

HOUSE BILL NO. 17

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE CRAWFORD

Introduced: 1/20/09

Referred: Labor and Commerce, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act raising the age for purchase, sale, exchange, or possession of tobacco to age
2 **21.**"

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

7 (1) negligently sells a cigarette, a cigar, tobacco, or a product
8 containing tobacco to a person under 21 [19] years of age;

9 (2) is 21 [19] years of age or older and negligently exchanges or gives
10 a cigarette, a cigar, tobacco, or a product containing tobacco to a person under 21 [19]
11 years of age;

12 (3) maintains a vending machine that dispenses cigarettes, cigars,
13 tobacco, or products containing tobacco; or

14 (4) holds a business license endorsement under AS 43.70.075 and

1 allows a person under 21 [19] years of age to sell a cigarette, a cigar, tobacco, or a
 2 product containing tobacco.

3 * **Sec. 2.** AS 11.76.100(b) is amended to read:

4 (b) Notwithstanding the provisions of (a) of this section, a person who
 5 maintains a vending machine is not in violation of (a)(3) of this section if the vending
 6 machine is located

7 (1) on premises licensed as a beverage dispensary under AS 04.11.090,
 8 licensed as a club under AS 04.11.110, or licensed as a package store under
 9 AS 04.11.150; and

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

11 (B) in a place that is directly and continually supervised by a
 12 person employed on the licensed premises during the hours the vending
 13 machine is accessible to the public; or

14 (2) in an employee break room or other controlled area of a private
 15 work place that is not generally considered a public place and the room or area
 16 contains a posted warning sign at least 11 inches by 14 inches indicating that
 17 possession of tobacco by a person under 21 [19] years of age is prohibited under
 18 AS 11.76.105.

19 * **Sec. 3.** AS 11.76.105(a) is amended to read:

20 (a) A person under 21 [19] years of age may not knowingly possess a
 21 cigarette, a cigar, tobacco, or a product containing tobacco in this state. This
 22 subsection does not apply to a person who is a prisoner at an adult correctional
 23 facility.

24 * **Sec. 4.** AS 11.76.106(b) is amended to read:

25 (b) Subsection (a) does not apply if the sale

26 (1) is by vending machine as provided under AS 11.76.100(b);

27 (2) is a wholesale transaction, the person is licensed as a manufacturer
 28 or distributor under AS 43.50.010, and the sale occurs on premises where no retail
 29 transactions occur; or

30 (3) is by a retailer who sells primarily cigarettes, cigars, tobacco, or a
 31 product containing tobacco and who restricts access to the premises to only those

1 individuals who are 21 [19] years of age or older.

2 * **Sec. 5.** AS 43.50.105(b) is amended to read:

3 (b) A person who is licensed under this chapter may not ship or cause to be
4 shipped cigarettes to a person in this state unless the person receiving the cigarettes

5 (1) is licensed under this chapter;

6 (2) holds a tobacco endorsement under AS 43.70.075;

7 (3) is an operator of a customs bonded warehouse under 19 U.S.C.
8 1311 or 19 U.S.C. 1555;

9 (4) is an instrumentality of the federal government or an Indian tribal
10 organization authorized by law to possess cigarettes not taxed under this chapter; or

11 (5) is an individual 21 [19] years of age or older receiving the
12 cigarettes for personal consumption and the tax imposed on the cigarettes under this
13 chapter has been paid.

14 * **Sec. 6.** AS 43.70.075(f) is amended to read:

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

25 * **Sec. 7.** AS 43.70.075(m) is amended to read:

26 (m) The department may initiate suspension of a business license endorsement
27 or the right to obtain a business license endorsement under this section by sending the
28 person subject to the suspension a notice by certified mail, return receipt requested, or
29 by delivering the notice to the person. The notice must contain information that
30 informs the person of the grounds for suspension, the length of any suspension sought,
31 and the person's right to administrative review. A suspension begins 30 days after

1 receipt of notice described in this subsection unless the person delivers a timely
2 written request for a hearing to the department in the manner provided by regulations
3 of the department. If a hearing is requested under this subsection, an administrative
4 law judge of the office of administrative hearings (AS 44.64.010) shall determine the
5 issues by using the preponderance of the evidence test and shall, to the extent they do
6 not conflict with regulations adopted under AS 44.64.060, conduct the hearing in the
7 manner provided by regulations of the department. A hearing under this subsection is
8 limited to the following questions:

9 (1) was the person holding the business license endorsement, or an
10 agent or employee of the person while acting within the scope of the agency or
11 employment of the person, convicted by plea or judicial finding of violating
12 AS 11.76.100, 11.76.106, or 11.76.107;

13 (2) if the department does not allege a conviction of AS 11.76.100,
14 11.76.106, or 11.76.107, did the person, or an agent or employee of the person while
15 acting within the scope of the agency or employment of the person, violate a provision
16 of (a) or (g) of this section;

17 (3) within the 24 months before the date of the department's notice
18 under this subsection, was the person, or an agent or employee of the person while
19 acting within the scope of the agency or employment of the person, convicted of
20 violating AS 11.76.100, 11.76.106, or 11.76.107 or adjudicated for violating a
21 provision of (a) or (g) of this section;

22 (4) did the person holding the business license endorsement establish
23 that the person holding the business license endorsement had adopted and enforced an
24 education, a compliance, and a disciplinary program for agents and employees of the
25 person as provided in (t) of this section;

26 (5) did the person holding the business license endorsement overcome
27 the rebuttable presumption established in (w) of this section;

28 (6) within five years before the date of the violation that is the subject
29 of the hearing, did the department establish that the person holding the business
30 license endorsement

31 (A) previously violated (a) or (g) of this section;

1 (B) previously violated AS 11.76.100, 11.76.106, or 11.76.107
 2 at a location or outlet in a location for which the person holds a business
 3 license endorsement, or had an agent or employee previously violate
 4 AS 11.76.100, 11.76.106, or 11.76.107; this subparagraph does not apply to a
 5 prior conviction that served to enhance a suspension period under (d)(2) - (4)
 6 of this section; or

7 (C) engaged at a location owned by the person in other conduct
 8 that was or is likely to result in the sale of tobacco to a person under 21 [19]
 9 years of age in violation of AS 11.76.100, 11.76.106, or 11.76.107.

10 * **Sec. 8.** AS 43.70.075(t) is amended to read:

11 (t) Based on evidence provided at the hearing under (m)(4) - (6) of this
 12 section, the department may reduce the license suspension period under (d) of this
 13 section if the person holding the business license endorsement establishes that, before
 14 the date of the violation, the person had

15 (1) adopted and enforced a written policy against selling cigarettes,
 16 cigars, tobacco, or products containing tobacco to a person under 21 [19] years of age
 17 in violation of AS 11.76.100, 11.76.106, or 11.76.107;

18 (2) informed the person's agents and employees of the applicable laws
 19 and their requirements and conducted training on complying with the laws and
 20 requirements;

21 (3) required each agent and employee of the person to sign a form
 22 stating that the agent and employee has been informed of and understands the written
 23 policy and the requirements of AS 11.76.100, 11.76.106, and 11.76.107;

24 (4) determined that the agents and employees of the person had
 25 sufficient experience and ability to comply with the written policy and requirements of
 26 AS 11.76.100, 11.76.106, and 11.76.107;

27 (5) required the agents and employees of the person to verify the age
 28 of purchasers of cigarettes, cigars, tobacco, or other products containing tobacco by
 29 means of a valid government issued photographic identification;

30 (6) established and enforced disciplinary sanctions for noncompliance
 31 with the written policy or the requirements of AS 11.76.100, 11.76.106, and

1 11.76.107; and

2 (7) monitored the compliance of the agents and employees of the
3 person with the written policy and the requirements of AS 11.76.100, 11.76.106, and
4 11.76.107.

5 * **Sec. 9.** AS 43.70.075(w) is amended to read:

6 (w) For purposes of (m)(5) of this section, a conviction for a violation of
7 AS 11.76.100, 11.76.106, or 11.76.107 by the agent or employee of the person who
8 holds the business license endorsement is rebuttably presumed to constitute proof of
9 the fact that the agent or employee negligently sold a cigarette, a cigar, or tobacco, or a
10 product containing tobacco to a person under 21 [19] years of age. The person who
11 holds the business license endorsement may overcome the presumption by
12 establishing by clear and convincing evidence that the agent or employee did not
13 negligently sell a cigarette, a cigar, or tobacco, or a product containing tobacco to a
14 person under 21 [19] years of age in violation of AS 11.76.100, 11.76.106, or
15 11.76.107 as alleged in the citation issued to the agent or employee. The presentation
16 of evidence authorized by this subsection does not constitute a collateral attack on the
17 conviction described in this subsection.

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

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

3 (5) AS 04.16.050, relating to possession, control, or consumption of
4 alcohol, except for conduct constituting habitual minor consuming or in possession or
5 control under AS 04.16.050(d); and

6 (6) a municipal curfew ordinance, whether adopted under
7 AS 29.35.085 or otherwise, unless the municipality provides for enforcement of its
8 ordinance under AS 29.25.070(b) by the municipality; in place of any fine imposed for
9 the violation of a municipal curfew ordinance, the court shall allow a defendant the
10 option of performing community work; the value of the community work, which may
11 not be lower than the amount of the fine, shall be determined under AS 12.55.055(c);
12 in this paragraph, "community work" includes the work described in AS 12.55.055(b)
13 or work that, on the recommendation of the municipal or borough assembly, city
14 council, or traditional village council of the defendant's place of residence, would
15 benefit persons within the municipality or village who are elderly or disabled.