

HB

224

HFIN

FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: April 10, 2003

FURTHER REFERRALS:

Date of Committee Action: 4/16/03

The FINANCE Committee considered:

HB 224

HOUSE BILL NO. 224

CIGARETTE SALES REQUIREMENTS

"An Act relating to a tobacco product manufacturer's compliance with certain statutory requirements regarding cigarette sales; and providing for an effective date."

Recommends it be replaced with HCS or CS for _____ (_____)
 For Senate Bills with new title: Technical Title New Title: HCR _____ Same Title New Title

- attach amendments
- add new referral to _____ Committee
- Letter of Intent _____ Committee

List of Abbrev for Depts.:
 ADM
 CED
 COR
 CRT
 EED
 DEC
 DFG
 GOV
 HSS
 LEG
 LAW
 LWF
 MVA
 DNR
 DPS
 REV
 DOT
 UA

<u>NEW FISCAL NOTES</u>				
*Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
DHSS				✓

<u>PREVIOUS FISCAL NOTES</u>				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
law	#1			✓
REV	#2			✓

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
<i>K. Meyer</i>	Meyer	✓			
<i>Michael...</i>	Hawker	✓			
<i>Stoltze</i>	Stoltze			✓	
<i>CROFT</i>	CROFT	✓			
<i>MOSES</i>	MOSES			✓	
<i>Chenault</i>	Chenault	✓			
<i>Whitaker</i>	Whitaker	✓			
<i>FOSTER</i>	FOSTER	X			
Chair: <i>DARRIS</i>	DARRIS	✓			
Chair: <i>Williams</i>	Williams	✓			

FISCAL NOTE

**STATE OF ALASKA
2003 LEGISLATIVE SESSION**

Fiscal Note Number: _____
 Bill Version: HB 224
 () Publish Date: _____
 Dept. Affected: Health & Social Services
 BRU State Health Services
 Component Tobacco Prevention and Control

Revision Date/Time (Note if correction): _____
 Title COMPLIANCE WITH TOBACCO MASTER SETTLEMENT

Sponsor HOUSE (RLS) BY REQUEST OF THE GOVERNOR
 Requester HOUSE (L&C)

Component No. 2384

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (0)						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
TOTAL.	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: _____
 Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 224 requires tobacco manufacturers who are not participating in the Tobacco Master Settlement Agreement to register with the Department of Revenue and report their sales to the State. These manufacturers are already responsible for contributing a set percentage of their tobacco sales to an escrow account established under AS 45.53. HB 224 will aid the State in the enforcement of AS 45.53. The department supports this bill.

The Department of Health & Social Services would not be directly involved in enforcement of this new law, and would not experience a fiscal impact as a result of passage of this legislation.

Prepared by: Doug Bruce, Director Phone 465-3090
 Division: Public Health Date/Time 04/16/2003
 Approved by: Joel S. Gilbertson, Commissioner Date 04/16/2003
 Agency: Department of Health and Social Services

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB 224
 (H) Publish Date: 3/28/03

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
 Title "An Act relating to a tobacco product manu- BRU Civil
facturer's compliance with certain statutory requirements . . ." Component Commercial
 Sponsor Rules Committee
 Requester Governor Component No. 2211

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type-Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill, based on a model developed by the National Association of Attorneys General in cooperation with a working group of participating states, is designed to aid state enforcement of the tobacco product Master Settlement Agreement (MSA) and AS 45.53, and thus preserve, to the fullest extent possible, the revenue stream under the MSA. One of the provisions of the MSA required states to enact legislation that would "level the playing field" for non-participating tobacco manufacturers, by requiring them to deposit money into escrow for every cigarette they sell in the state. Since 1999, participating states have detected concerted efforts to evade the legislative escrow requirement. This bill is intended to end those efforts.

This bill will have no fiscal impact on the Department of Law.

Prepared by: Joan M. Kasson Phone (907) 465-5370
 Division Attorney General's Office Date/Time 1/28/03 11:30 AM
 Approved by: Kathryn Daughhelee for Gregg D. Renkes, Attorney General Date 1/28/2003
 Agency Department of Law

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: HB 224
 (H) Publish Date: 3/28/03

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title Hearing Process: BRU Revenue Operations
Master Settlement Agreement Component Tax Division
 Sponsor Rules Committee
 Requester Governor Component No. 2476

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type-Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation would have no significant fiscal impact on the Department of Revenue. The intent is to aid the state in the enforcement of the nationwide tobacco products Master Settlement Agreement, therefore preserving, to the fullest extent possible, the revenue stream from that agreement.

The legislation would aid the state in its enforcement efforts against non-participating tobacco manufacturers that may try to circumvent the terms of the agreement.

Prepared by: Larry Perslly, Deputy Commissioner Phone 465-5469
 Divisor: Department of Revenue Date/Time 1/29/03 11:23 AM
 Approved by: Larry Perslly, Deputy Commissioner Date 1/29/2003
 Agency: Department of Revenue

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB 224
(H) Publish Date: 3/28/03

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
Title "An Act relating to a tobacco product manufacturer's compliance with certain statutory requirements . . ." BRU Civil
Sponsor Rules Committee Component Commercial
Requester Governor Component No. 2211

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

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TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

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This bill will have no fiscal impact on the Department of Law.

Prepared by: John M. Kasson Phone (907) 465-5370
Division Attorney General's Office Date/Time 1/28/03 11:30 AM
Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General Date 1/28/2003
Agency Department of Law

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: HB 224
 (H) Publish Date: 3/28/03

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title Hearing Process: BRU Revenue Operations
Master Settlement Agreement Component Tax Division
 Sponsor Rules Committee
 Requester Governor Component No. 2476

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

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Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

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Other (Specify Type-Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

This legislation would have no significant fiscal impact on the Department of Revenue. The intent is to aid the state in the enforcement of the nationwide tobacco products Master Settlement Agreement, therefore preserving, to the fullest extent possible, the revenue stream from that agreement.

The legislation would aid the state in its enforcement efforts against non-participating tobacco manufacturers that may try to circumvent the terms of the agreement.

Prepared by: Larry Persily, Deputy Commissioner Phone 465-5469
 Division: Department of Revenue Date/Time 1/29/03 11:23 AM
 Approved by: Larry Persily, Deputy Commissioner Date 1/29/2003
 Agency: Department of Revenue

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

FRANK H. MURKOWSKI,
GOVERNOR

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JUNEAU, ALASKA 99811-0300

PHONE: (907)465-3600
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HB 224
House Finance Committee
April 16, 2003
1:30pm

Testimony of Michael A. Barnhill, Asst. Attorney General

Thank you Mr. Chair. My name is Mike Barnhill. I am employed by the Alaska Dep't of Law as an Assist. Attorney General in the Commercial Section. I am pleased to testify on behalf of the administration in support of HB 224, the bill before you.

In your bill packets you should have a copy of the background and sectional analysis I prepared. I don't intend to read the entire document for you, but I will touch the salient points for your consideration.

By way of background, as you all know, the State of Alaska, along with 45 other states settled its tobacco litigation with the major tobacco manufacturers in 1998, in exchange for a stream of payments that would last indefinitely. One of the terms of this "Master Settlement Agreement" is that the payments can be reduced by what's called a "non-participating manufacturer adjustment" or "NPM adjustment." The MSA provides, however, that states can avoid an NPM adjustment by doing two things: (1) enact the model NPM statute and (2) diligently enforce that statute.

The model NPM statute is basically a statute that levels the playing field between tobacco manufacturers that participated in the settlement agreement and those that did not—it requires the non-participating manufacturers to deposit certain amounts of money into an escrow account for every cigarette sold in the state. In 2001, for instance, an NPM was required to deposit approximately 1.5 cents into escrow for every cigarette sold.

Alaska enacted the model NPM statute in 1999 (AS 45.53) and has been diligently enforcing it since its enactment.

Since the enactment of the NPM statute, however, Alaska and many other states have found that enforcing the NPM statute is unnecessarily difficult in some situations. Usually these situations involve cases where the tobacco manufacturer is located in a far-flung jurisdiction like India or the Phillipines. While it is possible to seek enforcement of Alaska laws on companies in foreign countries it is not necessarily easy.

As a solution, states began looking for ways to enhance their ability to enforce the NPM statutes. In 2001, Alaska and Maine became the first states to enact "complimentary legislation". Alaska's complimentary legislation is found at AS 43.50.145 and basically creates a list of companies that have failed to comply with our NPM laws and declares their cigarettes to be contraband and subject to seizure.

Other states followed suit and enacted their own versions of complimentary legislation. By 2002, there were various versions of complimentary legislation around the country and it became clear that there was a need for uniformity.

The National Association of Attorneys General formed a working group in 2002 with the goal of drafting a model complimentary legislation statute. HB 224 is the product of that working group and NAAG has urged all states to enact this legislation as a high priority.

Simply put, HB 224 enhances our ability to enforce Alaska's NPM statute by creating a "directory" of cigarettes that are permitted to be sold in Alaska. A company can be added to the directory simply by annually certifying to the Dep't of Revenue that they are either (a) a participating manufacturer under the MSA or (b) a non-participating manufacturer that has complied with AS 45.53 by depositing all required amounts into escrow.

HB 224 requires tobacco manufacturers to provide information about their products to the Dep't of Revenue to aid in enforcement efforts. It provides penalties for failure to comply. It provides for service of process upon the Dep't of Community and Econ. Development for companies that refuse to comply with our law and fail to appoint an instate agent for service of process. Lastly, it provides a tax credit for cigarette distributors that import cigarettes that are listed on the directory and that are subsequently de-listed—this ensures that distributors will not be left "holding the bag" on cigarette taxes for a tobacco manufacturer that fails to comply with Alaska law.

I'm delighted that the administration supports this bill and I urge your support of it. I'd be happy to answer any questions the committee might have.

HB 224



FRANK H. MURKOWSKI
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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 27, 2003

The Honorable Pete Kott
Speaker of the House
Alaska State Legislature
State Capitol, Room 208
Juneau, AK 99801-1182

Dear Speaker Kott:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to a tobacco product manufacturer's compliance with certain statutory requirements regarding cigarette sales.

The model for the bill was drafted by the National Association of Attorneys General in cooperation with a working group of participating states and is designed to aid state enforcement of the tobacco product Master Settlement Agreement and AS 45.53, and thus preserve, to the fullest extent possible, the revenue stream under the Master Settlement Agreement. We understand that most of the 46 participating states will seek to pass this legislation in their respective upcoming legislative sessions. We also understand that the bill has been reviewed and approved by two of the principal tobacco parties to the Master Settlement Agreement, Phillip Morris and RJ Reynolds.

In 1999, 46 states, including Alaska, collectively settled their claims against certain tobacco manufacturers and entered into the "Master Settlement Agreement" (MSA). Under the MSA, the participating tobacco product manufacturers agreed to pay certain amounts to the settling states in perpetuity in exchange for dismissal of the states' lawsuits. One of the provisions of the MSA, however, required that the states enact legislation that would "level the playing field" for non-participating tobacco manufacturers. This leveling legislation required such non-participating tobacco manufacturers to deposit money into escrow for every cigarette they sold in the state. The intent of this escrow requirement was to prevent the non-participants from undermining the overall goals of MSA by guaranteeing "a source of compensation and to prevent such manufacturers from deriving large, short-term profits and then becoming judgment-proof before liability may arise." See sec. 1, ch. 4 LA 1999.

The Honorable Pete Kott
March 27, 2003
Page 2

Since 1999, the participating states have detected concerted efforts by non-participating tobacco manufacturers to evade the legislated escrow requirements. Various schemes have been employed, often through use of elusive foreign tobacco manufacturers, to attempt to circumvent the requirement of escrow deposits.

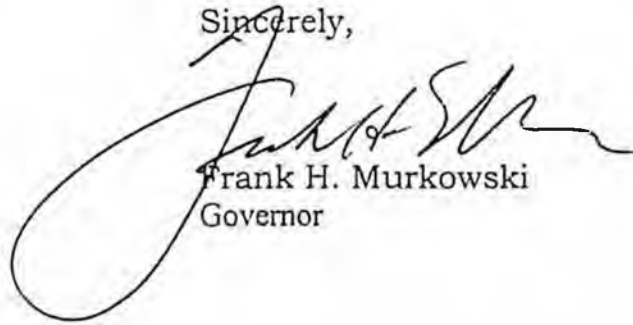
This bill seeks to bring an end to these schemes. In order to sell cigarettes in this state, a tobacco product manufacturer will have to annually certify that it is in compliance with AS 45.53. Additionally, tobacco product manufacturers must include certain information that will assist the Department of Revenue in its enforcement efforts in this regard.

The Department of Revenue will publish and update a directory of cigarettes that are approved for sale in this state. Cigarettes that are not listed in this directory are contraband and may not be sold in the state. The bill provides for civil penalties for selling or possessing contraband cigarettes.

The enactment of this bill will bring an end to efforts by non-participating manufacturers to evade their obligations to deposit escrow for their in-state cigarette sales.

I urge your prompt and favorable action on this measure.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'Frank H. Murkowski', is written over the typed name and title.

Frank H. Murkowski
Governor

HB 224

STATE OF ALASKA

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

FRANK H. MURKOWSKI,
GOVERNOR,

*Civil Division - Juneau Commercial Section
P.O. BOX 110300 - DIMOND COURT HOUSE
JUNEAU, ALASKA 99811-0300*

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HB 224

Background and Sectional Analysis

I. BACKGROUND

On November 23, 1998, Alaska and 45 other states (plus the District of Columbia and 5 territories) entered into the Tobacco Master Settlement Agreement ("MSA") with certain Tobacco Product Manufacturers (known as "Participating Manufacturers" or "PMs"). The MSA provides that in exchange for the PMs' agreement to make specified payments to the Settling States -- estimated to exceed \$200 billion through 2025 -- and their agreement to abide by extensive public health restrictions on the advertising, promotion and marketing of cigarettes, the Settling States agreed to release the PMs from claims by the States.¹

Those non-participating Tobacco Product Manufacturers that did not sign the MSA ("Non-Participating Manufacturers" or "NPMs") were not released from potential State claims and did not undertake any of the payment obligations or agree to abide by the public health restrictions. In order to ensure that Settling States that successfully sue NPMs in the future will have a fund against which they can recover any judgment or settlement moneys, the MSA includes a proposed "Model Statute" that, if enacted by a Settling State, requires NPMs to make annual payments into a qualified escrow fund based on the number of that NPM's cigarettes sold in the State.² The Model Statute is also intended to prevent NPMs from reaping a windfall benefit by selling cigarettes in a Settling State without bearing the costs that cigarette smoking imposes on the State.

The Model Statute declares:

It would be contrary to the policy of the state if tobacco product manufacturers who determine not to enter into such a settlement could use a resulting cost

¹ The released claims generally include claims arising out of or in any way related to (a) the use, sale, distribution, manufacture, development, advertising, marketing or health effects of, (b) the exposure to, or (c) research, statements, or warnings regarding, tobacco products. MSA §II(m).

² Alaska's "model statute" was enacted in 1999 (ch. 46, SLA 1999) and is found at AS 45.53.

advantage to derive large, short-term profits in the years before liability may arise without ensuring that the state will have an eventual source of recovery from them if they are proven to have acted culpably; it is thus in the interests of the state to require that such manufacturers establish an escrow fund to guarantee a source of compensation and to prevent such manufacturers from deriving large, short-term profits and then becoming judgment-proof before liability may arise.

§ 1, ch. 46, SLA 1999.

The MSA encouraged States to enact the Model Statute by creating a significant financial incentive: Settling States that enact and 'diligently enforce' a Model Statute are not subject to certain potential downward adjustments in receiving their annual MSA payments. All Settling States have enacted Model Statutes.

A Settling State through its attorney general or other official may bring a civil action on behalf of the State against any Tobacco Product Manufacturer that fails to place into escrow the funds required by the Model Statute. While the Settling States have been aggressively enforcing the provisions of the Model Statutes, enforcement has proved costly and cumbersome. Among other things, the Model Statute enables NPMs to sell cigarettes for up to 16 months in a State before the State can bring an action to enforce the Model Statute. In addition, many NPMs are located in foreign countries and it has proved difficult and expensive to obtain service of process or to effect judgments. And, as the Settling States have moved forward with numerous actions against non-compliant NPMs, many NPMs have devised ingenious schemes to evade compliance. The purpose of this "complementary legislation" is to make State enforcement of Model Statutes more effective and thereby promote the purposes for which the Model Statutes were enacted.

Approximately fifteen states, including Alaska, have enacted complementary legislation. Alaska's existing complimentary legislation is AS 43.50.145, which simply provides that NPM cigarettes for which escrow payments have not been made are contraband and subject to confiscation. Other states' complimentary legislation have taken different forms but is largely similar from state to state. Generally, these statutes: prohibit tax-stamping of tobacco products that are not in compliance with a Settling State's Model Statute; require certification that a Tobacco Product Manufacturer is either a Participating Manufacturer under the MSA or, if an NPM, is in full compliance with a State's Model Statute; require an attorney general or revenue department to maintain a list of Tobacco Product Manufacturers that are in compliance with a Settling State's laws; and subject violators to civil and criminal penalties and license revocation/suspension.

Complementary legislation has been effective in promoting compliance with the Model Statutes. This positive experience led the Tobacco Committee to create a Complementary Legislation Working Group, a multi-State staff-level group coordinated by the NAAG Tobacco Project. The Working Group was charged with developing draft

complementary legislation that could be recommended as a model to all of the Settling States. After extensive deliberations, the Working Group has now recommended model legislation to the Tobacco Committee, and the Committee has recommended that the Attorneys General of the Settling States give serious consideration to the legislation and designate its enactment a priority. The Committee believes that enactment of such legislation by all Settling States will promote the purposes the Model Statutes were designed to serve and safeguard payments to the Settling States that might otherwise be imperiled.

II. COMPLEMENTARY LEGISLATION SUMMARY

The proposed model complementary legislation would require a state to maintain a directory of cigarette products that are permitted to be sold instate. The proposed legislation would prohibit the sale of products that are not listed in the directory. While all Tobacco Product Manufacturers would be required to make specific certifications *before* a brand could be listed in the directory, a Non-Participating Manufacturer would be further required to certify that: a) it is registered to do business in the state or has appointed an agent for service of process; b) it maintains a Qualified Escrow Fund with an executed qualified escrow agreement that has been reviewed and approved by the State; c) it is in full compliance with the escrow statute; and d) it identifies the financial institution where it has established such Qualified Escrow Fund and identifies all deposits and withdrawals to/from said fund. In addition, neither an NPM nor its brands will be listed in the directory unless all escrow payments for any period have been fully paid and all outstanding final judgments for violations of the Model Statutes fully satisfied.

The proposed model complementary legislation will also allow the Settling State through its attorney general or other official to request information to verify the accuracy of reported information and will further permit disclosure of information to other state agencies to facilitate investigation. Civil penalties, including injunctive relief and designation of product as contraband subject to seizure, forfeiture and destruction are among the penalties imposed.

The proposed requirements will ensure that a Tobacco Product Manufacturer has met certain obligations before being permitted to sell its products instate. This will help prevent significant periods of non-compliance and will reduce the expense and difficulty of enforcement actions against NPMs.

The proposed model complementary legislation is intended to complement Alaska's Model Statute (AS 45.53), but it does not replace or amend Alaska's Model Statute.

III. SECTION REVIEW

Section 1. Findings and Purpose

Several Settling States emphasized that in order to assist with passage of a proposed model bill, it would be helpful, and in some cases, necessary to have a legislative declaration regarding the relationship between complementary legislation, fiscal soundness of the State and advancement of public health issues.

Section 2.

AS 43.50.500

- (a) Requires PMs to annually certify that they are a participating manufacturer. Requires NPMs to annually certify that they are in compliance with the model statute, AS 45.43.
- (b) Requires PMs to attach a list of its brands to its certification.
- (c) Requires NPMs to attach a list of its brands to its certification and provide information about its instate sales.
- (d) Requires NPMs to register to do business instate or appoint an instate agent for service of process. Requires NPMs to set up a "qualified escrow fund."
- (e) Requires NPMs to provide information about its qualified escrow fund.
- (f) Requires tobacco product manufacturers to affirm the identity of the brands it manufactures. This provision is intended to prevent a manufacturer from identifying a particular brand and then attempting to assert that another party, such as an importer or distributor, is responsible for escrow, other payment or certification obligations.
- (g) Requires tobacco product manufacturers to maintain sales records for five years.

AS 43.50.510

This section establishes the requirements for the directory to be maintained by the Department of Revenue for brands of tobacco products that may be sold in the state. The provisions of this section provide a means by which a cigarette seller will be able to ascertain if a particular brand of tobacco product may be permissibly sold in the State. In addition, this section requires that the Department of Revenue shall update the directory as necessary to keep it current. Notices provided by this section may be provided by electronic mail in order to reduce the cost and expense for disseminating any notices.

AS 43.50.520

- (a) This subsection establishes that it is unlawful to sell a product that is not

included in the directory.

(b) This subsection provides for a cigarette tax credit for licensees that permissibly import directory-listed cigarettes that are later de-listed prior to retail sale.

AS 43.50.530

This section requires any non-resident or foreign NPM to establish an agent for service of process before its brands may be included on the directory established in AS 43.50.510. The appointment of such an agent would be limited to actions arising out of the enforcement of the complementary legislation or the Model Statute, AS 45.53. Subsection (c) provides for service on the commissioner of the Department of Commerce and Economic Development for failure to appoint an agent.

AS 43.50.540

This section establishes the reporting requirements for licensees. This provision will allow monitoring of the sales activity of NPM product and provides an ongoing method to evaluate compliance. This section also provides the authority to share information obtained pursuant to the complementary legislation or Model Statute with the attorney general or other state agencies. The section also grants authority to request additional information as may be necessary to verify the accuracy of information reported and to provide actual product or label samples as may be necessary to effect the purpose of the statute. Finally, subsection (e) permits the adoption of regulations to require escrow deposits on a quarterly basis.

AS 43.50.550

This section provides for penalties for noncompliance. Penalties include:

- Revocation or suspension of a licensee's license and civil penalty.
- Designation of non-compliant NPM tobacco products as contraband, seizure and forfeiture of unlawful product.
- Injunctive relief against a licensee

AS 43.50.560

Subsection (a) establishes review procedures in accordance with a AS 44.62 (Administrative Procedure Act) for determinations regarding removal or non-listing of a tobacco product brand. Subsection (b) requires licensees to certify compliance with this law. Subsection (c) provides authority to promulgate regulations. Subsection (d) provides for disgorgement of any profits upon a finding of a violation by a court.

AS 43.50.590

Most of the definitions mirror those from the MSA or the Model Statute, AS 45.53.

Brand Family is intended to cover all variations of a brand of tobacco products that are sold instate. It is further intended to include the brand names of tobacco products that undergo slight modification as a means of evading liability under a Settling State's Model Statute. For example, in order to avoid an ongoing violation or potential injunction against a particular brand, some manufacturers have attempted to modify the name of a brand while maintaining the product the same, i.e., changing the brand name from Distinction to Distinctive or from Bloomberg to Blumburg.

Section 3. Conforming amendment to Administrative Procedures Act, AS 44.62.

Section 4. Repeal of existing complimentary legislation.

Section 5. Transition—initial compliance deadlines.

Section 6. Effective date.

IV. ASSURANCES BY PARTICIPATING MANUFACTURERS

After constructive deliberation with several Participating Manufacturers, Settling States and the PMs agreed upon certain assurances that the PMs would provide to the States. The assurances are intended to facilitate introduction and passage of Complementary Legislation in those States where there may be concerns that the proposed.

Complementary Legislation may be construed as amending the Model Statute or MSA. The language agreed upon States in relevant part that:

the Settling States shall have no duty or obligation to enact the proposed Complementary Legislation or any similar bill, and failure to enact such legislation shall not be used against any State in any proceeding to determine whether that State has diligently enforced its escrow statute.... Additionally, enactment of the proposed Model Complementary Legislation (or similar bill containing no deviation of substance from the Model Complementary Legislation) shall not be construed as an amendment to the Model Statute or to the MSA and shall not constitute any breach of the MSA....

The NAAG Tobacco Project has secured assurances from the following Participating Manufacturers: Philip Morris, RJ Reynolds, Brown & Williamson, Lorillard, Caribbean-America Tobacco, Dharanj Imports, Japan Tobacco Int'l, King Maker, Konci G&D, Liggett, Lignum-2, Nat Sherman, Planta, PT Djarum, Santa Fe Natural Tobacco, Top Tobacco, Vector Tobacco, Virginia Carolina, and Wind River.

V. CONCLUSION

The enactment of Complementary Legislation will streamline enforcement of the NPM Model Escrow Statutes, safeguard annual MSA payments and help combat the proliferation of youth smoking. The Attorneys General regard this legislation as extremely important and recommend that the proposed model Complementary Legislation be given legislative priority. Attorneys from the Alaska Department of Law as well as the NAAG Tobacco Project and the Complementary Legislation Working Group are available to answer additional questions on this issue of critical importance.