

**CS FOR HOUSE BILL NO. 79(STA)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

Offered: 4/18/97

Referred: Judiciary, Finance

Sponsor(s): REPRESENTATIVES BUNDE, James

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to the sale, possession, purchase, taxation, and regulation of  
2 products containing tobacco and to the offense of possession of tobacco by a  
3 person under 19 years of age."

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

5 \* Section 1. AS 11.76.100(b) is amended to read:

6 (b) Notwithstanding the provisions of (a) of this section,

7 (1) a person holding a business license endorsement issued under  
8 AS 43.70.075, or an agent or employee of a person who holds a business license  
9 endorsement issued under AS 43.70.075, may not be charged with a violation of  
10 (a)(1) of this section if the customer presented proof of age indicating that the  
11 owner and possessor of the proof of age was 19 years of age or over;

12 (2) a person who maintains a vending machine is not in violation of  
13 (a)(2) of this section if the vending machine is located

14 [(1)] on premises licensed as a beverage dispensary under

1 AS 04.11.090, licensed as a club under AS 04.11.110, or licensed as a package store  
2 under AS 04.11.150, [;] and

3 **(A) at least 10 feet away from any entrance to the premises**  
4 **that the public may use** [AS FAR AS PRACTICABLE FROM THE  
5 PRIMARY ENTRANCE]; and

6 (B) in a place that is directly and continually supervised by a  
7 person employed on the licensed premises during the hours the vending  
8 machine is accessible to the public [; OR

9 (2) IN AN EMPLOYEE BREAK ROOM OR OTHER CONTROLLED  
10 AREA OF A PRIVATE WORK PLACE THAT IS NOT GENERALLY  
11 CONSIDERED A PUBLIC PLACE].

12 \* **Sec. 2.** AS 11.76 is amended by adding new sections to read:

13 **Sec. 11.76.102. Unlawful sale of products containing tobacco.** (a) A person  
14 commits the offense of unlawful sale of products containing tobacco if the person

15 (1) sells cigarettes

16 (A) that are not in their original, unopened package or container  
17 obtained from the distributor;

18 (B) in their original, unopened package or container if the  
19 cigarette package or container does not display a warning required by 15  
20 U.S.C. 1333; or

21 (C) in packs of fewer than 20 cigarettes per pack; or

22 (2) holds a business license endorsement under AS 43.70.075 and sells  
23 or offers for sale cigarettes, cigars, tobacco, or products containing tobacco at the  
24 person's retail outlet

25 (A) without assuring that the cigarettes, cigars, tobacco, or  
26 products containing tobacco are kept in a secure place as required by  
27 AS 43.70.075(f)(1);

28 (B) at which the person has failed to post the warning sign  
29 required by AS 43.70.075(f)(2);

30 (C) to a person under 19 years of age without complying with  
31 AS 43.70.075(f)(3); or

1 (D) without first giving the notice to an employee required by  
2 AS 43.70.075(g).

3 (b) The court shall forward a record of each person convicted under this  
4 section who holds a business license endorsement under AS 43.70.075, or who is an  
5 employee or agent of a person who holds a license endorsement under AS 43.70.075,  
6 to the Department of Commerce and Economic Development.

7 (c) A person who violates this section is guilty of a violation. Upon  
8 conviction, the court shall impose a fine of \$300.

9 **Sec. 11.76.104. Use of false identification to obtain tobacco by a person**  
10 **under 19 years of age.** (a) A person under 19 years of age may not knowingly  
11 present false or fraudulent proof of age for the purpose of purchasing a tobacco  
12 product.

13 (b) A person who violates this section is, upon conviction, guilty of a  
14 violation.

15 \* **Sec. 3.** AS 11.76.105 is amended to read:

16 **Sec. 11.76.105. Possession of tobacco by a person under 19 years of age.**  
17 (a) A person under 19 years of age may not knowingly possess a cigarette, a cigar,  
18 tobacco, or a product containing tobacco in this state. This subsection does not apply  
19 to a person **working in cooperation with a peace officer to make a controlled**  
20 **purchase of a product containing tobacco in order to obtain evidence of the**  
21 **commission of a violation of AS 11.76.100. However, if the person is under 18**  
22 **years of age and is a person for whom the disabilities of minority have not been**  
23 **removed under AS 09.55.590 and who has not arrived at the age of majority**  
24 **under AS 25.20.020, the provisions of this subsection do not apply unless the**  
25 **person has first obtained the approval of the person's parent or guardian to**  
26 **participate in the controlled purchase of a product containing tobacco** [WHO IS  
27 A PRISONER AT AN ADULT CORRECTIONAL FACILITY].

28 (b) Possession of tobacco **or a product containing tobacco in violation of**  
29 **(a) of this section** by a **person under 19 years of age** [MINOR] is a violation. **Upon**  
30 **conviction, the court shall impose a fine of \$300.**

31 \* **Sec. 4.** AS 11.76.107(a) is amended to read:

1 (a) A person commits the offense of failure to supervise a cigarette vending  
 2 machine if the person owns premises licensed as a beverage dispensary under  
 3 AS 04.11.090 or licensed as a club under AS 04.11.110 or licensed as a package store  
 4 under AS 04.11.150 and with criminal negligence fails to have an employee supervise  
 5 a vending machine on those premises that dispenses cigarettes, cigars, tobacco, or  
 6 products containing tobacco as required by AS 11.76.100(b)(2)(B)  
 7 [AS 11.76.100(b)(1)(B)].

8 \* **Sec. 5.** AS 11.76 is amended by adding a new section to read:

9 **Sec. 11.76.109. Definitions for AS 11.76.100 - 11.76.109.** In AS 11.76.100 -  
 10 11.76.109, unless the context requires otherwise,

11 (1) "person" has the meaning given in AS 11.81.900;

12 (2) "proof of age" means a valid driver's license or valid identification  
 13 card made of or encased in plastic that contains a photograph of the holder and a  
 14 statement of age or date of birth of the person;

15 (3) "tobacco product" or "product containing tobacco" means a product  
 16 that contains tobacco and is intended for human consumption;

17 (4) "vending machine" means a mechanical, electric, or electronic self-  
 18 service device that, upon insertion of money, tokens, or another form of payment,  
 19 automatically dispenses a tobacco product.

20 \* **Sec. 6.** AS 29.10 is amended by adding a new section to article 1 to read:

21 **Sec. 29.10.110. Home rule municipality taxing authority not preempted.**

22 The provisions of AS 43.50, relating to taxes on products containing tobacco, and  
 23 AS 43.70.075, relating to business license endorsements authorizing sales of products  
 24 containing tobacco, do not preempt a home rule municipality from adopting and  
 25 enforcing additional requirements for the licensure, sale, and taxation of products  
 26 containing tobacco or from developing tobacco-related education programs.

27 \* **Sec. 7.** AS 43.50.070 is amended to read:

28 **Sec. 43.50.070. Revocation of licenses.** (a) The department may suspend or  
 29 revoke a license issued under AS 43.50.010 - 43.50.180

30 (1) for a criminally negligent violation of AS 11.76.100, 11.76.107, or  
 31 a violation of AS 43.50.010 - 43.50.180 or a regulation of the department adopted

1 under AS 43.50.010 - 43.50.180;

2 (2) if a licensee ceases to act in the capacity for which the license was  
3 issued; or

4 (3) if a manufacturer, distributor, or wholesale distributor negligently  
5 sells tobacco or products containing tobacco to a nonlicensed retailer or a retailer  
6 whose license endorsement under AS 43.70.075 has been suspended **or revoked**.

7 **(b)** A person whose license is suspended or revoked may not sell cigarettes or  
8 permit cigarettes to be sold during the period of the suspension or revocation on the  
9 premises occupied or controlled by that person. A disciplinary proceeding or action  
10 is not barred or abated by the expiration, transfer, surrender, renewal, or extension of  
11 a license issued under AS 43.50.010 - 43.50.180. The department shall comply with  
12 the provisions of **AS 44.62** ( [THE] Administrative Procedure Act [(AS 44.62)]).

13 \* **Sec. 8.** AS 43.70.075 is amended to read:

14 **Sec. 43.70.075. License endorsement.** (a) **A** [UNLESS A PERSON HAS A  
15 BUSINESS LICENSE ENDORSEMENT ISSUED UNDER THIS SECTION, A]  
16 person may not

17 **(1)** sell cigarettes, cigars, tobacco, or products containing tobacco as  
18 a retailer **unless, for each retail outlet at which cigarettes, cigars, tobacco, or**  
19 **products containing tobacco are to be sold, the person has obtained a business**  
20 **license endorsement issued under this section; an** [. AN] endorsement required  
21 under this **paragraph** [SECTION] is in addition to any other license or endorsement  
22 required by law; **or**

23 **(2)** **renew the business license endorsement required by (1) of this**  
24 **subsection unless the person complies with (i) of this section.**

25 (b) The department, upon payment of a fee of **\$100** [\$25], shall issue a  
26 business license endorsement to a person who applies for a business license under this  
27 chapter, and may renew the endorsement issued under this subsection for a fee of **\$100**  
28 [\$25]. The endorsement expires at the same time as the **business** license to which it  
29 attaches.

30 (c) The department

31 **(1) shall refuse to issue an endorsement under this section to a**

**person who applies for an endorsement while an endorsement issued to the person for another retail outlet is suspended or revoked;**

(2) may refuse to issue an endorsement under this section if there is reasonable cause to believe that the information submitted in the application is false or misleading and is not made in good faith.

(d) **Subject to (h) of this section, if** [IF] a person who holds an endorsement issued under this section, or an agent or an employee of a person who holds an endorsement issued under this section acting within the scope of the agency or employment, has been convicted of violating AS 11.76.100, **11.76.102**, or 11.76.107, or **is found by the department to have violated** [VIOLATES A PROVISION OF THIS SECTION OR] a regulation implementing this section adopted under AS 43.70.090, the department **shall**

(1) [MAY] suspend the endorsement for a period of

(A) **90** [NOT MORE THAN (1) 45] days; [OR]

(B) **180** [(2) 90] days [,] if within the past 24 months the person has been previously convicted of violating AS 11.76.100, **11.76.102**, or 11.76.107, or **has been found by the department to have violated** a provision of [THIS SECTION OR] a regulation implementing this section adopted under AS 43.70.090;

(C) **one year if within the past 24 months the person has been previously convicted two times of violating AS 11.76.100, 11.76.102, or 11.76.107 or has been found by the department to have violated a provision of a regulation implementing this section adopted under AS 43.70.090; and**

(2) **permanently revoke the endorsement if within the past 24 months the person has been previously convicted three or more times of violating AS 11.76.100, 11.76.102, or 11.76.107 or has been found by the department to have violated a provision of a regulation implementing this section adopted under AS 43.70.090.**

(e) If a person who receives an endorsement under this section has multiple retail outlets, a suspension **or revocation** imposed under (d) of this section applies

1 only to the retail outlet in which the violation occurs.

2 (f) A person who holds a **business** license endorsement issued under this  
3 section

4 **(1) may not sell or offer for sale cigarettes, cigars, tobacco, or**  
5 **products containing tobacco at the person's retail outlet unless the cigarettes,**  
6 **cigars, tobacco, or products containing tobacco are kept in a secure place; for**  
7 **purposes of this paragraph, "secure place" means**

8 **(A) a secure room, locked cabinet, or similar repository that**  
9 **is accessible only by the authorized employees of the person; or**

10 **(B) kept behind the counter accessible only to a salesperson**  
11 **or an employee of the person holding the business license endorsement if**  
12 **retail sales of the products containing tobacco are made at the counter;**

13 **(2) shall**

14 **(A)** post on the licensed premises a warning sign as described  
15 in this **paragraph; a** [SUBSECTION. A] warning sign required by this  
16 **paragraph** [SUBSECTION] must be at least 6 inches by 18 inches and must  
17 read, in lettering at least 1.25 inches high: "The sale of tobacco products to  
18 persons under age 19 is illegal [.]";

19 **(B)** [A PERSON HOLDING AN ENDORSEMENT ISSUED  
20 UNDER THIS SECTION SHALL] display the **warning** sign in a manner  
21 conspicuous to a person purchasing or consuming tobacco products on the  
22 licensed premises; **the** [. THE] department shall, without charge, furnish  
23 warning signs required under this **paragraph** [SECTION] to a person who  
24 holds an endorsement issued under this section or a person who requests the  
25 sign with the intention of displaying it;

26 **(3) shall, if the person holding a business license endorsement under**  
27 **this section or an agent or employee of the person holding the business license**  
28 **endorsement questions or has reason to question whether a customer purchasing,**  
29 **attempting to purchase, or otherwise procuring or attempting to procure**  
30 **cigarettes, cigars, tobacco, or a product containing tobacco has attained the age**  
31 **of 27 years, require the customer to furnish proof of age acceptable under this**

1 paragraph; for purposes of this paragraph, a valid driver's license or a valid  
2 identification card is acceptable as proof of age when used for identification in the  
3 purchase of cigarettes, cigars, tobacco, or a product containing tobacco only if the  
4 license or identification card is made of or encased in plastic and contains a  
5 photograph of the license or card holder and a statement of age or date of birth.

6 \* **Sec. 9.** AS 43.70.075 is amended by adding new subsections to read:

7 (g) A person engaged in the retail business of selling a tobacco product shall  
8 notify each individual employed by that person as a retail sales clerk, before or at the  
9 time the individual commences work as a retail sales clerk, that state law

10 (1) prohibits the sale or distribution of a tobacco product to any person  
11 under 19 years of age and the purchase or receipt of a tobacco product by any person  
12 under 19 years of age; and

13 (2) requires that proof of age be demanded from a prospective  
14 purchaser or recipient if the person engaged in sale or distribution of the tobacco  
15 product has reason to believe that the prospective purchaser or recipient is not at least  
16 27 years of age.

17 (h) When the department acts under (d) of this section to suspend or revoke  
18 an endorsement issued under this section,

19 (1) if suspension or revocation is based on a conviction under  
20 AS 11.76.100, 11.76.102, or 11.76.107, notwithstanding AS 44.62.330 - 44.62.630 or  
21 another provision imposing a requirement of a hearing to determine whether the  
22 endorsement should be suspended or revoked, the department may act without holding  
23 a hearing;

24 (2) except as provided in (1) of this subsection, the department may not  
25 act without holding a hearing.

26 (i) The department shall develop and periodically offer a training course to  
27 persons engaged in the sale of products containing tobacco. The course must provide  
28 information to persons engaged in the sale of products containing tobacco regarding  
29 federal and state laws and regulations that apply to sales of products containing  
30 tobacco. Attendance at the course at least once in every two-year period is a condition  
31 of renewal of a business license endorsement under (a) of this section. The department

1 shall establish a fee to defray the cost of developing and offering the training cost and  
 2 shall collect the fee from persons attending the training course.

3 \* **Sec. 10.** AS 43.70.080 is amended to read:

4 **Sec. 43.70.080. Disposal of money.** Except as provided in (b) of this  
 5 section, [ALL] money collected by the department under this chapter shall be  
 6 deposited in the general fund.

7 \* **Sec. 11.** AS 43.70.080 is amended by adding a new subsection to read:

8 (b) The money collected by the department under AS 43.70.075(b) shall be  
 9 deposited in the general fund and separately accounted for under AS 37.05.142. The  
 10 annual estimated balance in the account maintained by the commissioner of  
 11 administration under AS 37.05.142 may be used by the legislature to make  
 12 appropriations to establish and maintain a program that makes grants to support  
 13 enforcement of AS 11.76.100 - 11.76.109. The appropriations authorized by this  
 14 subsection are not intended to create a dedication in violation of art. IX, sec. 7,  
 15 Constitution of the State of Alaska.

16 \* **Sec. 12.** AS 43.70.090 is amended to read:

17 **Sec. 43.70.090. Regulations.** The department

18 (1) may adopt regulations necessary to determine and collect the fees  
 19 imposed by this chapter; **and**

20 (2) **shall adopt regulations necessary to implement AS 43.70.075.**

21 \* **Sec. 13.** AS 47.12.030(b) is amended to read:

22 (b) When a minor is accused of violating a statute specified in this subsection,  
 23 other than a statute the violation of which is a felony, this chapter and the Alaska  
 24 Delinquency Rules do not apply and the minor accused of the offense shall be charged,  
 25 prosecuted, and sentenced in the district court in the same manner as an adult; if a  
 26 minor is charged, prosecuted, and sentenced for an offense under this subsection, the  
 27 minor's parent, guardian, or legal custodian shall be present at all proceedings; the  
 28 provisions of this subsection apply when a minor is accused of violating

29 (1) a traffic statute or regulation, or a traffic ordinance or regulation of  
 30 a municipality;

31 (2) **AS 11.76.104, relating to use of false identification for the**

1 **purpose of purchasing tobacco, or** AS 11.76.105, relating to the possession of  
2 tobacco by a person under 19 years of age;

3 (3) a fish and game statute or regulation under AS 16;

4 (4) a parks and recreational facilities statute or regulation under  
5 AS 41.21; and

6 (5) AS 04.16.050, relating to possession, control, or consumption of  
7 alcohol.