

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 159(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 5/8/97

Referred: Today's Calendar

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 11.76.100(d) is amended to read:

12 (d) Selling or giving tobacco to a minor is a violation and upon conviction is
13 punishable by a fine of \$250 for a first offense within a two-year period, \$500 for
14 a second offense within a two-year period, and \$1,000 for a third or subsequent

1 **offense within a two-year period** [NOT LESS THAN \$300].

2 * **Sec. 3.** AS 11.76.105 is repealed and reenacted to read: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 person under 19.** (a) A person under 19 years of age may not
 5 knowingly

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

17 * **Sec. 4.** AS 11.76.107 is repealed and reenacted to read:

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

20 (1) the

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

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

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

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

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

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

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

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

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

9 (B) inaccessible to the public when the licensed premises is
 10 closed.

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

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

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

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

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

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

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

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

17 **Sec. 11.76.109. Definitions for AS 11.76.100 - 11.76.109.** In AS 11.76.100 -
 18 11.76.109, unless the context requires otherwise,

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

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

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

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

29 * **Sec. 6.** AS 22.35 is amended by adding a new section to read:

30 **Sec. 22.35.020. Use of fine proceeds.** The administrative director of the court
 31 system shall separately account for fines collected for violations of AS 11.76.100,

1 11.76.105, and 11.76.107 and deposit them in the general fund. The annual estimated
 2 balance in the account maintained under this section for fines collected under
 3 AS 11.76.100, 11.76.105, or 11.76.107 may be appropriated by the legislature to
 4 support municipal law enforcement.

5 * **Sec. 7.** AS 43.50.070 is amended to read:

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

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

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 license to which it attaches.

29 * **Sec. 9.** AS 43.70.075(d) is amended to read:

30 (d) If a person who holds an endorsement issued under this section, or an
 31 agent or an employee of a person who holds an endorsement issued under this section

1 acting within the scope of the agency or employment, has been convicted of violating
 2 AS 11.76.100 or 11.76.107, or violates a provision of this section or a regulation
 3 implementing this section [ADOPTED UNDER AS 43.70.090], the department may
 4 suspend the endorsement for a period of not more than

5 (1) 45 days; [OR]

6 (2) 90 days, if within the past 24 months the person has been
 7 previously convicted of violating AS 11.76.100 or 11.76.107, or a provision of this
 8 section or a regulation implementing this section; or

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

13 * **Sec. 10.** AS 43.70.075(e) is amended to read:

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

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

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

27 (1) a traffic statute or regulation, or a traffic ordinance or regulation of
 28 a municipality;

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

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

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

3 (5) AS 04.16.050, relating to possession, control, or consumption of
4 alcohol.

5 * **Sec. 12.** AS 11.76.100(b) and 11.76.100(c) are repealed.

6 * **Sec. 13.** TRANSITIONAL NOTICE PROVISION. Within 30 days after the effective
7 date of this Act, the employee notice required under AS 11.76.107(d), enacted in sec. 4 of this
8 Act, shall be given to employees engaged in the retail business of selling a tobacco product
9 on the day before the effective date of this Act.

10 * **Sec. 14.** This Act takes effect July 1, 1997.