

**CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 159(JUD)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 5/6/97

Referred: Finance

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(a) is amended to read:

5 (a) A person commits the offense of selling or giving tobacco to a minor if the  
6 person is 19 years of age or older and

7 [(1)] negligently sells, exchanges, or gives a cigarette, a cigar, tobacco,  
8 or a product containing tobacco to a person under 19 years of age [; OR

9 (2) MAINTAINS A VENDING MACHINE THAT DISPENSES  
10 CIGARETTES, CIGARS, TOBACCO, OR PRODUCTS CONTAINING TOBACCO].

11 \* **Sec. 2.** AS 11.76.105 is repealed and reenacted to read:

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

1 (1) possess or attempt to purchase a tobacco product in this state; or  
 2 (2) present false or fraudulent proof of age for the purpose of  
 3 purchasing a tobacco product.

4 (b) A person who violates this section is guilty of a violation and upon  
 5 conviction shall be punished by a fine of not less than \$250 for a first offense within  
 6 a two-year period, not less than \$500 for a second offense within a two-year period,  
 7 and not less than \$1,000 for a third or subsequent offense within a two-year period.

8 (c) In this section, "possess" does not include possession for the purpose of  
 9 retail sale by a person under 19 years of age who holds a license endorsement under  
 10 AS 43.70.075 or who is the employee of a person who holds a license endorsement  
 11 under AS 43.70.075.

12 \* **Sec. 3.** AS 11.76.107 is repealed and reenacted to read:

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

14 A person may not sell a tobacco product unless

15 (1) the

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

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

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

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

23 (3) the sale is by mail order, and the person selling the tobacco product  
 24 has a copy of the purchaser's photo identification indicating that the purchaser is at  
 25 least 19 years of age; or

26 (4) the sale is by vending machine as provided under (b) of this section.

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

30 (1) an employee break room or other controlled area of a private work  
 31 place that is not generally considered a public place; or

1 (2) a place where alcoholic beverages are sold, but only if the vending  
2 machine is

3 (A) located as far as practicable from the primary entrance; and

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

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

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

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

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

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

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

5 (g) A person who violates this section is guilty of a violation and upon  
 6 conviction shall be punished by a fine of not less than \$250 for a first offense within  
 7 a two-year period, of not less than \$500 for a second offense within a two-year period,  
 8 and for a third or subsequent violation within a two-year period by a fine of not less  
 9 than \$1,000 and suspension of the license endorsement required under AS 43.70.075  
 10 for a period of not more than one year.

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

12 **Sec. 11.76.109. Definitions for AS 11.76.100 - 11.76.109.** In AS 11.76.100 -  
 13 11.76.109, unless the context requires otherwise,

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

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

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

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

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

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

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

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

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

20           (b) The department, upon payment of a fee of **\$100** [\$25], shall issue a  
 21 business license endorsement to a person who applies for a business license under this  
 22 chapter, and may renew the endorsement issued under this subsection for a fee of **\$100**  
 23 [\$25]. The endorsement expires at the same time as the license to which it attaches.

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

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

31                           (1) 45 days; [OR]

1 (2) 90 days, if within the past 24 months the person has been  
 2 previously convicted of violating AS 11.76.100 or 11.76.107, or a provision of this  
 3 section or a regulation implementing this section; or

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

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

9 (e) If a person who receives an endorsement under this section has multiple  
 10 retail outlets, a suspension imposed under (d) of this section applies only to the retail  
 11 outlet in which the violation occurs. If a person receives a suspension under (d) of  
 12 this section, the person may not apply for a license endorsement under this section  
 13 under a different name.

14 \* **Sec. 10.** AS 47.12.030(b) is amended to read:

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

22 (1) a traffic statute or regulation, or a traffic ordinance or regulation of  
 23 a municipality;

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

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

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

29 (5) AS 04.16.050, relating to possession, control, or consumption of  
 30 alcohol.

31 \* **Sec. 11.** AS 11.76.100(b) and 11.76.100(c) are repealed

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

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