

HOUSE BILL NO. 159

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES KOTT, Mulder, Kohring, Sanders

Introduced: 2/25/97

Referred: Labor and Commerce, Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to sale, possession, and purchase of tobacco and tobacco
2 products; amending Rules 603 and 611(d), Alaska Rules of Appellate Procedure;
3 and providing for an effective date."

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

5 * **Section 1.** AS 11.76.100 is repealed and reenacted to read:

6 **Sec. 11.76.100. Selling or giving tobacco to a minor.** (a) A person commits
7 the offense of selling or giving tobacco to a minor if the person is 19 years of age or
8 older and negligently sells, exchanges, or gives a tobacco product to a person under
9 19 years of age.

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

14 (c) Selling or giving tobacco to a minor is a violation and upon conviction is

1 punishable by a fine of not less than \$300.

2 * **Sec. 2.** AS 11.76.105 is repealed and reenacted to read:

3 **Sec. 11.76.105. Possession, purchase, or use of false identification to obtain**

4 **tobacco by a minor.** (a) A person under 19 years of age may not knowingly

5 (1) possess or attempt to purchase a tobacco product in this state; or

6 (2) present false or fraudulent proof of age for the purpose of
7 purchasing a tobacco product.

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

10 * **Sec. 3.** AS 11.76.107 is repealed and reenacted to read:

11 **Sec. 11.76.107. Restrictions on sale of tobacco and tobacco products.** (a)

12 A person may not sell or distribute a tobacco product unless

13 (1) the

14 (A) person also holds a license endorsement issued under

15 AS 43.70.075;

16 (B) sale or distribution occurs on the retail premises; and

17 (C) person purchasing or receiving the tobacco product provides
18 proof of age;

19 (2) the sale or distribution is a wholesale transaction by a person
20 licensed as a manufacturer or distributor under AS 43.50.010; or

21 (3) the sale or distribution is by mail order.

22 (b) Except as provided in this subsection, a person may not sell or distribute
23 a tobacco product by vending machine. The sale or distribution of a tobacco product
24 through a vending machine is permitted if the vending machine is located in

25 (1) a factory, business, office, or other place that is not open to the
26 public;

27 (2) a place that is open to the public but to which a person under the
28 age of 19 years is denied access;

29 (3) a place where alcoholic beverages are sold for consumption on the
30 licensed premises, but only if the vending machine is

31 (A) under the continuous supervision of the owner or lessee of

1 the licensed premises or an employee of the owner or lessee; and

2 (B) inaccessible to the public when the licensed premises is
3 closed;

4 (4) other places, but only if the vending machine (A) is under the
5 continuous supervision of the owner or lessee of the premises or an employee of the
6 owner or lessee; (B) can be operated only by the activation of an electronic switch by
7 the owner or lessee of the premises or an employee of the owner or lessee before each
8 purchase; and (C) is inaccessible to the public when the licensed premises is closed;
9 in any place where supervision of a vending machine, or activation of an electronic
10 switch, is required by this paragraph, the person responsible for that supervision or the
11 activation of the switch shall demand proof of age from a prospective purchaser if the
12 person has reason to believe that the prospective purchaser is under 27 years of age.

13 (c) A person engaged in the sale or distribution of a tobacco product shall
14 demand proof of age from a prospective purchaser or recipient if the person has reason
15 to believe that the prospective purchaser or recipient is under 27 years of age. A
16 prosecution for violation of this subsection may not be brought unless a prosecution
17 is also brought for violation of AS 11.76.100.

18 (d) A person engaged in the retail business of selling a tobacco product shall
19 notify each individual employed by that person as a retail sales clerk that state law (1)
20 prohibits the sale or distribution of a tobacco product to any person under 19 years of
21 age and the purchase or receipt of a tobacco product by any person under 19 years of
22 age; and (2) requires that proof of age be demanded from a prospective purchaser or
23 recipient if the person engaged in sale or distribution of the tobacco product has reason
24 to believe that the prospective purchaser or recipient is under 27 years of age. This
25 notice shall be provided before the individual commences work as a retail sales clerk.
26 The individual shall signify receipt of the notice required by this subsection by signing
27 a form stating as follows:

28 "I understand that state law prohibits the sale or distribution of
29 a tobacco product to persons under 19 years of age and requires
30 that proof of age be demanded from a prospective purchaser or
31 recipient if I have reason to believe that the prospective

1 purchaser or recipient is under 27 years of age. I promise, as a
 2 condition of my employment, to observe this law."

3 Each form signed by an individual shall indicate the date of signature. The employer
 4 shall retain the form signed by an individual employed as a retail sales clerk until 120
 5 days after the individual has left the employer's employ.

6 (e) The court shall forward to the Department of Commerce and Economic
 7 Development a record of each person convicted under this section.

8 (f) A person who violates this section is guilty of a violation and upon
 9 conviction shall be punished by a fine of \$100 for a first offense within a two-year
 10 period, \$500 for a second offense within a two-year period, and suspension of the
 11 license endorsement required under AS 43.70.075 for a period of not more than one
 12 year for a third or subsequent violation within a two-year period.

13 * **Sec. 4.** AS 11.76 is amended by adding a new section to read:

14 **Sec. 11.76.109. Definitions for AS 11.76.100 - 11.76.109.** In AS 11.76.100 -
 15 11.76.109, unless the context requires otherwise,

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

17 (2) "proof of age" means a driver's license or other documentary or
 18 written evidence that is made of or encased in plastic and contains a photograph of the
 19 holder and a statement of age or date of birth that establishes that the person is 19
 20 years of age or older;

21 (3) "tobacco product" means a product that contains tobacco and is
 22 intended for human consumption;

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

26 * **Sec. 5.** AS 28.15 is amended by adding new sections to read:

27 **Sec. 28.15.195. Administrative revocation of minor's license to drive for**
 28 **tobacco offense.** (a) If a peace officer has probable cause to believe that a person
 29 who is not yet 19 years of age has possessed or attempted to purchase a tobacco
 30 product or presented false proof of age for the purpose of purchasing a tobacco product
 31 in violation of AS 11.76.105, the peace officer shall read a notice and deliver a copy

1 to the person. The notice must advise that

2 (1) the department intends to revoke the person's driver's license or
3 permit, privilege to drive, or privilege to obtain a license or permit;

4 (2) the person has the right to administrative review of the revocation;

5 (3) if the person has a driver's license or permit, the notice itself is a
6 temporary driver's license or permit that expires seven days after it is delivered to the
7 person;

8 (4) revocation of the person's driver's license or permit, privilege to
9 drive, or privilege to obtain a license or permit, takes effect seven days after delivery
10 of the notice to the person unless the person, within seven days, requests an
11 administrative review.

12 (b) After reading the notice under (a) of this section, the peace officer shall
13 seize the person's driver's license or permit if it is in the person's possession and shall
14 deliver it to the department with a sworn report describing the circumstances under
15 which it was seized.

16 (c) Unless the person has requested an administrative review, the department
17 shall revoke the person's driver's license or permit, privilege to drive, or privilege to
18 obtain a license or permit, effective seven days after delivery to the person of the
19 notice required under (a) of this section, upon receipt of a sworn report of a peace
20 officer

21 (1) that the officer had probable cause to believe that the person is not
22 yet 19 years of age and has possessed or attempted to purchase a tobacco product or
23 presented false proof of age for the purpose of purchasing a tobacco product in
24 violation of AS 11.76.105;

25 (2) that the peace officer has cited the person or arrested the person for
26 a violation of AS 11.76.105;

27 (3) that notice under (a) of this section was provided to the person; and

28 (4) describing the circumstances surrounding the violation of the
29 tobacco sales or proof of age provisions of AS 11.76.105.

30 (d) The department shall impose the revocation required under this section for
31 a period of

1 (1) one year for a first violation; and

2 (2) two years for a second or subsequent violation.

3 (e) A revocation imposed under this section shall be consecutive to a
4 revocation imposed under another provision of law, except that a revocation imposed
5 under this section shall be concurrent with a revocation imposed under AS 28.15.183,
6 28.15.185, or 28.15.187 that is based on the same incident. A department hearing
7 officer may grant limited license privileges in accordance with the standards set out
8 in AS 28.15.201 to a person whose driver's license, permit, or privilege was revoked
9 under this section.

10 (f) In this section, "peace officer" does not include a person employed by the
11 Department of Corrections.

12 **Sec. 28.15.197. Administrative review of revocation of license for tobacco**
13 **offense.** (a) A person who has received a notice under AS 28.15.195(a) may make
14 a written request for administrative review of the department's action. If the person's
15 driver's license has not been previously surrendered to the department, it shall be
16 surrendered to the department at the time the request for review is made.

17 (b) A request for review of the department's revocation under AS 28.15.195
18 shall be made within seven days after receipt of the notice under AS 28.15.195, or the
19 right to review is waived and the action of the department under AS 28.15.195(c) is
20 final. If a written request for a review is made after expiration of the seven-day
21 period, and if it is accompanied by the applicant's verified statement explaining the
22 failure to make a timely request for a review, the department shall receive and consider
23 the request. If the department finds that the person was unable to make a timely
24 request because of lack of actual notice of the revocation or because of factors of
25 physical incapacity such as hospitalization or incarceration, the department shall waive
26 the period of limitation, reopen the matter, and grant the review request.

27 (c) Upon receipt of a request for review, if it appears that the person holds a
28 valid driver's license and that the driver's license has been surrendered, the department
29 shall issue a temporary driver's permit that is valid until the scheduled date for the
30 review. A person who has requested a review under this section may request, and the
31 department may grant for good cause, a delay in the date of the hearing. If necessary,

1 the department may issue additional temporary permits to stay the effective date of its
2 action under AS 28.15.195(c) until the final order after the review is issued.

3 (d) A person who has requested a hearing under this section and who fails to
4 appear at the hearing, for reasons other than lack of actual notice of the hearing or
5 physical incapacity such as hospitalization or incarceration, waives the right to a
6 hearing. The determination of the department that is based upon the officer's report
7 becomes final.

8 (e) The hearing under this section must be held telephonically unless the
9 person requesting the hearing requests in writing that the hearing not be held
10 telephonically or the hearing officer determines that an in-person hearing is necessary
11 as provided under AS 28.05.141(b).

12 (f) A review under this section shall be held before a hearing officer
13 designated by the commissioner. The hearing officer shall have authority to

- 14 (1) administer oaths and affirmations;
- 15 (2) examine witnesses and take testimony;
- 16 (3) receive relevant evidence;
- 17 (4) issue subpoenas, take depositions, or cause depositions or
18 interrogatories to be taken;
- 19 (5) regulate the course and conduct of the hearing;
- 20 (6) make a final ruling on the issue.

21 (g) The hearing for review of a revocation by the department under
22 AS 28.15.195 shall be limited to the issue of whether the person possessed or
23 attempted to purchase a tobacco product or presented false proof of age as prohibited
24 by AS 11.76.105.

25 (h) The determination of the hearing officer may be based upon the sworn
26 report of a peace officer if the sworn report is supported by probable cause based on
27 personal observations as required under AS 28.15.195(a). The peace officer need not
28 be present at the hearing unless either the person requesting the hearing or the hearing
29 officer requests in writing before the hearing that the officer be present. If in the
30 course of the hearing it becomes apparent that the testimony of the peace officer is
31 necessary to enable the hearing officer to resolve disputed issues of fact, the hearing

1 shall be continued to allow the attendance of the peace officer.

2 (i) Upon written request of the person requesting the hearing, the hearing
3 officer shall stay the hearing until the conclusion of related criminal proceedings. If
4 the person requesting the hearing does not request a stay, testimony given by the
5 person at the hearing is admissible against the person in a criminal trial.

6 (j) If the issue set out in (g) of this section is determined in the affirmative by
7 a preponderance of the evidence, the hearing officer shall sustain the action of the
8 department. If the issue is determined in the negative, the department's revocation
9 action shall be rescinded.

10 (k) If the action of the department in revoking a nonresident's privilege to
11 drive a motor vehicle is not administratively contested by the nonresident driver or if
12 the departmental action is sustained by the hearing officer, the department shall give
13 written notice of action taken to the motor vehicle administrator of the state of the
14 person's residence and to any state in which that person has a driver's license.

15 (l) Within 30 days of the issuance of the final determination of the department,
16 a person aggrieved by the determination may file an appeal in superior court for
17 judicial review of the hearing officer's determination.

18 (m) The filing of an appeal under (l) of this section or a petition for review
19 does not automatically stay the department's order or revocation. The court may grant
20 a stay of the order or revocation under the applicable rules of court, after a motion and
21 hearing, and upon a finding that there is a reasonable probability that the petitioner
22 will prevail on the merits and that the petitioner will suffer irreparable harm if the
23 order is not stayed.

24 * **Sec. 6.** AS 43.50.070 is amended to read:

25 **Sec. 43.50.070. Revocation or suspension of licenses.** The department may
26 suspend or revoke a license issued under AS 43.50.010 - 43.50.180 (1) for a criminally
27 negligent violation of AS 11.76.100 [, 11.76.107] or a violation of AS 43.50.010 -
28 43.50.180 or a regulation of the department adopted under AS 43.50.010 - 43.50.180;
29 (2) if a licensee ceases to act in the capacity for which the license was issued; or (3)
30 if a manufacturer, distributor, or wholesale distributor negligently sells tobacco or
31 products containing tobacco to a nonlicensed retailer or a retailer whose license

1 endorsement under AS 43.70.075 has been suspended. **The department may suspend**
 2 **or revoke a license issued under AS 43.50.010 - 43.50.180 for a period of not more**
 3 **than one year for a criminally negligent violation of AS 11.76.107.** A person whose
 4 license is suspended or revoked may not sell cigarettes or permit cigarettes to be sold
 5 during the period of the suspension or revocation on the premises occupied or
 6 controlled by that person. A disciplinary proceeding or action is not barred or abated
 7 by the expiration, transfer, surrender, renewal, or extension of a license issued under
 8 AS 43.50.010 - 43.50.180. The department shall comply with the provisions of
 9 **AS 44.62** ([THE] Administrative Procedure Act [(AS 44.62)]).

10 * **Sec. 7.** AS 43.70.075(b) is amended to read:

11 (b) The department, upon payment of a fee of **\$100** [\$25], shall issue a
 12 business license endorsement to a person who applies for a business license under this
 13 chapter, and may renew the endorsement issued under this subsection for a fee of **\$100**
 14 [\$25]. The endorsement expires at the same time as the license to which it attaches.

15 * **Sec. 8.** AS 43.70.075(d) is amended to read:

16 (d) If a person who holds an endorsement issued under this section, or an
 17 agent or an employee of a person who holds an endorsement issued under this section
 18 acting within the scope of the agency or employment, has been convicted of violating
 19 AS 11.76.100 or 11.76.107, or violates a provision of this section or a regulation
 20 implementing this section adopted under AS 43.70.090, the department may suspend
 21 the endorsement for a period of not more than

22 (1) 45 days; [OR]

23 (2) 90 days, if within the past 24 months the person has been
 24 previously convicted of violating AS 11.76.100 or 11.76.107, or a provision of this
 25 section or a regulation implementing this section adopted under AS 43.70.090; **or**

26 (3) **one year if within the past 24 months the person has been**
 27 **previously convicted two or more times of violating AS 11.76.100 or 11.76.107 or**
 28 **a provision of this section or a regulation implementing this section adopted under**
 29 **AS 43.70.090.**

30 * **Sec. 9.** AS 47.12.030(b) is amended to read:

31 (b) When a minor is accused of violating a statute specified in this subsection,

1 other than a statute the violation of which is a felony, this chapter and the Alaska
2 Delinquency Rules do not apply and the minor accused of the offense shall be charged,
3 prosecuted, and sentenced in the district court in the same manner as an adult; if a
4 minor is charged, prosecuted, and sentenced for an offense under this subsection, the
5 minor's parent, guardian, or legal custodian shall be present at all proceedings; the
6 provisions of this subsection apply when a minor is accused of violating

7 (1) a traffic statute or regulation, or a traffic ordinance or regulation of
8 a municipality;

9 (2) AS 11.76.105, relating to the possession or purchase of tobacco,
10 or use of false proof of age for the purpose of purchasing tobacco by a person
11 under 19 years of age;

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

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

15 (5) AS 04.16.050, relating to possession, control, or consumption of
16 alcohol.

17 * **Sec. 10.** AS 28.15.197(m), enacted in sec. 5 of this Act, has the effect of amending Rules
18 603 and 611(d), Alaska Rules of Appellate Procedure, by prohibiting an automatic stay of the
19 administrative revocation of a driver's license pending appeal or petition for review and by
20 limiting the power of the court to stay the administrative revocation of a driver's license.

21 * **Sec. 11.** TRANSITIONAL NOTICE PROVISION. Within 30 days after the effective
22 date of this Act, the employee notice required under AS 11.76.107(d), enacted in sec. 3 of this
23 Act, shall be given to employees engaged in the retail business of selling a tobacco product
24 on the day before the effective date of this Act.

25 * **Sec. 12.** This Act takes effect July 1, 1997.