

Original sponsors: Faiks and Binkley

1 IN THE SENATE BY THE JUDICIARY COMMITTEE
2 HOUSE CS FOR CS FOR SENATE BILL NO. 339 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to tobacco products."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 * Saction 1. PURPOSE. AS 11.76.105, added by sec. 3 of this Act, makes
9 the purchase of cigarettes by persons under age 19 a violation. The sole
10 penalty for a violation is a fine. The amendment of AS 47.10.010(b), made
11 by sec. 6 of this Act, implements legislative intent. Because children's
12 proceedings do not provide for the imposition of fines, the amendment of AS
13 47.10.010(b) excludes these offenses from the juvenile jurisdiction of the
14 superior court, allowing the citation of minors and the imposition of fines
15 by the district court.

16 * Sec. 2. AS 11.76.100 is repealed and reenacted to read:

17 Sec. 11.76.100. SELLING OR GIVING TOBACCO TO A MINOR. (a) A
18 person commits the offense of selling or giving tobacco to a minor if
19 the person is 19 years of age or older and

20 (1) knowingly sells, exchanges, or gives a cigarette, a
21 cigar, tobacco, or a product containing tobacco to a person under 19
22 years of age; or

23 (2) maintains a vending machine that dispenses cigarettes,
24 cigars, tobacco, or products containing tobacco and that is accessible
25 to persons under 19 years of age.

26 (b) Notwithstanding the provisions of (a) of this section, a
27 person who maintains a vending machine is not in violation of (a)(2)
28 of this section if

29 (1) the vending machine is in a location that is generally

1 supervised by a person who maintains the vending machine, or an em-
2 ployee of the person, during the hours the machine is accessible;

3 (2) the vending machine is in a location where a person
4 under 21 years of age, other than an employee of the owner of the
5 premises, is not allowed entry by law unless accompanied by a parent,
6 guardian, or spouse of the person who is 21 years of age or older; or

7 (3) the vending machine is in a location where a person
8 under 19 years of age is not allowed entry by policy of the owner of
9 the premises unless accompanied by a person 19 years of age or older.

10 (c) In this section, a person maintains a vending machine if the
11 person owns the machine or owns or controls a facility in which the
12 machine is located.

13 (d) Selling or giving tobacco to a minor is a violation.

14 * Sec. 3. AS 11.76 is amended by adding a new section to read:

15 Sec. 11.76.105. PURCHASE OF TOBACCO BY A MINOR. (a) A person
16 under 19 years of age may not purchase a cigarette, a cigar, tobacco,
17 or a product containing tobacco in this state.

18 (b) Purchase of tobacco by a minor is a violation.

19 * Sec. 4. AS 43 is amended by adding new sections to read:

20 ARTICLE 3. EXCISE TAX ON CERTAIN TOBACCO PRODUCTS.

21 Sec. 43.50.300. EXCISE TAX LEVIED. An excise tax is levied on
22 tobacco products in the state at the rate of 25 percent of the whole-
23 sale price of the tobacco products. The tax is levied when a person

24 (1) brings, or causes to be brought, a tobacco product into
25 the state from outside the state for sale;

26 (2) makes, manufactures, or fabricates a tobacco product in
27 the state for sale in the state; or

28 (3) ships or transports a tobacco product to a retailer in
29 the state for sale by the retailer.

1 Sec. 43.50.310. EXEMPTIONS. (a) A facility operated by one of
2 the uniformed services of the United States is exempt from the tax.
3 In this subsection, "uniformed services" has the meaning given in 5
4 U.S.C. 2101.

5 (b) The tax does not apply to a tobacco product if the United
6 States Constitution or other federal laws prohibit the levying of the
7 tax on the product by the state.

8 Sec. 43.50.320. LICENSING. (a) Except as provided in (g) of
9 this section, a person must be licensed by the department if the
10 person engages in business as a distributor for a tobacco product that
11 is subject to the tax.

12 (b) The department, upon application and payment of a fee of
13 \$50, shall issue a license for one year to a person who applies for a
14 license under (a) of this section.

15 (c) The department may refuse to issue a license under this
16 section if there is reasonable cause to believe the information sub-
17 mitted in the application is false or misleading and is not made in
18 good faith.

19 (d) A license issued under this section must include the name
20 and address of the licensee, the type of business to be conducted, and
21 the year for which the license is issued.

22 (e) The department may renew a license issued under this section
23 for a fee of \$50.

24 (f) The department may suspend or revoke a license issued under
25 this section if the licensee violates a provision of AS 43.50.300 -
26 43.50.390 or a regulation adopted under AS 43.50.370.

27 (g) A license required by this section is in addition to any
28 other license required by law, except that a person who is licensed
29 under AS 43.50.010 - 43.50.180 is exempt from the licensing require-

1 ments of this section.

2 (h) A license issued under this section is not assignable or
3 transferable, except that in the case of death, bankruptcy, receiver-
4 ship, or incompetency of the licensee, or if the business of the
5 licensee is transferred to another by operation of law, the department
6 may extend the license for a limited time to the executor, administra-
7 tor, trustee, receiver, or the transferee.

8 Sec. 43.50.330. RETURNS. (a) On or before the last day of each
9 calendar month, a licensee shall file a return with the department.
10 The return must state the number or amount of tobacco products sold by
11 the licensee during the preceding calendar month, the selling price of
12 the tobacco products, and the amount of tax imposed on the tobacco
13 products.

14 (b) The licensee shall remit with the return the tax due under
15 AS 43.50.300 for the month covered by the return, after deducting one
16 percent of the tax due, which the licensee shall retain to cover the
17 expense of accounting and filing the return.

18 Sec. 43.50.340. RECORDS. A licensee shall keep a complete and
19 accurate record of all tobacco products of the licensee subject to the
20 tax, including purchase prices, sales prices, the names and addresses
21 of the sellers and the purchasers, the dates of delivery, the quan-
22 tities of tobacco products, and the trade names and brands. State-
23 ments and records required by this section must be in the form pre-
24 scribed by the department, preserved for three years, and available
25 for inspection upon demand by the department.

26 Sec. 43.50.350. DISPOSITION OF PROCEEDS. The tax collected by
27 the department shall be deposited in the general fund. The commis-
28 sioner of administration shall separately account for the taxes that
29 are deposited in the general fund under this section. The annual

1 estimated balance in the account may be used by the legislature to
2 make appropriations for health care, health research, health pro-
3 motion, and health education programs.

4 Sec. 43.50.360. ANNUAL REPORT. The department shall submit to
5 the legislature by the first day of each regular legislative session a
6 report indicating the amount of the tax collected during the fiscal
7 year that ended on the June 30 preceding the session.

8 Sec. 43.50.370. REGULATIONS. The department shall adopt under
9 the Administrative Procedure Act (AS 44.62) reasonable regulations
10 that it considers necessary to carry out the provisions of AS 43.50.-
11 300 - 43.50.390.

12 Sec. 43.50.390. DEFINITIONS. In AS 43.50.300 - 43.50.390

13 (1) "distributor" means a person who

14 (A) brings, or causes to be brought, a tobacco product
15 into the state from outside the state for sale;

16 (B) makes, manufactures, or fabricates a tobacco
17 product in the state for sale in the state; or

18 (C) ships or transports a tobacco product to a retail-
19 er in the state for sale by the retailer;

20 (2) "licensee" means a distributor who is

21 (A) licensed under AS 43.50.320; or

22 (B) exempted by AS 43.50.320(g) from licensing under
23 AS 43.50.320;

24 (3) "the tax" means the tax levied by AS 43.50.300;

25 (4) "tobacco product" means

26 (A) a cigar;

27 (B) a cheroot;

28 (C) a stogie;

29 (D) a perique;

- 1 (E) snuff and snuff flour;
- 2 (F) smoking tobacco, including granulated, plug-cut,
3 crimp-cut, ready-rubbed, and any form of tobacco suitable for
4 smoking in a pipe or cigarette;
- 5 (G) chewing tobacco, including cavendish, twist, plug,
6 scrap, and tobacco suitable for chewing; or
- 7 (H) an article or product made of tobacco or a tobacco
8 substitute, but not including a cigarette as defined in AS 43.-
9 50.170;

10 (5) "wholesale price" means the established price for which
11 a manufacturer sells a tobacco product to a distributor, after deduc-
12 tion of a discount or other reduction received by the distributor for
13 quantity or cash.

14 * Sec. 5. AS 43.50.170 is amended to read:

15 Sec. 43.50.170. DEFINITIONS. In AS 43.50.010 - 43.50.190 [THIS
16 CHAPTER], unless the context otherwise requires,

17 (1) "buyer" means a person who imports or acquires ciga-
18 rettes for the person's [HIS] own consumption from any source other
19 than a manufacturer, distributor, direct-buying retailer, or retailer;

20 (2) "cigarette" means a roll for smoking of any size or
21 shape, made wholly or partly of tobacco, whether the tobacco is fla-
22 vored, adulterated, or mixed with another ingredient, if the wrapper
23 or cover of the roll is made of paper or a material other than tobac-
24 co;

25 (3) ["DEPARTMENT" MEANS THE DEPARTMENT OF REVENUE;

26 (4)] "direct-buying retailer" means a person who is engaged
27 in the sale of cigarettes at retail in this state, and who brings or
28 causes to be brought cigarettes into the state;

29 (4) [(5)] "distributor" means a person who brings

1 cigarettes, or has cigarettes brought into the state, and who sells or
2 distributes at least 75 per cent of the cigarettes to others for
3 resale in the state;

4 (5) [(6)] "licensee" means a person licensed under AS 43.-
5 50.010 - 43.50.180;

6 (6) [(7)] "manufacturer" means a person who makes,
7 fashions, or produces cigarettes for sale to distributors or other
8 persons;

9 (7) [(8)] "person" includes an individual, company, part-
10 nership, joint venture, joint agreement, association, mutual or other-
11 wise, corporation, estate, trust, business trust, receiver, [OR]
12 trustee, syndicate, or political subdivision of this state, or combi-
13 nation acting as a unit;

14 (8) [(9)] "place of business" means a place where ciga-
15 rettes are sold, or where cigarettes are brought or kept for the
16 purpose of sale or consumption, including a vessel, vehicle, airplane,
17 or train;

18 (9) [(10)] "retailer" means a person in the state who is
19 engaged in the business of selling cigarettes at retail;

20 (10) [(11)] "sale" includes a sale, barter, exchange, and
21 every other manner of transferring the ownership of personal property.

22 * Sec. 6. AS 47.10.010(b) is amended to read:

23 (b) When a minor is accused of violating a traffic statute or
24 regulation, a traffic ordinance or regulation of an incorporated
25 municipality, AS 11.76.105 relating to the purchase of tobacco by a
26 minor, a fish and game statute or regulation under AS 16, or a parks
27 and recreational facilities statute or regulation under AS 41.21,
28 excepting a statute the violation of which is a felony, the procedure
29 prescribed in AS 47.10.020 - 47.10.090 may not be followed, except

1 that a parant, guardian, or legal custodian shall be present at all
2 proceedings. The minor accused of an [A TRAFFIC] offense specified in
3 this subsection [, A FISH AND GAME STATUTE OR REGULATION VIOLATION
4 UNDER AS 16 OR PARKS AND RECREATIONAL FACILITIES VIOLATION UNDER
5 AS 41.21] shall be charged, prosecuted, and sentenced in the district
6 court in the same manner as an adult.