

**CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 159(L&C)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered: 4/17/97

Referred: Judiciary

Sponsor(s): REPRESENTATIVES KOTT, Mulder, Kohring, Sanders, Ryan, Cowdery

**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4 \* **Section 1.** AS 11.76.100 is repealed and reenacted to read: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 person under 21.** (a) A  
6 person commits the offense of selling or giving tobacco to a person under 21 if the  
7 person is 21 years of age or older and negligently sells, exchanges, or gives a tobacco  
8 product to a person under 21 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3 \* **Sec. 2.** AS 11.76.105 is repealed and reenacted to read: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 person under 21.** (a) A person under 21 years of age may not  
 6 knowingly

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

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

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

14 (c) In this section, "possess" does not include possession for the purpose of  
 15 retail sale by a person under 21 years of age who holds a license endorsement under  
 16 AS 43.70.075 or who is the employee of a person who holds a license endorsement  
 17 under AS 43.70.075.

18 \* **Sec. 3.** AS 11.76.107 is repealed and reenacted to read:

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

21 (1) the

22 (A) person also holds a license endorsement issued under  
 23 AS 43.70.075;

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

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

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

29 (3) the sale is by mail order, and the person selling the tobacco product  
 30 has a copy of the purchaser's photo identification indicating that the purchaser is at  
 31 least 21 years of age.

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

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

6 (2) a place that is open to the public but to which a person under the  
7 age of 21 years is denied access; or

8 (3) a place where alcoholic beverages are sold, but only if the vending  
9 machine is

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

12 (B) inaccessible to the public when the licensed premises is  
13 closed.

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

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

29 "I understand that state law prohibits the sale of a tobacco  
30 product to persons under 21 years of age and requires that proof  
31 of age be demanded from a prospective purchaser or recipient

1 if I have reason to believe that the prospective purchaser or  
 2 recipient is under 27 years of age. I promise, as a condition of  
 3 my employment, to observe this law."

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

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

9 (f) A person who holds a business license endorsement under AS 43.70.075,  
 10 or an agent or employee of the person, may not sell cigarettes to another person if the  
 11 cigarettes are sold singly or in numbers that are fewer than contained in the  
 12 manufacturer's original cigarette pack or contained in a cigarette carton or box.

13 (g) A person who violates 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  
 15 period, \$500 for a second offense within a two-year period, and for a third or  
 16 subsequent violation within a two-year period by a fine of \$1,000 and suspension of  
 17 the license endorsement required under AS 43.70.075 for a period of not more than  
 18 one year.

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

20 **Sec. 11.76.109. Definitions for AS 11.76.100 - 11.76.109.** In AS 11.76.100 -  
 21 11.76.109, unless the context requires otherwise,

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

23 (2) "proof of age" means a driver's license or other documentary or  
 24 written evidence that is made of or encased in plastic and contains a photograph of the  
 25 holder and a statement of age or date of birth that establishes that the person is 21  
 26 years of age or older;

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

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

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

2           **Sec. 22.35.020. Use of fine proceeds.** The administrative director of the court  
3 system shall separately account for fines collected for violations of AS 11.76.100,  
4 11.76.105, and 11.76.107 and deposit them in the general fund. The annual estimated  
5 balance in the account maintained under this section for fines collected under  
6 AS 11.76.100, 11.76.105, or 11.76.107 may be appropriated by the legislature to  
7 support municipal law enforcement.

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

9           **Sec. 43.50.070. Revocation or suspension of licenses.** The department may  
10 suspend or revoke a license issued under AS 43.50.010 - 43.50.180, (1) for a  
11 criminally negligent violation of AS 11.76.100 [, 11.76.107] or a violation of  
12 AS 43.50.010 - 43.50.180 or a regulation of the department adopted under  
13 AS 43.50.010 - 43.50.180; (2) if a licensee ceases to act in the capacity for which the  
14 license was issued; or (3) if a manufacturer, distributor, or wholesale distributor  
15 negligently sells tobacco or products containing tobacco to a nonlicensed retailer or a  
16 retailer whose license endorsement under AS 43.70.075 has been suspended. **The**  
17 **department may suspend or revoke a license issued under AS 43.50.010 -**  
18 **43.50.180 for a period of not more than one year for a criminally negligent**  
19 **violation of AS 11.76.107.** A person whose license is suspended or revoked may not  
20 sell cigarettes or permit cigarettes to be sold during the period of the suspension or  
21 revocation on the premises occupied or controlled by that person **and may not apply**  
22 **for a license under AS 43.50.010 - 43.50.180 under a different name.** A  
23 disciplinary proceeding or action is not barred or abated by the expiration, transfer,  
24 surrender, renewal, or extension of a license issued under AS 43.50.010 - 43.50.180.  
25 The department shall comply with the provisions of **AS 44.62** ( [THE] Administrative  
26 Procedure Act [(AS 44.62)]).

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

28           (b) The department, upon payment of a fee of **\$100** [\$25], shall issue a  
29 business license endorsement to a person who applies for a business license under this  
30 chapter, and may renew the endorsement issued under this subsection for a fee of **\$100**  
31 [\$25]. The endorsement expires at the same time as the license to which it attaches.

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

2 (d) If a person who holds an endorsement issued under this section, or an  
3 agent or an employee of a person who holds an endorsement issued under this section  
4 acting within the scope of the agency or employment, has been convicted of violating  
5 AS 11.76.100 or 11.76.107, or violates a provision of this section or a regulation  
6 implementing this section [ADOPTED UNDER AS 43.70.090], the department may  
7 suspend the endorsement for a period of not more than

8 (1) 45 days; [OR]

9 (2) 90 days, if within the past 24 months the person has been  
10 previously convicted of violating AS 11.76.100 or 11.76.107, or a provision of this  
11 section or a regulation implementing this section; or

12 (3) one year if within the past 24 months the person has been  
13 previously convicted two or more times of violating AS 11.76.100 or 11.76.107 or  
14 a provision of this section or a regulation implementing this section [ADOPTED  
15 UNDER AS 43.70.090].

16 \* **Sec. 9.** AS 43.70.075(e) is amended to read:

17 (e) If a person who receives an endorsement under this section has multiple  
18 retail outlets, a suspension imposed under (d) of this section applies only to the retail  
19 outlet in which the violation occurs. If a person receives a suspension under (d) of  
20 this section, the person may not apply for a license endorsement under this section  
21 under a different name.

22 \* **Sec. 10.** AS 43.70.075(f) is amended to read:

23 (f) A person who holds a license endorsement issued under this section shall  
24 post on the licensed premises a warning sign as described in this subsection. A  
25 warning sign required by this subsection must be at least 6 inches by 18 inches and  
26 must read, in lettering at least 1.25 inches high: "The sale of tobacco products to  
27 persons under age 21 [19] is illegal." A person holding an endorsement issued under  
28 this section shall display the sign in a manner conspicuous to a person purchasing or  
29 consuming tobacco products on the licensed premises. The department shall, without  
30 charge, furnish warning signs required under this section to a person who holds an  
31 endorsement issued under this section or a person who requests the sign with the

1 intention of displaying it.

2 \* **Sec. 11.** AS 47.12.030(b) is amended to read:

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

10 (1) a traffic statute or regulation, or a traffic ordinance or regulation of  
11 a municipality;

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

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

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

17 (5) AS 04.16.050, relating to possession, control, or consumption of  
18 alcohol.

19 \* **Sec. 12.** TRANSITIONAL NOTICE PROVISION. Within 30 days after the effective  
20 date of this Act, the employee notice required under AS 11.76.107(d), enacted in sec. 3 of this  
21 Act, shall be given to employees engaged in the retail business of selling a tobacco product  
22 on the day before the effective date of this Act.

23 \* **Sec. 13.** This Act takes effect July 1, 1997.