ALASKA LEGISLATURE COMMITTEE FILES, 2005-2006 8672
11486 HOUSE JUDICIARY

(b) Except as provided in (a) of this section, in a prosecution under AS 11.41.410 or 11.41.420, it is not a defense that the victim was, at the time of the alleged offense, the legal spouse of the defendant.

Sec. 11.41.434. Sexual abuse of a minor in the first degree.

(a) An offender commits the crime of sexual abuse of a minor in the first degree if

(1) being 16 years of age or older, the offender engages in sexual penetration with a person who is under 13 years of age or aids, induces, causes, or encourages a person who is under 13 years of age to engage in sexual penetration with another person;

(2) being 18 years of age or older, the offender engages in sexual penetration with a person who is under 18 years of age, and the offender is the victim's natural parent, stepparent, adopted parent, or legal guardian; or

(3) being 18 years of age or older, the offender engages in sexual penetration with a person who is under 16 years of age, and

(A) the victim at the time of the offense is residing in the same household as the offender and the offender has authority over the victim; or

(B) the offender occupies a position of authority in relation to the victim.

(b) Sexual abuse of a minor in the first degree is an unclassified felony and is punishable as provided in AS 12.55.

Sec. 11.41.436. Sexual abuse of a minor in the second degree.

(a) An offender commits the crime of sexual abuse of a minor in the second degree if

(1) being 16 years of age or older, the offender engages in sexual penetration with a person who is 13, 14, or 15 years of age and at least three years younger than the offender, or aids, induces, causes or encourages a person who is 13, 14, or 15 years of age and at least three years younger than the offender to engage in sexual penetration with another person;

(2) being 16 years of age or older, the offender engages in sexual contact with a person who is under 13 years of age or aids, induces,

causes, or encourages a person under 13 years of age to engage in sexual contact with another person;

(3) being 18 years of age or older, the offender engages in sexual contact with a person who is under 18 years of age, and the offender is the victim's natural parent, stepparent, adopted parent, or legal guardian;

(4) being 16 years of age or older, the offender aids, induces, causes, or encourages a person who is under 16 years of age to engage in conduct described in AS 11.41.455 (a)(2) - (6); or

(5) being 18 years of age or older, the offender engages in sexual contact with a person who is under 16 years of age, and

(A) the victim at the time of the offense is residing in the same household as the offender and the offender has authority over the victim; or

(B) the offender occupies a position of authority in relation to the victim.

(b) Sexual abuse of a minor in the second degree is a class B felony.

Sec. 11.41.438. Sexual abuse of a minor in the third degree.

(a) An offender commits the crime of sexual abuse of a minor in the third degree if

(1) being 16 years of age or older, the offender engages in sexual contact with a person who is 13, 14, or 15 years of age and at least three years younger than the offender;

(2) being 18 years of age or older, the offender engages in sexual penetration with a person who is 16 or 17 years of age and at least three years younger than the offender, and the offender occupies a position of authority in relation to the victim; or

(3) being under 16 years of age, the offender engages in sexual penetration with a person who is under 13 years of age and at least three years younger than the offender.

(b) Sexual abuse of a minor in the third degree is a class C felony.

Sec. 11.41.440. Sexual abuse of a minor in the fourth degree.

(a) An offender commits the crime of sexual abuse of a minor in the fourth degree if

(1) being under 16 years of age, the offender engages in sexual contact with a person who is under 13 years of age and at least three years younger than the offender; or

(2) being 18 years of age or older, the offender engages in sexual contact with a person who is 16 or 17 years of age and at least three years younger than the offender, and the offender occupies a position of authority in relation to the victim.

(b) Sexual abuse of a minor in the fourth degree is a class A misdemeanor.

Sec. 11.41.443. Spousal relationship no defense. [Repealed, Sec. 61 ch 50 SLA 1989. For current law, see AS 11.41.432 (b)].

Repealed or Renumbered

Sec. 11.41.445. General provisions.

(a) In a prosecution under AS 11.41.434 - 11.41.440 it is an affirmative defense that, at the time of the alleged offense, the victim was the legal spouse of the defendant unless the offense was committed without the consent of the victim.

(b) In a prosecution under AS 11.41.410 - 11.41.440, whenever a provision of law defining an offense depends upon a victim's being under a certain age, it is an affirmative defense that, at the time of the alleged offense, the defendant

(1) reasonably believed the victim to be that age or older; and

(2) undertook reasonable measures to verify that the victim was that age or older.

Sec. 11.41.450. Incest.

(a) A person commits the crime of incest if, being 18 years of age or older, that person engages in sexual penetration with another who is related, either legitimately or illegitimately, as

(1) an ancestor or descendant of the whole or half blood;

(2) a brother or sister of the whole or half blood; or

(3) an uncle, aunt, nephew, or niece by blood.

(b) Incest is a class C felony.

Sec. 11.41.452. Online enticement of a minor.

(a) A person commits the crime of online enticement of a minor if the person, being 18 years of age or older, knowingly uses a computer to communicate with another person to entice, solicit, or encourage the person to engage in an act described in AS 11.41.455 (a)(1) - (7) and

(1) the other person is a child under 16 years of age; or

(2) the person believes that the other person is a child under 16 years of age.

(b) In a prosecution under (a)(2) of this section, it is not a defense that the person enticed, solicited, or encouraged was not actually a child under 16 years of age.

(c) In a prosecution under this section, it is not necessary for the prosecution to show that the act described in AS 11.41.455 (a)(1) - (7) was actually committed.

(d) Except as provided in (e) of this section, online enticement is a class C felony.

(e) Online enticement is a class B felony if the defendant was, at the time of the offense, required to register as a sex offender or child kidnapper under AS 12.63 or a similar law of another jurisdiction.

Sec. 11.41.455. Unlawful exploitation of a minor.

(a) A person commits the crime of unlawful exploitation of a minor if, in the state and with the intent of producing a live performance, film, audio, video, electronic, or electromagnetic recording, photograph, negative, slide, book, newspaper, magazine, or other material that visually or aurally depicts the conduct listed in (1) - (7) of this subsection, the person knowingly induces or employs a child under 18 years of age to engage in, or photographs, films, records, or televises a child under 18 years of age engaged in, the following actual or simulated conduct:

(1) sexual penetration;

(2) the lewd touching of another person's genitals, anus, or breast;

(3) the lewd touching by another person of the child's genitals, anus, or breast:

(4) masturbation;

(5) bestiality;

(6) the lewd exhibition of the child's genitals; or

(7) sexual masochism or sadism.

(b) A parent, legal guardian, or person having custody or control of a child under 18 years of age commits the crime of unlawful exploitation of a minor if, in the state, the person permits the child to engage in conduct described in (a) of this section knowing that the conduct is intended to be used in producing a live performance, film, audio, video, electronic, or electromagnetic recording, photograph, negative, slide, book, newspaper, magazine, or other material that visually or aurally depicts the conduct.

(c) Unlawful exploitation of a minor is a

(1) class B felony; or

(2) class A felony if the person has been previously convicted of unlawful exploitation of a minor in this jurisdiction or a similar crime in this or another jurisdiction.

(d) In this section, "audio recording" means a nonbook prerecorded item without a visual component, and includes a record, tape, cassette, and compact disc.

Testing, Disclosure of Results, Definitions of HIV and AIDS

Sec. 18.15.300. Order for blood test; disclosure of results.

(a) A defendant charged in a criminal complaint, indictment, presentment, or information filed with a magistrate or court with a violation of AS 11.41.410 - 11.41.450 that includes sexual penetration as an element of the offense, or a minor with respect to whom a petition has been filed in a juvenile court alleging a violation of AS 11.41.410 - 11.41.450 that includes sexual penetration as an element of the offense, may be ordered by a court having jurisdiction of the complaint, indictment, information, presentment, or juvenile petition to submit to testing as provided in AS 18.15.300 - 18.15.320.

(b) An alleged victim listed in the complaint, indictment, information, presentment, or juvenile petition, the parent or guardian of an alleged victim who is a minor or incompetent, or the prosecuting attorney on the behalf of an alleged victim, may petition the court for an order authorized under this section.

(c) Upon receipt of a petition filed under (b) of this section, the court shall determine if (1) probable cause exists to believe that a crime for which a test may be ordered under (a) of this section has been committed, and (2) probable cause exists to believe that sexual penetration took place between the defendant or minor and the alleged victim in an act for which the defendant or minor is charged under (a) of this section. In making the determination, the court may rely exclusively on the evidence presented at a grand jury proceeding or preliminary hearing.

(d) If the court finds probable cause exists to believe that (1) a crime for which a test may be ordered under (a) of this section has been committed, and (2) sexual penetration described in (c)(2) of this section took place, the court shall order that the defendant or minor provide two specimens of blood for testing as provided in AS 18.15.300 - 18.15.320.

(e) Copies of the blood test results shall be provided to the defendant or minor, each requesting victim, the victim's designee or, if the victim is a minor or incompetent, the victim's parents or legal guardian. If the defendant or minor is being incarcerated or detained at the time of the blood test or thereafter, the blood test results shall be provided to the officer in charge and the chief medical officer of the facility in which the defendant or minor is incarcerated or detained, including an incarceration or detention ordered as a result of conviction or judgment of delinquency or child in need of aid for an act for which the defendant or minor is charged under (a) of this section.

Testing, Disclosure of Results, Definitions of HIV and AIDS

Sec. 18.15.300. Order for blood test; disclosure of results.

(a) A defendant charged in a criminal complaint, indictment, presentment, or information filed with a magistrate or court with a violation of AS 11.41.410 - 11.41.450 that includes sexual penetration as an element of the offense, or a minor with respect to whom a petition has been filed in a juvenile court alleging a violation of AS 11.41.410 - 11.41.450 that includes sexual penetration as an element of the offense, may be ordered by a court having jurisdiction of the complaint, indictment, information, presentment, or juvenile petition to submit to testing as provided in AS 18.15.300 - 18.15.320.

(b) An alleged victim listed in the complaint, indictment, information, presentment, or juvenile petition, the parent or guardian of an alleged victim who is a minor or incompetent, or the prosecuting attorney on the behalf of an alleged victim, may petition the court for an order authorized under this section.

(c) Upon receipt of a petition filed under (b) of this section, the court shall determine if (1) probable cause exists to believe that a crime for which a test may be ordered under (a) of this section has been committed, and (2) probable cause exists to believe that sexual penetration took place between the defendant or minor and the alleged victim in an act for which the defendant or minor is charged under (a) of this section. In making the determination, the court may rely exclusively on the evidence presented at a grand jury proceeding or preliminary hearing.

(d) If the court finds probable cause exists to believe that (1) a crime for which a test may be ordered under (a) of this section has been committed, and (2) sexual penetration described in (c)(2) of this section took place, the court shall order that the defendant or minor provide two specimens of blood for testing as provided in AS 18.15.300 - 18.15.320.

(e) Copies of the blood test results shall be provided to the defendant or minor, each requesting victim, the victim's designee or, if the victim is a minor or incompetent, the victim's parents or legal guardian. If the defendant or minor is being incarcerated or detained at the time of the blood test or thereafter, the blood test results shall be provided to the officer in charge and the chief medical officer of the facility in which the defendant or minor is incarcerated or detained, including an incarceration or detention ordered as a result of conviction or judgment of delinquency or child in need of aid for an act for which the defendant or minor is charged under (a) of this section.

(f) A court may not order a test under this section

(1) before seven days after the defendant or minor's arrest;

(2) after the entry of a disposition favorable to a defendant; or

(3) if the defendant is convicted or adjudicated delinquent or in need of aid, after 90 days after the issuance of the judgment and sentence or of the judgment in a juvenile action.

(g) In this section,

(1) "disposition favorable to the defendant" means an adjudication by a court other than a conviction, or if the defendant is a minor not being prosecuted as an adult, that the minor is not adjudicated delinquent or a child in need of aid, for an offense for which a blood test could be ordered under this section;

(2) "sexual penetration" has the meaning given in AS 11.81.900 (b).

Sec. 18.15.310. Testing; test results.

(a) The withdrawal of blood for a test under AS 18.15.300 - 18.15.320 shall be performed in a medically approved manner. Only a physician or physician assistant licensed under AS 08.64, registered nurse, licensed practical nurse, or certified emergency medical technician may withdraw blood specimens for the purposes of AS 18.15.300 - 18.15.320.

(b) The court shall order that the blood specimens withdrawn under AS 18.15.300 - 18.15.320 be transmitted to a licensed medical laboratory and that tests be conducted on them for medically accepted indications of exposure to or infection by the human immunodeficiency virus (HIV) and other sexually transmitted diseases for which medically approved testing is readily and economically available as determined by the court.

(c) Copies of test results that indicate exposure to or infection by HIV or other sexually transmitted diseases shall also be transmitted to the department.

(d) The test results shall be provided to the designated recipients with the following disclaimer:

"The tests were conducted in a medically approved manner but tests cannot determine exposure to or infection by HIV or other sexually transmitted diseases with absolute accuracy. Persons receiving this test

result should continue to monitor their own health and should consult a physician as appropriate."

(e) The court shall order all persons, other than the test subject, who receive test results under AS 18.15.300 - 18.15.320 to maintain the confidentiality of personal identifying data relating to the test results except for disclosures by the victim, or if the victim is a minor or incompetent by the victim's parents or legal guardian, as

(1) is necessary to obtain medical or psychological care or advice or to ensure the health of the victim's spouse, immediate family, persons occupying the same household as the victim, or a person in a dating, courtship, or engagement relationship with the victim;

(2) is necessary to pursue civil remedies against the test subject; or

(3) otherwise permitted by the court.

(f) The specimens and the results of tests ordered under AS 18.15.300 - 18.15.320 are not admissible evidence in a criminal or juvenile proceeding.

(g) A person performing testing, transmitting test results, or disclosing information under AS 18.15.300 - 18.15.320 is immune from civil liability for an act or omission under authority of AS 18.15.300 - 18.15.320. However, this subsection does not preclude liability for a grossly negligent or intentional violation of a provision of AS 18.15.300 - 18.15.320.

(h) If the results of a blood test conducted under AS 18.15.300 indicate exposure to or infection by HIV or other sexually transmitted diseases for which testing was conducted, the department shall provide (1) free counseling and free testing to a victim for HIV and other sexually transmitted diseases reasonably communicable through the offense; and (2) counseling to the alleged perpetrator or defendant upon request of the alleged perpetrator or defendant. The department shall provide referral to appropriate health care facilities and support services at the request of the victim.

(i) In this section,

(1) "AIDS" means acquired immunodeficiency syndrome or HIV symptomatic disease;

(2) "counseling" means providing a person with information and explanations relating to AIDS and HIV that are medically appropriate for that person, including all or part of the following:

(A) accurate information regarding AIDS and HIV;

(B) an explanation of behaviors that reduce the risk of transmitting AIDS and HIV;

(C) an explanation of the confidentiality of information relating to AIDS diagnoses and HIV tests;

(D) an explanation of information regarding both social and medical implications of HIV tests;

(E) disclosure of commonly recognized treatment or treatments of AIDS and HIV;

(3) "HIV" means the human immunodeficiency virus.

Sec. 18.15.320. Cost of performing test; reimbursement.

(a) The cost of performing a blood test under AS 18.15.300 shall be paid by the department.

(b) If a defendant for whom a blood test has been ordered under AS 18.15.300 is convicted of an offense for which the defendant was charged, and for which a blood test could be ordered under AS 18.15.300, the court shall order the defendant to reimburse the department for the cost of the test and may order the Department of Corrections to deduct the amount of the test from any pay the inmate receives under AS 33.30.201 .

(2) "counseling" means providing a person with information and explanations relating to AIDS and HIV that are medically appropriate for that person, including all or part of the following:

(A) accurate information regarding AIDS and HIV;

(B) an explanation of behaviors that reduce the risk of transmitting AIDS and HIV;

(C) an explanation of the confidentiality of information relating to AIDS diagnoses and HIV tests;

(D) an explanation of information regarding both social and medical implications of HIV tests;

(E) disclosure of commonly recognized treatment or treatments of AIDS and HIV;

(3) "HIV" means the human immunodeficiency virus.

Sec. 18.15.320. Cost of performing test; reimbursement.

(a) The cost of performing a blood test under AS 18.15.300 shall be paid by the department.

(b) If a defendant for whom a blood test has been ordered under AS 18.15.300 is convicted of an offense for which the defendant was charged, and for which a blood test could be ordered under AS 18.15.300, the court shall order the defendant to reimburse the department for the cost of the test and may order the Department of Corrections to deduct the amount of the test from any pay the inmate receives under AS 33.30.201 .

Alaska State Legislature

Chairman
Military & Veterans' Affairs Committee

Member
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State Affairs Committee
Economic Development, Trade & Tourism Committee
Education Committee
Joint Armed Services Committee

Finance Subcommittees
Labor & Workforce Development
Community & Economic Development
Military & Veterans' Affairs

A Communication From
REPRESENTATIVE BOB LYNN
District 31 Anchorage

E-Mail: Representative_Bob_Lynn@legis.state.ak.us
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Witnesses to testify, including by teleconference, for CSHB258 at House Judiciary Committee
(list as of March 24, 2006)

From Fairbanks:

Brenda Stanfill, Executive Director of the Interior Alaska Center for Non-Violent Living, 452-2293 (work) or 456-4662 (home)
Email: brendakay@rocketmail.com

From Anchorage LIO (I think)

Trevor Storrs, Executive Director of Alaska AIDS Assistance Association
263-2052 (opposed), email: tstorrs@alaskanaids.org

Susan Sullivan, Executive Director of Victims for Justice
278-0986 (work), 240-2887 (cell), email: ssullivan@victimsforjustice.org

John Cyr, Business Manager of Public Safety Employees Association
337-1979 (office), email: jcyr@psea.net

At the hearing:

Robert A. Bassett, Jr., Certified HIV/AIDS counselor and family therapist from Lower 48, phone 957-1897 (cell), 789-0336 (home)

Barbara Mason, Executive Director of the Alaska Council on Domestic Violence and Sexual Assault, 465-5504 (work), 957-2037 (cell)
Email: Barbara_mason@dps.state.ak.us

Peggy Brown, Executive Director of Alaska Network on Domestic Violence and Sexual Assault
586-3650, email: pbrown.andvsa@alaska.com

Susan Parkes, Deputy Attorney General in Alaska Department of Law
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Portia Parker, Deputy Commissioner of Alaska Department of Corrections
269-7397 (work), email: portia_parker@correct.state.ak.us

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB258-Courts-2-16-06
() Publish Date:

Revision Date/Time (Note if correction):
Title: Sexual Assault by Persons With HIV/Aids
Sponsor: Representative Lynn
Requester:

Dept. Affected:
RDU: Alaska Court System
Component: Trial Courts
Component No.

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
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 ( )						

FUND SOURCE (Thousands of Dollars)

	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
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 (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

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

The court system does not anticipate any fiscal impact from the passage of HB 258.

Prepared by: Doug Wooliver, Administrative Attorney — Phone 463-4750
Division: Alaska Court System — Date/Time 2/16/06 ?:30 PM

Approved by: Doug Wooliver for Stephanie Cole, Adminstrative Director — Date 2/16/2006
Agency: Alaska Court System

(Revised 9/7/2005 OMB)

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB 258
() Publish Date:

Revision Date/Time (Note if correction): 2/28/06 3:38 p.m.
Title: "An Act relating to aggravating factors at sentencing."
Sponsor: Rep. Lynn
Requester: (H) HES

Dept. Affected: Administration
RDU: Legal and Advocacy Services
Component: Public Defender Agency
Component No. 1631

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
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 ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
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 (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal: [ ]

POSITIONS

Full-time						
Part-time						
Temporary						

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

This bill create a new aggravating factor under AS 12.55.155 when a defendant is convicted of an offense under AS 11.41.410 - 11.41.455 and the defendant had been previously diagnosed as having or having tested positive for HIV or AIDS.

This bill is not expected to have a significant fiscal impact on the Public Defender Agency operations.

Prepared by: Quinlan Steiner, Director — Phone (907) 334-4414
Division: Public Defender Agency — Date/Time 2/28/06/ 3:38 p.m.
Approved by: Mike Tibbles, Deputy Commissioner — Date 2/28/2006
Agency: Administration

(Revised 9/7/2005 OMB)

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB258
() Publish Date:

Revision Date/Time (Note if correction):
Title "Sexual Assult by Persons with HIV/AIDS"
Sponsor Representative Lynn
Requester Judiciary, Health Education & Social Services

Dept. Affected: Corrections
RDU Institutional Facilities
Component Institution Director's Offic
Component No. 524

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CHANGE IN REVENUES ( )	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2005) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal: [ ]

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

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

Department of Corrections medical staff reports that currently there are five inmates (out of 5001) who have been diagnosed with HIV/AIDS, and none of these inmates are incarcerated for a sexual crime. Medical staff also reports that there are about four to five additional inmates who often are booked and released from Alaska correctional facilities on minor charges or for a non-criminal hold (Title 47) who have been diagnosed with HIV/AIDS, but again none are sex offenders. Based on the information available, it is difficult for the department to predict with any accuracy if a case may arise that may be impacted by the changes contained in the legislation. But, it is estimated that the impact will be minimal due to the very small number of total HIV/AIDS cases. Therefore, the Department of Corrections does not anticipate a significant fiscal impact due to the passage of this legislation.

Prepared by: Sharleen Griffin, Acting Director — Phone 465-3339
Division: Administrative Services — Date/Time 2/28/06 12:04 PM

Approved by: Portia C.K. Parker, Deputy Commissioner — Date 2/28/2006
Agency: Department of Corrections

(Revised 9/23/2004 OMB)

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB258-LAW-CJL-2-21-06
() Publish Date:

Revision Date/Time (Note if correction):
Title "An Act relating to aggravating factors at sentencing."
Sponsor Representative Lynn
Requester House Health, Education and Social Services

Dept. Affected: LAW
RDU CRIMINAL
Component Criminal Justice Litigation
Component No.

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
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 ( )						

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 (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal: [ ]

POSITIONS

Full-time						
Part-time						
Temporary						

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

This bill amends AS 12.55 by adding a diagnosis of testing positive for or having HIV or AIDS as an aggravating factor in sentencing for sexual assault offenses, sexual abuse or unlawful exploitation of a minor.

Passage of this legislation is not expected to have a fiscal impact on the Department of Law.

Prepared by: Kathryn Daughhetee, Director — Phone 465-3673
Division Administrative Services Division — Date/Time 2/21/06 11:59 AM
Approved by: Kathryn Daughhetee for David Márquez, Attorney General — Date 2/21/2006
Agency Department of Law

HB258 Q&A Background Information

Reports, studies, fact sheets, statutes and other supporting information referred to in the Sponsor's Q&A Paper are available upon request

United States Department of
Health & Human Services

OCR PRIVACY BRIEF

SUMMARY OF THE HIPAA PRIVACY RULE

HIPAA Compliance Assistance

SUMMARY OF THE HIPAA PRIVACY RULE

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SUMMARY OF
THE HIPAA PRIVACY RULE

Introduction

The *Standards for Privacy of Individually Identifiable Health Information* ("Privacy Rule") establishes, for the first time, a set of national standards for the protection of certain health information. The U.S. Department of Health and Human Services ("HHS") issued the Privacy Rule to implement the requirement of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA").[1] The Privacy Rule standards address the use and disclosure of individuals' health information—called "protected health information" by organizations subject to the Privacy Rule — called "covered entities," as well as standards for individuals' privacy rights to understand and control how their health information is used. Within HHS, the Office for Civil Rights ("OCR") has responsibility for implementing and enforcing the Privacy Rule with respect to voluntary compliance activities and civil money penalties.

A major goal of the Privacy Rule is to assure that individuals' health information is properly protected while allowing the flow of health information needed to provide and promote high quality health care and to protect the public's health and well being. The Rule strikes a balance that permits important uses of information, while protecting the privacy of people who seek care and healing. Given that the health care marketplace is diverse, the Rule is designed to be flexible and comprehensive to cover the variety of uses and disclosures that need to be addressed.

This is a summary of key elements of the Privacy Rule and not a complete or comprehensive guide to compliance. Entities regulated by the Rule are obligated to comply with all of its applicable requirements and should not rely on this summary as a source of legal information or advice. To make it easier for entities to review the complete requirements of the Rule, provisions of the Rule referenced in this summary are cited in notes at the end of this document. To view the entire Rule, and for other additional helpful information about how it applies, see the OCR website: http://www.hhs.gov/ocr/hipaa. In the event of a conflict between this summary and the Rule, the Rule governs.

Links to the OCR Guidance Document are provided throughout this paper. Provisions of the Rule referenced in this summary are cited in endnotes at the end of this document. To review the entire Rule itself, and for other additional helpful information about how it applies, see the OCR website: http://www.hhs.gov/ocr/hipaa.

Statutory & Regulatory Background

The Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, was enacted on August 21, 1996. Sections 261 through 264 of HIPAA require the Secretary of HHS to publicize standards for the electronic exchange, privacy and security of health information. Collectively these are known as the *Administrative Simplification* provisions.

HIPAA required the Secretary to issue privacy regulations governing individually identifiable health information, if Congress did not enact privacy legislation within

three years of the passage of HIPAA Because Congress did not enact privacy legislation, HHS developed a proposed rule and released it for public comment on November 3, 1999 The Department received over 52,000 public comments The final regulation, the Privacy Rule, was published December 28, 2000[2]

In March 2002, the Department proposed and released for public comment modifications to the Privacy Rule The Department received over 11,000 comments The final modifications were published in final form on August 14, 2002[3] A text combining the final regulation and the modifications can be found at 45 CFR Part 160 and Part 164, Subparts A and E on the OCR website http://www.hhs.gov/ocr/hipaa

Who is Covered by the Privacy Rule

The Privacy Rule, as well as all the Administrative Simplification rules, apply to health plans, health care clearinghouses and to any health care provider who transmits health information in electronic form in connection with transactions for which the Secretary of HHS has adopted standards under HIPAA (the "covered entities") For help in determining whether you are covered, use the decision tool at http://www.cms.hhs.gov/hipaa/hipaa2/support/tools/decisionsupport/default.asp

Health Plans. Individual and group plans that provide or pay the cost of medical care are covered entities[4] Health plans include health, dental, vision, and prescription drug insurers, health maintenance organizations ("HMOs"), Medicare, Medicaid, Medicare+Choice and Medicare supplement insurers, and long-term care insurers (excluding nursing home fixed-indemnity policies) Health plans also include employer-sponsored group health plans, government and church-sponsored health plans, and multi-employer health plans There are exceptions—a group health plan with less than 50 participants that is administered solely by the employer that established and maintains the plan is not a covered entity Two types of government-funded programs are not health plans (1) those whose principal purpose is not providing or paying the cost of health care, such as the food stamps program, and (2) those programs whose principal activity is directly providing health care, such as a community health center,[5] or the making of grants to fund the direct provision of health care Certain types of insurance entities are also not health plans, including entities providing only workers' compensation, automobile insurance, and property and casualty insurance

Health Care Providers. Every health care provider, regardless of size, who electronically transmits health information in connection with certain transactions, is a covered entity These transactions include claims, benefit eligibility inquiries, referral authorization requests, or other transactions for which HHS has established standards under the HIPAA Transactions Rule[6] Using electronic technology, such as email, does not mean a health care provider is a covered entity, the transmission must be in connection with a standard transaction The Privacy Rule covers a health care provider whether it electronically transmits these transactions directly or uses a billing service or other third party to do so on its behalf Health care providers include all "providers of services" (e g , institutional providers such as hospitals) and "providers of medical or health services" (e g , non-institutional providers such as physicians, dentists and other practitioners) as defined by Medicare, and any other person or organization that furnishes, bills, or is paid for health care

Health Care Clearinghouses. *Health care clearinghouses* are entities that process nonstandard information they receive from another entity into a standard (i.e., standard format or data content), or vice versa.[7] In most instances, health care clearinghouses will receive individually identifiable health information only when they are providing these processing services to a health plan or health care provider as a business associate. In such instances, only certain provisions of the Privacy Rule are applicable to the health care clearinghouse's uses and disclosures of protected health information.[8] Health care clearinghouses include billing services, repricing companies, community health management information systems, and value-added networks and switches if these entities perform clearinghouse functions.

Business Associates

Business Associate Defined. In general, a business associate is a person or organization, other than a member of a covered entity's workforce, that performs certain functions or activities on behalf of, or provides certain services to, a covered entity that involve the use or disclosure of individually identifiable health information. Business associate functions or activities on behalf of a covered entity include claims processing, data analysis, utilization review, and billing.[9] Business associate services to a covered entity are limited to legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services. However, persons or organizations are not considered business associates if their functions or services do not involve the use or disclosure of protected health information, and where any access to protected health information by such persons would be incidental, if at all. A covered entity can be the business associate of another covered entity.

Business Associate Contract. When a covered entity uses a contractor or other non-workforce member to perform *"business associate"* services or activities, the Rule requires that the covered entity include certain protections for the information in a business associate agreement (in certain circumstances governmental entities may use alternative means to achieve the same protections). In the business associate contract, a covered entity must impose specified written safeguards on the individually identifiable health information used or disclosed by its business associates.[10] Moreover, a covered entity may not contractually authorize its business associate to make any use or disclosure of protected health information that would violate the Rule. Covered entities that have an existing written contract or agreement with business associates prior to October 15, 2002, which is not renewed or modified prior to April 14, 2003, are permitted to continue to operate under that contract until they renew the contract or April 14, 2004, whichever is first.[11] Sample business associate contract language is available on the OCR website at http://www.hhs.gov/ocr/hipaa/contractprov.html. Also see OCR "Business Associate" Guidance.

What Information is Protected

Protected Health Information. The Privacy Rule protects all *"individually identifiable health information"* held or transmitted by a covered entity or its business associate, in any form or media, whether electronic, paper, or oral. The Privacy Rule calls this information *"protected health information (PHI)."*[12]

	"Individually identifiable health information" is information, including demographic data, that relates to: • the individual's past, present or future physical or mental health or condition, • the provision of health care to the individual, or • the past, present, or future payment for the provision of health care to the individual, and that identifies the individual or for which there is a reasonable basis to believe can be used to identify the individual.[13] Individually identifiable health information includes many common identifiers (e.g., name, address, birth date, Social Security Number). The Privacy Rule excludes from protected health information employment records that a covered entity maintains in its capacity as an employer and education and certain other records subject to, or defined in, the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g. **De-Identified Health Information.** There are no restrictions on the use or disclosure of de-identified health information.[14] De-identified health information neither identifies nor provides a reasonable basis to identify an individual. There are two ways to de-identify information; either: 1) a formal determination by a qualified statistician; or 2) the removal of specified identifiers of the individual and of the individual's relatives, household members, and employers is required, and is adequate only if the covered entity has no actual knowledge that the remaining information could be used to identify the individual.[15]
General Principle for Uses and Disclosures	**Basic Principle.** A major purpose of the Privacy Rule is to define and limit the circumstances in which an individual's protected heath information may be used or disclosed by covered entities. A covered entity may not use or disclose protected health information, except either: (1) as the Privacy Rule permits or requires; or (2) as the individual who is the subject of the information (or the individual's personal representative) authorizes in writing.[16] **Required Disclosures.** A covered entity must disclose protected health information in only two situations: (a) to individuals (or their personal representatives) specifically when they request access to, or an accounting of disclosures of, their protected health information; and (b) to HHS when it is undertaking a compliance investigation or review or enforcement action.[17] See OCR "Government Access" Guidance.
Permitted Uses and Disclosures	**Permitted Uses and Disclosures.** A covered entity is permitted, but not required, to use and disclose protected health information, without an individual's authorization, for the following purposes or situations: (1) To the Individual (unless required for access or accounting of disclosures); (2) Treatment, Payment, and Health Care Operations; (3) Opportunity to Agree or Object; (4) Incident to an otherwise permitted use and disclosure; (5) Public Interest and Benefit Activities; and

(6) Limited Data Set for the purposes of research, public health or health care operations.[18] Covered entities may rely on professional ethics and best judgments in deciding which of these permissive uses and disclosures to make.

(1) To the Individual. A covered entity may disclose protected health information to the individual who is the subject of the information.

(2) Treatment, Payment, Health Care Operations. A covered entity may use and disclose protected health information for its own treatment, payment, and health care operations activities.[19] A covered entity also may disclose protected health information for the treatment activities of any health care provider, the payment activities of another covered entity and of any health care provider, or the health care operations of another covered entity involving either quality or competency assurance activities or fraud and abuse detection and compliance activities, if both covered entities have or had a relationship with the individual and the protected health information pertains to the relationship. See OCR "Treatment, Payment, Health Care Operations" Guidance.

> *Treatment* is the provision, coordination, or management of health care and related services for an individual by one or more health care providers, including consultation between providers regarding a patient and referral of a patient by one provider to another.[20]
>
> *Payment* encompasses activities of a health plan to obtain premiums, determine or fulfill responsibilities for coverage and provision of benefits, and furnish or obtain reimbursement for health care delivered to an individual[21] and activities of a health care provider to obtain payment or be reimbursed for the provision of health care to an individual.
>
> *Health care operations* are any of the following activities: (a) quality assessment and improvement activities, including case management and care coordination; (b) competency assurance activities, including provider or health plan performance evaluation, credentialing, and accreditation; (c) conducting or arranging for medical reviews, audits, or legal services, including fraud and abuse detection and compliance programs; (d) specified insurance functions, such as underwriting, risk rating, and reinsuring risk; (e) business planning, development, management, and administration; and (f) business management and general administrative activities of the entity, including but not limited to: de-identifying protected health information, creating a limited data set, and certain fundraising for the benefit of the covered entity.[22]

Most uses and disclosures of psychotherapy notes for treatment, payment, and health care operations purposes require an authorization as described below.[23]

Obtaining "consent" (written permission from individuals to use and disclose their protected health information for treatment, payment, and health care operations) is optional under the Privacy Rule for all covered entities.[24] The content of a consent form, and the process for obtaining consent, are at the discretion of the covered entity electing to seek consent.

(3) Uses and Disclosures with Opportunity to Agree or Object. Informal permission may be obtained by asking the individual outright, or by circumstances that clearly give the individual the opportunity to agree, acquiesce, or object. Where the individual is incapacitated, in an emergency situation, or not available, covered entities generally may make such uses and disclosures, if in the exercise of their professional judgment, the use or disclosure is determined to be in the best interests of the individual.

Facility Directories. It is a common practice in many health care facilities, such as hospitals, to maintain a directory of patient contact information. A covered health care provider may rely on an individual's informal permission to list in its facility directory the individual's name, general condition, religious affiliation, and location in the provider's facility.[25] The provider may then disclose the individual's condition and location in the facility to anyone asking for the individual by name, and also may disclose religious affiliation to clergy. Members of the clergy are not required to ask for the individual by name when inquiring about patient religious affiliation.

For Notification and Other Purposes. A covered entity also may rely on an individual's informal permission to disclose to the individual's family, relatives, or friends, or to other persons whom the individual identifies, protected health information directly relevant to that person's involvement in the individual's care or payment for care.[26] This provision, for example, allows a pharmacist to dispense filled prescriptions to a person acting on behalf of the patient. Similarly, a covered entity may rely on an individual's informal permission to use or disclose protected health information for the purpose of notifying (including identifying or locating) family members, personal representatives, or others responsible for the individual's care of the individual's location, general condition, or death. In addition, protected health information may be disclosed for notification purposes to public or private entities authorized by law or charter to assist in disaster relief efforts.

(4) Incidental Use and Disclosure. The Privacy Rule does not require that every risk of an incidental use or disclosure of protected health information be eliminated. A use or disclosure of this information that occurs as a result of, or as "incident to," an otherwise permitted use or disclosure is permitted as long as the covered entity has adopted reasonable safeguards as required by the Privacy Rule, and the information being shared was limited to the "minimum necessary," as required by the Privacy Rule.[27] See OCR "Incidental Uses and Disclosures" Guidance.

(5) Public Interest and Benefit Activities. The Privacy Rule permits use and disclosure of protected health information, without an individual's authorization or permission, for 12 national priority purposes.[28] These disclosures are permitted, although not required, by the Rule in recognition of the important uses made of health information outside of the health care context. Specific conditions or limitations apply to each public interest purpose, striking the balance between the individual privacy interest and the public interest need for this information.

Required by Law. Covered entities may use and disclose protected health information without individual authorization as *required by law* (including by

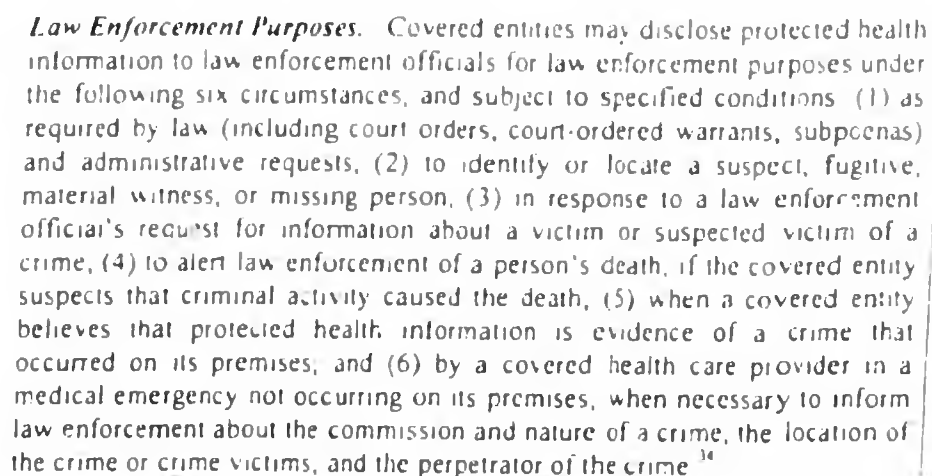
statute, regulation, or court orders).[29]

Public Health Activities. Covered entities may disclose protected health information to: (1) public health authorities authorized by law to collect or receive such information for preventing or controlling disease, injury, or disability and to public health or other government authorities authorized to receive reports of child abuse and neglect; (2) entities subject to FDA regulation regarding FDA regulated products or activities for purposes such as adverse event reporting, tracking of products, product recalls, and post-marketing surveillance; (3) individuals who may have contracted or been exposed to a communicable disease when notification is authorized by law; and (4) employers, regarding employees, when requested by employers, for information concerning a work-related illness or injury or workplace related medical surveillance, because such information is needed by the employer to comply with the Occupational Safety and Health Administration (OHSA), the Mine Safety and Health Administration (MHSA), or similar state law.[30] See OCR "Public Health" Guidance; CDC Public Health and HIPAA Guidance.

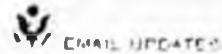
Victims of Abuse, Neglect or Domestic Violence. In certain circumstances, covered entities may disclose protected health information to appropriate government authorities regarding victims of abuse, neglect, or domestic violence.[31]

Health Oversight Activities. Covered entities may disclose protected health information to health oversight agencies (as defined in the Rule) for purposes of legally authorized health oversight activities, such as audits and investigations necessary for oversight of the health care system and government benefit programs.[32]

Judicial and Administrative Proceedings. Covered entities may disclose protected health information in a judicial or administrative proceeding if the request for the information is through an order from a court or administrative tribunal. Such information may also be disclosed in response to a subpoena or other lawful process if certain assurances regarding notice to the individual or a protective order are provided.[33]



Law Enforcement Purposes. Covered entities may disclose protected health information to law enforcement officials for law enforcement purposes under the following six circumstances, and subject to specified conditions: (1) as required by law (including court orders, court-ordered warrants, subpoenas) and administrative requests; (2) to identify or locate a suspect, fugitive, material witness, or missing person; (3) in response to a law enforcement official's request for information about a victim or suspected victim of a crime; (4) to alert law enforcement of a person's death, if the covered entity suspects that criminal activity caused the death; (5) when a covered entity believes that protected health information is evidence of a crime that occurred on its premises; and (6) by a covered health care provider in a medical emergency not occurring on its premises, when necessary to inform law enforcement about the commission and nature of a crime, the location of the crime or crime victims, and the perpetrator of the crime.[34]



The HIV/AIDS Epidemic: 20 Years in the U.S.

AIDS Information in the U.S.	Statistics
Number of people living with HIV/AIDS	Approx. 900,000
Number of people who may not know they are HIV pos	Approx. 300,000
Number of new HIV infections per year	Approx. 40,000
Percent of new HIV infections who are male	70%
Percent of new HIV infections who are female	30%
Cumulative AIDS cases (as of June 2000)	753,907
Percent of AIDS cases (as of June 2000) who are male	76%
Percent of AIDS cases (as of June 2000) who are female	24%
Number of new AIDS cases (7/99-6/00)	43,517
Cumulative number who have died from AIDS	438,795
Percent of AIDS deaths who are male	85%
Percent of AIDS deaths who are female	15%
Number of States affected by HIV/AIDS	50 + DC and US territories

Death due to AIDS by race/ethnicity	AIDS Deaths	U.S. Population
White, non-Hispanic	46%	71%
African American	35%	12%
Latino	17%	13%
Asian/Pacific Islander	1%	4%
American Indian/Alaska Native	<1%	1%

Mode of transmission among men	Percent
Men who have sex with men (MSM)	47%
Injection drug use (IDU)	25%
Heterosexual sex	10%
Other	18%

Mode of transmission among women	Percent
Heterosexual sex	75%
Injection drug use (IDU)	25%

HIV/AIDS among ethnic populations (men)	AIDS Cases	U.S.

PHOTO ESSAYS

FEATURES

Contact Information
The White House
Washington, DC 20502
(202) 456-7320
FAX (202) 456-7315

CDC Home | Search | Health Topics A-Z

National Center for HIV, STD and TB Prevention

Divisions of HIV/AIDS Prevention

A Glance at the HIV/AIDS Epidemic

View PDF (374 KB, 2 pages)

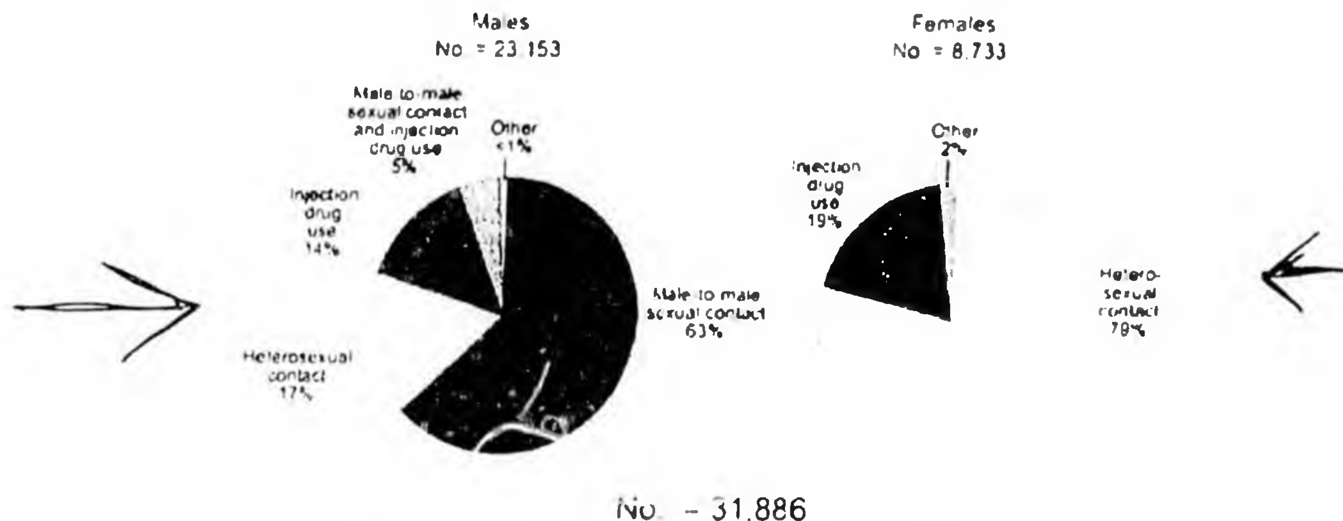
HIV/AIDS Diagnoses

At the end of 2003, an estimated 1,039,000 to 1,185,000 persons in the United States were living with HIV/AIDS [1]. In 2003, 32,048 cases of HIV/AIDS were reported from the 33 areas (32 states and the US Virgin Islands) with long-term, confidential name-based HIV reporting [2]. When all 50 states are considered, CDC estimates that approximately 40,000 persons become infected with HIV each year [1].

By Exposure

In 2003, men who have sex with men (MSM) represented the largest proportion of HIV/AIDS diagnoses, followed by adults and adolescents infected through heterosexual contact.

Exposure categories of adults and adolescents who received a diagnosis of HIV/AIDS, 2003



No. = 31,886

Note. Based on data from 33 areas with long-term, confidential name-based HIV reporting.

HIV/AIDS includes persons with a diagnosis of HIV infection (not AIDS), a diagnosis of HIV infection and a later diagnosis of AIDS, or concurrent diagnoses of HIV infection and AIDS.

By Sex

In 2003, almost three quarters of HIV/AIDS diagnoses were made for male adolescents and adults.

www.cdc.gov/hepatitis
October 25, 2005

Hepatitis C Fact Sheet

SIGNS & SYMPTOMS	80% of persons have no signs or symptoms.	
	• jaundice • fatigue • dark urine	• abdominal pain • loss of appetite • nausea
CAUSE	• Hepatitis C virus (HCV)	
LONG-TERM EFFECTS	• Chronic infection: 55%-85% of infected persons • Chronic liver disease: 70% of chronically infected persons • Deaths from chronic liver disease: 1%-5% of infected persons may die • Leading indication for liver transplant	
TRANSMISSION	• Occurs when blood from an infected person enters the body of a person who is not infected. • HCV is spread through sharing needles or "works" when "shooting" drugs, through needlesticks or sharps exposures on the job, or from an infected mother to her baby during birth.	

Recommendations for testing based on risk for HCV infection

Persons at risk for HCV infection might also be at risk for infection with hepatitis B virus (HBV) or HIV.

Recommendations for Testing Based on Risk for HCV Infection

PERSONS	RISK OF INFECTION	TESTING RECOMMENDED?
Injecting drug users	High	Yes
Recipients of clotting factors made before 1987	High	Yes
Hemodialysis patients	Intermediate	Yes
Recipients of blood and/or solid organs before 1992	Intermediate	Yes
People with undiagnosed liver problems	Intermediate	Yes
Infants born to infected mothers	Intermediate	After 12-18 mos. old
Healthcare/public safety workers	Low	Only after known exposure
People having sex with multiple partners	Low	No*
People having sex with an infected steady partner	Low	No*

*Anyone who wants to get tested should ask their doctor.

CALIFORNIA STD/HIV PREVENTION TRAINING CENTER

Genital Herpes

Genital herpes is a Sexually Transmitted Disease (STD) caused by a herpes simplex virus (HSV). Genital herpes can cause sores on the genitals (vagina, penis and anus) and the skin around those areas.

Q: How is genital herpes spread?

A: Herpes is spread by direct contact with infected skin or sores during sexual activity. The virus is usually passed from an infected person's genitals or mouth to their partner's genitals during oral, vaginal or anal sex. A person with genital herpes may have sores or blisters. However, herpes is commonly passed to a sex partner when no actual sores are present.

Q: What are the signs and symptoms of genital herpes?

A: **Symptoms of genital herpes can include:**

- Blisters or sores on the genitals that may last a few days to a week or more.
- Tingling, numbness or itching at the site of the sores a day or two before they appear.
- Genital herpes infection lasts for life, although sores may come and go.

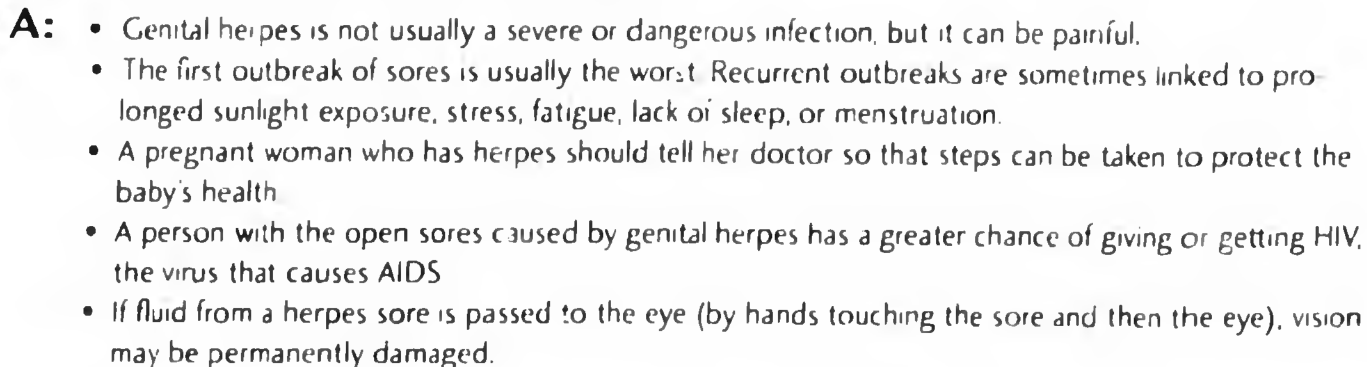
Q: Can I have genital herpes and not know it?

A: **Yes!** About 1 out of 4 sexually active adults are infected with genital herpes and most don't know they have it.

MANY PEOPLE HAVE NO SYMPTOMS, OR MILD SYMPTOMS THAT THEY DON'T KNOW ARE CAUSED BY HERPES.

Q: Is genital herpes serious?

A:



- Genital herpes is not usually a severe or dangerous infection, but it can be painful.
- The first outbreak of sores is usually the worst. Recurrent outbreaks are sometimes linked to prolonged sunlight exposure, stress, fatigue, lack of sleep, or menstruation.
- A pregnant woman who has herpes should tell her doctor so that steps can be taken to protect the baby's health.
- A person with the open sores caused by genital herpes has a greater chance of giving or getting HIV, the virus that causes AIDS.
- If fluid from a herpes sore is passed to the eye (by hands touching the sore and then the eye), vision may be permanently damaged.

Q: How is genital herpes treated?

A:
- There is no cure for herpes. There are several medications, available by prescription, that can help control herpes outbreaks. Ask your doctor or nurse for more information.
- For some people, the outbreaks are mild and do not require medication.

Q: How can I avoid getting genital herpes?

A:
- ☐ Abstinence (not having sex) is the only sure way to avoid infection.
- ☐ **Plan Ahead:** Think about protecting yourself. Talk about STDs and the need to protect yourself with your sex partner(s).
- ☐ Use a male condom with each sex partner.
- ☐ If a male condom cannot be used properly, the female condom can be used.

Note: Condoms are more likely to protect you from genital herpes if they cover the infected area(s).

HIV IS ALSO A STD!

When you get infected with genital herpes, you could also be getting HIV.
Birth control pills or a birth control shot cannot protect you against genital herpes or other STDs.

USING CONDOMS CORRECTLY EVERY TIME YOU HAVE SEX CAN PROTECT YOU FROM HERPES, HIV, AND OTHER STDs.

Where can I get more information about STDs and protecting myself?

- **In English:** Call toll free: National STD/HIV hotlines at 1+(800) 342-2437 or 1+(800) 227-8922.
- **In Spanish:** Call toll free: 1+(800) 344-7432
- **TTY for the Deaf and Hard of Hearing:** 1+(800) 243-7889

Talk to your own health care provider or call your county health department by looking for the telephone number in the phone book (white pages) under county government. Ask to speak to someone in the STD clinic or the STD program for more information about genital herpes.

DEFNITIONS FOR PHYSICAL INJURY, SEXUAL CONTACT AND SEXUAL PENETRATION IN ALASKA STATUTES

Sec. 11.81.900. Definitions.

(a) For purposes of this title, unless the context requires otherwise,

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(56) "serious physical injury" means

(A) physical injury caused by an act performed under circumstances that create a substantial risk of death; or

(B) physical injury that causes serious and protracted disfigurement, protracted impairment of health, protracted loss or impairment of the function of a body member or organ, or that unlawfully terminates a pregnancy;

(57) "services" includes labor, professional services, transportation, telephone or other communications service, entertainment, including cable, subscription, or pay television or other telecommunications service, the supplying of food, lodging, or other accommodations in hotels, restaurants, or elsewhere, admission to exhibitions, the use of a computer, computer time, a computer system, a computer program, a computer network, or any part of a computer system or network, and the supplying of equipment for use;

(58) "sexual contact" means

(A) the defendant's

(i) knowingly touching, directly or through clothing, the victim's genitals, anus, or female breast; or

(ii) knowingly causing the victim to touch, directly or through clothing, the defendant's or victim's genitals, anus, or female breast;

(B) but "sexual contact" does not include acts

(i) that may reasonably be construed to be normal caretaker responsibilities for a child, interactions with a child, or affection for a child;

(ii) performed for the purpose of administering a recognized and lawful form of treatment that is reasonably adapted to promoting the physical or mental health of the person being treated; or

(iii) that are a necessary part of a search of a person committed to the custody of the Department of Corrections or the Department of Health and Social Services;

(59) "sexual penetration"

(A) means genital intercourse, cunnilingus, fellatio, anal intercourse, or an intrusion, however slight, of an object or any part of a person's body into the genital or anal opening of another person's body; each party to any of the acts described in this subparagraph is considered to be engaged in sexual penetration;

(B) does not include acts

(i) performed for the purpose of administering a recognized and lawful form of treatment that is reasonably adapted to promoting the physical health of the person being treated; or

(ii) that are a necessary part of a search of a person committed to the custody of the Department of Corrections or the Department of Health and Social Services;

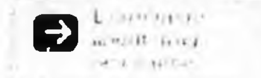
ACTIVE FORUMS

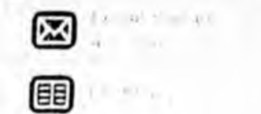
- Choosing Your Meds
- Fatigue and Anemia
- Fusion Inhibitors
- Hepatitis and HIV Coinfection
- Managing Side Effects of HIV Treatment
- Mental Health and HIV
- Mixed HIV-Status Couples
- Safe Sex and HIV Prevention
- Tratamientos (En Español)
- Understanding Your Labs
- Women and HIV
- Workplace and Insurance Issues

INACTIVE FORUMS:

- AIDS-Related Cancers
- Lipodystrophy and Wasting
- Nutrition and Exercise
- Opportunistic Infections

Ask the Experts about Drug Resistance and Staying Undetectable





Q Normal Life Expectancy?

Jan 14, 2006

First, I should tell you that each and every one of the professionals on this site that work so hard to add a voice of reason to an otherwise very confusion situation are worth your weight in gold. Thank you

I am a 40 year old man newly diagnosed with HIV. I am a professional, dont smoke cigarettes, and only drink in moderation. My Doctor does not feel it is time to begin medication because my numbers are all near normal. I dont NOT have co infections such as Hep. A, B or C and I dont have diabetes (thank goodness)

I am the type of person who is extremely able to adhere to medications and have access to an excellent HIV Doctor and medication. Do you think it is reasonable to assume that can live a normal life span (providing I dont get hit in the head with a coconut or other circumstance beyond HIV)? I read conflicting things on life span from 10 years to a normal life span. Please tell me what prognoses for the future that you would tell one of your patients in a similar circumstance. Thank you and look forward to your answer

A Response from Dr. Sherer

Renslow Sherer MD
University of Chicago Hospitals

I tell my patients who have just been found to have HIV that there IS a chance of a normal life expectancy, and that that chance has been getting greater with each passing year, as the risk of antiretroviral therapy failures has decreased in the past 10 years.

So that's the good, optimistic news. And of course I inform them that this will not be easy, even in the best of circumstances. Adherence to daily medications is extremely demanding, even if there are no untoward side effects. Life with HIV is still a hard life, even if the medication part becomes simple and routine, as it does for a remarkable percentage of patients these days.

I prepare patients for a life long struggle with adherence, in part to be sure to get their attention at the outset, but also from long and hard experience, it is for many patients who perfectly fit the profile that you describe. If it turns out to be easier than expected, thats great... but lapses in adherence often result from complacency and a sense that 'I've got everything covered'. So some vigilance is

Oral Health and HIV

Spiritual Support and HIV

Powered by EXPERTVIEWPOINT

required.

But there is still harder news in that first encounter. A patient may do everything right, with exemplary perfect adherence ...and still have trouble with ART, virologic failure, resistance mutations, and a difficult sequence of ART. Fortunately these are uncommon events in this era, but they still do occur.

I appreciate your coconut comment as well, as any one of us may obsess over one illness (maybe HIV, maybe diabetes, maybe cancer) only to walk in front of a bus. Its a reminder to enjoy life on this day, because none of knows what tomorrow will bring.

In sum - there was a modeling study of a 40 year old male with a story similar to yours and new HIV infection, the outcome of which was a reasonable chance of a normal life expectancy in the event of positive outcomes with antiretroviral therapy. I tell all new HIV positive patients about that study. And then I also tell them the possibilities for the outcomes that are less than the best.

Please Note: Due to volume considerations not all questions can be answered. Questions most likely to be answered will be those of general interest to a broad group of visitors to this forum. Questions pertaining to a specific case, requests for diagnosis, medical advice, or second opinion, or requests for opinions about untested alternative therapies will generally not be answered.

The participation of Dr. [illegible]slow Sherer in this [for]um is made possible [in p]art by an unrestricted educational grant from Abbott Laboratories.

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THE BODY
The Complete HIV/AIDS Resource

CENTERS FOR DISEASE CONTROL AND PREVENTION • MEDICAL NEWS

HIV Therapy: Early Treatment Extends Life

June 11, 2003

A study led by Dr. Bruce Schackman of Weill Cornell Medical College shows that early antiretroviral therapy for HIV-positive patients may significantly increase life expectancy -- even after accounting for side effects like heightened cholesterol levels. And though early therapy is still being denied to many patients because of cost, it was found to be cost-effective.

In the study's computer simulation model, the projected life expectancy of a 37-year-old patient receiving early highly active antiretroviral therapy was nearly three years longer than that of a patient receiving delayed therapy (16.54 years vs. 13.73 years), even assuming increased cholesterol levels, a side effect associated with the therapy. This benefit is attributable to HAART's effectiveness in reducing HIV viral levels, which improves CD4 cell count and leads to a reduction in the likelihood of opportunistic infections. The study also compared life expectancy for early vs. delayed therapy assuming no cholesterol side effects, and the results were similar (16.66 years vs. 13.80 years).

The timing of HAART initiation has been the subject of controversy because of the drugs' side effects, including elevated cholesterol and fat redistribution (a condition that may have a negative effect on the patient's quality of life but is not life-threatening). Last year the U.S. Department of Health and Human Services changed its recommendation for initial HAART use. It suggested offering HAART only to those patients with somewhat more advanced disease (viral loads of greater than 30,000 copies/mL or CD4 cell count less than 350/(micro)L.

The current study's findings suggest that HIV patients who choose early treatment offered according to current guidelines will benefit. "Changes in cholesterol levels or quality of life associated with HAART should not be used by government or private payers to justify placing limitations on access to early HIV treatment," said Schackman, an assistant professor of public health. "We know that access is being denied due to budget limitations among AIDS Drug Assistance Programs, which frequently pay for early treatment for HIV patients who are too healthy to qualify for Medicaid. [ADAPs] in 10 states have one or more program restrictions, including capped enrollment, limited drug coverage, or expenditure caps. Early treatment is cost-effective, so enrollment caps that delay access until the patient's HIV disease becomes more advanced

are an inefficient reallocation of resources."

Early HAART is more expensive than delayed treatment. However, its cost-effectiveness ratio -- a measure of "value for money" -- is well below the median for all medical interventions nationwide. Early HAART's cost-effectiveness ratio was shown to be $13,000 per quality-adjusted life year, with or without the consideration of increased risk of heart disease. Even after adjusting for the decline in quality of life that may be associated with fat redistribution, early HAART's cost-effectiveness ratio was $17,000-$24,000 per quality-adjusted life year. This ratio is less than half that for cholesterol-lowering drugs used to prevent coronary heart disease in men without HIV.

The full report, "Cost-effectiveness Implications of the Timing of Antiretroviral Therapy in HIV-Infected Adults," was published in the *Archives of Internal Medicine* (2002;162:2478-2486).

Back to other CDC news for June 11, 2003

Previous Updates | Search the CDC archive

Excerpted from:
AIDS Weekly
05.26.03

This article is a part of the publication *The CDC HIV, STD, TB Prevention News Update*

Our thanks to Centers for Disease Control and Prevention, which provided this article to The Body.

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HB
260

IOUSE COMMITTEE REI O

(7)
Date Referred to Committee: April 7, 2005 **FURTHER REFERRALS:** Finance

Date of Committee Action: April 13, 2005

The JUDICIARY Committee considered: **HB 260**

HOUSE BILL NO. 260 **TOBACCO: BONDS; TAX; POSSESSION BY MINORS**

"An Act relating to purchase and possession of cigarettes or tobacco products by a person under 19 years of age, to licenses for persons engaged in activities involving tobacco products, to taxes on cigarettes and tobacco products, and to the amount of the bond required to stay execution of a judgment in civil litigation involving a signatory, a successor of a signatory, or an affiliate of a signatory to the tobacco product Master Settlement Agreement during an appeal; amending Rules 204, 205, and 603, Alaska Rules of Appellate Procedure; and providing for an effective date."

Recommends it be replaced with [ ] HCS *or* **[X] CS** *for* HB 260 (JUD)
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR______ **[X] Same Title [ ] New Title**

[ ] attach amendments
[ ] add new referral to ____________Committee
[ ] Letter of Intent___________Committee

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

***NEW* FISCAL NOTES** *Assigned by Chief Clerk's Office

List by Dept(s):	*FN#	Fiscal	Indet.	Zero
REV		✓		
HSS				✓
DPS				✓

***PREVIOUS* FISCAL NOTES**

List by Dept(s):	FN#	Fiscal	Indet.	Zero

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
[signature]	Kott			—	
[signature]	Gruenberg			—	
[signature]	Dahlstrom			X	
[signature]	Gara				✓
[signature]	Coghill			✓	
Chair: [signature]	ANDERSON	X			✓
Chair: [signature]	McGuire			✓	

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB 260
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: Revenue

Title	Taxes on cigarettes and tobacco products
Sponsor	House Finance Committee
Requester	House Finance Committee
RDU	Taxation and Treasury
Component	Tax
Component No.	2476

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	53.7	53.7	53.7	53.7	53.7	53.7
Travel						
Contractual	4.3	4.3	4.3	4.3	4.3	4.3
Supplies						
Equipment	8.0					
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	**66.0**	**58.0**	**58.0**	**58.0**	**58.0**	**58.0**
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )	**7,100.0**	**8,100.0**	**2,250.0**	**2,250.0**	**2,250.0**	**2,250.0**

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	66.0	58.0	58.0	58.0	58.0	58.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	**66.0**	**58.0**	**58.0**	**58.0**	**58.0**	**58.0**

Estimate of any current year (FY2005) cost: 0.0
Check this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal: [ ]

POSITIONS

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

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

Bill Language: This bill will change the effective date for cigarette tax increases passed in June 2004 by SB 1001. SB 1001 increased Alaska's cigarette excise tax to $1.60 per pack of 20 cigarettes on January 1, 2005 and provided for additional cigarette tax increases of 20 cents per pack of 20 cigarettes on July 1, 2006 and July 1, 2007. This bill will accelerate the last two increases so that both will take effect on January 1, 2006. Therefore, on January 1, 2006, Alaska's cigarette excise tax would be $2.00 per pack of twenty cigarettes. This bill will also increase the other tobacco products (OTP) tax from 75% to 100% of the wholesale cost and require individuals who purchase OTP through the mail or over the Internet to obtain a license with the Department of Revenue and pay the applicable OTP tax on those purchases. This bill also includes a section requiring a two-thirds majority vote in each house for the tax increases to take effect.

Prepared by: Johanna Bales — Phone 907-269-6628
Division: Tax Division — Date/Time 4/13/05 12:05 PM
Approved by: Jerry Burnett — Date 4/13/2005
Agency: Department of Revenue

(Revised 9/23/2004 OMB)

FISCAL NOTE

STATE OF ALASKA **BILL NO.** HB 260

2005 LEGISLATIVE SESSION

ANALYSIS CONTINUATION

Bill Analysis (cont.): This bill also makes changes to the criminal statutes regarding underage possession and purchase of cigarettes and limits the amount of a bond that cigarette manufacturers must post when filing an appeal of a judgment from a lower court. These provisions are not administered by the Department of Revenue. Therefore, this fiscal note does not address any additional operating costs of these proposed changes.

Program Summary: DOR will license individuals to purchase cigarettes through the mail and over the Internet and process tax returns filed by those individuals. DOR will also work with other states to determine the amount of other tobacco products purchased by individuals in Alaska. Currently, Alaska has information agreements with other states which allows Alaska to obtain information about tobacco products shipped into Alaska. DOR will gather this information, summarize it, determine the amount of other tobacco products purchased by an individual, and prepare assessments for unpaid taxes. DOR will also conduct other compliance activities to ensure that all taxes owed on other tobacco products is paid.

Positions: DOR expects that it will need 1 additional position, 1 Tax Technician II, to perform the additional functions required by this bill. DOR expects the total cost of this additional position to be $53,700 each year.

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 $4,300 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.

Revenue: DOR estimates cigarette tax revenue to increase by approximately $6 million in FY 2006 and 2007 as a result of this bill at which time the entire $2 per pack tax rate would have been reached under SB 1001. DOR estimates the other tobacco products (OTP) tax to increase by approximately $1.1 million in FY 2006 due to the increase taking effect half-way through the fiscal year and by $2.2 million each year thereafter.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB260-DHSS-DBH-04-13-05
( ) Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: Health & Social Services

Title: PURCHASE AND POSSESSION OF TOBACCO BY MINORS AND TOBACCO TAXES AND SETTLEMENTS

RDU: Behavioral Health

Component: Behavioral Health Administration

Sponsor: HOUSE (FIN)

Requester: HOUSE (JUD)

Component No. 2665

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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 (0)						

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2005) cost:

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

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

The intent of the legislation of HB 260 is to amend the section of the law related to the purchase of cigarettes or tobacco products by a person under 19 years of age; to amend the section of the law related to licenses for persons engaged in activities involving tobacco products; to amend the section of the law related to taxes on cigarettes and tobacco products; and to amend the section of the law related to the amount of the bond required to stay execution of a judgement in civil litigation involving the tobacco product Master Settlement Agreement during an appeal.

This legislation in its current form would have no direct impact on the Tobacco Prevention and Contral Program. Price increases in the form of tobacco taxes are effective strategies for preventing tobacco use by youth.

Prepared by: Bill Hogan, Director — Phone 465-3166
Division: Behavioral Health — Date/Time
Approved by: Joel S. Gilbertson, Commissioner — Date 04/13/2005
Agency: Department of Health and Social Services

(Revised 9/23/2004 OMB)

FISCAL NOTE
FN #

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL NO. HB260-DHSS-DBH-04-13-05

ANALYSIS CONTINUATION

This bill will allow Confidential Informant's to attempt to purchase tobacco products and not be in violation of the law.

The Division of Behavioral Health has determined that this bill will have a zero fiscal impact.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB260-DPS-ASTD-4-12-05
() Publish Date:

Revision Date/Time (Note if correction):

Title	"An Act relating to purchase and possession of cigarettes or tobacco by a person under 19..."
Sponsor	House Finance Committee
Requester	House Judiciary Committee

Dept. Affected:	Public Safety
RDU	Alaska State Troopers
Component	AST Detachments
Component No.	2325

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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 ( )						

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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 (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

POSITIONS	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Full-time						
Part-time						
Temporary						

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

Passage of this bill will have no fiscal impact on the Department of Public Safety.

Under section 1, additional language is added to AS 11.76.105 specifying that not only possession, but the purchase, attempted purchase, and the attempted possession of tobacco by an individual under 19 years of age is a violation. It also creates an additional exclusion to this subsection by including language that will allow a person to assist a peace officer in the enforcement of this section of statute.
Assisting a peace officer with enforcement of this section may include the purchase, attempted purchase, attempted possession or possession of tobacco by the person.

Prepared by:	Lieutenant Todd Sharp	Phone	907-465-3223
Division	Alaska State Troopers	Date/Time	4/12/05 9:14 AM
Approved by:	Commissioner William Tandeske	Date	4/12/2005
Agency	Department of Public Safety		

(Revised 9/23/2004 OMB)

ALASKA STATE LEGISLATURE
HOUSE FINANCE COMMITTEE

Representative Mike Chenault
Co-Chairman
(907) 465-3779
Fax: (907) 465-2833
Representative_Mike_Chenault@legis.state.ak.us

145 Main St. Loop #223
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Representative Kevin Meyer
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Anchorage, Alaska 99501

State Capitol, Juneau, Alaska 99801-1182

SPONSOR STATEMENT

HOUSE BILL 260

House Bill 260 addresses tobacco taxation, possession and purchase of tobacco products by minors, and aspects relating to the Tobacco Master Settlement Agreement ("MSA").

HB 260 addresses tobacco taxation in two ways. First, the tax on "other tobacco products", such as smokeless tobacco, is increased from 75 percent to 100 percent of the wholesale cost. Second, the implementation of the remaining tobacco tax increase that was passed by the 23rd Legislature is accelerated to January 1, 2006. Passage of this tax increase and acceleration of the current increase is supported by the health benefits alone. Tobacco is the number one preventable cause of death, disability, and chronic illness in Alaska. Increased taxes can result in reduced consumption of tobacco products. It is especially a deterrent for underage smokers.

A grave concern is the prevention of teenagers and pre-teens from smoking. HB 260 expands current statutes to prohibit a minor from purchasing, possessing, and attempting to purchase or possess tobacco products. The intent of this section is to further deter underage access and consumption of tobacco products.

Under HB 260, individuals who choose to import other tobacco products into Alaska for personal consumption would be required to purchase a buyer's license from the Department of Revenue. This enables the department to collect the required State taxes on products that are currently not taxed.

HB 260 also sets a $100,000,000 million limit on the supersedeas bond that MSA signatories, successors, and affiliates must post to stay the execution of a judgment in Alaska. This bond limit would not change any other aspect of the law. It does not change the rules by which a trial is conducted. It does not affect who ultimately wins or loses lawsuits. And, it does not affect the rights of plaintiffs to recover fully the damages to which they are entitled if the judgment is upheld.

Last Update: April 11, 2005

By placing a limit on the bond, the State is protected by ensuring that it will continue to receive its MSA payments while the tobacco companies appeal an adverse judgment.

The MSA delivers millions of dollars in revenue annually to Alaska and 45 other participatory states. Alaska will join 26 other states with similar legislation or amended court rules to limit the size of the required appeal bond in cases involving large judgments. By joining these states, we promote our collective interest with respect to preserving the revenue stream mandated by the Master Settlement Agreement.

I encourage your support for this important legislation.

FISCAL NOTE

STATE OF ALASKA
200[illegible] LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB260-DPS-ASTD-4-12-05
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: Public Safety

Title	"An Act relating to purchase and possession of cigarettes or tobacco by a person under 19..."
Sponsor	House Finance Committee
Requester	House Judiciary Committee

RDU	Alaska State Troopers
Component	AST Detachments
Component No.	2325

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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 ( )						

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 (FY2005) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

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

Passage of this bill will have no fiscal impact on the Department of Public Safety.

Under section 1, additional language is added to AS 11.76.105 specifying that not only possession, but the purchase, attempted purchase, and the attempted possession of tobacco by an individual under 19 years of age is a violation. It also creates an additional exclusion to this subsection by including language that will allow a person to assist a peace officer in the enforcement of this section of statute.
Assisting a peace officer with enforcement of this section may include the purchase, attempted purchase, attempted possession or possession of tobacco by the person.

Prepared by:	Lieutenant Todd Sharp	Phone	907-465-3223
Division	Alaska State Troopers	Date/Time	4/12/05 9:14 AM
Approved by:	Commissioner William Tandeske	Date	4/12/2005
Agency	Department of Public Safety		

(Revised 9/23/2004 OMB)

Vanessa Tondini

From: Mike Elerding [melerding@nsales.com]
Sent: Tuesday, April 12, 2005 12:23 AM
To: Suzanne Cunningham; Vanessa Tondini
Cc: Rep. Pete Kott; Rep. Tom Anderson; Rep. John Coghill; Rep. Nancy Dahlstrom; Rep. Les Gara; Rep. Max Gruenberg; Joe Darnell; grant_sirevog@revenu state.ak.us
Subject: FW: HB 260 An act relating to the purchase and possession of cigarettes by a person under 19 years of age

I apologize if this is the 2nd copy of this email transmitted to you. My initial transmission of the email had an incorrect address, which gave me an error message that indicated the email had not been sent. Please accept my apology. I had trouble spelling Tondini Thx me

-----Original Message-----
From: Mike Elerding [mailto:melerding@nsales.com]
Sent: Tuesday, April 12, 2005 12:17 AM
To: Suzanne_cunningham@legis.state.ak.us; vanessa_tontini@legis.state.ak.us
Cc: Representative_Pete_Kott@legis.state.ak.us;
Representative_Tom_Anderson@legis.state.ak.us;
Representative_John_Coghill@legis.state.ak.us;
Representative_Nancy_Dahlstrom@legis.state.ak.us;
Representative_Les_Gara@legis.state.ak.us;
Representative_Max_Gruenberg@legis.state.ak.us;
joe_darnell@health.state.ak.us; grant_sirevog@revenue.state.ak.us
Subject: HB 260 An act relating to the purchase and possession of cigarettes by a person under 19 years of age

Dear Suzanne and Vanessa,

Thank you both for taking my call regarding HB 260. Our company, Northern Sales Co. of Alaska, is a licensed in-state tobacco distributor. As a tobacco distributor we have a strong interest in legislation, which impacts the sale of tobacco products within Alaska. While, we have not had an opportunity to fully review HB 260, listed below is a brief summary of the salient issues as we see them.

1. Section 2. AS 43.50.190 accelerates the 2nd & 3rd step increases of the phase-in of the cigarette excise tax increase passed last year in HCS SB 1001. Under provisions of last years measure the final excise tax increase was scheduled to be effective July 1, 2007. Under the provisions of this measure the remaining $4.00 per carton excise tax will become effective on
January 1, 2006. With the acceleration of the $4.00 excise tax Alaska would have the 3rd highest excise tax in the nation with a total excise tax of $20.00 per carton.
2. Section 3. AS 43.50.300 increases the OTP tax from 75% of the wholesale price of tobacco to 100% of the wholesale price of tobacco. Only Minnesota with a proposed OTP tax rate of 108% would have a higher rate than Alaska.
3. Section 4. AS 43.50.300 paragraphs (3) & (4) would address a gross inequity in the existing collection of the state OTP tax. Currently only Alaska based businesses are required to pay the state OTP excise tax. Mail order businesses operating outside of the states jurisdiction are permitted to ship tobacco products (non cigarettes) into the state without paying the OTP tax to the state. The result has been that in-state tobacco dealers have been at a significant price disadvantage to out of state competitors.
And as you might expect the sale of OTP products by in-state licensed businesses has been adversely impacted.
4. Section 12. AS 45.53.050 sets a bonding cap limit of $100 million to insure court awarded payments by the defendant to plaintiffs who have prevailed in a civil litigation matter regarding tobacco cases. This measure will put limits on the ability of special interest groups to abuse the court system and usurp legislative powers by forcing defendants to settle tobacco related disputes rather than post an exorbitant bond while waging an aggressive appeal of the initial adverse court decision.

5. Section 1 and Section 13 of this measure change state law to make it a violation of state law for a person under 19 years of age to purchase; attempt to purchase; or possess tobacco products. Further a person under the age of 19 found to have violated this law shall be charged; prosecuted; and sentenced in the same manner as an adult.

We concur that an increase in state excise tax in cigarettes does reduce youth access to these products. However, we would point out that the state already has a plan to increase the state excise tax on cigarettes and we believe that the acceleration of this tax puts an unnecessary burden on the states adult smokers who choose to smoke.

Regarding item #2 and #3 from above we believe that there will be insignificant gains to state revenue by increasing the excise tax from 75% to 100% because as the law stands now Alaska licensed distributors simply cannot compete with out of state operators who are exempt from the states OTP tax. It is our assertion that licensed Alaska distributors who are collecting and remitting OTP tax payments to the state are selling less OTP product than out of state mail order business who are exempt from this tax.
Section #3 of HB 260 attempts to remedy this inequity, but the state does not have the authority to impose Alaska taxes on businesses operating outside of their jurisdiction. Endeavors to collect the OTP tax from Alaska consumers while well intentioned is simply going to be unenforceable.

We concur with the major tobacco manufacturers desire to have a bonding cap on litigated claims processed through the court system and we feel that a bonding cap of $100 million is adequate to protect the state and provide successful plaintiffs of assurance of collecting any settlement they may be awarded in a civil litigation matter.

We think the provisions in item #5 from above are warranted and appropriate.
We salute the intent to transfer the responsibility of the illegal possession of cigarettes by a person under the age of 19 to the individual perpetrating the crime. Current state law puts the entire burden for the violation of the illegal possession of tobacco by a person under 19 on legitimate licensed tobacco retailers. We believe that the license suspension for retailers who are found to be in violation of state law by facilitating the illegal sale of tobacco to minors needs to be completely overhauled. Current law requires a 20-day license suspension for the first offense, a 45-day license suspension for the second offense, and a 90-day license suspension for a third offense occurring within a 24-month period.
In addition to the license suspension component of the penalty for the violation of this law there are escalating monetary civil penalties to retailer for each infraction of this law. We think that businesses that can demonstrate participation in training programs to educate their employees to prevent the illegal sale of tobacco products to a person under the age of 19 should count as an affirmative defense for a business found to be in violation of state law prohibiting the sale of tobacco to minors. We would support an amendment to this bill, which would incorporate the changes to the penalty phase outlined above.

On 16 June 2003 Governor Murkowski signed into law SB 168 which mandated the imposition of a tobacco stamp to be imprinted on every pack of cigarettes imported into the state. Section 43.50.510 of SB 168 stipulated that "for purposes of this section, a stamp is considered affixed only if more than 80% of the stamp; is attached to the individual package (ie each pack of
cigarettes) in accordance" with regulations adopted by the department of revenue. Subsequent to the passage of this measure it has been demonstrated that the current state of tax stamping technology has not been able to produce an 80% affixment standard. Based on our actual experience the best estimate for the performance standard of affixing a tobacco stamp on each
pack of cigarettes is somewhere in the 55% range. Only through the
collaborative efforts of the State Department of Revenue and industry have we avoided an unmitigated disaster regarding the enforcement of the 80% performance requirement. Section 43.50.510 needs to be amended to reduce the affixment standard from 80% down to 55%.

I apologize for my "brief" overview of this measure and I appreciate your interest and your willingness to work with us on this very important matter.
I will be in Juneau for the 13 April House Judiciary hearing on this bill and I would like to testify before the committee. In the meantime if you have any questions or require additional information please do not hesitate to email me. While in Juneau I can be

reached on my cell phone at 206-850-5250.

Thanks again for your interest.

Mike Elerding
President
Northern Sales Co. of Alaska

Alaska Should Join Other States To Limit The Size Of Appeal Bonds and Protect Its Tobacco Settlement Revenues

The Tobacco Master Settlement Agreement ("MSA") is vitally important to Alaska and to the 45 other states who are parties to the settlement. It delivers millions of dollars in revenues to Alaska annually, and it will continue to do so for years to come. It also delivers real benefits to the state through its non-monetary provisions, which restrict advertising by participating (but not by non-participating) manufacturers and are designed to help reduce youth smoking.

Yet the continued receipt of these funds is threatened by litigation against the tobacco companies that are funding the settlement. The ability of the tobacco companies to meet their obligations under the MSA ultimately depends upon their financial viability. It may seem far-fetched to worry about the financial viability of tobacco companies, but the litigation onslaught they are currently facing presents a real risk to their ability to make MSA payments.

This memorandum explains what Alaska can do to minimize that risk and protect the state's ongoing receipt of MSA money.

A. The Enormous Litigation Risks Confronting The MSA Signatories Threaten Alaska's Master Settlement Agreement Revenues

Within the last several years, the tobacco companies have faced gargantuan judgments. In 2000, the Engle class action in Florida resulted in a verdict of $145 billion, which was reversed on appeal in May 2003. In California, two individual suits resulted in verdicts of $28 billion and $3 billion respectively, although both of these verdicts were reduced by the trial judge. In March 2003, a judge in the case of Price v. Philip Morris in Illinois ordered one tobacco company to pay compensatory damages of $7.1 billion and punitive damages of $3 billion in a class action. This decision is currently being appealed.

As the Engle case demonstrates, many extraordinarily large verdicts are reduced or overturned on appeal. In order for a verdict to be overturned, however, a defendant must be able to appeal and do so while remaining in business. The problem is that in most states, a defendant must post an appeal bond at least equal to the size of the judgment in order to stay the execution of the judgment during the appeal. In Alaska, the bond required to stay the execution of a money judgment is ordinarily the amount of the judgment remaining unsatisfied, plus appeal costs and interest.[1] But Alaska courts are permitted to set the bond in a different amount or to order

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1 Alaska R. App. P. 204(d).

alternate security for good cause shown -- meaning that judges may theoretically set the bond at any amount they deem appropriate, even if that amount exceeds the total judgment.[2]

If a defendant cannot afford to post an appeal bond in the amount set by the court, a plaintiff could potentially seize the defendant's bank accounts, or its manufacturing facilities, or any property located anywhere that the plaintiff can find, even though the defendant may be in the middle of an appeal. In order to stop the plaintiff from taking its assets during the appeal, the defendant may have no alternative other than to file for bankruptcy, which carries with it an automatic stay of the debtor's obligation to pay its creditors.

However, a stay in bankruptcy is indiscriminate: while it would allow tobacco companies subject to huge judgments to appeal while the stay is in place without fear that plaintiffs could seize their assets, it would also prevent the companies from making their payments to Alaska and the other states under the MSA. This potential problem has been most vividly demonstrated by the ongoing Price case in Illinois. In March 2003, the judge in that case set the appeal bond at $12 billion -- an amount that the company could not possibly have posted.[3] If the company had been forced to post such a large bond, it most likely would not have been able to continue to make the billions of dollars in payments that it owes under the MSA. Because of concern about this disastrous result, 37 state attorneys general (including Alaska's) and the National Conference of State Legislatures petitioned the Price court to allow a lower bond to be posted so that MSA payments would not be jeopardized. The bond was eventually lowered to $6.8 billion, but even this reduced amount would bankrupt many companies.

As the Price case demonstrates, the state has a vital interest in ensuring tobacco companies can appeal massive judgments in Alaska by posting a bond under state law, rather than being forced into bankruptcy.

B. Other States Have Recognized The Risks That Litigation Against MSA Signatories Pose To Their Continued Receipt Of Tobacco Settlement Funds, And They Have Enacted Appeal Bond Caps

Increasingly, states have become aware of the potential consequences of high appeal bonds and have imposed reasonable limits on the size of these bonds. In 2000, legislators in Florida became concerned because the Engle class action against the tobacco companies was proceeding in that state. It was estimated that the punitive damages awarded in the case could be so large that these companies could not afford to post a bond, thereby forcing the companies to seek a stay from the bankruptcy court. While legislators had no particular sympathy for tobacco companies, they recognized that these companies, like every defendant, are at least entitled to a full and fair appeal, and they also recognized that Florida and every other state might lose an important income stream from the MSA payments if the companies were driven out of business. Thus, the legislature enacted a cap on the size of the appeal bond that would have to be posted

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2 Id.

3 "Confidential Talks Continue on $12 Billion Bond Issue in Light Cigarette Class Action," Mealey's Litigation Report: Tobacco (Apr. 14, 2003).

with regard to the punitive damages aspect of any judgment. The cap limited appeal bonds to the lower of the punitive damages judgment plus twice the statutory rate of interest, ten percent of a defendant's net worth, or $100 million.[4]

As noted above, the jury in Engle eventually awarded the plaintiffs $145 billion in punitive damages. Under Florida's previous appeal bond rules, the defendants would have had to post an $181 billion bond to appeal this judgment, which would have bankrupted any company or group of companies. But because the legislature had passed the appeal bond cap, the tobacco companies were able to post a much lower bond and appeal the verdict. Their appeal was ultimately successful: on May 21, 2003, a Florida appeals court decertified the Engle class and set aside the jury's decision in the case. In an emphatic opinion, the court ruled that the class action approach for Engle was completely improper. But if the legislature had not acted to limit the appeal bond prior to the trial court's judgment in Engle, the previous bonding requirement would have bankrupted the entire industry, thrown thousands of people out of work, and deprived each state of its tobacco settlement revenues.

Florida did not act alone. Twenty-nine other states have also passed limits on the size of appeal bonds, two of them by court rule and the rest through legislation. Five other states (Connecticut, Maine, Massachusetts, New Hampshire and Vermont) automatically stay a judgment upon the filing of a notice of appeal. As a result, over half of the states currently limit the appeal bond requirement. The approaches taken by the states have differed somewhat, as summarized below.

In the year 2000, along with Florida, four other states enacted limits on the size of appeal bonds.[5] These states were Kentucky ($100 million limit) and Georgia, North Carolina and Virginia ($25 million limits). In each of these states, the limit applied only to the bond for the punitive damages portion of a judgment. Each of these states was concerned that if the Florida legislature did not act, the Florida plaintiffs might seek to seize tobacco company assets in these other states. Thus, these states limited the size of bonds for judgments entered by courts within their states, and further provided that if a plaintiff with an out-of-state judgment came to their state to collect on that judgment, the defendant could stop the plaintiff until the appeal was completed by posting the bond required in that state. These states were worried that the tobacco settlement proceeds might be threatened before an appeal could ever be completed, and they were also worried about the jobs that could be lost in their states if the tobacco companies were put out of business before they could appeal.

In 2001 Louisiana, Nevada, Oklahoma and West Virginia passed legislation that limited the size of the appeal bond that signatories of the Master Settlement Agreement would have to

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4 Fla. Stat. § 768.733 (2002).

5 Florida (Fla. Stat. § 768.733), Georgia (Ga. Code Ann. § 5-6-46), Kentucky (Ky. Rev. Stat. Ann. § 205.1), North Carolina (N.C. Gen. Stat. § 1-289), and Virginia (Va. Code Ann. § 8.01-676.1 J.) each passed legislation in 2000.

post to appeal a damages verdict of any kind, be it compensatory or punitive damages.[6] Again, a primary motivating factor for these states was their financial interest in ensuring that settlement proceeds under the state tobacco settlement were not threatened because of an inability of the tobacco companies to appeal a judgment. The Oklahoma appeal bond cap was $25 million; the caps in Nevada and Louisiana were $50 million; and West Virginia's cap was $100 million for punitive damages and $100 million for compensatory damages.

As these states were doing their work, the Mississippi Supreme Court amended its court rules, which govern appeal bonds in that state, to limit the bond that a defendant of any kind would have to post to stay a punitive damages judgment while it appeals.[7] The amount of the limit in Mississippi was the lower of $100 million, 125 percent of the punitive damages award, or 10 percent of the defendant's net worth.

In 2002 three states enacted limits on the size of appeal bonds. Ohio adopted a $50 million limit,[8] while Indiana and Michigan[9] adopted a $25 million limit. These bond limitations were not tied in any way to tobacco companies or to the MSA. Rather, in each state, the limit that was adopted applies to damages of all kinds, including the costs a defendant might incur to pay for equitable relief, and it applies to any kind of defendant.

In 2003 Arkansas, California, Colorado, Idaho, Kansas, Missouri, New Jersey, Oregon, Pennsylvania, South Dakota, Tennessee, Texas and Wisconsin adopted appeal bond caps.[10] The Arkansas, Colorado, Tennessee, Texas and Wisconsin statutes apply to all litigants in civil litigation regardless of legal theory. The other states' laws are more limited in scope. Idaho's $1 million cap, for example, applies to all litigants in civil litigation but covers only the punitive damages portion of the appeal. The Kansas cap applies to appellants who are signatories or successors of signatories to the tobacco Master Settlement Agreement; California, Missouri, New Jersey, Oregon and Pennsylvania extend this application to also include affiliates of signatories to the tobacco Master Settlement Agreement. The amounts of the caps enacted in these states range from $25 million to $100 million.[11] In addition, the South Dakota Supreme

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[6] Louisiana (La. Rev. Stat. Ann. § 98.6), Nevada (Nev. Rev. Stat. § 20.035.1); Oklahoma (Okla. Stat. Ann. tit. 12 § 990.4 B.5); and West Virginia (W. Va. Code § 4-11A-4).

[7] Mississippi Rule of Appellate Procedure 8.

[8] Ohio Rev. Code Ann. § 2505.09 (2002).

[9] Ind. Code Ann. § 34-49-5-3 (2002); Mich. Comp. Laws. Ann. § 600.2607(1) (2002).

[10] Ark. Code § 16-55-214 (2003); Cal. Health & Safety Code § 104558 (2003); Colo. Rev. Stat. 13-16-125 (2003); Idaho Comp. Stat. Ann. § 13-202 (2003); Kan. Stat. Ann. § 50-6a05 (2003); Mo. Rev. Stat. § 512.085 (2003); N.J. Stat. Ann. § 52:4D-13 (2003); 2003 Or. Laws 804 (not yet codified); Pa. Stat. Ann. tit. 35, § 5701.309 (2003); Tenn. Code § 27-1-124 (2003); Tex. Civ. Proc. & Rem. Code § 52.006(b) (2003); Wis. Stat. § 808.07 (2003).

[11] Arkansas, Colorado, Kansas and Texas agreed to cap their appeal bonds at $25 million, while Missouri and New Jersey set their caps at $50 million. Tennessee set its cap at $75 million. The Pennsylvania and Wisconsin bills capped bonds at $100 million, and California and Oregon each set a cap of $150 million.

Court amended its court rules to limit the bond required to stay the execution of a judgment during an appeal to $25 million.[12] Lastly, North Carolina and Florida broadened their existing statutes in 2003 to limit the appeal bond for money judgments under any legal theory, not just punitive damages.

Thus far in 2004, four states have acted to solve the appeal bond problem. The legislatures in Utah, Nebraska, and Iowa have all adopted general bond cap legislation that applies to all litigants in all civil actions. The cap adopted in Nebraska is the lesser of the fifty percent of the appellant's net worth or $50 million; the cap in Utah is $25 million; and the cap in Iowa is $100 million.[13] In addition, the South Carolina legislature passed a bill eliminating the bond requirement entirely for MSA signatories, successors, and affiliates.[14]

Like these other states, the Alaska legislature should act to solve the problems caused by high appeal bonds immediately. While some states have passed broader measures that apply to any defendant in any kind of litigation, a bill limiting the appeal bond in cases involving signatories, successors of signatories, or affiliates of signatories to the MSA would be sufficient to solve the most problematic aspects of Alaska's current law. The legislature, in its role as the protector of the state's finances, has the authority to adopt such a measure,[15] which is important not only for Alaska, but also for all other states who are relying on the continued stream of tobacco revenues for vital public projects.

C. The Appeal Bond Limitation Laws Provide No Substantive Legal Protections To A Tobacco Company In Litigation, But They Do Protect Plaintiffs

A key point for each of the states discussed above is that, in limiting the bond, none of them changed their substantive law in any way. Bond limitation laws only ensure that defendants can fully exercise their right to an appeal without going into bankruptcy or being forced to settle with the plaintiffs. So, for example, had the tobacco companies lost their appeal

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[12] S.D.C.L. 15-26A-26.

[13] Utah H.J.R. 16 (2004); Iowa S.B. 2306 (2005); Neb. L.B. 1207 (2004). The Iowa bill is pending the governor's signature.

[14] S.C. H.B. 4823 (2004). The South Carolina bill is pending the governor's signature.

[15] Although Article IV, section 15 of the Alaska constitution gives the Supreme Court primary authority over rules that affect court procedure, the Court upholds legislative enactments if the main subject of the statute is substantive with only an incidental effect on procedure. See, e.g., Ware v. City of Anchorage, 439 P.2d 793, 794 (Alaska 1968)(upholding statute requiring a non-resident plaintiff to provide security for the costs of litigation). An important part of the inquiry into whether the statute is substantive or procedural is "whether the rule or statute under scrutiny is more closely related to the concerns that led to the establishment of judicial rule making power, or to matters of public policy properly within the sphere of elected representatives." Nolan v. Sea Airmotive, 627 P.2d 1035, 1042-43 (Alaska 1987). Since the purpose of the appeal bond cap is to "secure and protect the monies to be received as a result of the Master Settlement Agreement," which is a substantive goal clearly within the purview of elected representatives, the legislature has the power to enact this statute.

in the Engle case in Florida, they would have had to pay the full amount of the judgment. Nothing in the bond limitation statute passed in Florida would have prevented that. In addition, virtually all of the laws passed in each state allow a judge to require a much larger bond if it is shown that a defendant is dissipating its assets to avoid a judgment. Thus, plaintiffs are protected under these bills in two ways: because the amount of the appeal bond even as limited is large in and of itself, and because in a case where the defendant is misbehaving, the court may require a larger bond.

Alaska should adopt legislation limiting the size of appeal bonds that MSA signatories, successors and affiliates must post to $100 million, regardless of the value of the judgment. Plaintiffs would be protected by the large but limited bond that is required and by the provision in the bill allowing a judge to require a higher bond if a defendant is improperly dissipating assets. A defendant's right to appeal would also be fully protected, by mandating a large but not impossibly high appeal bond. And Alaska and the other states would be protected, by ensuring that the MSA signatories can fully appeal an adverse judgment, thereby avoiding the necessity of seeking a stay in the bankruptcy court. This, in turn, will benefit Alaska and its citizens by preserving the uninterrupted flow of tobacco settlement revenues.

ENACTED APPEAL BOND LEGISLATION

State	Bill Number	Date Approved	To Whom Limits Apply	Amount of Appeal Bond Limit	Scope of Appeal Bond Limit
Arkansas	HB 1038	3/27/2003	All litigants	$25,000,000	Applies to all judgments in civil litigation regardless of leg[illegible] theory
California	A 1752	8/9/2003	Master Settlement Agreement signatories, successors, and affiliates	The lesser of 100% of the judgment or $150,000,000	Applies to all judgments in civil litigation regardless of legal theory
Colorado	HB 1366	5/20/2003	All litigants	$25,000,000	Applies to all judgments in civil litigation regardless of legal theory
Florida	HB 1721 SB 2826	5/9/2000 6/10/2003	All litigants in class actions Master Settlement Agreement signatories, successors, and affiliates	$100,000,000 $100,000,000	As passed in 2000, applied to judgments for non-compensatory damages. Broadened in 2003 to apply to all money judgments under any legal theory
Georgia	HB 1346 SB 411	3/30/2000 *Pending Governor's signature*	All litigants All litigants	$25,000,000 $25,000,000	Applies to punitive damages only Expands current law to apply to all forms of judgments in civil litigation
Idaho	HB 92	3/26/2003	All litigants	$1,000,000	Applies to punitive damages only
Indiana	HB 1204	3/14/2002	All litigants	$25,000,000	Applies to all judgments in civil litigation regardless of legal theory

Notes
* Created by court rule rather than legislation.

State	Bill Number	Date Approved	To Whom Limits Apply	Amount of Appeal Bond Limit	Scope of Appeal Bond Limit
Iowa	SB 2306	*Pending Governor's signature*	All litigants	Gives court discretion to exceed 110% of the judgment, but caps bond at $100 million	Applies to appeals from money judgments
Kansas	SB 64	4/21/2003	Master Settlement Agreement signatories and their successors	$25,000,000	Applies to all judgments in civil litigation regardless of legal theory
Kentucky	SB 316	3/29/2000	All litigants	$100,000,000	Applies to punitive damages portion of a judgment
Louisiana	HB 1807 HB 1819	6/25/2001 7/2/2003	As passed in 2001, covered Master Settlement Agreement signatories only; broadened in 2003 to include "affiliates"	$50,000,000	Applies to all money judgments
Michigan	HB 5151	5/8/2002	All litigants	$25,000,000 plus COLA every 5th year	Applies to all judgments in civil litigation
Mississippi	Rule 8	4/26/2001	All litigants	$100,000,000	Applies to all litigation subject to court rule
Missouri	SB 242	7/10/2003	Master Settlement Agreement signatories, successors, and affiliates	$50,000,000	Applies to all forms of judgments in civil litigation
Nebraska	LB 1207	4/15/2004	All litigants	The lesser of the following: 1. Amount of the money judgment. 2. 50% of appellant's net worth. 3. $50 million.	Applies to all forms of judgments in civil litigation
Nevada	AB 576	5/29/2001	Master Settlement Agreement signatories	$50,000,000	Applies to all forms of judgments in civil litigation

State	Bill Number	Date Approved	To Whom Limits Apply	Amount of Appeal Bond Limit	Scope of Appeal Bond Limit
New Jersey	SB 2738	11/21/2003	Master Settlement Agreement signatories, successors, and affiliates	$50,000,000	Applies to all forms of judgments in civil litigation
North Carolina	SB 2 SB 784	4/5/2000 4/23/2003	All litigants All litigants	$25,000,000	As passed in 2002, applied to judgments for non-compensatory damages. Broadened in 2003 to apply to all money judgments under any legal theory
Ohio	SB 161	3/28/2002	All litigants	$50,000,000	Applies to all forms of judgments in civil litigation
Oklahoma	SB 372	4/10/2001	Master Settlement Agreement signatories	$25,000,000	As passed in 2001, applied to all forms of judgments in civil litigation involving MSA signatories
Oregon	HB 2368	9/24/2003	Master Settlement Agreement signatories, successors, and affiliates	$150,000,000	Applies to all judgments in civil litigation regardless of legal theory
Pennsylvania	HB 1718	12/30/2003	Master Settlement Agreement signatories, successors, and affiliates	$100,000,000	Applies to all judgments in civil litigation regardless of legal theory
South Carolina	HB 4823	*Pending Governor's signature*	MSA signatories, successors, and affiliates	Appeal automatically stays execution of judgment - no bond required	Applies to all forms of judgments in civil litigation
South Dakota	Sup. Ct. R. 03-13	9/29/2003	All litigants	$25,000,000	Applies to money judgments
Tennessee	SB 1687	6/5/2003	All litigants	$75,000,000	Applies to all forms of judgments in civil litigation

State	Bill Number	Date Approved	To Whom Limits Apply	Amount of Appeal Bond Limit	Scope of Appeal Bond Limit
Texas	HB 4	6/11/2003	All litigants	The lesser of 50% of the judgment debtor's net worth or $25,000,000	Applies to money judgments
Utah	HJR 16	Passed House on 2/17/04; Passed Senate on 3/2/04	All litigants	$25 million collectively (lesser of (1) $5 million + 10% of the judgment award, or (2) $25 million for any single appellant)	Applies to all forms of judgments in civil litigation
Virginia	HB 1547 HB 430/ SB 172	3/10/2000 4/8/2004	All litigants All litigants	$25,000,000 $25,000,000	As passed in 2000, applied only to punitive damages portion of a judgment; as passed in 2004, expanded to apply to all forms of judgments in civil litigation
West Virginia	SB 661 S 671	5/2/2001 4/6/2004	As passed in 2001, applied only to Master Settlement Agreement signatories; amended in 2004 to clarify that the appeal bond limitations extend to appellants who control or are under common control with signatories to the master settlement agreement	$100,000,000 for all portions of a judgment other punitive damages; $100,000,000 for the punitive damages portion of a judgment	Applies to all civil litigation and provides that consolidated or aggregated cases shall be treated as a single judgment for purposes of the appeal bond limits
Wisconsin	AB 548	12/12/2003	All litigants	$100,000,000	Applies to all judgments in civil litigation regardless of legal theory

JURISDICTIONS THAT DO NOT REQUIRE BONDS

Jurisdiction	Governing Rule
Connecticut	Proceedings to stay noncriminal judgments shall be stayed automatically until the final determination of the cause. Conn. R. App. P. § 61-11.
Maine	The taking of an appeal operates as a stay of execution upon the judgment, and no supersedeas bond or other security shall be required. Me. R. Civ. P. 62.
Massachusetts	The taking of an appeal from a judgment shall stay execution upon the judgment during the pendency of the appeal. Mass. R. Civ. P. 62(d).
New Hampshire	No execution of a judgment shall issue until the expiration of the appeal period. N.H. Rev. Stat. Ann. § 527:1.
Vermont	The taking of an appeal operates to stay execution of the judgment during the pendency of the appeal; no supersedeas bond or other security is required. Vt. R. Civ. P. 62(d)(1).
Puerto Rico	Once a bill of appeal is filed, all further proceedings in lower courts regarding a judgment or any part thereof which is appealed, or the issues contained therein, shall be stayed, except for an order to the contrary, issued on its own initiative or by petition of a party thereto by the court of appeals. P.R. R. Civ. P. 53.9.

Where We Stand On...

Philip Morris USA supports state legislation and/or judicial rule changes, already implemented in more than 35 states, that limit the size of appeal bonds(1). Virtually every state requires a defendant who seeks to appeal and automatically stay an adverse judgment to post a bond, and most states require the bond to equal or exceed the size of the judgment. However, given the recent escalation in verdicts, some states are re-addressing their bond cap requirements and are passing legislation or implementing judicial rule changes, capping the amount a defendant must post to stay a judgment on appeal.

Appeal bonds are intended to provide the plaintiff with some security in the judgment and to protect the defendant from having the plaintiff seize its assets while the defendant appeals. These bond requirements, however, were developed at a time when most litigation involved individuals, not well-established companies, and at a time when multi-million or -billion dollar verdicts were unthinkable.

As the size of damage awards in litigation has escalated in the past few years, large bond requirements [illegible] become unworkable for the largest of judgments. [illegible] sheer magnitude of a multi-million or multi-billion dollar verdict can prevent a company from [illegible] bond, thereby forcing the company to either settle [illegible] case or [illegible] its assets seized during the pendency [illegible] [illegible] ...ious [illegible] [illegible] ment from the defendant.

While many legislators or policymakers may have no particular sympathy for tobacco companies, they have recognized that every defendant is entitled to a full and fair appeal. In addition, bond caps protect ongoing tobacco settlement payments(2) to the states during the appellate process.

Legislation or judicial changes limiting appeal bonds do not change the substantive law that guides the ultimate resolution of any litigation, including tobacco-related cases. They simply keep the courts open and protect the financial interests of both plaintiffs and defendants throughout the course of the appeal. They also allow a judge to subsequently increase the bond [illegible] if it is shown that a defendant is dissipating its assets to avoid a judgment. We urge states around the country to enact bond cap legislation or implement appropriate judicial rule changes, to address these issues.

For more information, please visit our website at [illegible]philipmorrisusa.com

[1] A number of states require court rulings to amend bonding requirements, versus state legislation.

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[1] A number of states require court rulings to amend bonding requirements, versus state legislation.

[2] Tobacco settlement payments arising from the 1998 Master Settlement Agreement and the earlier agreements with Florida, Minnesota, Mississippi, and Texas.

Philip Morris USA

EDITORIAL DESK | April 4, 2003, Friday

Too Costly an Appeal

New York Times
Late Edition - Final , Section A , Page 20 , Column 1

When it comes to civil lawsuits, tobacco companies are high on the list of disliked defendants. That makes it even more important that judges be vigilant in making sure that cigarette makers, like other unpopular parties, are given the full protection of constitutional due process. Mindful of that, an Illinois trial court acted wrongly when it required Philip Morris to post a $12 billion bond before it could appeal an adverse judgment.

On March 21, Judge Nicholas Byron of Madison County, Ill., found Philip Morris, now a subsidiary of the virtuous-sounding Altria, liable in a class-action lawsuit. The plaintiffs, more than a million smokers, convinced the judge that despite federally mandated warnings, they had been fraudulently misled by Philip Morris into believing that light and low-tar cigarettes were less harmful. The judge awarded them $7.1 billion in damages, their lawyers $1.78 billion and Illinois $3 billion. He then set the appeal bond required at the total liability, plus interest.

Whatever the merits of the underlying decision, it is absurd to require someone — even a cigarette manufacturer — to put up $12 billion to file an appeal. That is the kind of ruling that erodes the credibility of our legal system.

Even if Philip Morris fails to overturn the judge's ruling on appeal, it stands a good chance of getting those damages reduced. Yet in making an appeal so prohibitively costly — the company claims that it would have to file for bankruptcy to post it — Judge Byron renders the right to an appeal nearly meaningless, thus violating the defendant's due process rights. The plaintiffs may hope that the situation forces Philip Morris to settle now, but such pressure would be akin to extortion.

Things get even stranger, as they usually do when tobacco is involved. It turns out that this unpopular defendant does have some powerful allies, if not exactly friends: most of the states that have successfully sued the industry and obtained a $246 billion settlement. Many state governments, strapped for cash, have borrowed against those expected payments. Judge Byron has managed to underscore the degree to which states have become hooked on tobacco, and their paradoxical interest in seeing cigarette makers like Philip Morris continue to prosper. Its bankruptcy would imperil the ability of states to continue plugging their budget gaps with settlement revenues. California has already had to put off a mid-April $2.3 billion bond offering backed by its share of the tobacco settlement.

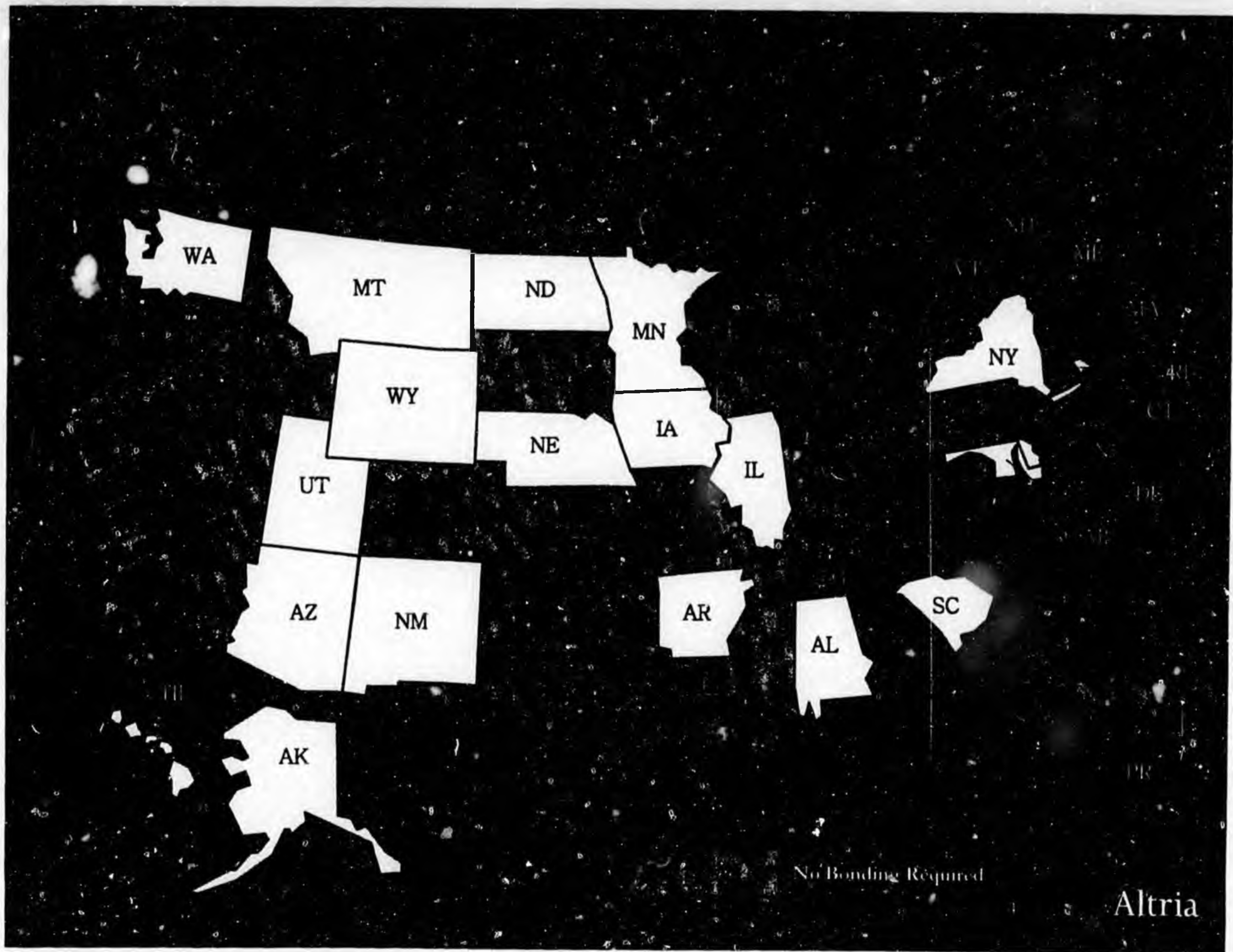
Many states will now be filing legal briefs and lobbying Illinois officials on Philip Morris's behalf. Still, the terms of the appeal bond should not be struck down to ameliorate states' fiscal crises, but rather to uphold principles of due process.

BONDING

Updated

February 16, 2005

Altria


WA
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NM
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SC
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AK
No Bonding Required
Altria

11800 Nebesna • Anchorage, Alaska 99516 • 907-345-5131

April 11, 2004

To: Rep. Lesil McGuire, Chair
House Judiciary Committee

Re: HB 260 hearing on April 13, 2005

Dear Rep. McGuire and Members of the House Judiciary Committee:

HB 260 is fair and responsible legislation that deserves your support.

Our court system is the fundamental means by which parties are able to obtain a fair and even-handed adjudication of their grievances.

We cannot allow one party to gain the upper hand using the courts, especially with the growing tendency for huge plaintiff's judgments beyond all rhyme or reason.

That's why HB 260 is important. Parties to tobacco litigation must have the right to a fair appeal, but the requirement that a defendant post a huge bond to stay a judgment on appeal can prevent a defendant from even mounting an appeal.

We need to make sure the playing field stays level, and HB 260 will do that. It will establish a bond cap of $100 million in Alaska, a level that is reasonable and that will not force a defendant to settle a tobacco case because it does not have the financial resources to post a bond.

Bond cap reform has been embraced in many other states because it is not only fair but also necessary to help preserve the continuing flow of Master Settlement Agreement funds to Alaska and other states. So HB 260 is also fiscally sound legislation that will ensure Alaska continues to receive its share of MSA funds.

In addition, HB 260 also contains provisions that will strengthen our ability to keep tobacco products out of the hands of our youth, and that is certainly an important goal for us all.

Please support HB 260 and help keep our state courts open and accessible to litigants who rely on the integrity it offers as a means to resolve legal disputes.

Sincerely,

George Kallas

To: **Representative Lesil McGuire, Chair**
House Judiciary Committee

From: **Jim Gardner, representing Philip Morris USA by its service company Altria Corporate Services, Inc.**

Date: **Wednesday, April 13, 2005**

Subject: **Support of H.B. 260, relating to supersedeas bonds**

First, I'd like to thank you, Chairwoman McGuire, for the opportunity to speak with your committee today in support of House Bill 260, which provides a $100 million limitation on bond requirements during appeal in litigation involving signatories to the tobacco master settlement agreement or their successors or affiliates. My name is Jim Gardner, and I am here today on behalf of Philip Morris USA.

The Tobacco Master Settlement Agreement ("MSA") is very important to Alaska and to the 45 other states that are parties to the settlement. It delivers millions of dollars in revenues to the state annually.

Yet the continued receipt of these funds is threatened by the huge judgments that have been awarded against the tobacco companies that are funding the settlement. Defendants facing such large judgments almost always have a right to appeal them, and in many cases their appeals are successful in obtaining a reduced judgment or in overturning the judgment entirely. But in order to stay the execution of a judgment on appeal, a defendant must post a supersedeas (or appeal) bond, which, in the diminishing number of states that do not have limits on appeal bonds, usually equals the amount of the judgment. In Alaska, the bond required is ordinarily the amount of the judgment remaining unsatisfied, plus appeal costs and interest, although the courts are permitted to set the bond in a different amount for good cause shown.[1]

If a company cannot afford to post a bond in the amount set by the court, the company may be forced to file for bankruptcy in order to stop the plaintiff from taking its assets during the appeal. Such a stay could disrupt payments by the company, including payments to Alaska and the other states under the MSA. This problem was most vividly demonstrated by the Engle case in Florida, in which a class of smokers was awarded $145 billion in punitive damages. Had there not been an appeal bond limit in place at that time, the defendant tobacco companies would clearly have gone bankrupt, likely resulting in the termination of all MSA settlement payments nationwide. However, because Florida had previously enacted legislation limiting the size of the appeal bond, the companies were able to post the limited bond required under state law and pursue their appeal. During the appeal, settlement payments to the states

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[1] Alaska R. App. P. 204(d).

continued. The appellate court ultimately rejected and reversed the verdict in its entirety. The case is now before the Florida Supreme Court.[2]

To date, 33 states have recognized the possibility that a large supersedeas bond may cause the tobacco companies to be unable to meet their obligations to the states under the MSA, and these states have passed legislation or amended court rules to limit the size of the required bond in cases involving large judgments. In addition, five states do not require a defendant to post a bond at all during an appeal. Some states have passed legislation that applies broadly to all litigants, while other states have passed more limited legislation that applies only to MSA signatories, successors, and affiliates. The bond limits vary in amount. Nearly all of the statutes include a provision that allows the court to increase the bond amount up to the full value of the judgment if the court determines that the appellant is dissipating assets to avoid paying a judgment.

H.B. 260 would impose a $100 million limit on the supersedeas bond that MSA signatories, successors, and affiliates must post to stay the execution of a judgment in Alaska while a case is on appeal. This bond limit would not change the substantive law -- meaning it does not affect who ultimately wins or loses the lawsuit -- or affect the rights of plaintiffs to recover fully the damages to which they are entitled if a judgment is upheld on appeal. Plaintiffs are also protected by the provision in the bill allowing the court to require a bond amount up to the value of the judgment if the appellant is dissipating its assets to avoid paying a judgment. H.B. 260 thus would not injure plaintiffs in any way, but would merely ensure that the tobacco companies are able to appeal a judgment while continuing to make their MSA payments to Alaska and the other states.

For the foregoing reasons, I urge the committee to pass H.B. 260. Thank you.

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2 Engle v. Liggett Group Inc., 873 So. 2d 1222 (Fla. 2004) (review granted).

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ALASKA ★STATE★ CHAMBER OF COMMERCE

April 12, 2005

Representative Lesil McQuire, Chair
House Judiciary Committee
State Capitol, Room 118
Juneau, AK 99801-1182

The Honorable Chair and Members of the House Judiciary Committee

The Alaska State Chamber of Commerce would like to express our support for HB 260, currently under consideration by the Judiciary Committee. The State Chamber supports any action by the legislature that encourages development and construction within the State of Alaska. Funds from the Tobacco Master Settlement Agreement (MSA) have continually been utilized for bonding for state capital projects. These funds ultimately have led to an increase in state capital projects and increases in employment within the construction industry while also eliminating much of the backlog associated with deferred maintenance. The State Chamber of Commerce fully supports the continued used of settlement funds for future capital projects and to continue to pay for the remainder of state bond indebtedness.

House Bill 260 seeks to cap the appeal bond required for a stay of execution in a civil trial. While HB 260 doesn't limit liability in a civil trial, it ensures that tobacco companies will be able to continue to provide to the state, funds under the MSA.

Without tobacco settlement funds, the state would be hard pressed to come up with additional funds that have been leveraged to provide necessary capital dollars for state infrastructure upgrades, and for the elimination of deferred maintenance projects. The chamber of Commerce supports any action meant to protect funds collected by the state that encourage business growth, construction and elimination of state deferred maintenance.

Yours in economic prosperity,

Wayne A. Stevens
President/CEO

Alaska Native Brotherhood Camp 2

April 13, 2005

Representative Lesil McGuire, Chair
House Judiciary Committee
State Capitol, Room
Juneau, Alaska 99801

RE: House Bill 206

Dear Representative McGuire:

Our Legislative Committee has reviewed HB 260 and we feel that the bill is fair and responsible legislation. The bond cap of $100,000,000 appears to be appropriate to assure any litigation that may arise and it appears that the state is benefiting from use of the MSA funds. It would be in the best interest of the state to continue to keep tobacco out of the hands of our children. It also appears that other states have accepted the bond cap reform act.

Thank you for your time. We will be sending a more detailed letter as soon as possible.

Sincerely,

Bob

Robert W. Loescher, Chair
Legislative Affairs Committee

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April 13, 2005

State of Alaska
House Judiciary & Finance Committees

Re: HB 260

To whom it may concern,

Upon review of the proposals contained within HB 260 (particularly penalties and taxes), we have several thoughts to present for consideration:

Penalties:

As the state's highest volume (single store) tobacco retailer we feel strongly about tobacco enforcement for the protection of children. However, we feel that the current law suspending a businesses license on a 1st offense of selling to a minor to be excessive. Essentially, a single malicious person could put all of our (8) employees out of work. We suggest joint penalties for both the person committing the offense and the business ($5,000 apiece for the 1st offense per year, $10,000 for the second). In addition, we feel that persons selling tobacco should be trained and licensed as is done for the Alaska alcohol industry.

OTP Tax:

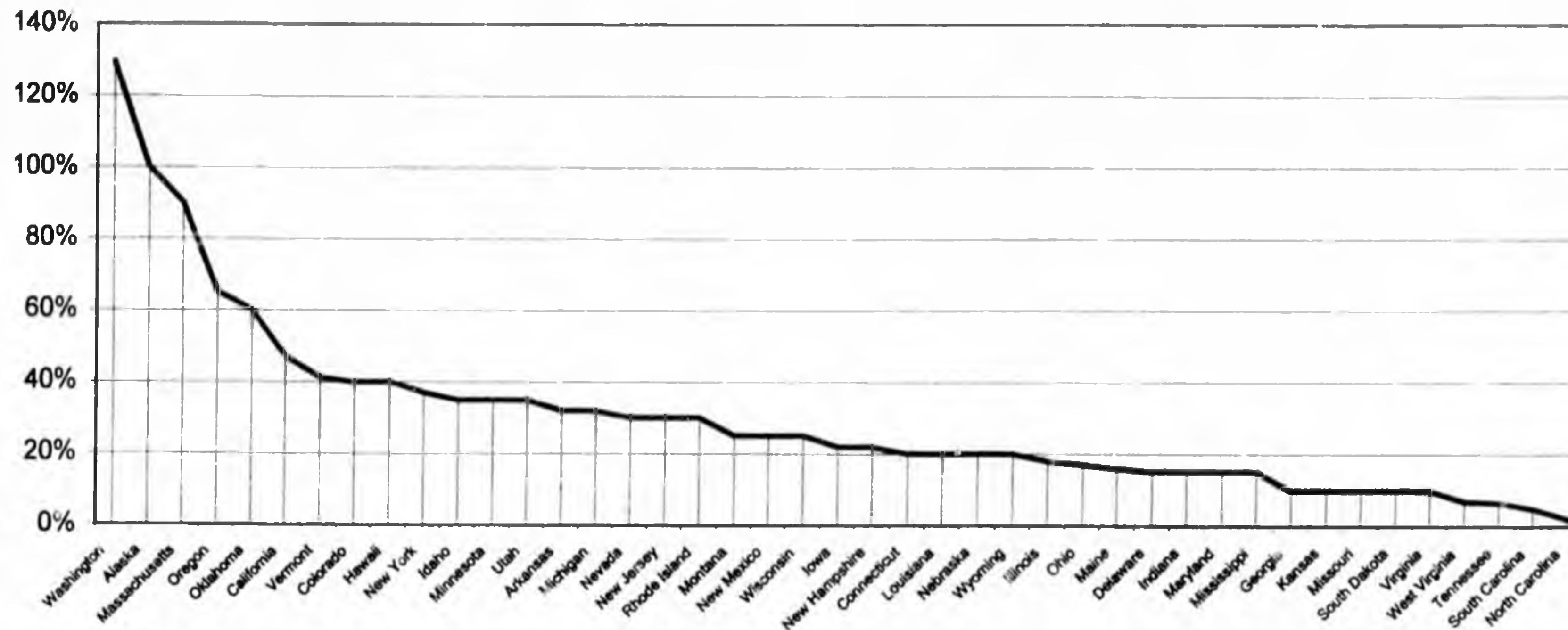
We are also aware that the majority of our OTP consumers (particularly cigars) already purchase from the internet. Under current US laws, attempts to tax this activity are not expected to succeed due to the lack of state-to-state reporting of OTP sales. In other words, it's virtually impossible to catch an offender purchasing through the internet. Increasing this tax and attempting to force consumers to pay it will most likely have poor results. The attached chart demonstrates how Alaska could become 100% higher in price on cigars than Florida (which has zero tax).

Cigarette Tax Acceleration:

The larger the price gap grows between states, the more opportunity exists for a profitable black-market, and increased supply to juveniles. A single case of cigarettes shipped from Kentucky to Anchorage or the bush areas of Alaska has a profit potential of $1,800 to $2,400. The attached chart defines the issue.

Sincerely,

Mike Patterson, CEO, Lucky Raven, Inc.



OTHER STATES	PER 10 CIGARS	LITTLE CIGARS	TOBACCO / SNUFF	CIGARS / TOBACCO	CHEW / SNUFF
Alabama	4.0¢-40.5¢/ 10 cigars		0.6¢-5.25¢/ ounce		
Arizona	26.3¢-$2.60/ 20 cigars		13.3¢/ounce		
Florida	$0		25% Wholesale Price		
Georgia	23% Wholesale Price	2.5¢/10 cigars			
North Dakota				28% Wholesale Price	16¢-60¢/ounce
Texas	1.0¢-15.0¢/10 cigars		35.2% Manufacture Price		

Sources: Bonnie Herzog (Citigroup) & www.taxadmin.org

CAMPAIGN for TOBACCO-FREE Kids

THE BIG CIGARETTE COMPANIES' PUSH FOR APPEAL BOND CAPS

When defendants lose a lawsuit and are required to pay monetary damages to plaintiffs, in most cases they must post a bond or other security before they are allowed to appeal the adverse ruling to a higher court. This appeal bond is meant to protect the plaintiffs by ensuring that funds will be available to pay the judgment amount if it is upheld on appeal. Without an appeal bond, losing defendants could delay payments (at no cost) and also waste, hide, or otherwise protect their assets during the appeal process. Such appeal bonds have traditionally been set at the same amount as the monetary judgment against the defendants, plus costs and interest. In recent years, however, the big cigarette companies have been supporting legislation to change the appeal bond requirements, typically by setting a maximum amount or cap of $100 million or less (when judgments against the cigarette companies can be in the billions). Many states have already passed these appeal bond caps, despite the following problems.

- The traditional appeal bond requirements that set the appeal bond at an amount equal to the monetary judgment amount have been working fine for decades.
- Cigarette companies that are found liable for causing enormous amounts of personal harm already enjoy a number of protections against large monetary judgments or related large appeal bond requirements, including: a) the recent U.S. Supreme Court ruling restricting the size of punitive damages; b) state and federal laws that make certifying plaintiff classes in attempted class-action lawsuits against the companies difficult; c) new state laws making product liability lawsuits more difficult or limiting the damages that can be collected through such lawsuits; and d) court rulings that appeal bond requirements cannot be set at levels that would force a losing defendant wishing to appeal into bankruptcy or out of business.[1]
- The proposals to change the long-standing appeal bond requirements in various states have been prompted by major cigarette companies that are trying to obtain special protections against large judgments against them. In fact, some of the proposals apply the appeal bond caps only in cases with monetary judgments against tobacco companies.
- To date, there has not been any lawsuit where a major cigarette companies was not able to appeal an adverse judgment because of an appeal bond requirement. Nor has any appeal bond even caused a major cigarette company any significant economic hardship. Most notably, in the multi-billion dollar judgments against the cigarette companies in the Florida *Engle* class action lawsuit and the Illinois *Miles* light/low-tar class action lawsuit ruling, the losing cigarette manufacturers were able to meet the appeal bond requirements under traditional appeal bond rules. In the Miles case, for example, Philip Morris threatened that the initial $12 million appeal bond would force the company to declare bankruptcy. After some adjustments to that requirement, under existing traditional appeal bond rules, however, Philip Morris posted the required bond, still amounting to billions of dollars, and continued its appeal (which is still pending).
- The large cigarette companies have massive financial resources and can easily secure appeal bonds in the billions of dollars. For example, when Philip Morris USA was the losing defendant in the Illinois *Miles* case, its net revenues were $18.87 billion and its net operating income (roughly equal to its profit) was $5.01 billion; and its parent company, Altria Group, Inc. had total assets of $87.5 billion, net revenues of $80.4 billion, operating income of $16.6 billion, and an established available line of credit of $15.0 billion.[2]

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- An appeal bond cap of $100 million or any similar amount drastically reduces the protections of winning plaintiffs in multi-billion dollar lawsuits and allows losing defendants that are big cigarette companies (or other large corporations) to secure appeal bonds by paying only pennies on the dollar. A $100 million appeal bond in the *Miles* case would have amounted to less than one percent of the monetary judgment against Philip Morris; and Philip Morris would have been able to post the $100 appeal bond directly by using only about two percent of its operating income for just a single year.[3]

- An appeal bond cap of $100 million or any similar fixed amount provides absolutely no protection at all for losing defendants in the vast majority of lawsuits where the awarded damages amount is much less than $100 million. Yet losing individual and small business defendants have much less access to financial resources or credit, even on a proportional basis, than the big cigarette companies (or other large corporate defendants) and are much more likely than the big cigarette companies to have trouble posting appeal bonds equal to the full judgment amounts.

- Even if a state wanted to make its existing appeal bond requirements easier on defendants, the just-described flaws with fixed appeal bond caps show that they do not and cannot improve the situation. But there are more flexible alternatives available that would strike a much more equitable and constructive balance between the need both to protect winning plaintiffs and to treat losing defendants fairly. For example:

  > The courts could simply be provided with the authority to reduce the amount of an appeal bond below the monetary judgment amount (plus costs and interest) -- but only to the extent necessary to make the appeal bond reasonably available to the defendant. In determining whether an appeal bond or security in a certain amount is reasonably available, the court could be directed to consider such factors as whether it is possible for the defendant to post the bond or other security without severe economic hardship such as being forced into bankruptcy or out of business, whether the interests of the prevailing parties can be adequately protected if the appeal bond amount is lowered, and whether the defendant has any non-frivolous grounds for making an appeal.[4]

  > If a more formal appeal bond cap is desired, creating a flexible cap based on some percentage of a defendant's total assets or average net revenues over the past several years (perhaps 50%) would make more sense than some inequitable fixed amount.

  > However it is done, the court could also be given clear authority to issue related orders when establishing an appeal bond requirement to protect against any possible efforts by defendants to divert, hide, or waste their assets during the appeal process.

National Center for Tobacco-Free Kids, June 16, 2004/ Eric Lindblom

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[1] See, e.g., *State Farm v. Campbell*, 000 U.S. 01-1289, April 7, 2003, Foundation for Taxpayer and Consumer Rights, *The CALA Files: The Secret Campaign by Big Tobacco and Other Major Industries to Take Away Your Rights*, July 2000; R.J. Reynolds, Class Actions, http://www.rjrt.com/TI/TILitigationLitSumClassAction.asp, downloaded March 8, 2004; *Pennzoil v. Texaco*, 481 U.S. 1, 1987 [overruling the 2nd Circuit on jurisdictional grounds but leaving the 2nd Circuit's ruling on appeal bonds and due process intact].

[2] Altria Group, Inc., *2002 Annual Report*. For more on cigarette company assets, see their filings with the U.S. Securities and Exchange Commission, http://www.sec.gov/edgar/searchedgar/webusers.htm; and the TFK factsheet *Philip Morris's Ability to Post Lawsuit Appeal Bonds*, http://tobaccofreekids.org/research/factsheets/pdf/0228.pdf.

[3] At that time, Philip Morris's operating income was $5.01 billion, and its net revenues were $18.87 billion. Altria Group, Inc., *2002 Annual Report*.

[4] Judicial discretion with authority to make rulings to protect against defendants' diversion or waste of assets is at the core of the changes to the rules governing appeal bonds made by the Supreme Court Rules Committee in Illinois (home of the *Miles* lawsuit), http://www.state.il.us/court/SupremeCourt/Rules/MRAmend061504.htm#305.

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State Capitol, Juneau, Alaska 99801-1182

MEMORANDUM

DATE: April 13, 2005

TO: Representative Lesil McGuire, Chair
House Judiciary Committee

CC: House Judiciary Committee Members

FROM: Representative Kevin Meyer KCM

RE: Back-up Material for HB 260 Tobacco: Bonds; Tax; Possession by Minors

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Attached to this memo is back-up material on HB 260 Tobacco: Bonds; Tax; Possession by Minors.

HB 260 will be heard in the House Judiciary Committee today, April 13. If you have any questions prior to the committee hearing, please do not hesitate to contact my office.

Thank you for your consideration of this important legislation.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
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MEMORANDUM April 12, 2005

SUBJECT: Sectional Summary of HB 260 (Work Order No. 24-LS0837\Y)

TO: Representative Kevin Meyer
Attn: Suzanne Cunningham

FROM: Kathryn L. Kurtz KK
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1. Adds language to AS 11.76.105 prohibiting purchase, attempted purchase, and attempted possession of tobacco by a minor, as well as possession.

Section 2. Accelerates the existing increase in the excise tax on cigarettes under AS 43.50.190(a).

Section 3. Increases the excise tax on tobacco products levied under AS 43.50.300 from 75 to 100 percent. Adds to the list of activities taxable under this section.

Section 4. Rewords AS 43.50.320(a), and adds a clause to reflect the addition of activities in sec. 3.

Section 5. Adds language providing for a buyer's license, corresponding to the new activities in sec. 3.

Section 6. Conforming change to AS 43.50.320(d) to reflect the existence of the new buyer's licenses.

Section 7. Makes a conforming change to reflect the existence of the new buyer's licenses, and sets the license fee for buyer's licenses at $25.

Section 8. Increases the scope of the licensee reporting requirement to reflect tobacco products imported for personal consumption under a buyer's license.

Section 9. Expands the definition of "distributor" to include one who ships tobacco to an individual in the state for personal consumption.

Section 10. Adds a buyer a holding buyer's license to the definition of "licensee."

Section 11. Defines "buyer."

Section 12. Adds a new section to the statutes relating to the tobacco product master settlement agreement in AS 45.53 setting a maximum bond amount to be furnished in order to get a stay of execution on the judgment.

Section 13. Conforming change to AS 47.12.030(b) reflecting the additions to AS 11.76.105 made in sec. 1, and treating them in the same way as possession of tobacco by a minor for purposes of charging, prosecution, and sentencing.

Section 14. Amends a contingent amendment to the rate of the additional tax on cigarettes in AS 43.50.190. The contingent language increases the additional cigarette tax in AS 43.50.190 rather than the original cigarette tax in AS 43.50.090, the proceeds of which are dedicated to education under AS 43.50.140. The contingent language will take effect if a court enters a judgment finding that the 1997 increase to the cigarette tax in AS 43.50.090 violated the constitutional provision prohibiting the dedication of funds. The change to the contingent language reflects the acceleration of the tax increase in sec. 2 of this bill.

Section 15. Gives notice of indirect amendments to court rules relating to bonds made by sec. 12 of the bill.

Section 16. Makes the limitation established in sec. 12 applicable to cases pending on or after the effective date of the bill.

Section 17. Makes the tax increases and limit on the bond amount contingent on the court rule change in sec. 15 receiving the required supermajority vote.

Section 18. Effective date.

KLK:lmb
05-116.lmb

Alaska Department of Revenue
Tax Division

1. Information Related to Taxation

    a. FY 05 Cigarette and Other Tobacco Products Summary

    b. Tobacco Tax Revenue Information

    c. Tobacco Settlement

    d. Compliant Tobacco Product Manufacturers: State of Alaska

    e. Notices

        i. Cigarette Tax Stamps

        ii. Cigarette Shipping Requirements

    f. Statutes pertaining to tobacco excise taxation and importation requirements