

**SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 159**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES KOTT, Mulder, Kohring, Sanders, Ryan, Cowdery

Introduced: 3/27/97

Referred: Labor and Commerce, Judiciary

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to sale, gift, exchange, possession, and purchase of tobacco and  
2 tobacco products; and providing for an effective date."

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

4 \* **Section 1.** AS 11.76.100 is repealed and reenacted to read:

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

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

13 (c) A person who violates (a) of this section is guilty of a violation and upon  
14 conviction shall be punished by a fine of \$250 for a first offense within a two-year

1 period, \$500 for a second offense within a two-year period, and \$1,000 for a third or  
 2 subsequent offense within a two-year period.

3 \* **Sec. 2.** AS 11.76.105 is repealed and reenacted to read:

4 **Sec. 11.76.105. Possession, purchase, or use of false identification to obtain**  
 5 **tobacco by a minor.** (a) A person under 19 years of age may not knowingly

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

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

9 (b) A person who violates this section is guilty of a violation and upon  
 10 conviction shall be punished by a fine of \$250 for a first offense within a two-year  
 11 period, \$500 for a second offense within a two-year period, and \$1,000 for a third or  
 12 subsequent offense within a two-year period.

13 \* **Sec. 3.** AS 11.76.107 is repealed and reenacted to read:

14 **Sec. 11.76.107. Restrictions on sale of tobacco and tobacco products.** (a)  
 15 A person may not sell a tobacco product unless

16 (1) the

17 (A) person also holds a license endorsement issued under  
 18 AS 43.70.075;

19 (B) sale occurs on the retail premises; and

20 (C) person purchasing or receiving the tobacco product provides  
 21 proof of age if proof is demanded as provided under (c) of this section;

22 (2) the sale is a wholesale transaction by a person licensed as a  
 23 manufacturer under AS 43.50.010; or

24 (3) the sale is by mail order.

25 (b) Except as provided in this subsection, a person may not sell a tobacco  
 26 product by vending machine. The sale of a tobacco product through a vending  
 27 machine is permitted if the vending machine is located in

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

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

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

3 (A) under the continuous supervision of the owner or lessee of  
4 the licensed premises or an employee of the owner or lessee; and

5 (B) inaccessible to the public when the licensed premises is  
6 closed.

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

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

22 "I understand that state law prohibits the sale of a tobacco  
23 product to persons under 19 years of age and requires that proof  
24 of age be demanded from a prospective purchaser or recipient  
25 if I have reason to believe that the prospective purchaser or  
26 recipient is under 27 years of age. I promise, as a condition of  
27 my employment, to observe this law."

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

31 (e) The court shall forward to the Department of Commerce and Economic

1 Development a record of each person convicted under this section.

2 (f) A person who violates this section is guilty of a violation and upon  
3 conviction shall be punished by a fine of \$100 for a first offense within a two-year  
4 period, \$500 for a second offense within a two-year period, and for a third or  
5 subsequent violation within a two-year period by a fine of \$1,000 and suspension of  
6 the license endorsement required under AS 43.70.075 for a period of not more than  
7 one year.

8 \* **Sec. 4.** 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 driver's license or other documentary or  
13 written evidence that is made of or encased in plastic and contains a photograph of the  
14 holder and a statement of age or date of birth that establishes that the person is 19  
15 years of age or older;

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

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

21 \* **Sec. 5.** AS 22.35 is amended by adding a new section to read:

22 **Sec. 22.35.020. Use of fine proceeds.** The administrative director of the court  
23 system shall separately account for fines collected for violations of AS 11.76.100,  
24 11.76.105, and 11.76.107 and deposit them in the general fund. The annual estimated  
25 balance in the account maintained under this section for fines collected under  
26 AS 11.76.100, 11.76.105, or 11.76.107 may be appropriated by the legislature to  
27 support municipal law enforcement.

28 \* **Sec. 6.** AS 43.50.070 is amended to read:

29 **Sec. 43.50.070. Revocation or suspension of licenses.** The department may  
30 suspend or revoke a license issued under AS 43.50.010 - 43.50.180, (1) for a  
31 criminally negligent violation of AS 11.76.100 [, 11.76.107] or a violation of

1 AS 43.50.010 - 43.50.180 or a regulation of the department adopted under  
 2 AS 43.50.010 - 43.50.180; (2) if a licensee ceases to act in the capacity for which the  
 3 license was issued; or (3) if a manufacturer, distributor, or wholesale distributor  
 4 negligently sells tobacco or products containing tobacco to a nonlicensed retailer or a  
 5 retailer whose license endorsement under AS 43.70.075 has been suspended. **The**  
 6 **department may suspend or revoke a license issued under AS 43.50.010 -**  
 7 **43.50.180 for a period of not more than one year for a criminally negligent**  
 8 **violation of AS 11.76.107.** A person whose license is suspended or revoked may not  
 9 sell cigarettes or permit cigarettes to be sold during the period of the suspension or  
 10 revocation on the premises occupied or controlled by that person. A disciplinary  
 11 proceeding or action is not barred or abated by the expiration, transfer, surrender,  
 12 renewal, or extension of a license issued under AS 43.50.010 - 43.50.180. The  
 13 department shall comply with the provisions of **AS 44.62** ( [THE] Administrative  
 14 Procedure Act [(AS 44.62)]).

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

16 (b) The department, upon payment of a fee of **\$100** [\$25], shall issue a  
 17 business license endorsement to a person who applies for a business license under this  
 18 chapter, and may renew the endorsement issued under this subsection for a fee of **\$100**  
 19 [\$25]. The endorsement expires at the same time as the license to which it attaches.

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

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

27 (1) 45 days; [OR]

28 (2) 90 days, if within the past 24 months the person has been  
 29 previously convicted of violating AS 11.76.100 or 11.76.107, or a provision of this  
 30 section or a regulation implementing this section adopted under AS 43.70.090; **or**

31 **(3) one year if within the past 24 months the person has been**

1 previously convicted two or more times of violating AS 11.76.100 or 11.76.107 or  
2 a provision of this section or a regulation implementing this section adopted under  
3 AS 43.70.090.

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

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

12 (1) a traffic statute or regulation, or a traffic ordinance or regulation of  
13 a municipality;

14 (2) AS 11.76.105 [, RELATING TO THE POSSESSION OF  
15 TOBACCO BY A PERSON UNDER 19 YEARS OF AGE];

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

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

19 (5) AS 04.16.050, relating to possession, control, or consumption of  
20 alcohol.

21 \* **Sec. 10.** 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. 11.** This Act takes effect July 1, 1997.