

AK LEGISLATURE FINANCE COMMITTEES FILES 2007-2008 3326

208

S B

8 3

SFIN

FILE

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER
FINANCE AND MANAGEMENT SERVICES

SARAH PALIN, GOVERNOR

P.O. Box 110650
Juneau, AK 99811-0650
Phone: (907) 465-3082
Fax: (907) 465-2499

RECEIVED

March 2, 2007

MAR 07 2007

The Honorable Lyman Hoffman, Co-Chair
The Honorable Bert Stedman, Co-Chair
The Honorable Charlie Huggins, Vice-Chair
Senate Finance Committee
State Capitol, Room 518, 516 and 119
Juneau, AK 99801-1182

COPY

Dear Senators Hoffman, Stedman and Huggins:

In response to your inquires on February 27, 2007 at the SB83 Supplemental hearing, please see the responses below:

The first four questions are in reference to the Fairbanks Virology Laboratory.

➤ *How much of the 24.2 million has been expended?*

The funding source for the \$24.2 million appropriated in FY06 was Certificates of Participation. To date nearly \$1 million has been expended. Funds have been expended for the following:

- Selling of Certificates of Participation
- Architectural and Engineering Services
- DOT/PF – ICAP and Project Management
- General Contractor Pre-Construction Services
- UAF Building Permits and Administrative Support

➤ *How much has the department used for administrative purposes?*

The Department has not spent any of the appropriation for administrative costs. DOT/PF administrative costs are allowed as bondable costs. DOT/PF ICAP rate is 2% of the project amount. DHSS intends to expend up to \$200.0 from the full project amount of \$30.7 million to offset the cost of DHSS project administration. This is the only administrative expenses that DHSS will have and it is less than 0.7% of the project.

- *Can the state's virology needs be addressed in Juneau, Anchorage or another city? Can it be done cheaper somewhere else?*

The location for the laboratory was looked at extensively during the planning process. We looked at the cost of expanding the Anchorage Laboratory to accommodate virology, as well as locating the laboratory in Fairbanks off campus. No consideration was given to locating it in Juneau since the Department closed the old Juneau laboratory in the late 1990s to increase efficiencies and decrease operational expenses. The cost for adding on to the Anchorage laboratory would have been comparable to building in Fairbanks. However, the benefits of keeping it in Fairbanks would have been compromised.

The driving factor for keeping the laboratory on the Fairbanks campus was the desire for collaboration between the virology staff and UAF researchers. The UAF West Ridge is becoming the research hub in Alaska. The university is expanding its biomedical research program on infectious diseases and sees strong potential for collaboration with the state-operated virology laboratory. The laboratory would be connected to the Biological Research and Diagnosis facility (BiRD). Also, keeping the laboratory in Fairbanks allows for a level of redundancy in the event of a man-made or natural disaster for both the Anchorage and Fairbanks locations. Following the decision to keep the laboratory in Fairbanks, it only made sense to keep it on campus where it would be most beneficial for staff and research.

- *Who is paying for stainless steel apparatuses? Assume more costs coming, who will pay for these?*

The Department of Health and Social Services is responsible for all costs for construction of the laboratory that will be used by the Division of Public Health. This includes all stainless steel apparatuses including fume hoods, bio-safety cabinets, and other equipment.

- *What are the number of residents and the capacity of the Sitka Pioneer Home?*

The Sitka Pioneer Home (SPH) has 63 residents and 75 licensed beds and as of January.

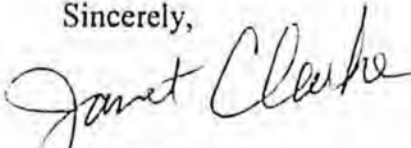
In SFY 07, the SPH had four additional positions (one Registered Nurse and three Certified Nurse Aides) added to their budget and these positions are now filled. Sitka's staff is working at increasing residency. The staff is expected to be able to properly care for 75 residents with the current staffing level.

- *When cost containment was implemented in the interim assistance program, how many people did not qualify for benefits?*

The Division of Public Assistance implemented the in-depth medical review process for Interim Assistance (IA) applicants in September 2003. The Interim Assistance caseload has decreased 56%, from 1,471 IA recipients in August 2003 (the month before the IA medical review process was implemented) to 817 recipients in January 2007.

If you have additional questions regarding this issue, please contact me at 465-1630.

Sincerely,



Janet Clarke
Assistant Commissioner

cc: Senator Kim Elton, Capitol Building, Room 506
Senator Donny Olson, Capitol Building, Room 514
Senator Joe Thomas, Capitol Building, Room 510
Senator Fred Dyson, Capitol Building, Room 121
Karleen Jackson, Commissioner
Anthony Lombardo, Deputy Commissioner
Bill Hogan, Deputy Commissioner
Sherry Hill, Special Assistant
Laura Baker, Budget Chief, Finance and Management Services
Mary Sutton, Budget Analyst, Office of Management and Budget
Gary Zepp, Fiscal Analyst, Legislative Finance
Jay Butler, Director, Division of Public Health
Virginia Smiley, Director, Alaska Pioneer's Homes
Ellie Fitzjarrald, Director, Division of Public Assistance
Arnold Liebelt, Facilities Chief, Finance and Management Services

SB

84

HFIN

FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: May 5, 2007

FURTHER REFERRALS:

Date of Committee Action: 5/11/07

The FINANCE Committee considered:

CSSB 84(JUD)

CS FOR SENATE BILL NO. 84(JUD)

TESTING & PACKAGING OF CIGARETTES

"An Act relating to the testing and packaging of cigarettes to be sold, offered for sale, or possessed in this state; and providing for an effective date."

Recommends it be replaced with HCS or CS for SB 84 (FIN)
 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
 LWF
 LAW
 LEG
 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
HSS		*		
REV		*		

<u>PREVIOUS FISCAL NOTES</u>				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
DPS	#4	*		

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
	FOSTER	X			
Mary Nelson	NELSON	✓			
	Gana	✓			
	Thomas	✓			
	Joubert	X			
	STOLTZE			X	
	Hawker				*
Chair:	Meyer	X			
Chair:	Chevallier			X	

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: .8084HCSCS(FIN)-DHSS-DBH-I
 Bill Version: HCS CS SB 84 (FIN)
 () Publish Date: _____
 Dept. Affected: Health & Social Services
 RDU Behavioral Health
 Component Behavioral Health Administration

Revision Date/Time (Note if correction):
 Title SALE OF TOBACCO TO MINORS

Sponsor OLSON

Requester HOUSE (FIN)

Component No. 2665

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services						
Travel						
Contractual	38.6	38.6	38.6	38.6	38.6	38.6
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	38.6	38.6	38.6	38.6	38.6	38.6

CAPITAL EXPENDITURES						
CHANGE IN REVENUES (0)						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	38.6	38.6	38.6	38.6	38.6	38.6
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
Other(Specify Type-do not abbreviate)						
TOTAL	38.6	38.6	38.6	38.6	38.6	38.6

Estimate of any current year (FY2007) cost: _____

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The intent of this bill is to ensure due process of persons holding a tobacco endorsement on their Alaska Business License when their employees are cited for selling tobacco products to persons under the age of 19.

The bill requires the Department to provide notice to the endorsement holder of the employee violation and the holder's right to a hearing before a hearing officer of the office of administrative hearings.

(continued on page 2)

Prepared by: Sherry Hill, Special Assistant
 Division Office of the Commissioner
 Approved by: Karleen Jackson, Commissioner
 Agency Department of Health and Social Services

Phone 907-465-1618
 Date/Time 05/09/2007
 Date 05/09/2007

FISCAL NOTE
FN #

STATE OF ALASKA
2007 LEGISLATIVE SESSION

ANALYSIS CONTINUATION
(Analysis continued)

This fiscal note represents the contractual costs associated with the expanded legal support necessary to ensure due process. Figures obtained from the Department of Law, approximate an increase in hearings at the rate of 1.3 hearings per month or the equivalent of .25 FTE. This translates to contractual obligations for the division in the amount of \$38.6 per year.

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: CSSB84(JUD)-DOR-TAX-5-10-07
 Bill Version: CSSB 84 (JUD)
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue 04
 Title TESTING & PACKAGING OF CIGARETTES RDU Taxation and Treasury
 Component* Tax Division
 Sponsor Senators Olson, Elton, Ellis, Davis, Dyson,
McGuire, Thomas, Representative Gardner
 Requester House Finance Component No. 2476

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services	31.4	31.4	31.4	31.4	31.4	31.4
Travel						
Contractual	2.2	4.4	4.4	4.4	4.4	4.4
Supplies						
Equipment	8.0					
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	41.6	35.8	35.8	35.8	35.8	35.8

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
-----------------------------	------------	------------	------------	------------	------------	------------

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Receipt Supported Services	41.6	35.8	35.8	35.8	35.8	35.8
TOTAL	41.6	35.8	35.8	35.8	35.8	35.8

Estimate of any current year (FY2007) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time	1					
Part-time		1	1	1	1	1
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached.

Prepared by: Nols Tomlinson & Johanna Bales
 Division: Tax
 Approved by: Jerry Burnett
 Agency: Department of Revenue

Phone: (907) 465-5636
 Date/Time: 10 May 2007 / 11:30
 Date: 5/10/2007

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

BILL NO. CSSB 84 (JUD)

ANALYSIS CONTINUATION

Bill Language: This bill will give the Department of Revenue authority to seize and destroy cigarettes sold in the state that do not meet new fire safety requirements. It would also require the Department of Revenue to develop and maintain a directory of cigarettes that meet fire safe standards and educate cigarette distributors and retailers about the new law.

Program Summary: Currently, DOR maintains a directory of cigarettes approved for sale in the state. Cigarettes on this directory are compliant with the nationwide tobacco Master Settlement Agreement (MSA) and escrow statutes under AS 45.53. As such, it is legal to sell these cigarettes in Alaska and place a cigarette tax stamp on the cigarettes as proof that the cigarette tax was paid. Cigarette distributors and retailers rely on this list to ensure that cigarettes they stamp are approved for sale in Alaska. SB 84 would impose another restriction, outside the MSA, on what brands of cigarettes can be legally stamped and sold in Alaska. DOR would be required to maintain a separate directory and conduct an education campaign to ensure that cigarette distributors and retailers are aware that the cigarettes must be on both directories before they can be stamped and sold in the state.

Expenditures:

Positions: DOR expects that it will need 1 additional part-time position, a Tax Technician II, to perform the additional functions required by this bill. DOR expects the total cost of this additional position to be \$31,400 each year. In the first year of implementation, DOR expects that a full-time position will be utilized to develop the directory and educate tobacco businesses, but that position will only be needed for the second half of the fiscal year. In FY 2009 and all subsequent years, DOR expects that it will need a part-time position to maintain the directory.

Other Operating Expenditures: (1) Contractual - Contractual costs include leasing office space and providing phone service for 1 additional employee each year. DOR expects the total contractual costs to be \$4,400 each year. (2) Equipment - DOR expects equipment expense of \$8,000 per FTE in the first year for a computer, telephone, cubicle parts, software, and other one-time purchases of office equipment needed to perform the duties of the position.

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: 4
Bill Version: CSSB 84(JUD)
(S) Publish Date: 3/28/07

Revision Date/Time (Note if correction): _____ Dept. Affected: Public Safety
Title "An Act relating to the burning capability of RDU Fire Prevention
cigarettes . . ." Component Fire Prevention Operations
Sponsor Senator Olson
Requester Senate Judiciary Committee Component No. 494

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
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						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES (new fund)	83.3	83.3	83.3	83.3	83.3	83.3
--	-------------	-------------	-------------	-------------	-------------	-------------

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 (FY2007) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill establishes a new chapter on cigarette fire safety. No cigarette may be sold in Alaska unless it meets specific fire safety standards. The new program will be administered by the State Fire Marshal, and funded by a fee of \$250 for each cigarette submitted for certification. Implementation and enforcement of the chapter is to be paid by the new Fire Prevention and Public Safety Fund funded with appropriations made from the certification fees.

A previous fiscal note based the revenue projection from this bill on the number of cigarette manufacturers and brands taxed by the state on February 26, 2007. However, it has since been determined that each individual style of a particular brand will be certified individually, i.e., light vs. ultra light, 100 vs. regular, etc. The Department of Revenue estimates this definition will result in 800 to

Prepared by: Rusty Balanger, Acting State Fire Marshal Phone 907-269-5905
Division Division of Fire Prevention Date/Time 3/19/07 3:27 PM
Approved by: Walt Monegan, Commissioner Date 3/19/2007
Agency Department of Public Safety

FISCAL NOTE # 4

STATE OF ALASKA
2007 LEGISLATIVE SESSION

BILL NO. CSSB 84(JUD)

ANALYSIS CONTINUATION

1,000 separate brands requiring certification, for a total estimate of \$250,000 in revenue spread over each 3-year period.

The Division of Fire Prevention does not anticipate additional costs from passage of this bill. The new duties will be handled by existing staff during the normal course of business.

ALASKA STATE SENATE

SENATOR DONALD C. OLSON

ALASKA STATE CAPITOL
ROOM 514
JUNEAU, ALASKA 99801-1182



(907)465-3707
FAX (907) 465-4821

SPONSOR STATEMENT

CSSB 84 (L&C)

"Testing and Packaging of Cigarettes"

SB 84 mandates that only self-extinguishing cigarettes can be sold in Alaska, and establishes the testing and certification requirements to assure that only self-extinguishing cigarettes are sold in Alaska. Although no cigarette could ever be called safe, so called self-extinguishing or "fire safe" cigarettes are reduced ignition propensity cigarettes. These are cigarettes that are designed to be less likely than a conventional cigarette to ignite soft furnishings such as a couch or mattress. The bill also provides for the marking of cigarette packaging in an approved and easily identifiable manner to indicate they are fire safe.

Cigarettes are the leading cause of home fire fatalities in Alaska and the United States. The most common material first ignited in home fires are mattresses and bedding, upholstered furniture, and floor coverings. A typical scenario for fires is when a lit cigarette is forgotten or dropped by a smoker. The cigarette fire can smolder for hours before it flares up into a full blaze.

One fourth of victims of smoking-material fire fatalities are *not* the smoker whose cigarette started the fire; over one third of these are children. The risk of dying in a residential structure fire caused by smoking rises with age: 38 percent of fatal smoking-material-fire victims are age 65 or older.

The most common technology used by cigarette manufacturers for reduced cigarette ignition propensity (RCIP) is to make the paper thicker in places to slow down a burning cigarette. If such a cigarette is left unattended, when the burn reaches one of the thicker places, or "speed bumps", the burning will self-extinguish. Self-extinguishing cigarettes meet established fire safety performance standards.

Legislation similar to SB 84 has been enacted in New York, Massachusetts, Vermont, New Hampshire, California, and Illinois. A fire safe cigarette mandate has also been approved for all of Canada. This legislation is supported by the Alaska Fire Chiefs Association, the Alaska Firefighters Association, and Department of Public Safety, Division of Fire Prevention.

SB 84 will save lives, as well as reduce injuries and damage to property in Alaska. I urge you to give favorable consideration to this bill.

25-LS0596AN
Bannister
5/9/07

HOUSE CS FOR CS FOR SENATE BILL NO. 84()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

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

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 18.74.610, 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 43.70.075(d) is amended to read:

27 (d) If a person who holds an endorsement issued under this section, or an
28 agent or an employee of a person who holds an endorsement issued under this section
29 acting within the scope of the agency or employment, has been convicted of violating
30 AS 11.76.100, 11.76.106, or 11.76.107, the department shall impose a civil penalty
31 as set out in this subsection. However, following a hearing under (m) of this

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

10 (1) 20 days and impose a civil penalty of \$300 if the person has not
11 been previously convicted of violating AS 11.76.100, 11.76.106, or 11.76.107 and is
12 not otherwise subject to the sanctions described in (2) - (4) of this subsection;

13 (2) 45 days and impose a civil penalty of \$500 if, within the 24 months
14 before the date of the department's notice under (m) of this section, the person, or an
15 agent or employee of the person while acting within the scope of the agency or
16 employment of the person, was convicted once of violating AS 11.76.100, 11.76.106,
17 or 11.76.107;

18 (3) 90 days and impose a civil penalty of \$1,000 if, within the 24
19 months before the date of the department's notice under (m) of this section, the person,
20 or an agent or employee of the person while acting within the scope of the agency or
21 employment of the person, was convicted twice of violating AS 11.76.100, 11.76.106,
22 or 11.76.107, or a provision of this section or a regulation implementing this section
23 adopted under AS 43.70.090; or

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

29 * Sec. 4. AS 43.70.075(m) is amended to read:

30 (m) The department may initiate suspension of a business license endorsement
31 or the right to obtain a business license endorsement under this section by sending the

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

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

17 (2) if the department does not allege a conviction of AS 11.76.100,
18 11.76.106, or 11.76.107, did the person, or an agent or employee of the person while
19 acting within the scope of the agency or employment of the person, violate a provision
20 of (a) or (g) of this section;

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

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

30 (5) did the person holding the business license endorsement
31 overcome the rebuttable presumption established in (v) of this section;

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

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

5 (B) previously violated AS 11.76.100, 11.76.106, or
 6 11.76.107 at a location or outlet in a location for which the person holds a
 7 business license endorsement, or had an agent or employee previously
 8 violate AS 11.76.100, 11.76.106, or 11.76.107; this subparagraph does not
 9 apply to a prior conviction that served to enhance a suspension period
 10 under (d)(2) - (4) of this section; or

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

14 * Sec. 5. AS 43.70.075 is amended by adding new subsections to read:

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

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

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

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

28 (4) determined that the agents and employees of the person had
 29 sufficient experience and ability to comply with the written policy and requirements of
 30 AS 11.76.100, 11.76.106, and 11.76.107;

31 (5) required the agents and employees of the person to verify the age

1 of purchasers of cigarettes, cigars, tobacco, or other products containing tobacco by
2 means of a valid government issued photographic identification;

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

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

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

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

26 (w) For purposes of (m)(5) of this section, a conviction for a violation of
27 AS 11.76.100, 11.76.106, or 11.76.107 by the agent or employee of the person who
28 holds the business license endorsement is rebuttably presumed to constitute proof of
29 the fact that the agent or employee negligently sold a cigarette, a cigar, or tobacco, or a
30 product containing tobacco to a person under 19 years of age. The person who holds
31 the business license endorsement may overcome the presumption by establishing by

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

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

9 * Sec. 6. AS 44.29.094 is amended by adding a new subsection to read:

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

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

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

25 * Sec. 7. The uncodified law of the State of Alaska is amended by adding a new section to
26 read:

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

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

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

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

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

DRAFT

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: SB084HCSCS(FIN)-DHSS-DBH-
Bill Version: HCS CS SB 84 (FIN)
() Publish Date:
Dept. Affected: Health & Social Services
RDU Behavioral Health
Component Behavioral Health Administration

Revision Date/Time (Note if correction):
Title SALE OF TOBACCO TO MINORS

Sponsor OLSON

Requester HOUSE (FIN)

Component No. 2665

Expenditures/Revenues (Thousands of Dollars)

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

Table with 7 columns: OPERATING EXPENDITURES, FY 2008, FY 2009, FY 2010, FY 2011, FY 2012, FY 2013. Rows include Personal Services, Travel, Contractual, Supplies, Equipment, Land & Structures, Grants & Claims, Miscellaneous, and TOTAL OPERATING.

CAPITAL EXPENDITURES table with 7 columns.

CHANGE IN REVENUES (0) table with 7 columns.

FUND SOURCE (Thousands of Dollars)

Table with 7 columns: FUND SOURCE, FY 2008, FY 2009, FY 2010, FY 2011, FY 2012, FY 2013. Rows include 1002 Federal Receipts, 1003 GF Match, 1004 GF, 1037 GF/Mental Health, Other, and TOTAL.

Estimate of any current year (FY2007) cost:
Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal: []

POSITIONS

Table with 7 columns for Full-time, Part-time, and Temporary positions across fiscal years.

ANALYSIS: (Attach a separate page if necessary)
The intent of this bill is to ensure due process of persons holding a tobacco endorsement on their Alaska Business License when their employees are cited for selling tobacco products to persons under the age of 19.
The bill requires the Department to provide notice to the endorsement holder of the employee violation and the holder's right to a hearing before a hearing officer of the office of administrative hearings.
(continued on page 2)

Prepared by: Sherry Hill, Special Assistant
Division: Office of the Commissioner
Approved by: Karleen Jackson, Commissioner
Agency: Department of Health and Social Services

Phone 907-465-1618
Date/Time 05/09/2007
Date 05/09/2007

FISCAL NOTE
FN #

DRAFT

STATE OF ALASKA
2007 LEGISLATIVE SESSION

ANALYSIS CONTINUATION
(Analysis continued)

This fiscal note represents the contractual costs associated with the expanded legal support necessary to ensure due process. Figures obtained from the Department of Law, approximate an increase in hearings at the rate of 1.3 hearings per month or the equivalent of .25 FTE. This translates to contractual obligations for the division in the amount of \$38.6 per year.

Withdrawn

AMENDMENT

#2

OFFERED IN THE HOUSE

BY REPRESENTATIVE GARA

TO: HCS CSSB 84(), Draft Version "N"

1 Page 1, line 1, following "products":

2 Insert ", to the sale of tobacco products by minors,"

3

4 Page 16, following line 8:

5 Insert a new subsection to read:

6 "(y) If a person who holds a business license endorsement issued under this
7 section employs a minor to sell to sell a cigarette, cigar, tobacco, or a product
8 containing tobacco, and if the minor sells a cigarette, cigar, tobacco, or a product
9 containing tobacco at a location, or an outlet at a location, for which the person holds
10 the business license endorsement, the person who holds the business license
11 endorsement is subject to a civil fine of \$5,000, and the department may revoke the
12 person's business license endorsement. In this subsection, "minor" means a person
13 under 19 years of age."

withdraw

CONCEPTUAL AMENDMENT

~~§~~ 3

OFFERED IN THE HOUSE

BY REPRESENTATIVE GARA

TO: CS SB 84 ()

Version 25-LS0596\N

- 1 Page 12, line 3-line 4
- 2 After "subsection,"
- 3 Delete "or by not more than 20 days a suspension under (2) of this subsection,"
- 4
- 5 Page 12, line 5-line 6
- 6 After "subsection,"
- 7 Delete "or by not more than 20 days a suspension under (2) of this subsection"
- 8
- 9 Page 15, line 22-line 23
- 10 After "section"
- 11 Delete "or by more than 20 days under (d)(2) of this section"
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24

adopted

AMENDMENT |

OFFERED IN THE HOUSE

BY REPRESENTATIVE MEYER

TO: CS SB 84 ()

Version 25-LS0596\N

- 1 Page 11, after line 25
- 2 Insert new section
- 3 Sec. 3. AS 37.05.146 (c) is amended by adding a new paragraph:
- 4 (82) fees collected under AS 18.74.080
- 5
- 6 Remember the remaining sections accordingly
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24

Adopted

25-LS0596\N
Bannister
5/9/07

HOUSE CS FOR CS FOR SENATE BILL NO. 84()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

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

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 43.70.075(d) is amended to read:

27 (d) If a person who holds an endorsement issued under this section, or an
28 agent or an employee of a person who holds an endorsement issued under this section
29 acting within the scope of the agency or employment, has been convicted of violating
30 AS 11.76.100, 11.76.106, or 11.76.107, the department shall impose a civil penalty
31 as set out in this subsection. However, following a hearing under (m) of this

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

10 (1) 20 days and impose a civil penalty of \$300 if the person has not
11 been previously convicted of violating AS 11.76.100, 11.76.106, or 11.76.107 and is
12 not otherwise subject to the sanctions described in (2) - (4) of this subsection;

13 (2) 45 days and impose a civil penalty of \$500 if, within the 24 months
14 before the date of the department's notice under (m) of this section, the person, or an
15 agent or employee of the person while acting within the scope of the agency or
16 employment of the person, was convicted once of violating AS 11.76.100, 11.76.106,
17 or 11.76.107;

18 (3) 90 days and impose a civil penalty of \$1,000 if, within the 24
19 months before the date of the department's notice under (m) of this section, the person,
20 or an agent or employee of the person while acting within the scope of the agency or
21 employment of the person, was convicted twice of violating AS 11.76.100, 11.76.106,
22 or 11.76.107, or a provision of this section or a regulation implementing this section
23 adopted under AS 43.70.090; or

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

29 * Sec. 4. AS 43.70.075(m) is amended to read:

30 (m) The department may initiate suspension of a business license endorsement
31 or the right to obtain a business license endorsement under this section by sending the

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

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

17 (2) if the department does not allege a conviction of AS 11.76.100,
18 11.76.106, or 11.76.107, did the person, or an agent or employee of the person while
19 acting within the scope of the agency or employment of the person, violate a provision
20 of (a) or (g) of this section;

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

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

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

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

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

5 (B) previously violated AS 11.76.100, 11.76.106, or
6 11.76.107 at a location or outlet in a location for which the person holds a
7 business license endorsement, or had an agent or employee previously
8 violate AS 11.76.100, 11.76.106, or 11.76.107; this subparagraph does not
9 apply to a prior conviction that served to enhance a suspension period
10 under (d)(2) - (4) of this section; or

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

14 * Sec. 5. AS 43.70.075 is amended by adding new subsections to read:

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

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

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

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

28 (4) determined that the agents and employees of the person had
29 sufficient experience and ability to comply with the written policy and requirements of
30 AS 11.76.100, 11.76.106, and 11.76.107;

31 (5) required the agents and employees of the person to verify the age

1 of purchasers of cigarettes, cigars, tobacco, or other products containing tobacco by
2 means of a valid government issued photographic identification;

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

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

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

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

26 (w) For purposes of (n)(5) of this section, a conviction for a violation of
27 AS 11.76.100, 11.76.106, or 11.76.107 by the agent or employee of the person who
28 holds the business license endorsement is rebuttably presumed to constitute proof of
29 the fact that the agent or employee negligently sold a cigarette, a cigar, or tobacco, or a
30 product containing tobacco to a person under 19 years of age. The person who holds
31 the business license endorsement may overcome the presumption by establishing by

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

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

9 * Sec. 6. AS 44.29.094 is amended by adding a new subsection to read:

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

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

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

25 * Sec. 7. The uncodified law of the State of Alaska is amended by adding a new section to
26 read:

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

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

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

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

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

FISCAL NOTE

Change

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: 3
Bill Version: CSSB 84(JUD)
(S) Publish Date: 3/28/07

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue 04
Title: Testing & Packaging of Cigarettes RDU: Taxation and Treasury
Component: Taxation and Treasury
Sponsor: Senator Olson
Requester: Senate Judiciary Component No.: 2476

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services	31.4	31.4	31.4	31.4	31.4	31.4
Travel						
Contractual	2.2	4.4	4.4	4.4	4.4	4.4
Supplies						
Equipment	8.0					
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	41.6	35.8	35.8	35.8	35.8	35.8

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
-------------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts	41.6	35.8	35.8	35.8	35.8	35.8
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	41.6	35.8	35.8	35.8	35.8	35.8

Estimate of any current year (FY2007) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time	1					
Part-time		1	1	1	1	1
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill will give the Department of Revenue authority to seize and destroy cigarettes sold in the state that do not meet new fire safety requirements. It would also require the Department of Revenue to develop and maintain a directory of cigarettes that meet fire safe standards and educate cigarette distributors and retailers about the new law.

Prepared by: Johanna Bales
Division: Tax
Approved by: Jerry Burnolt
Agency: Dept. of Revenue

Phone: (907) 269-6628
Date/Time: 3/19/2007 1:15 p.m.
Date: 3/19/2007

FISCAL NOTE # 3

STATE OF ALASKA
2007 LEGISLATIVE SESSION

BILL NO. CSSB 84(JUD)

ANALYSIS CONTINUATION

Program Summary: Currently, DOR maintains a directory of cigarettes approved for sale in the state. Cigarettes on this directory are compliant with the nationwide tobacco Master Settlement Agreement (MSA) and escrow statutes under AS 45.53. As such, it is legal to sell these cigarettes in Alaska and place a cigarette tax stamp on the cigarettes as proof that the cigarette tax was paid. Cigarette distributors and retailers rely on this list to ensure that cigarettes they stamp are approved for sale in Alaska. SB 84 would impose another restriction, outside the MSA, on what brands of cigarettes can be legally stamped and sold in Alaska. DOR would be required to maintain a separate directory and conduct an education campaign to ensure that cigarette distributors and retailers are aware that the cigarettes must be on both directories before they can be stamped and sold in the state.

Positions: DOR expects that it will need 1 additional part-time position, a Tax Technician II, to perform the additional functions required by this bill. DOR expects the total cost of this additional position to be \$31,400 each year. In the first year of implementation, DOR expects that a full-time position will be utilized to develop the directory and educate tobacco businesses, but that position will only be needed for the second half of the fiscal year. In FY 2009 and all subsequent years, DOR expects that it will need a part-time position to maintain the directory.

Other Operating Expenditures: (1) Contractual - Contractual costs include leasing office space and providing phone service for 1 additional employee each year. DOR expects the total contractual costs to be \$4,400 each year. (2) Equipment - DOR expects equipment expense of \$8,000 per FTE in the first year for a computer, telephone, cubicle parts, software, and other one-time purchases of office equipment needed to perform the duties of the position.

Holiday Companies

GEN. OFFICE 2567 AMERICAN BOULEVARD WEST BROMINGTON, MN 55417 (MAIL ADDRESS) P.O. BOX 1234 MENA MOTHS, MN 55410 P.O. 95283/46707 FAX 952 46707
CREDIT OFFICE MAIL ADDRESS P.O. BOX 1234 MENA MOTHS, MN 55410 P.O. 95283/46707 FAX 952 46707

Direct Dial: 952/832-8557

Fax: 952/830-1081

E-mail: steve.rush@holidaycompanies.com

May 11, 2007

Representative Kevin Meyer
District 30 – Anchorage
Finance Committee Co-Chair
House of Representatives
State Capitol, Room 515
Juneau, AK 99801-1182

EMAIL TRANSMISSION

Re: Committee Substitute for HB187 (Revised 5/8/07)

Dear Rep. Meyer:

I previously sent your office a letter dated May 10, 2007 with a critical review of the Committee Substitute ("CS") to HB187, revised 5/8/07, explaining how the CS is poor public policy. John Treptow of Dorsey & Whitney also submitted a letter to your office the same day, explaining how the CS did not solve, and even exacerbates, the Due Process infirmity of current law concerning underage sale of tobacco to minors.

As the business community had valid objections to the CS, I fully expected that the House Finance Committee ("Committee") would hold a fair and open public hearing. I was dumbfounded to learn that it is the intention of your office to attach the provisions of this CS to SB84, which is currently pending before the Committee. No public hearing will be held for the voters of the State to give their opinion on the CS. Despite the many problems with the CS, the most fundamental flaw with the document is that it perpetuates the fallacy that the holder of a tobacco business license endorsement is given a meaningful hearing. The CS does absolutely nothing to change the current law that it is a violation of Due Process for a license holder to be strictly liable for the acts of its employees.

Moreover, I am disappointed and object to the method of preparation of the CS. I understood that a CS would be prepared with the input of all interested parties, including the retail community. That did not occur. Holiday Alaska, Inc. ("Holiday") and a number of other businesses lobbied for change in the 24th Legislative Session in the form of HB276. The bill languished in House Judiciary, and when it finally reached House Finance, it was never given a hearing. Later in 2006, Holiday received its favorable decision by Judge Morse, finding the current law unconstitutional. Consequently, in the 25th Legislative Session, Holiday was instrumental in the introduction of HB187. A hearing was held in House Judiciary on March 26, 2007, and was finally referred to House Finance on April 26, 2007. The bill was heard in the Committee on Saturday, April 28 and Sunday, April 29, 2007. After the Sunday hearing,

Representative Kevin Meyer
May 11, 2007
Page 2

while the undersigned was traveling to Alaska to represent retail interests, an unannounced meeting was held that included you, Rep. Gara, a lobbyist for the health associations, and the Attorney General's Office. No retailer was represented at this meeting, particularly the undersigned. Holiday has invested considerable time and resources to enact legislation to address the constitutional question and be sensitive to the concern of all interested parties. As the CS was crafted under such circumstances, I am very disappointed in the actions of your Committee.

The business community at large will be informed of the foregoing facts, and will be advised to oppose passage of SB84. Given the Administration's position that government should be transparent and the cloud hanging over the Legislature, it is extremely inadvisable to enact legislation by this method. Moreover, since this legislation will do nothing to fix the fundamental Due Process problems, we fully expect to be back in court if we are ever cited by the State under this proposed law.

When and if a true deliberation is held to reach a consensus resolution of this important issue, I will be at your service.

Very truly yours,

HOLIDAY COMPANIES



Steven G. Rush
Director of Corporate Compliance
and Government Relations

SGR/kjl.77

cc: Anchorage Chamber of Commerce (by email)
Fairbanks Chamber of Commerce (by email)
House Finance Standing Committee Members (10) (by email)
Rep. John Coghill (by email)
Rep. John Harris (by email)
Sen. Donny Olson (by email)

JOHN A. TREPTOW
(907) 257-7820
treptow.john@dorsey.com

May 10, 2007

VIA EMAIL (Representative Kevin Meyer@legis.state.ak.us)

Representative Kevin Meyer
District 30 – Anchorage
Finance Committee Co-Chair
House of Representatives
State Capitol, Room 515
Juneau, Alaska 99801-1182

Re: Committee Substitute for HB 187, Revised 5/8/07

Dear Representative Meyer:

I represented Holiday Companies in its successful appeal challenging the constitutionality of one aspect of AS 43.70.075(d) before the Superior Court for the State of Alaska, Third Judicial District, Judge William Morse presiding. I also testified at the hearing held on HB 187 on April 28, 2007.

At the request of Holiday Companies, I have been asked to review the Committee Substitute for HB 187, revised 05/8/07, and provide you with my thoughts on the current draft of the legislation.

In my opinion, the proposed amendments to AS 43.70.075(d) do not address, let alone correct, the due process deficiencies in the statute as found by Judge Morse in his October 27, 2006 decision. In addition, the proposed amendments raise new, additional constitutional concerns. The basis for my opinion is discussed below.

Section 2. AS 43.70.075(d)

In this amendment, the conviction of an employee for violating AS 11.76.100, .106, and .107 is the sole requirement for suspending a tobacco endorsement. The proposed amendment uses the employee's conviction in a manner that Judge Morse has already found deprives the endorsement holder of the opportunity to effectively challenge the real conduct at issue—that of the endorsement holder. This section of the proposed amendment runs afoul of Judge Morse's previous ruling.

The sale of tobacco products to a person under the age of 19 is a criminal offense only if the sale is a negligent one. The sale of tobacco products to minors is not a strict liability offense. Accordingly, the conduct of the endorsement holder must be viewed in terms of whether it was negligent in permitting the sale to a person under the age of 19. It is the

Representative Kevin Meyer
May 10, 2007
Page 2

endorsement holder's conduct that should be the principal focus of the hearing under subsection (d).

Judge Morse made it very clear that fundamental fairness requires that an endorsement holder's conduct be reviewed and evaluated before action is taken that would affect the endorsement holder's constitutionally protected rights. The Alaska Supreme Court has long held that "A license to engage in a business enterprise is of considerable value to one who holds it. There can be no question in this case that a suspension of appellant's liquor license would represent a potential economic loss to its business." *Frontier Saloon, Inc. v. Alcoholic Beverage Control Bd.*, 524 P.2d 657, 659 (Alaska 1974).

On this point, Judge Morse held: "Holiday has a property interest in its ability to sell tobacco products. That interest must be protected in a proceeding wherein Holiday may lose, even temporarily, the tobacco endorsement that is required to sell tobacco products." (Decision, p. 5)

Alaska Statute 43.70.075(d), as written, requires a suspension of the endorsement, for a first or second offense, even if the endorsement holder has presented evidence at the hearing that it was not negligent in permitting its employees to sell tobacco products to minors. This violates due process and is an unconstitutional taking of property. Judge Morse found that a tobacco endorsement holder is entitled to present evidence that it acted reasonably in the hiring and supervision of its employees and that it is this type of evidence that goes to the issue of whether tobacco endorsement should be suspended. The amendment fails to address this important issue. The amendment suffers from the same constitutional defects as its predecessor.

Section 2. AS 43.70.075(m)(5)

As proposed, the length of a suspension depends, in part, on subsection (m)(5). Subsection (m)(5) permits the department to consider the conduct of the endorsement holder for the previous year at any location or outlet for the person who holds the business license endorsement. In my opinion, both the five-year period and the use of conduct at locations other than the location selling the products raise serious issues of fundamental fairness and brings into serious question the constitutionality of that provision.

On the issue of conduct at other outlets, Judge Morse has already held: "The state could not revoke the endorsement of a Fairbanks store if the underage sale occurred at an Anchorage outlet. Nor could it suspend the particular endorsement, assigned to one of the holder's multiple Anchorage locations or outlets, without proving the precise location or outlet at which the prohibited sale occurred." Fundamental fairness requires that, with respect to the violation at a particular outlet, it is the endorsement holder's conduct at that outlet that is relevant.

The five-year time limitation is totally unreasonable. With respect to a tobacco endorsement holder's license conduct, the legislature itself has addressed only conduct that has occurred in the previous 24 months before a violation. Twenty-four months would appear to be

Representative Kevin Meyer
May 10, 2007
Page 3

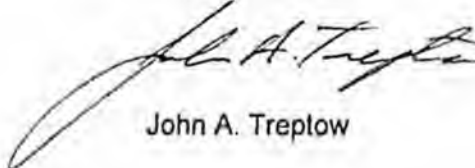
a reasonable time, and the two years in question would apply only to the location or outlet involved in the particular section.

Sub-subsection (C) of subsection (m)(5) would permit evidence of "conduct that was or is likely to result in the sale of tobacco to persons under the age of 18." This appears to be a "catch-all" category for any type of behavior that does not violate AS 11.76.100, .106, and .107. This portion of the statute is unconstitutionally vague. The amendment expands the scope of the endorsement holder's conduct from the site of the sale to any other site in the state. These provisions are overbroad and contrary to Judge Morse's concern for fundamental fairness and focuses on the conduct of the specific outlet involved in the suspension proceeding.

Conclusion

The proposed amendments not only do not correct the constitutional deficiencies identified by Judge Morse, but they create problems that did not exist before in the legislation. Due process rights need to be protected, and the proposed amendments need to be redrafted to ensure that those rights are protected.

Very truly yours,



John A. Treptow

cc (via email): Steve Rush, Holiday Companies

ALASKA STATE SENATE
SENATOR DONALD C. OLSON

ALASKA STATE CAPITOL
ROOM 514
JUNEAU, ALASKA 99801-1182



(907)465-3707
FAX (907) 465-4821

SECTIONAL ANALYSIS
CSSB 84 (JUD), "Testing and Packaging of Cigarettes"

Section 1 establishes a new Chapter 74 for cigarette fire safety.

Subsection 18.74.010 prohibits the sale of any cigarette that does not have fire extinguishing characteristics determined by:

- (1) testing to an approved performance standard under 18.74.030 or 040,
- (2) marking and identification under 18.74.130, and
- (3) a certification by the manufacturer to the state fire marshal that each cigarette offered for sale complies with the requirements of this chapter.

Subsection 18.74.030 establishes the test methods based on the National Institute of Standards & Technology (NIST) performance standards by which cigarettes are determined to have acceptable fire extinguishing characteristics. The state fire marshal may select a variation of the standards if he finds that the results better assure the diminished burning capabilities of the cigarettes.

Subsection 18.74.040 allows the state fire marshal to accept alternative test methods and performance standards under certain conditions and findings.

Subsection 18.74.050 requires testing by laboratories that meet the accreditation and other requirements for acceptability in determining quality assurance and repeatability of test results regarding fire extinguishing characteristics.

Subsection 18.74.060 allows testing of cigarettes for other purposes, provided that said testing is consistent with this chapter.

ALASKA STATE SENATE

SENATOR DONALD C. OLSON

ALASKA STATE CAPITOL
ROOM 514
JUNEAU, ALASKA 99801-1182



(907) 465-3707
FAX (907) 465-4821

Subsection 18.74.065 allows the state fire marshal to perform testing; and requires the state fire marshal or a contractor of the fire marshal to follow this chapter if they should perform a test to determine a cigarette's compliance with this chapter.

Subsection 18.74.070 requires manufacturers keep all cigarette test results for a period of three years.

Subsection 18.74.080 requires a manufacturer to certify to the state fire marshal that each type of cigarette listed satisfies the performance standards of this chapter. Any subsequent change to the cigarette type that may alter its fire extinguishing performance must be re-tested. There is an annual certification fee of \$250 paid to the fire marshal for each type of cigarette. The fire marshal may adjust this fee.

Subsection 18.74.090 lists the information required in the certification about the nature of the cigarette and its test results.

Subsection 18.74.100 lists the banding requirements for cigarettes that use lowered permeability bands to achieve the performance standards of the chapter.

Subsection 18.74.110 allows the attorney general and the Department of Revenue access to the certification information in order to enforce provisions of the chapter.

Subsection 18.74.120 requires approval of the manufacturer's packaging and marking of fire extinguishing cigarettes by the fire marshal prior to certification, and requires the fire marshal to act within 10 business days. Certain state officials are permitted to inspect the packaging markings of cigarettes being sold by wholesalers, agents, and retailers in the state.

Subsection 18.74.130 specifies the cigarette package marking requirements to indicate compliance with this chapter.

ALASKA STATE SENATE
SENATOR DONALD C. OLSON

ALASKA STATE CAPITOL
ROOM 514
JUNEAU, ALASKA 99801-1182



(907)465-3707
FAX (907) 465-4821

Subsection 18.74.150 requires copies of a manufacturer's certification under 18.74.080 to be provided to every wholesaler, agent, and retailer who sells the cigarette.

Subsection 18.74.160 lists civil penalties for sales of cigarettes in the state that are in violation of this chapter by a manufacturer, wholesaler, agent, or retailer.

Subsection 18.74.180 directs that certification fees and civil penalties received shall be deposited in a separate account in the general fund. The legislature may appropriate from this account to the fire prevention and public safety fund established under subsection 18.74.210.

Subsection 18.74.190 requires the fire marshal, the Department of Revenue, or a law enforcement agency to seize cigarettes that are sold or offered for sale that are in violation of this chapter. Conditions for disposal of seized cigarettes are detailed.

Subsection 18.74.200 allows the state fire marshal or the attorney general to seek additional remedies for violations of this chapter through superior court action.

Subsection 18.74.210 establishes a fire prevention and public safety fund for the purpose of paying for the expenses of the state fire marshal in implementing and enforcing this chapter. Money appropriated to the fund may be expended without further appropriation.

Subsection 18.74.220 specifies the requirements for implementation of this chapter.

Subsection 18.74.230 requires the state fire marshal to report to the legislature every three years on the effectiveness of this chapter in reducing cigarette caused fires.

Subsection 18.74.240 is the fire marshal's authority to adopt regulations.

ALASKA STATE SENATE
SENATOR DONALD C. OLSON

ALASKA STATE CAPITOL
ROOM 514
JUNEAU, ALASKA 99801-1182



(907)465-3707
FAX (907) 465-4821

Subsection 18.74.250 authorizes inspections by certain state officials of cigarettes being sold and examination of paper, invoices, and records of persons who possess, control, or occupies premises where cigarettes are being sold or stored.

Subsection 18.74.260 exempts cigarettes manufactured in Alaska for sale in another state or another country from the requirements of this chapter as long as reasonable steps are taken to exclude sales in Alaska.

Subsection 18.74.270 prohibits a municipality from enacting or enforcing an ordinance that is in conflict with the purpose and provisions of this chapter.

Subsection 18.74.280 confirms the supremacy of federal law over provisions of this chapter.

Subsection 18.74.290 provides definitions of terms used in this chapter.

Section 2 provides for the transition from currently allow cigarette sales to the mandated sale of fire safe cigarettes only in the 13 month transition period.

Section 3 provides a 13 month delayed effective date.



[Click here to return to the original story](#)

Fire leaves 18 homeless

City still considering sprinkler rule for downtown buildings

For years, commercial fisherman Norval Nelson III and friends lived in the eight-unit apartment building at 331 Gastineau Ave.

It was the perfect spot for a bachelor's shack.

"It was a nice comfortable place for watching the boat leave and come back and for watching fireworks," he said. "It was a cool option for someone that wasn't the richest to have a bay view."

It's not any more.

An abandoned cigarette blew out of an ashtray and into a crevice in an outdoor couch Wednesday morning, touching off a fire that gutted the three-story Gastineau Avenue apartment building and left 18 people homeless, Capital City Fire & Rescue investigators said.

Propelled by gusting winds, the fire quickly decimated the wooden building. There was no sprinkler system to stop it.

"Really, the only way to make these old buildings safe is to install a sprinkler system," Fire Chief Eric Mohrmann said. "A system that was properly installed, with two or more heads at the most, would have easily extinguished the fire."

The smoldering cigarette was left in an ashtray outside the first floor 30 minutes before the fire was reported, at 10:23 a.m., Mohrmann said.

By then, the fire was progressing rapidly up the wooden staircase. The first Capital City unit arrived at 10:28, and the first ladder truck pulled up by 10:32.

The fire has been ruled accidental. No charges have been filed, nor are any anticipated, Mohrmann said. Property damage is still unknown, but the 18 residents lost practically everything they had in the building.

"There's definitely a large group of people that were living there that aren't the wealthiest," Nelson said. "They had enough to make ends meet. I doubt

that any of them will recover any personal belongings of that loss. And if they do, it's going to take some time to regain everything.

"It's a shame to live with 10 shirts, and 10 pants and 10 shoes, and get maybe a shirt and a pair of pants and a shoe," he said.

Though belongings were lost, no lives were. One person was treated at Bartlett Regional Hospital for injuries.

As of Thursday afternoon, the Red Cross had doled out \$11,000 in immediate response credit cards to the 11 families, or 18 people, who lived in the building, said Shad Engkilterra, Southeast service center director.

The cards pay for food for each person for a week, clothing, shoes, seasonal garments, an allotment for storage containers, bedding and linens.

The Red Cross expects to give out a total of \$22,000, he said. It also has a rental assistance program that sometimes provides the first month's rent or enough money to cover a deposit.

Six of the families have been housed at the Driftwood Lodge for at least three days. Five other families found alternative options.

In a situation like this, Engkilterra said, the Red Cross is able to pay for up to five days of lodging.

"After that, I have to say, 'No, you have to pay for this on your own,' which is hard," he said. "The housing situation in Juneau being what it is. I've had some people contact us about (housing options), and the best I can do is pass that information on."

As of 3 p.m. Thursday, Juneau residents had donated \$500 to the fire relief effort. Most people had called wondering if they could donate items.

"I've been referring them to St. Vincent or the Salvation Army," Engkilterra said. "We're not equipped to deal with anything other than monetary donations."

The apartment was built in the 1960s. The codes at that time did not mandate sprinkler systems, said Sara Boesser, the city's chief building inspector.

The owner installed a six-inch fire line in 2001 to feed a sprinkler system, but apparently never took the next step.

The city's Public Works Committee is deliberating a retrofit ordinance that would require all buildings in downtown Juneau's "high hazard" core area to install sprinkler systems.

The burned apartment falls within that zone.

The "high hazard" map stretches along Gastineau Avenue to Sixth Street, down Sixth to Main Street, and down Main to the intersection with Egan Drive and Marine Way. It also includes the area by the Mount Roberts Tram and part of Willoughby Avenue.

"The problem we have is a lot of 100-year-old wood-framed construction right next to each other without fire prevention or walls or yards separating them," Mohrmann said. "That can lead to fire jumping from building to building."

At the last Public Works Committee meeting, the staff was directed to develop a financial plan to help subsidize sprinklers, Mohrmann said.

Click here to return to story:

http://www.juneauempire.com/stories/040607/loc_20070406028.shtml



State of Alaska

Department of Public Safety
Division of

Fire Prevention

Sarah Palin, Governor
Walt Monegan, Commissioner

February 21, 2007

The Honorable Donny Olson
State Senate
State Capitol, Room 514
Juneau, AK 99801-1182

Dear Senator Olson:

The Division of Fire Prevention supports SB84 sponsored by you: "An Act relating to the burning capability of cigarettes being sold or offered for sale, or possessed for sale; relating to compliance certifications by tobacco product manufacturers, a directory of tobacco product manufacturers, the affixing of stamps to cigarette packages, and cigarette tax stamps; and providing for an effective date."

This bill embodies the focus of the Division's mission statement which is to prevent the loss of life and property from fire and explosion. This bill recognizes significant losses of life and property due to cigarettes; as the following statistics will show.

Between 1996 and 2005 Alaska lost \$8.0 million in property to fires with cigarettes as an ignition source.

Between 1996 and 2006 cigarette related fires caused 28% (51 Alaskans) of the deaths due to fire. This is the leading cause of fire fatalities in Alaska.

It is our belief that this bill will significantly lower fire fatalities in Alaska related to cigarettes, as the manufacturers will have to meet the new requirements for a cigarette that meets a fire safety standard. This would be at minimal cost to the state.

The states that have enacted similar legislation are New York, Vermont, California, Illinois, New Hampshire and Massachusetts. Those states are closely monitoring their fire statistics for the expected decline in fire fatalities. The legislation enactment is recent; therefore the information on fire fatalities is just now being collected for analysis.

If you have any questions or need more information, please do not hesitate to contact me.

Sincerely,


Steven "Rusly" Belanger
Acting State Fire Marshal

ALASKA FIRE CHIEF'S ASSOCIATION

2358 Bradway Road, North Pole, AK 99705

EIN #92-0098649

Phone: (907) 488-3400

FAX: (907) 488-6118



Date: February 20, 2007
To: Alaska Legislators
From: Alaska Fire Chiefs Association
Subject: Support SB 84 (Olson) and HB131 (Gatto)

The Alaska Fire Chiefs Association, the largest membership of fire service managers in Alaska, is dedicated to serving the needs and issues that face Alaska's fire service. We would like to inform you that Alaska Chiefs strongly support the Burning Capability of Cigarettes (SB 84/HB131) legislation, and encourage your yes vote when this legislation comes before you.

SB 84/HB131 will prohibit the sale, manufacture or distribution of cigarettes in Alaska that do not meet fire safe standards established by the American Society of Testing and Materials (ASTM).

Careless smoking is the leading cause of fire deaths in Alaska. From 1997 to 2006, fires caused by careless smoking resulted in 23% of all fire deaths in Alaska. This type of fire killed 37 people during the past 10 years.

These costs are simply too great. Fortunately, an effective solution to this problem lies within your reach. California, Illinois, New Hampshire, New York and Vermont have already passed similar legislation to protect their residents. We hope you will do your part to accomplish the same in Alaska.

On behalf of the 150 members of the Alaska Fire Chiefs Association, we thank you for considering our support of this legislation, and we hope you will vote YES on SB 84/HB 131 – a life saving piece of legislation.

Sincerely,

A handwritten signature in black ink, appearing to read "Warren B. Cummings". The signature is fluid and cursive, written over a horizontal line.

Warren B. Cummings
President, Alaska Fire Chiefs Association



ALASKA FIRE CHIEF'S ASSOCIATION
and the
ALASKA STATE FIRE FIGHTERS ASSOCIATION



JOINT RESOLUTION NO. 2006-1

A JOINT RESOLUTION TO THE STATE OF ALASKA LEGISLATURE SUPPORTING
PASSAGE OF LEGISLATION TO CREATE A FIRE SAFE CIGARETTE.

WHEREAS: Commercially, mass produced cigarettes have long been the leading
cause of fire deaths in the United States and particularly here in
Alaska and,

WHEREAS: Decades of research done by the National Institutes of Standards and
Technology, private industry and congressional research groups have
shown that reduced ignition propensity cigarettes can be
manufactured and,

WHEREAS: Legislation has been passed in the state of New York, Vermont,
Illinois, New Hampshire and California as well as the nation of
Canada requiring cigarettes sold in those jurisdictions to meet the
standard in the New York law requiring fire safety performance and,

WHEREAS: Preliminary data from New York state already shows a significant
reduction in fire deaths following implementation of the law and,

WHEREAS: The National Fire Protection Association along with other national
safety and health related agencies have formed a coalition to propose
legislation in the remaining 44 states,

THEREFORE BE IT RESOLVED: That the Alaska Fire Chiefs Association and the Alaska
State Fire Fighters Association request the Alaska State Legislature to pass legislation
requiring cigarettes sold in Alaska meet the fire safe requirements of the standard written in
New York.

Adopted this 29th day of September 2006 by a vote of the joint memberships at their Fall
Conference in Fairbanks, Alaska.

Attested by: Warren B. Cummings
Warren B. Cummings, Alaska Fire Chief's Association President

Attested by: Carol Reed
Carol Reed, President Alaska State Fire Fighters Association



National Fire Protection Association

1 Batterymarch Park, Quincy, MA 02169-7471
Phone: 617-770-3000 • Fax: 617-770-0700 • www.nfpa.org

James M. Shannon
President and Chief Executive Officer

February 23, 2007

Senator Donny Olson
State Capitol, Room 514
Juneau, AK 99801-1182

Dear Senator Olson:

I write to thank you for sponsoring SB 84, a bill that would require all cigarettes sold in Alaska to meet a fire safety standard. This important public safety bill will undoubtedly save lives and protect property all across your state.

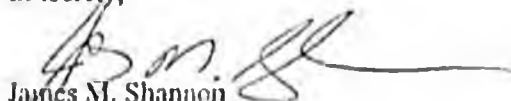
By filing this bill, you are taking a critical step to enhance fire safety by preventing fires caused by cigarettes. If the proposed fire-safe cigarette bill becomes law in Alaska, the state will be in good company. Already, legislative requirements for fire-safe cigarettes have been adopted in New York, Vermont, California, Illinois, New Hampshire and Massachusetts — covering over 25 percent of the U.S. population. Currently, there are 22 states across the country considering similar legislation.

Cigarettes are the leading cause of residential fire death across the country, killing 700 to 900 Americans each year. Additionally, thousands of victims suffer devastating burn and lung injuries, and property losses total millions of dollars each year. Cigarette fires also create a significant risk for firefighters battling these fires. Cigarette manufacturers can produce cigarettes that are more likely to go out when left unattended, greatly lowering the risk of igniting nearby furniture and bedding.

Fire-safe cigarettes work. Initial research in New York State since the implementation of its statewide mandate shows a dramatic decline in the number of fires and fatalities caused by cigarettes. Research has also shown that these fire-safe cigarettes have not reduced sales or made cigarettes more toxic to smoke. In short, fire-safe cigarettes save lives, and can make a difference in Alaska as well.

I strongly support this bill and your efforts to better protect the citizens of Alaska. Please let me know if I can be of assistance as the bill moves forward.

Sincerely,


James M. Shannon
President and CEO
National Fire Protection Association

Denise Liccioli

From: Sen. Donny Olson
Sent: Tuesday, March 27, 2007 8:09 AM
To: Denise Liccioli
Subject: FW: SB84

Jane Ann Boer
Legislative Assistant
Senator Donald Olson
Capitol Building Rm 514

(907) 465-3707
jane_boer@legis.state.ak.us

-----Original Message-----

From: Jack Smith [mailto:Jack.Smith@north-slope.org]
Sent: Tuesday, March 27, 2007 8:08 AM
To: Sen. Donny Olson
Cc: Edward Itta; George Olemaun; Andy Mack
Subject: SB84

Dear Senator Olson:

Want to again thank you for sponsoring SB 84. Was notified the bill has been read and forwarded to Senate finance. Am hopeful it can be heard and continue to move forward. The fire service strongly supports mandating safe cigarette sales in Alaska, recognizing the potential to save lives and property. Fire Chiefs around the state are in constant email contact about important bills such as this, ready to offer additional assistance. Please let me know if there is anything we can do to continue to support your efforts.

Again, thank you for recognizing the importance of this issue and your willingness to take up the fight.

Jack M. Smith Jr., Fire Chief
North Slope Borough Fire Department
P.O. Box 69
Barrow, Alaska 99723
(907) 852-0234
Fax (907) 852-0235

**COALITION
for FIRE-SAFE
CIGARETTES**

The time is now.™

Coalition for Fire-Safe Cigarettes (CFSC)

Mission Statement:

The mission of the Coalition for Fire-Safe Cigarettes is to save lives, prevent injuries and devastation from cigarette-ignited fires by calling on cigarette manufacturers to immediately produce and market only cigarettes that adhere to an established cigarette fire safety performance standard, (based on ASTM E2187, Standard Test Method for Measuring the Ignition Strength of Cigarettes); and working to see that these standards for fire-safe cigarettes are required in every state in the country.

Who We Are:

The Coalition for Fire-Safe Cigarettes (CFSC) is a national group of fire service members, consumer and disabled rights advocates, medical and public health practitioners and others, coordinated by the National Fire Protection Association (NFPA), who are committed to saving lives and preventing injuries by reducing the threat of cigarette-ignited fires.

Background:

Cigarettes currently are the leading cause of home fire fatalities in the U.S. killing 700 to 900 people, smokers and non-smokers alike, per year. In addition, thousands of victims suffer burn and lung injuries, and property losses total millions of dollars each year.

Yet, there is a proven, practical, and effective way to eliminate the risk of cigarette-ignited fires. The use of cigarettes that have a reduced propensity to burn when left unattended will help to prevent tens of thousands of cigarette-ignited fires each year. The use of such "fire-safe" cigarettes has already been mandated in New York, California, Vermont, Illinois, New Hampshire, and Massachusetts (covering 25 percent of Americans) and in all of Canada.

Call to Action:

We applaud the successful actions of state legislatures to mandate that cigarettes sold in their states follow established guidelines for reduced ignition propensity, and we encourage all states to do so.

Therefore, we call on cigarette manufacturers to immediately begin producing and marketing only cigarettes that have a reduced propensity to burn when left unattended (*as established through testing to a performance standard based on ASTM E2187, Standard Test Method for Measuring the Ignition Strength of Cigarettes*).

COALITION for FIRE-SAFE CIGARETTES

The time is now."

Cigarette Fire Facts

- Cigarettes are the leading cause of home fire fatalities in the United States, killing 700 to 900 people – smokers and non-smokers alike – per year.
- Smoking-material structure fires killed 760 people and injured 1,520 others in 2003.
- Property losses total hundreds of millions of dollars each year.
- There were 25,600 smoking-material structure fires in the United States in 2003.
- Fires caused by smoking materials have declined in recent years, thanks in part to more stringent standards for fire-resistive mattresses and upholstered furniture, public education, and a dramatic decrease in the number of cigarettes consumed per adult in the United States. But cigarettes are still the leading cause of residential fire deaths.
- The risk of dying in a residential structure fire caused by smoking materials rises with age. Two-fifths (38 percent) of fatal smoking-material-fire victims are age 65 or older.
- One-quarter of victims of smoking-material fire fatalities are not the smoker whose cigarette started the fire: 34 percent are children of the smokers; 25 percent are neighbors or friends; 14 percent are spouses or partners; and 13 percent are parents.
- Almost half (43 percent) of fatal home smoking-material fire victims were sleeping when injured; one-third (32 percent) were attempting to escape, to fight the fire, or to rescue others.

Fire-Safe Cigarettes – The Time Is Now!

- One in four Americans is now or soon will be covered by fire-safe cigarette mandates approved in New York, California, Vermont, Illinois, New Hampshire, and Massachusetts. A fire-safe cigarette mandate has also been approved for all of Canada.
- Research in New York State shows no decline in cigarette sales with the introduction of fire-safe cigarettes, but cigarette-fire fatalities were reported to have declined in the state by a third in 2004 when the law was in place for not quite half the year.
- NFPA research in the mid-1980s predicted that fire-safe cigarettes would eliminate three out of four cigarette fire deaths. Had manufacture of fire-safe cigarettes become universal then, approximately 15,000 lives could have been saved by now.

(Source: National Fire Protection Association, 10/06)

COALITION for FIRE-SAFE CIGARETTES

The time is now.™

Members as of February 1, 2007

American Association of Retired Persons	Massachusetts Call/Volunteer Firefighters Associations
American Burn Association	Massachusetts Coalition for Fire-Safe Cigarettes
American College of Emergency Physicians	Metropolitan Fire Chiefs
American Fire Sprinkler Association	National Association of Emergency Medical Technicians
American Health Care Association	National Association of Hispanic Firefighters
American Society of Testing and Materials International	National Association of State Fire Marshals
AMERIND Risk Management Corporation	National Center for Assisted Living
Asian American Hotel Owners Association	National Fallen Firefighters Foundation
Automatic Fire Alarm Association, Inc.	National Fire Protection Association
Boston Society of Vulcans	National Fire Sprinkler Association
Business and Institutional Furniture Manufacturer's Association	National Native American Fire Chiefs Association
Center for Campus Fire Safety	National Safety Council
Center for Social Gerontology, Inc.	National Volunteer Fire Council
Firemen's Association of the State of New York	Phoenix Society for Burn Survivors
Florida Association of Fire & Life Safety Educators	Polyurethane Foam Association
Harvard School of Public Health	Property Casualty Insurers Association of America
Home Safety Council	Public Citizen
Illinois Fire Inspectors Association	Safe Kids Worldwide
International Association of Arson Investigators	Trauma Foundation
International Association of Black Professional Fire Fighters	Uniform Fire Code Association
International Association of Fire Chiefs	Washington Fire Chiefs
International Association of Fire Fighters	Western Fire Chiefs Association
International Association of Hispanic Firefighters	
International Code Council	<i>Supporters/State Groups</i>
International Fire Marshals Association	Tobacco Free Kids

www.firesafecigarettes.org

COALITION for FIRE-SAFE CIGARETTESTM

The time is now.

Search

GO

- Home - The Coalition for Fire Safe Cigarettes
- About the Coalition
- About fire-safe cigarettes
 - What is a fire-safe cigarette?
 - The smoking-material fire problem
 - Fast facts
 - Myths vs. realities
 - History
- Legislative updates
- In the news
- Model legislation
- Letter to tobacco companies
- For the media
- Join the Coalition
- Read the Coalition blog
- Contact Us
- Sign online petition

printer version

email page

What is a fire-safe cigarette?

A fire-safe cigarette has a reduced propensity to burn when left unattended. The most common fire-safe technology used by cigarette manufacturers is to wrap cigarettes with two or three thin bands of less-porous paper that act as "speed bumps" to slow down a burning cigarette. If a fire-safe cigarette is left unattended, the burning tobacco will reach one of these speed bumps and self-extinguish.

Fire-safe cigarettes meet an established cigarette fire safety performance standard (based on ASTM E2187, Standard Test Method for Measuring the Ignition Strength of Cigarettes).

Fire-safe cigarettes save lives
The good news is that improved standards for cigarette-resistant materials in furniture and mattresses, and public education have all helped cut down the number of fires caused by smoking materials and have saved many lives. The bad news is that 700 to 900 people still die each year due to cigarette-ignited fires. And the fact remains: smoking materials are the #1 cause of fire deaths in the United States.

There is no doubt that fire-safe cigarettes will save hundreds of lives each year. Deaths caused by cigarette fires have declined dramatically in New York State in the first few months that fire-safe cigarettes were mandated there in 2004. The use of cigarettes with a proven, reduced propensity to ignite other materials will save lives and offer the best opportunity to achieve the next big leap forward in fire protection.

Is it possible for a "fire-safe" cigarette to ignite furniture or bedding?

All cigarettes have the *potential* to ignite fires, but the use of "fire-safe" technology provides a tremendous reduction in those risks. A fire-safe cigarette cuts off the burning time before most cigarettes are able to ignite things like furniture or bedding material.

Isn't the real issue the need to educate people about using cigarettes in a responsible way?

Actually, the real issue is that cigarettes are the leading cause of home fire fatalities every year. Fires started by cigarettes kill smokers and non-smokers alike. Cigarette fires also burn and injure thousands of people, while causing millions of dollars in property losses. But, we have the opportunity to prevent those horrible situations through the use of fire-safe cigarettes.

With any fire problem, you can and should try to change the heat source (the cigarette), the items ignited (for example, mattress, couch), and the behavior that brings them together (that is, the smoker's behavior). And all of these strategies are being actively pursued. The reality is that without changing the cigarettes, there will still be hundreds of needless cigarette-fire deaths every year. That is why fire-safe cigarettes offer the best opportunity to achieve the next big leap forward in fire protection.

Wouldn't it be better if the U.S. had a federal standard with which each state had to comply?

All of us wish the tobacco companies would step up and do the right thing in this situation —

If a fire-safe cigarette is left unattended, the burning tobacco will reach one of these banded "speed bumps" and self-extinguish.



Illustration: John Roman



Cigarette regulations adopted in New York, California, and Vermont require that no more than 25 percent of 40 cigarettes tested burn their full length when placed on 10 layers of standard filter paper. The established cigarette fire safety performance standard is based on ASTM E2187, Standard Test Method for Measuring the Ignition Strength of Cigarettes. Photo: National Institute of Standards and Technology. See larger image.

replacing traditional cigarettes with fire-safe cigarettes. But, until that happens, strong legislation like this is the best way to prevent fires started by cigarettes. Currently, there is gridlock at the federal level, yet there is tremendous progress on the state level. Until a strong fire safety standard can be enacted by the U.S. Congress, we must pursue regulation at the state level. And to avoid a patchwork of standards, the best approach is to adopt the New York State standards, just as California and Vermont have already done.

What are other states doing?

New York State was the first to require that cigarettes sold and manufactured in the state be fire-safe. Vermont and California both adopted fire-safe legislation late last year. Additional states are considering fire-safe bills now, and many other states and jurisdictions are looking into it. In Canada, fire-safe cigarettes are mandated nationwide using the New York state standard.

[top of page](#)[Contact Us](#)[Privacy Policy](#)[Terms & Conditions](#)

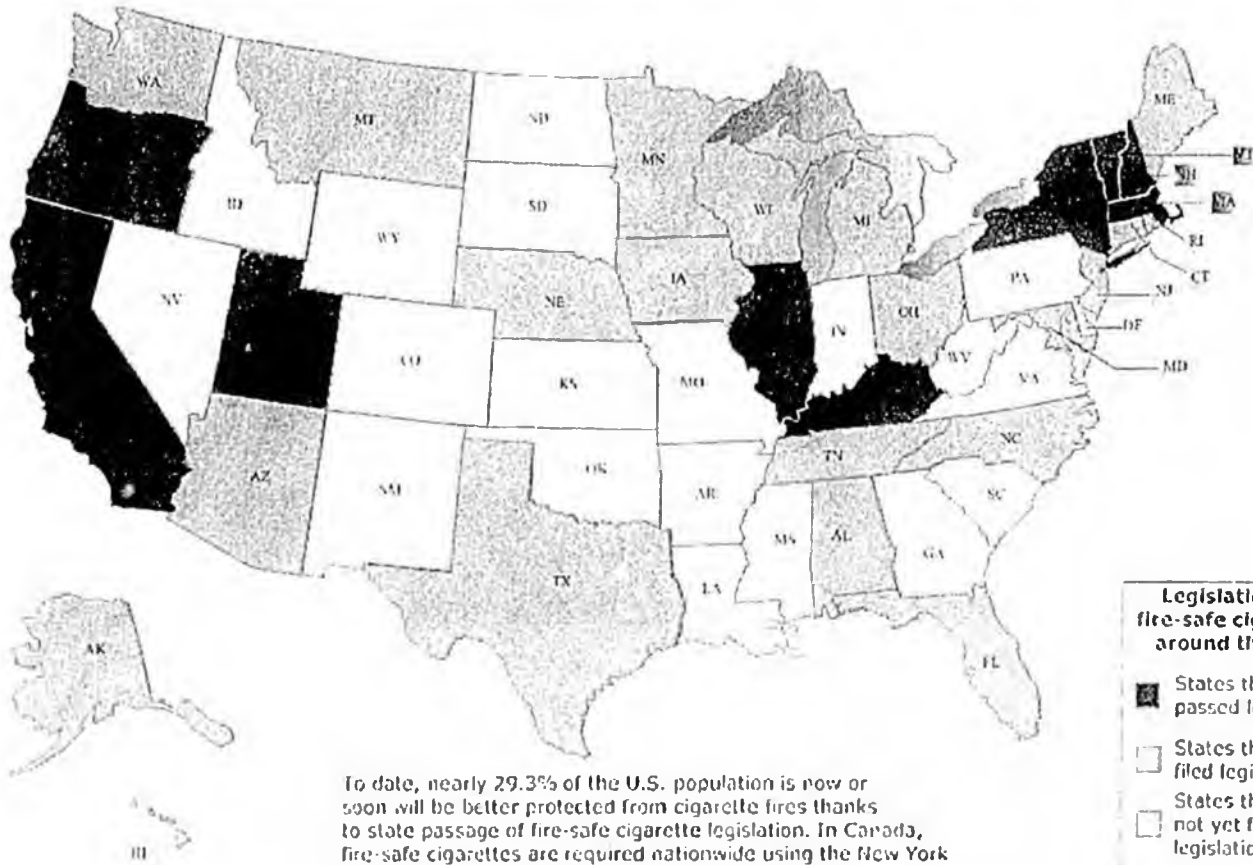
The Coalition for Fire-Safe Cigarettes campaign is coordinated by NFPA.

URL: <http://firesafecigarettes.org/itemDetail.asp?categoryID=48&itemID=1190&URL=About%20fire-safe%20cigarettes/What%20is%20a%20fire-safe%20cigarette?>

www.firesafecigarettes.org

COALITION for FIRE-SAFE CIGARETTES™

The time is now.



To date, nearly 29.3% of the U.S. population is now or soon will be better protected from cigarette fires thanks to state passage of fire-safe cigarette legislation. In Canada, fire-safe cigarettes are required nationwide using the New York standard.

Click on any state to learn more.



American Burn Association

625 N. Michigan Avenue, Ste. 2550
Chicago, IL 60611

Voice (312) 642-9260

Fax (312) 642-9130
e-mail: info@ameriburn.org

Fire-Safe Cigarettes American Burn Association Policy Statement

Cigarettes are the leading cause of fatal fires in the United States, killing 700 to 900 people every year and injuring thousands more. Those killed or injured in these fires are oftentimes not the smoker, but family members, children or neighbors. 34,800 smoking-material structure fires in the U.S. in 2002 resulted in property losses in the hundreds of millions of dollars.

The typical scenario for fires cause by cigarettes is the following: a lit cigarette is forgotten or dropped by a smoker whose alertness may be impaired by alcohol or medication. The cigarette fire can smolder for hours hidden between seat cushions or elsewhere before it flares up into a deadly blaze. "Fire safe" or reduced ignition propensity cigarettes have less porous paper, less dense tobacco, a smaller diameter, filter tip and no added citrates to the paper. These design changes result in no change in taste to the cigarette.

Nine states require the sale of fire safe cigarettes: New York, California, Vermont, Illinois, New Hampshire, Massachusetts, Kentucky, Utah and Oregon. Legislation is pending in New Jersey and Maryland.

The American Burn Association has been a strong advocate for the development of fire-safe cigarettes for more than 15 years, supporting past legislation on the issue and participating in two US Government studies that successfully demonstrated the technical and economic feasibility of commercial production of fire safe cigarettes.

The American Burn Association strongly and actively supports the passage of legislation mandating the manufacture and sale of fire-safe cigarettes along with the efforts of the Fire Safe Cigarette Coalition, a national group of fire service members, consumer, elderly and disabled rights advocates, medical and public health practitioners and other who are committed to saving lives and preventing injuries by reducing the threat of cigarette-ignited fires. The ABA is a member of the Fire Safe Cigarette Coalition.

For more information, contact Kitty Vineyard at the American Burn Association at (312) 642-9260 or vineyard@ameriburn.org.



National Institute of Standards & Technology

Certificate of Analysis

Standard Reference Material[®] 1082

Cigarette Ignition Strength Standard

This Standard Reference Material (SRM) is intended for use by test laboratories to assess and control their testing of cigarette ignition strength in accordance with ASTM Standard Methods E 2187-04 (or ASTM E2187-02b). The SRM unit consists of one carton of cigarettes containing 10 packs of 20 cigarettes each.

Certified Values and Uncertainties: A NIST certified value is a value for which NIST has the highest confidence in its accuracy and that all known or suspected sources of bias have been investigated or accounted for by NIST. The certified value for ignition strength is given in Table 1. The certified value is the result of testing at NIST, Kidde-Fenwal, and the National Research Council, Canada. The certified value and its uncertainty were obtained by fitting a Bayesian hierarchical model [1] to the data from the two laboratories. The model accounts for random variation both within and between laboratories. The data from each laboratory was modeled using individual binomial likelihood functions, the between-laboratory variation was modeled using a beta distribution, and non-informative prior distributions were used for all parameters in the model. The model was fit to the data using Markov chain Monte Carlo methods. The expanded uncertainty given in Table 1 is reported at the 95 % probability level. This uncertainty includes measurement variability within and between laboratories. Tests for cigarette uniformity did not show evidence of any significant variation in ignition strength between packs. A combined standard uncertainty for the certified ignition strength of $u_c = 1.65$ % should be used in further uncertainty calculations.

Table 1. Certified Values

Measurand	ASTM Method	Certified Value and Expanded Uncertainty
Ignition Strength (on 10 layers of filter paper)	E 2187-04 ^(a)	12.6 % \pm 3.3 %

^(a) Standard Test Method for Measuring the Ignition Strength of Cigarettes.

NOTICE AND WARNING TO USERS: THERE ARE SUBSTANTIAL SAFETY HAZARDS ASSOCIATED WITH EXPOSURE TO BOTH PRIMARY AND SECOND-HAND SMOKE FROM CIGARETTES. THESE CIGARETTES ARE ONLY TO BE USED UNDER THE LABORATORY CONDITIONS DESCRIBED IN ASTM E2187-04.

Expiration of Certification: The certification of SRM 1082 is valid, within the measurement uncertainties specified, until **31 December 2015**, provided the SRM is handled in accordance with the instructions given in this certificate (see "Instructions for Use"). This certification is nullified if the SRM is contaminated, disfigured, or otherwise modified.

Maintenance of Certification: NIST will monitor representative samples from this SRM lot over the period of its certification. If substantive changes occur that affect the certification before the expiration date, NIST will notify the purchaser. Registration (see attached sheet) will facilitate notification.

The coordination of the technical measurements leading to certification was performed by R.G. Gann of the NIST Fire Research Division.

Ignition strength measurements at NIST were made by J. Lee of the Fire Research Division.

Statistical consultation on experiment design and analysis of the certification data were performed by W.F. Guthrie of the NIST Statistical Engineering Division.

William L. Grosshandler, Chief
Fire Research Division

Robert L. Watters, Jr., Chief
Measurement Services Division

Gaithersburg, MD 20899
Certificate Issue Date: 01 February 2006
SRM 1082

Page 1 of 2

The support aspects involved in the issuance of this SRM were coordinated through the NIST Measurement Services Division.

The cigarettes were purchased by NIST from Philip Morris USA (Richmond, VA).¹

INSTRUCTIONS FOR USE

Stability and Use: ASTM E2187-04 states that cigarette test specimens are to be protected from physical or environmental damage while in handling and storage. It is important that the specimens not be crushed or deformed in any manner. Careful handling is needed to ensure that the specimens are not contaminated while in storage, and that they are protected from degradation by insects. If test cigarettes are not to be used for more than one week, they are to be stored in a freezer at approximately 0 °C (32 °F).

Prior to testing, the cigarettes are to be removed from the pack(s) and conditioned at a relative humidity of 55 % ± 5 % and a temperature of 23 °C ± 3 °C (73 °F ± 5 °F) for at least 24 h. The cigarettes are to be placed in a clean, open container, with the number of cigarettes being sufficiently small to enable free air access to the specimens, for example, a maximum of 20 cigarettes in a 250 mL polyethylene or glass beaker.

Material Selection and Packaging: The state of New York, the state of Vermont, the state of California, and the dominion of Canada have enacted legislation requiring that all cigarettes sold in their jurisdictions must not exceed 25 % full-length burns using this test method. A test consists of 40 determinations, each on a substrate consisting of 10 layers of filter paper. The filter paper is to meet the weight requirements in ASTM E2187-04 and is to be conditioned prior to testing, as described in the ASTM standard.

This SRM was developed because cigarette companies, the New York Office of Fire Prevention and Control, and Health Canada indicated a need for a standard cigarette that could be used by testing laboratories and manufacturers to assess and control ignition strength testing to assure regulatory compliance and quality control. The planned cigarette was to have a target ignition strength near (a) the required pass/fail criterion and (b) the value to which cigarette companies would need to design products in order to assure success during compliance testing, which is somewhat lower than the pass/fail criterion.

After examining several prototypes, Philip Morris USA submitted the candidate standard cigarettes to NIST. The packs and cartons were printed to NIST specifications at the factory. The cigarettes themselves bear no markings.

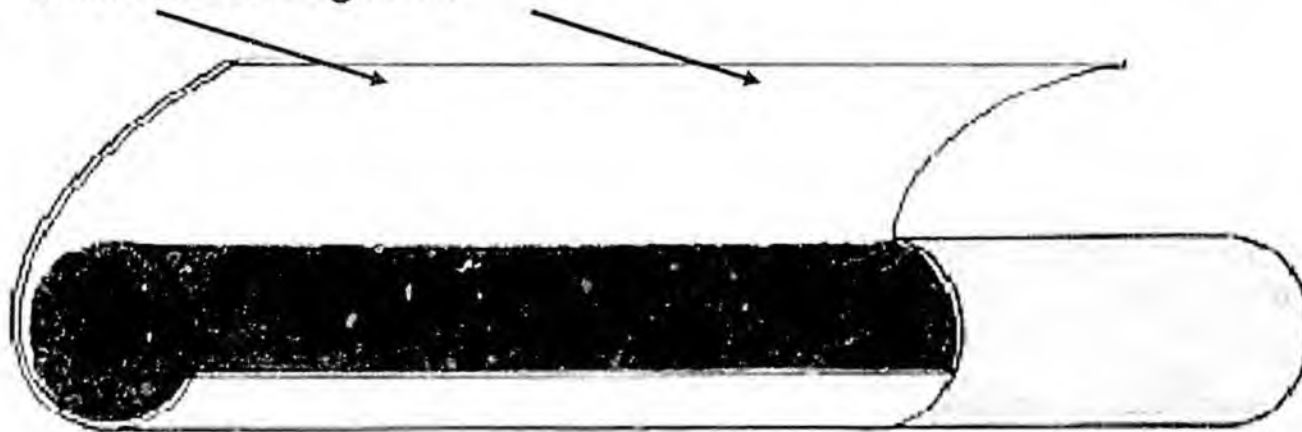
REFERENCE

- [1] Gelman, A.; Carlin, J.B.; Stern, H.S.; Rubin, D.B.; *Bayesian Data Analysis*; Chapman and Hall: London (1995).

Users of this SRM should ensure that the certificate in their possession is current. This can be accomplished by contacting the SRM Program at: telephone (301) 975-6776; fax (301) 926-4751; e-mail srminfo@nist.gov, or via the Internet <http://www.nist.gov/srm>.

¹Certain commercial equipment, instrumentation, or materials are identified in this certificate to specify adequately the experimental procedure. Such identification does not imply recommendation or endorsement by the NIST, nor does it imply that the materials or equipment identified are necessarily the best available for the purpose.

If a fire-safe cigarette is left unattended, the burning tobacco will reach one of these banded "speed bumps" and self-extinguish.



COALITION
for **FIRE-SAFE**
CIGARETTES
The time is now.™