

ALASKA LEGISLATURE COMMITTEE FILES 2007-2008

SJUD

12

Alaska State Legislature



Senator Hollis French

SB 78 - Motor Vehicle Window Tinting

Sponsor Statement

Illegally tinted windows cause a number of safety concerns in Alaska's local communities. The dark tints create a danger for peace officers who approach vehicles, as they can completely block any view of the driver and passengers. In addition, these tints deny pedestrians, bikers and motorcyclists the opportunity to confirm they have been seen by a driver when meeting in an intersection or sharing a roadway.

Currently it is illegal for a vehicle to be on Alaska's roadways if the window tinting allows less than thirty percent of the light to transmit through the glass. However, it is not illegal for higher levels of tinting to be installed by auto detailing shops and similar businesses.

SB 78 would close this loophole by making it a misdemeanor to install illegal window tinting. The bill would also help enforcement efforts by allowing police to "go to the source" by bringing charges against installers.

Please join me in supporting this legislation.



WINDOW TINT

ALASKA / FEDERAL LAW

ALASKA LAW

- Front windshield 5" strip of tint
- Front driver and passengers side windows must allow 70% Visible Light Transmission (VLT).
- All other rear windows must allow 40% VLT, (some exemptions).
- Special use vehicles must comply with 49 C.F.R. §71.205 (Federal Law)

FEDERAL LAW

- The Federal DOT specifies a minimum of 70% VLT for window tinting on the windshield and the windows to the immediate left and right of the driver.
- The Federal DOT does not specify any VLT requirements for any other windows

OTHER JURISDICTIONS

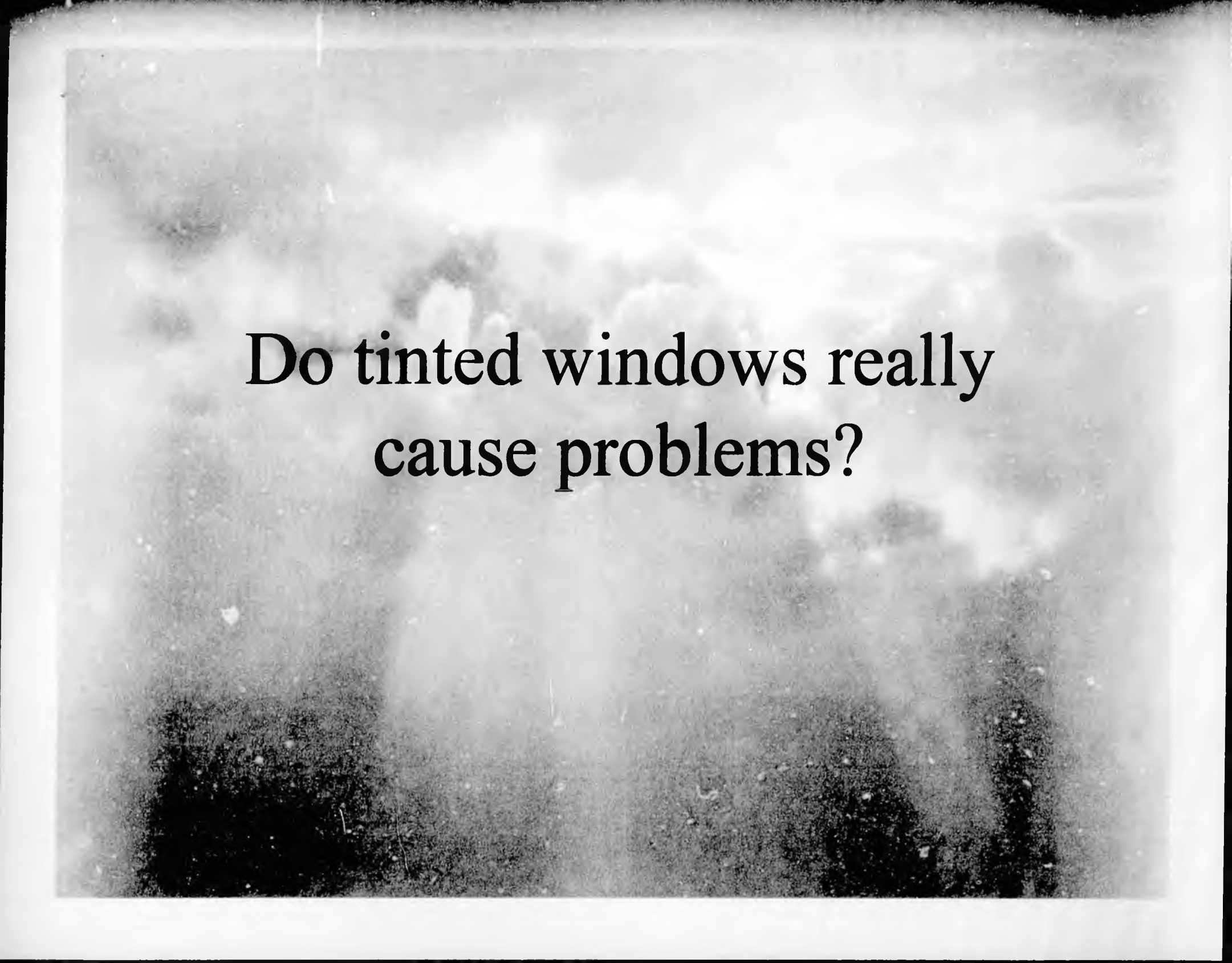
- At least 13 other States have similar, or more restrictive laws.
- 90% of Canadian provinces have a similar or more restrictive laws.
- 5 States allow 50% VLT (front sides)
- 31 States range from 20%-40% VLT (front sides)
- General rule, the hotter the climate, the greater window tint allowed.

For Consideration

- **Driving with tinted windows at night is the same as driving with sunglasses on.**
- **Sunglasses are regulated by the Food and Drug Administration (FDA) as medical devices.**
- **Per the American National Standards Institute (ANSI) Cosmetic sunglasses must let through at least 40% of the visible light (not recommended for wear at night).**
- **Most people choose General Purpose sunglasses in the 15 to 25% VLT range.**
- **Some want Alaska's Tinted window law to allow tints that only allow 30% of VLT.**

Common filter colors

- light gray, which transmits **35 to 43%** of visible light.
- dark gray, which transmits **14 to 25%** of visible light
- light brown or tan, which transmits **27 to 29%** of visible light
- dark brown, which transmits **18 to 27%** of visible light
- yellow, which transmits **68 to 71%** of visible light
- amber, a high-definition filter that inhibits blue light
- neutral gray or brown, for indoor or computer use, transmitting **60% of visible light**



**Do tinted windows really
cause problems?**

Police Officer Shot To Death After Car Chase

(March 24, 2007)--A Dallas police officer was shot and killed Friday after a car chase in which the suspect's car ended up nose to nose with the squad car, a police spokesman said.

Senior Corporal Mark Timothy Nix, 33, was declared dead at Parkland Memorial Hospital. He had been on **the force** nearly seven years and was a veteran of the first Gulf War. The car chase ended in a West Dallas neighborhood when the suspect lost control of his car.

The police car and the suspect's car ended up front bumper to front bumper.

A police spokesman says the suspect opened fire, shooting from inside his car.

The chase began around 5 p.m. after officers spotted the man, initially **believed to be a suspect in a killing** committed earlier this week, driving down the street, the spokesman said.

Police spokesman Vernon Hale said the car's dark, tinted windows initially prevented officers from knowing how many people were inside.

Texas Law allows 65% tint / 35% VLT - Front D/P

“The red and gray Chevrolet Caprice with customized rims, driven by Mr. Ruiz, had nearly blacked-out tinted windows, and the officers could see neither the race of the driver – the suspects in the Wednesday morning slaying were black – nor how many people were in the car”.

With his other hand, he yanked out his expandable baton, known as an asp, and began hammering on the window trying to break it.

The Caprice's window barely budged, held together by the heavy tint. He managed no more than a small hole when a shot came from inside the car. Police later found his baton and sidearm laying beside the car.

Mr. Ruiz fired at least one round from an assault rifle, which may have at some point jammed. The bullet pierced Senior Cpl. Nix's neck near his clavicle. He dropped to the ground. He did not fire his weapon.

Examples of other problems

- Chicago - Police officers unable to see clearly through a tinted window mistakenly shot a passenger they thought had a gun (cell phone). *Mayor vowed to ban all tinted windows.*
- Numerous examples of criminals who were not identified because witnesses could not see the driver through tinted windows.
- Collisions with motor vehicles and pedestrians blamed on **poor visibility** due to tinted windows.

- **The National Highway Traffic Safety Administration has noted that tinted windows can hamper police in determining whether a vehicle's occupants are wearing seat belts or have their children properly protected in car seats.**
- **Heavy tints may also prevent other motorists from viewing the road ahead by looking through the cabins of cars in front of them - something many drivers do, especially when roads are congested.**
- **Tinted windows can impair a driver's vision, particularly at night, making it difficult to see pedestrians and bicyclists, for example.**

TINT EXAMPLES

Taken from the Tint industry and photographs
of actual vehicles in Alaska

Nissan Maxima

70% VLT
(Light / Legal)

30% VLT
(medium)

5% VLT
(Heavy /Limo)

Note: pictures taken on a sunny day (see shadows), far better than seen in real life during





Ford Explorer - Front DR/PS 75% VLT Rear doors/windows 20% VLT (stock).



**Dodge Durango - Front DR/PS 80% VLT Rear doors/windows
20% VLT (stock).**



Toyota Avalon - Front DR/PS 70% VLT (stock), Rear doors 35% VLT, Rear Window 20% VLT (aftermarket).

Reasons not to change current law

- Our current standard assures that Alaskan vehicles are in compliance with the tinted window laws in most States and Canadian provinces.
- Increased visibility for the driver.
- Increased safety for pedestrians.
- Increased safety for Law Enforcement officers.

Reasons to support SB78

- **Protects the public from unethical installers who would tint a vehicle, knowing that the installation is illegal.**
- **Will reduce the number of citations issued to motorists.**
- **Will increase safety on our highways.**

You can always wear sunglasses on a sunny day, but can't take off window tint at night.

A black and white photograph of a cloudy sky. The clouds are soft and white, filling most of the upper and middle portions of the frame. The bottom portion of the image is dominated by a dark, grainy, and textured foreground, possibly representing a field of low-lying vegetation or a similar natural setting. The overall composition is simple and atmospheric.

THANK YOU
ANY QUESTIONS?

13 AAC ~~04.2234~~ Tinted vehicle windows

(a) A person may not drive a motor vehicle on a highway, public road, street, or parking lot with mirrored tinting material on any window of the vehicle. Except as provided in this section, a person may not drive a motor vehicle on a highway, public road, street or parking lot with aftermarket tinting material or aftermarket striping material on any window of the vehicle.

(b) Aftermarket tinting of vehicle windows is allowed as follows:

(1) the front windshield may have a strip of tinting material applied to the top edge, known in the industry as an "eyebrow," which does not extend downward more than five inches from the top of the glass;

(2) the driver and front passenger side windows may have tinting material that permits at least 70 percent light transmittance;

(3) the rear door windows, quarter glasses, and back glasses may have tinting material that permits at least 40 percent light transmittance;

(4) limousines and passenger buses used to transport persons for hire, motor homes, and vehicles identified by the vehicle manufacturer as multipurpose may have tinting material that complies with Standard No. 205, Glazing Materials, in 49 C.F.R. 571.205 (1992).

(c) The windows of a vehicle may have tinting material that permits less light transmittance than that specified in (b) of this section if

(1) a driver or a passenger who frequently travels in the vehicle is required for medical reasons to be shielded from the direct rays of the sun;

(2) the medical reasons are certified annually by a physician licensed to practice in this state; and

(3) the certification is carried in the vehicle.

(d) Tinting materials must be green, gray, bronze, or neutral smoke in color, or a sun reflective auto film.

(e) Light transmittance must be measured by using a light transmittance measuring device with an allowance for manufacturing variances of plus or minus three percent. The accuracy of the device must be certified by the manufacturer.

(f) In this section, "light transmittance" means the ratio, expressed as a percentage, of the amount of total light that is allowed to pass through a window, including glazing, to the amount of total light falling on the window.

(g) All vehicles must comply with this section by July 1, 1994.

(h) A tinted rear window on a motor vehicle is exempt from regulations relating to the tinting or

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luminous transmittance materials used in motor vehicle windows, if the vehicle's owner has proof that the rear window tinting was installed before July 1, 1994, and the vehicle is equipped with driver-side and passenger-side rearview mirrors.

History: Eff. 10/2/92 Register 123; am 4/2/94, Register 129; am 2/8/98, Register 145

Authority: AS 28.05.011

13 AAC 04.225. Windshields and wipers

(a) No person may drive a motor vehicle which is not equipped with a windshield, nor may a person drive a motor vehicle equipped with a defective windshield or windows which obstructs, obscures or impairs the driver's view. This section does not require a windshield as equipment upon a motor-driven cycle, bicycle, or off-highway vehicle.

(b) No person may drive a motor vehicle with a sign, poster or other nontransparent material on the front windshield or window of the vehicle which obstructs, obscures, or impairs the driver's view; nor may a person drive a motor vehicle when there is an accumulation of snow, ice or frost on the windshield or windows which obstructs, obscures or impairs the driver's view.

(c) The windshield on a motor vehicle must be equipped with devices for cleaning rain, snow and other moisture from both sides of the windshield; the device must be constructed to be controlled or operated by the driver of the vehicle, and must be maintained in good working order.

(d) A motor vehicle required to have a windshield, except vehicles which do not have enclosed passenger compartments, must be equipped with a defrosting device to remove snow, ice, frost, or internal moisture from the windshield; this defrosting device must be maintained in good working order.

(e) Repealed 6/28/79.

(f) No person may sell or drive a motor vehicle or truck camper manufactured or assembled after July 1, 1968, unless it is equipped with safety glazing material constructed, treated or combined with other materials to reduce substantially, in comparison with ordinary sheet glass or plate glass, the likelihood of injury to persons by glass which is cracked or broken.

(g) A person who drives on a highway a motor vehicle which is not equipped with a windshield in a position to deflect objects which would hit his face must wear an eye-protective device as prescribed for motorcycle operators in sec. 350 of this chapter.

History: In effect before 7/28/59; am 12/15/61, Register 3; am 8/10/66, Register 22; am 12/31/69, Register 31; am 6/28/79, Register 70

Authority: AS 28.05.011

13 AAC 04.227. Steering assembly, wheel alignment and body condition

(a) No vehicle may be driven upon a highway or a vehicular way or area with loose or defective wheels or steering assembly which constitutes a hazard.

LEGISLATIVE RESEARCH REPORT

MARCH 12, 2007



REPORT NUMBER 07.150

PUNISHMENT FOR ILLEGAL AUTOMOBILE WINDOW TINTING IN OTHER STATES

PREPARED FOR SENATOR HOLLIS FRENCH

BY CHUCK BURNHAM, LEGISLATIVE ANALYST

You asked about other states' laws regarding automobile window tinting. Specifically, you wanted to know what punishments other states impose on individuals or businesses that illegally install window tinting.¹

Our review of the applicable laws of ten western states found that the punishment for illegal installation of window tinting ranged from a fixed fine of \$57 in Idaho to a maximum fine of \$1,000 and up to one year in jail in California and Nevada.² It is important to note, however, that eight of the states whose laws we reviewed allow courts the discretion to set penalties at any level below the maximum amounts prescribed in statute. The following table shows statutory citations, crime classifications, and the associated penalties for illegal installation of window tinting for the ten states we reviewed.

¹ The term "window tinting" is used in this report to describe transparent material that is applied to automobile windows to reduce or filter the amount of light coming through the windows. This material is variously described in other states' laws as "sunscreen" or "sun-shade."

² We reviewed the laws of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, and Washington. We include copies of the applicable laws of these states as Attachment A.

Selected States' Laws Regarding Illegal Installation of Window Tinting			
State	Statutes	Crime Classification	Maximum Penalty
Arizona	A.R.S. § 28-959.01 (Prohibition) A.R.S. § 28-121 (Classification) A.R.S. § 13-802 (Penalty)	Class 2 Misdemeanor	\$750 fine
California	Cal. Veh. Code § 26708.5 (Prohibition) Cal. Veh. Code § 42002 (Penalty)	Misdemeanor	\$1,000 fine and/or six months in jail
Colorado	C.R.S. § 42-4-227	Misdemeanor	\$500 (minimum) to \$5,000 fine
Idaho	Idaho Code § 49-944 (Prohibition) Idaho Infraction Rule 9 (Penalty)	Infraction	\$57.00 fine set by Court Rule
Montana	Mont. Code § 61-9-429 (Prohibition) Mont. Code § 46-18-212 (Penalty)	Misdemeanor	\$500 fine and/or six months in jail
Nevada	Nev. Rev. Stat. § 484.6195 (Prohibition) Nev. Rev. Stat. § 484.999 (Classification) Nev. Rev. Stat. § 193.150 (Penalty)	Misdemeanor	\$1,000 fine and/or six months in jail
New Mexico	N.M. Stat. § 66-30846.1	Petty Misdemeanor	\$75 fine
Oregon	O.R.S. § 815.221 (Prohibition) O.R.S. § 815.222 (Penalty) O.R.S. § 153.138 (Fine Schedule) O.R.S. § 153.800 (Violations Clerk)	"Illegal Window Tinting"	Fine amount set by the Violations Bureau of the presiding Court
Utah	Utah Code § 41-6a-1635 (Prohibition) Utah Code § 41-6a-202 (Classification) Utah Code § 76-3-301 (Penalty)	Class C Misdemeanor	\$750 fine
Washington	RCW § 46.37.430 (Prohibition) RCW § 46.37.435 (Classification) RCW § 9A.20.021 (Penalty)	Misdemeanor	\$1,000 fine and/or ninety days in jail
<p>Notes: All but two of the states we reviewed allow courts the discretion to set actual penalties at any level below the statutory maximum. Two states--Idaho and Oregon--have fixed fines. Idaho sets its fine in Court Rule while Oregon allows fines to be set by the "Violations Bureau" of each local jurisdiction.</p> <p>Source: Lexis database of states' laws.</p>			

I hope you find this information to be useful. Please do not hesitate to contact us if you have questions or need additional information.

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of Fairbanks, Inc.
2550 South Cushman
Fairbanks, Alaska 99701
Phone (907) 456-8400 Fax (907) 456-8406

Fax

To: Senator French	From: Andrew Felt
Fax: 907-465-6595	Email:
Phone:	Pages: 4
Re: SB 78	Date:

Urgent For Review Please Comment Please Reply Please Recycle

A perspective and information about window tint from those who earn their living from it.



of Fairbanks, Inc.
2550 South Cushman Street
Fairbanks, Alaska 99701

Phone (907) 456-8400

Fax (907) 456-8406

3-15-2007

Dear Senator French,

Thank you for hearing our testimony before the Judiciary Committee regarding SB 78. We appreciate the chance to present our concerns regarding the bill, and would like to provide you with a bit more information that we hope you find helpful.

First of all, the statement by the representative from the Anchorage Police Department that Alaska is in compliance with the Federal standards of vehicle window light transmission is a half-truth. The Federal standards mean nothing when the vehicles are registered and operated in their respective states. In 1992, Alaska basically adopted the Federal standard of what is required for light transmission through windows when the vehicle is built. For passenger cars, that limit is 70% visible light transmission (VLT) on the front doors, and 40% VLT on the rear sides and back window. All other vehicles, SUVs, minivans, pickup trucks, and full size vans only have a limit on the front doors, 70% VLT like cars. The rear windows in those vehicles can be, and most often is dark glass. This darkness is part of the glass, not a tinting film, it can not be removed from the glass. The line between passenger cars and SUVs has become very fuzzy in the last decade. For instance, a Subaru Outback wagon is a car, but a Subaru Forester wagon is an SUV. By our current Alaska law, you could tint the back windows on the Forester as black as you wanted, but any tint, even the lightest shade would be out of compliance on the Outback. Makes a ton of sense, right?

What is window tint? Window tint is a polyester film of varying degrees of darkness. The industry standards are 50%, 35%, 20%, and 5%. The lower the percentage the darker the tint becomes. To give you a frame of reference, the back windows on your average SUV, like a Chevy Tahoe or Ford Explorer are about 20%VLT. The benefits of window tint applied to a vehicle's windows are many. First of all, in the event of a collision, the tint will keep the broken shards of glass from flying around inside the vehicle. Second is elimination of both UVA and UVB rays from entering the passenger cabin. These are both important to me when my 5 year old daughter is in the car. The tint also reduces heat gain, allowing your air conditioning to work less, saving fuel, and it reduces glare all year. A very nice feature this time of year, where we have lots of light and plenty of glare from snow. This is also a nice feature at night to reduce eye fatigue when that 4x4 pickup is behind you, with their headlights shining right in your back window. The most popular shades of tint we use are the 35% and 20% films. We will not install any tint darker than 35% on the front doors of any vehicle, or go darker than 20% on the rear windows any car. We always explain to every customer what Alaska law is regarding this matter, and have them sign a form acknowledging we have done so. If you saw a car we had tinted the windows of going down the road, you would have no trouble at all seeing the driver of the vehicle. Most of our customers do not want their

08/16/2007 19:33 9874558406 AUTO TINT DESIGN OPE PAGE 03/04

windows to be too dark. They want window tint products for the above mentioned benefits, not to be invisible inside their vehicles. I will venture to say that this is probably why we rarely have anyone we have done work for cited by law enforcement for having tinted windows. Thousands of Alaskan citizens are enjoying the benefits of this product right now; this bill will deny them future use of it.

The majority of the states in the U.S. allow 35% VLT on the front doors of a vehicle, and many of those allow the back windows to be somewhat darker. Because of a wide variety of manufacturers and glass colors, most states allow some leeway around those numbers. Only Rhode Island and Pennsylvania are as restrictive as Alaska. The fact most states allow a darker degree of tinting than the very few that don't is not an accident. It came about by all the parties with an interest in the law coming together and forming an agreeable compromise, a process that we would like to see happen in Alaska.

Senate Bill 78 would eliminate the ability for legitimate businesses to install any tint on a passenger car, or from the front doors on SUVs, pickups, etc. The limits set in Alaska are simply too high to even be able to install the lightest tint. We are not opposed to the spirit of this bill. We agree that tint that is too dark on the front doors of a vehicle is indeed potentially hazardous to both the driver and to those around him/her. However, not all tint is too dark. We would like to see the 1992 law revisited and have some more reasonable limits set. We welcome the inclusion of consequences for those who would install tint beyond those limits.

Senator French, your statement at the beginning of the minutes from the hearing in the Transportation Committee states that this bill would cause window tint businesses to help enforce the tint laws. This would be true if we had a reasonable set of rules to help enforce. As such, SB 78 puts us out of the tint business, leaving no legitimate businesses to help enforce the law. There will always be those with no regard for vehicle regulations who will refuse to comply with our state laws. This is true for areas other than window tint. Painfully loud stereo systems, loud exhausts, trucks lifted too high, or running studded tires all year, are just a few examples. Those who want their windows to be very dark will get it done somehow. A guy being paid cash, working out of his garage will be next to impossible to enforce this law upon. You can buy kits off the Internet, buy tint at any auto parts store, even use tint designed for houses or commercial buildings. We just don't believe that SB 78 will solve the problem it sets out to address.

Therefore, let's work together to solve that problem. Giving Alaskans a reasonable set of rules to work within will help keep tint that is too dark off the streets. As the law stands now, the lightest tint is no more illegal than the darkest. Our offer still stands to come to Juneau to demonstrate to the committee members, law enforcement, and anyone else who may be interested what this product is all about. We feel that there is quite a bit of misunderstanding about this product, and a brief demonstration of the product would clear up a lot of the confusion.

Attached is a chart of the 50 state window tint laws, quite a few of the states have recently revisited their regulations in this matter, revising unnecessarily restrictive laws to the benefit of their citizens and business community. Please feel free to contact me at any time if I may be of more help to you.

Sincerely,

Andrew Felt
Cell: 907-388-2577

A

STATE WINDOW TINTING RULES & LAWS

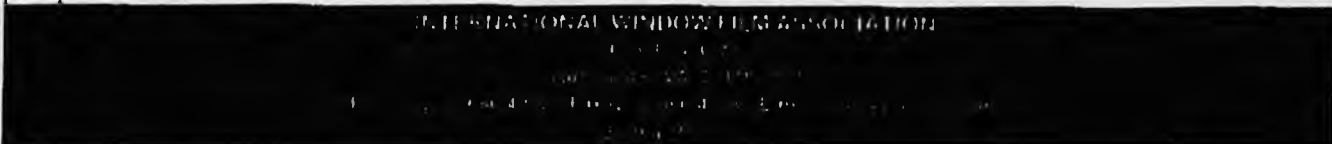
1/22/07 Updates			% OF VISIBLE LIGHT TRANSMISSION						% OF REFLECTIVITY		RESTRICTED COLORS					
ST	LAW	TYPE	WIND	F SIDE	B SIDE	B SIDE	REAR	REAR	F SIDE	B SIDE	ALL GLASS	LAR MIRR	CERTIF.	STCKR/ACC	MEDICAL	
ENACTED			SHIELD	(car)	(MPV)	(car)	(MPV)	(SEE LEGEND)		(SEE LEGEND)	REQ	REQ.				
AL	96	NET	6"	32	32	ANY	32	ANY	20	20	N/S	NO	YES	SPEC / ALL	YES	
AK	94	NET	5"	70	40	ANY	40	ANY	NMMA	NMMA	R, A, Y	NO	NO	NO	YES	
AZ	94	NET	AS1	33	ANY	ANY	ANY	ANY	35	35	R, A	YES	NO	NO	YES	
AR	93	NET	5"	25	25	10	10	10	NR	NR	N/S	NO	NO	SPEC / DRIVER	YES	
CA	99	NET	4"	70	ANY	ANY	ANY	ANY	MNIR	MNIR	R, A, B	YES	NO	NO	YES*	
CO	95	NET	4"	NO	ANY	ANY	ANY	ANY	NMMA	NMMA	R, A	NO	NO	NO	NO	
CO	95	NET	4"	27	27	27	27	27	NMMA	NMMA	R, A	YES	NO	RECOMMEND	NO	
CT	94	NET	AS1	35	35	ANY	ANY	ANY	21	27	N/S	YES	YES	SPEC/ALL	NO	
DE	92	NET	AS1	70	ANY	ANY	ANY	ANY	NR	NR	N/S	YES	NO	SPEC / DRIVER	YES	
FL	91	NET	AS1	28	15	8	15	6	25	35	ALL	YES	NO	SPEC / DOOR	YES	
GA	2005	NET	6"	32	32	ANY	32	ANY	20	20	R, A	NO	NO	NO	YES	
HI	89	NET	4"	35	35	ANY	35	ANY	NR	NR	N/S	YES	NO	NO	NO	
IA	83	NET	AS1	70	ANY	ANY	ANY	ANY	NE	NE	N/S	NO	NO	NO	YES	
ID	92	FILM	AS1	35	20	ANY	35	ANY	35	35	N/S	YES	NO	NO	YES	
IL	90	NET	6"	NO	ANY	ANY	ANY	ANY	MBNR	MBNR	N/S	YES	NO	NO	YES	
IN	2003	VAGUE	AS1	30	30	VAGUE	30	VAGUE	25	25	N/S	NO	YES	NO	YES	
KS	87	NET	AS1	35	35	35	35	35	MBNR	MBNR	R, A, Y	YES	NO	RECOMMEND	NO	
KY	94	FILM	AS1	35	18	8	18	8	25	25	N/S	NO	YES	SPEC/DOOR	NO	
LA	93	NET	AS1	40	25	ANY	12	ANY	20	20	N/S	NO	YES	SPEC / DRIVER	YES	
MA	85	NET	6"	35	35	35	35	35	35	35	N/S	YES	NO	RECOMMEND	YES	
ME	1993	FILM	4"	50	50	ANY	50	ANY	MBNR	MBNR	N/S	YES	YES	NO	YES	
MD	95	NET	5"	35	35	ANY	35	ANY	NONE	NONE	R, A, Y	YES	YES	SPEC/ALL	YES	
MI	2000	NET	4"	4"	ANY	ANY	ANY	ANY	35	35	N/S	NO	NO	NO	YES	
MN	85	VAGUE	NO	50	50	50	50	50	20	20	N/S	NO	NO	SPEC/DRIVER	YES	
MO	2002	NET	AS1	35	ANY	ANY	ANY	ANY	35	35	N/S	YES	NO	NO	YES	
MS	2006	NET	AS1	28	28	ANY	28	ANY	20	20	N/S	NO	YES	SPEC / ALL	YES	
MT	91	FILM	AS1	35	20	ANY	20	ANY	35	35	N/S	NO	NO	RECOMMEND	YES	
NC	2001	NET	AS1	35	35	ANY	35	ANY	20	20	R, A, Y	YES	NO	NO	YES	
ND	2003	NET	70	50	ANY	ANY	ANY	ANY	NR	NR	N/S	YES	NO	NO	NO	
NE	2008	NET	AS1 OR 5"	35	20	35	20	35	35	35	***R, A, Y	VAGUE	NO	NO	YES	
NH	90	NET	6"	NO	35	ANY	35	ANY	NR	NR	N/S	YES	NO	RECOMMEND	NO	
NJ	2003	NET	NO	NO	ANY	ANY	ANY	ANY	NMMA	NMMA	N/S	YES	NO	NO	YES	
NM	97	NET	AS1 OR 5"	20	20	ANY	20	ANY	NONE	NONE	N/S	YES	YES	SPEC / DRIVER	YES	
NV	93	NET	AS1	35	ANY	ANY	ANY	ANY	NONE	NONE	N/S	YES	YES	NO	YES	
NY	91	NET	6"	70	70	ANY	ANY	ANY	NR	NR	N/S	YES	NO	SPEC/ALL	YES	
OH	2004	NET	70	50	ANY	ANY	ANY	ANY	MNIR	MNIR	R, Y	YES	YES	SPEC/ALL	YES	
OK	95	NET	AS1 OR 5"	25	25	ANY	25	ANY	25	25	N/S	YES	YES	NO	YES	
OR	2003	NET	6"	35	35	ANY	35	ANY	13	13	R, G, A, Y, BK	YES	YES	NO	YES	
PA	99	NET	NO	70	70	ANY	70	ANY	NR	NR	N/S	YES	NO	SPEC/REAR	YES	
RI	2000	NET	AS1	70	70	ANY	70	ANY	NONE	NONE	N/S	NO	NO	NO	YES	
SC**	92	NET	AS1	27	27	ANY**	27	ANY	MBNR	MBNR	R, A, Y	YES	YES	SPEC / ALL	YES	
SD	89	NET	AS1	35	20	NR	20	NR	NR	NR	N/S	NO	YES	SPEC / ALL	YES	
TN	90	NET	AS1	35	35	ANY	35	ANY	NR	NR	N/S	NO	NO	SPEC / ALL	YES	
TX	2003	NET	AS1 OR 5"	25	25	ANY	ANY	ANY	25	25	R, B, A	YES	YES	SPEC / DRIVER	YES	
UT	94	NET	AS1	43	ANY	ANY	ANY	ANY	NMMA	NMMA	N/S	YES	NO	NO	NO	
VT	84	NET	AS1	NO	ANY	ANY	ANY	ANY	NR	NR	N/S	YES	NO	NO	NO	
VA	99	NET	AS1	50	35	ANY	35	ANY	20	20	R, A, Y	YES	NO	NONE	YES	
WA	93	FILM	6"	35	35	ANY	35	ANY	35	35	R, Y, G, BK	YES	YES	SPEC / DRIVER	YES	
WI	96	NET	AS1	50	35	35	35	35	MBNR	MBNR	N/S	YES	NO	NO	YES	
WV	91	NET	5"	35	35	ANY	35	ANY	20	20	R, A, Y	YES	YES	SPEC / ALL	YES	
WY	98	NET	AS1 OR 5"	28	28	ANY	28	ANY	20	20	N/S	YES	NO	NO	YES	
Wash... DC	NET	AS1 OR 5"	70	50	35	50	35								YES	

This information is prepared for IWFA members by the Legislative Committee and consultants and represents our understanding of the law, regulations and rules of the states published in it. If you are an IWFA member and you have questions on these interpretations, call the IWFA office. In all cases, refer to your local authority for current laws, rules or regulations. Your current state law is the final authority.

* Medical Exemption Day Time Only **Pick-Up Trucks are not considered MPV's ***Active AS1 only

LEGEND:

NET = VLT% refers to the combined LT of film and glass
 Reflectivity: NR = NOT REGULATED, NE = NOT EXCESSIVE (NOT SPECIFIC), MBNR = MUST BE NON-REFLECTIVE (NOT SPECIFIC),
 MNIR = MUST NOT INCREASE REFLECTIVITY, NMMA = NO METALLIC OR MIRRORED APPEARANCE, NONE = NO REFERENCE
 TO REFLECTIVITY IN THE CURRENT LAW
 Colors: R = RED, A = AMBER, Y = YELLOW, B = BLUE, G = Gold, BK = BLACK, NS = NOT SPECIFIED,



SB

84

25-LS0596\O
Bannister
3/19/07

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

BY

Offered:
Referred:

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

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

9 (1) the cigarettes are tested under

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

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

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

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

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

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

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

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

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

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

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

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

21 **Sec. 18.74.040. Alternative test methods.** (a) If the state fire marshal
22 determines that cigarettes cannot be tested by a test method established in
23 AS 18.74.030(a), a manufacturer of the cigarettes shall propose an alternative test
24 method and performance standard for the cigarettes to the state fire marshal. On
25 approval of the proposed test method and a determination by the state fire marshal that
26 the performance standard proposed by the manufacturer is equivalent to the
27 performance standard prescribed by AS 18.74.030(d), the manufacturer may employ
28 the proposed alternative test method and performance standard to certify the cigarette
29 under AS 18.74.080.

30 (b) Unless the state fire marshal demonstrates a reasonable basis why the
31 alternative test method should not be accepted under this chapter, the state fire marshal

1 shall authorize a manufacturer to use an alternative test method and performance
2 standard to certify cigarettes for sale in this state if the state fire marshal

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

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

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

12 **Sec. 18.74.050. Testing laboratories.** (a) Testing of cigarettes under this
13 chapter shall be performed by a laboratory that has been accredited under standard
14 ISO/IEC 17025 of the International Organization for Standardization or by another
15 comparable accreditation standard required by the state fire marshal.

16 (b) A laboratory that conducts cigarette testing under this chapter shall
17 implement a quality control and quality assurance program that ensures the
18 repeatability of the testing results. The repeatability value may not be greater than
19 0.19. In this subsection,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (2) 10 millimeters from

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

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

21 cigarette.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (c) The penalties against

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (4) "manufacturer" means

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

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

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

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

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

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

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

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

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

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

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

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

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

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

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 19, 2007

SUBJECT: CSSB 84() relating to the testing and packaging of cigarettes to be sold, offered for sale, or possessed in this state (Work Order No. 25-LS0596\L)

TO: Senator Donald Olson
Attn: Denise Liccioli

FROM: *JB*
Theresa Bannister
Legislative Counsel

This memo accompanies a draft of the bill described above.

1. Delegation issue. Please be aware that certain sections in the bill raise issues relating to unlawful delegation of legislative authority. See secs. 18.74.040(b), 18.74.120(b), and 18.74.220.
2. Civil penalties. Some of the civil penalties in sec. 18.74.160 seem high, although it may be appropriate in this situation for cigarettes. A civil penalty may be considered a criminal matter by the courts if it is large enough to indicate that the community considers it criminal.
3. Interstate commerce issue. Since this bill establishes a requirement for cigarettes coming into the state, it will place some level of a burden on interstate commerce. This raises the issue whether the requirement would be prohibited by the interstate commerce provision of the United States Constitution. The question will be whether the burden the bill imposes on interstate commerce is clearly excessive in relation to the anticipated local benefits. I do not have enough information to evaluate the burden that this bill will impose.

If I may be of further assistance, please advise.

TLB:lmb
07-059.lmb

Enclosure

MEMORANDUM

To: Altria Corporate Services, Inc.
From: Michael D. White, Esq.
Date: March 20, 2007
Subject: Comments on Alaska's RCIP Bills (Senate Bill 84 and House Bill 131)

COMMENTS ON ALASKA'S RCIP BILLS (SENATE BILL 84 AND HOUSE BILL 131)

The following sets forth Philip Morris USA's further comments on certain points raised by Legislative Counsel with respect to the drafts of Senate Bill 84 and House Bill 131, concerning reduced cigarette ignition propensity (RCIP). In particular, Legislative Counsel has questioned whether sections 18.74.040(b), 18.74.120(b), and 18.74.220 of those bills unlawfully delegate legislative power. For the following reasons, we believe that those provisions, if ever challenged as an unlawful delegation of legislative power, would be upheld as constitutional.

1. The Legislature's delegation of authority in the Alaska RCIP bills is permissible.

Delegation of legislative authority is not prohibited in Alaska. *See Municipality of Anchorage v. Anchorage Police Dept. Employees Assoc.*, 839 P.2d 1080, 1084 (Alaska 1992); *see also DeArmond v. Alaska State Development Corp.*, 376 P.2d 717, 722-725 (Alaska 1962) (affirming legislative delegation where the delegation had "sufficient standards" for guidance); *Walker v. Alaska State Mortgage*, 416 P.2d 245, 249-51 (Alaska 1966) (adopting the *DeArmond* approach); *Western Star Trucks v. Big Iron Equipment*, 101 P.3d 1047, 1053 (Alaska 2004) (applying federal judicial decisions as persuasive authority based on legislative history and intent); *Kenai Peninsula Borough v. Kenai Peninsula Ed. Ass'n*, 572 P.2d 416, 420-421 (Alaska 1977) (finding permissible delegation of legislative authority to a private group or persons).

Rather, the Alaska Supreme Court has adopted a sliding scale approach to analyze delegation of legislative authority. *Usibelli Coal Mine, Inc. v. State, Dept. of Natural Resources*, 921 P.2d 1134, 1144 (Alaska 1996). The broader the grant of authority, the more specific the standards must be to govern its exercise. Conversely, where authority is delegated within "a

narrowly defined field ... there is less need for explicit, detailed standards to guide agency action." *Id.* (citation omitted); *see also Anchorage Police Dept. Empl. Ass'n*, 839 P.2d at 1085.

With respect to the Alaska RCIP bills at issue here, the field of delegation is extraordinarily narrow, and delegation concerns are correspondingly at their weakest. Particularly given this context, the specific sections at issue -- which require the state fire marshal to look to the implementation decisions made by another state in deciding whether to approve an alternative test method (section 18.74.040(b)), whether to accept a proposed packaging marking (section 18.74.120(b)), and responsibility for enforcing and implementing the RCIP law (section 18.74.220) -- give the fire marshal sufficient direction to guide his or her actions.

2. The Legislature's adoption of the laws of other jurisdictions, as in the Alaska RCIP bills, has been repeatedly recognized as valid in Alaska.

The Alaska RCIP bills' references to the laws of other jurisdictions in sections 18.74.040(b), 18.74.120(b), and 18.74.220 reflect a legitimate exercise of legislative power. Indeed, Alaska statutes and case law have repeatedly recognized the validity of adoption of the laws of other jurisdictions, either by incorporation or as a source of guidance. For example, Alaska statutes specifically incorporate portions of federal tax law by reference. *See* AS 43.20.021 "Internal Revenue Code Adopted by Reference"; AS 43.20.200(b) (adopting limitation period to assess and collect taxes). The Alaska Supreme Court has recognized these incorporations and given effect to them as the Legislature intended. *Louisiana Pac. Corp. v. State of Alaska, Dept. of Revenue*, 26 P.3d 422, 427 (Alaska 2000). *See also State Dept. of Revenue v. Dyncorp and Subsidiaries*, 14 P.3d 981, 985-86 (Alaska 2000) (affirming the adoption of the IRC by reference as well as the body of case law interpreting the adopted provisions).

Similarly, a wide range of Alaska statutes have expressly required reliance upon the construction of laws of other jurisdictions as persuasive authority:

- AS 45.50.545 (Consumer Protection) "In interpreting AS 45.50.471 due consideration and great weight should be given the interpretations of 15 U.S.C. 45(a)(1)(§5(a)(1) of the Federal Trade Commission Act)."
- AS 12.37.060(b) (Authorized Communications Interceptions) "When the language of AS 12.37.010-12.37.130 is the same or similar to the language of 18 U.S.C. 2510-2521, the courts of this state in construing AS 12.37.010-12.37.130 shall follow the construction given to those federal statutes by the federal courts."
- AS 40.19.050 (Public Records and Recorders) "To the extent the provisions of this chapter follow the Uniform Federal Lien Registration Act (1978) they shall be applied and construed to effectuate their general purpose to make uniform with the law with respect to the subject of this chapter among the states enacting it."

In addition to the explicit adoption of other laws for guidance, there is also implicit guidance adopted by the Alaska Legislature. Some examples include the following:

- The Sherman Act. The Alaska Anti-Trust Act is based on the Sherman Anti-Trust Act and the Alaska Legislature gave specific instructions in its committee report to adopt the federal case law for interpreting the Alaska Act. *West v. Whitney -Fidalgo Seafoods, Inc.*, 628 P.2d 10, 14, n.6 (Alaska 1981).
- The Uniform Probate Code. Alaska looks to the interpretations of the Uniform Probate Code for guidance in interpreting its own act's provisions. *Estate of Maldonado*, 117 P.3d 720, 723, n.15-19 (Alaska 2005).

Given that the Legislature has adopted the laws of other jurisdictions (both directly and as persuasive authority) multiple times and in broad reaching statutes, and that the Legislature's adoption of the laws of other jurisdictions has been repeatedly recognized as valid, the Legislature is well within its power to refer to other states' RCIP laws in sections 18.74.040(b), 18.74.120(b), and 18.74.220 of the Alaska RCIP bills.

Prepared at the request of Altria Corporate Services, Inc.

**REFERENCES TO THE NEW YORK REDUCED CIGARETTE IGNITION
PROPENSITY LAW BY OTHER STATES**

Reduced cigarette ignition propensity (RCIP) legislation has been signed into law in Vermont, California, Illinois, New Hampshire, Massachusetts, and Utah, and has passed the legislature and awaits the Governor's signature in Kentucky and New Jersey. As set forth below, all of these laws and bills have provisions that directly refer to the New York RCIP law.¹

Vermont (VSA tit. 20, chapter 173)

"The commissioner ... (3) Shall assure that the implementation and substance of this section is in accordance with the implementation and substance of the New York Fire Safety Standards for Cigarettes." Section 2757(f)

"Any marking approved and in use for the sale of cigarettes in the state of New York shall be approved unless the commissioner determines that the New York Fire Safety Standards for Cigarettes have changed significantly since those standards were effective on June 28, 2004." Section 2757(d)(2)

California (Health and Safety Code §§ 14950-14960)

"This section shall be implemented in accordance with the implementation and substance of the New York Fire Safety Standards for Cigarettes that are effective on June 28, 2004." Section 14952(g)

"A marking in use and approved for the sale of cigarettes in the State of New York shall be deemed approved." Section 14954(b)

Illinois (425 ILCS 8/)

"This Act shall be implemented in accordance with the implementation and substance of the New York Fire Safety Standards for Cigarettes." 425 ILCS 8/20(d)

"A marking in use and approved for sale of cigarettes in the State of New York shall be deemed approved." 425 ILCS 8/40(d)

¹ The New York requirements are codified as the "Fire Safety Standards for Cigarettes" at Title 19 NYCRR Part 429. The New York regulations took effect on June 28, 2004. The underlying statute is the "Cigarette Fire Safety Act of 2000" (codified at Executive Law 156-c, entitled "Fire Safety Standards for Cigarettes"), which was amended on August 16, 2006.



New Hampshire (RSA 339-F)

“This chapter shall be implemented in accordance with the substance of the New York Fire Safety Standards for Cigarettes, as amended.” Section 4(IV)

“A marking in use and approved for the sale of cigarettes in the state of New York shall be deemed approved.” Section 8

Massachusetts (MGLA 64C)

**“Upon receipt of the request, the secretary shall approve or disapprove the marking offered, except that the secretary shall approve any marking in use and approved for sale in New York State pursuant to the New York fire safety standards for cigarettes.”
Section 2D(d)**

Utah (2007 UT SB 200, signed by the Governor on March 19, 2007)

“This part shall be implemented in accordance with the implementation and substance of the New York Fire Safety Standards for Cigarettes.” Section 53-7-403(9)

“Upon receipt of the request, the state fire marshal shall approve or disapprove the marking offered, except that the state fire marshal shall approve any marking in use and approved for sale in New York pursuant to the New York Fire Safety Standards for Cigarettes.” Section 53-7-405(4)

Kentucky (2007 KY S 134, enrolled on March 12, 2007)

**“The implementation and substance of the New York Fire Safety Standards for Cigarettes shall be persuasive authority in the implementation of Sections 1 to 8 of this Act.”
Section 2(8)**

New Jersey (A2575, passed both houses on March 15, 2007)

“This act shall be implemented in accordance with the implementation and substance of the New York Fire Safety Standards for Cigarettes.” Section 4(h)

“Upon receipt of the request, the director shall approve or disapprove the marking offered, except that the director shall approve any marking in use and approved for sale in New York pursuant to the New York Fire Safety Standards for Cigarettes.” Section 6(d)



Cindy Smith

From: Steven R Belanger Sr [steven_belanger@dps.state.ak.us]
Sent: Friday, March 23, 2007 10:29 AM
To: Sen. Hollis French
Cc: Cindy Smith
Subject: Cigarette question

Senator French,

During the hearing for CSSB84 that took place on Wednesday a question was asked regarding effects of cigarettes such as marijuana, roll your own and cigars. The question was if any of the statistics regarding the losses of life or property due to cigarettes included these styles of cigarettes.

I posed the question to our statistician and also our public education office and this is what was discovered. We have no reports that indicate these types of cigarettes as ignition sources. The reason being is these cigarettes due to the nature of their composition do not burn on their own. In order for these cigarettes to deliver a full length burn they must be continually drawn on to sustain their burning capability. If left unattended they go out on their own and need to be relit.

I hope this answers that question. If you or the committee have any other questions that I might be able to help with please don't hesitate to contact me.

Rusty Belanger
Acting State Fire Marshal

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