department shall use the
 23 person's most current address that the Department of Commerce, Community, and
 24 Economic Development has on file for the person's business license endorsement
 25 under AS 43.70.075; the citation or other document shall be postmarked within five
 26 business days after the citation is issued.

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

29 **TRANSITION.** (a) AS 18.74.010, enacted by sec. 2 of this Act, does not prohibit a
 30 wholesale dealer or retail dealer from selling or offering to sell an inventory of cigarettes
 31 existing on the effective date of this Act if the wholesale dealer or retail dealer establishes that

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

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

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

7 * **Sec. 9.** Section 2 of this Act takes effect on the first day of the 13th month after the month
8 in which this Act becomes law under AS 01.10.070.