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4 66

(7)

Date Referred: February 20, 1990

FURTHER REFERRALS:

Date of Committee Action: 3-2-90

The JUDICIARY Committee considered:

HB 466

HOUSE BILL NO. 466

RELATING TO TOBACCO AND TOBACCO PRODUCTS

"An Act relating to tobacco."

RECOMMENDATIONS:

- be replaced with CS HB 466 (JUD) the same title
- have attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):
(Dept)

APPROVES PREVIOUS: (Date/Dept)

- fiscal impact _____
- zero fiscal note LAU
- zero with analysis _____

- fiscal note(s) _____
- zero fiscal note(s) Pub Safety
- zero fn/analysis _____

SIGNING DO PASS:

SIGNING:
(Check approp. column)

Do Not Pass No Rec Amend

Bob Gumbey

Hike Hillis

John Jones

Al Ellis

Mike De

SIGNING: (Check approp. column)	Do Not Pass	No Rec	Amend
<i>Terry Martin</i>		<input checked="" type="checkbox"/>	

John Jones / *Bob Gumbey*

Chairman's Signature

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to tobacco."

Agency Affected: Department of Law
BRU: Legal Services

Sponsor: Representative Gruenberg
Requestor: House Judiciary

Components: Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Prepared by: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Date: March 2, 1990
 Approved by Commissioner: Richard I. Pegues / FOR /
 Agency: Douglas B. Bally, Attorney General Date: March 2, 1990
Department of Law

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 466

This bill amends AS 11.76 by adding a new section that provides that a person may not provide tobacco to another person without charge or for a nominal fee, for the purpose of promoting retail sales. The bill does allow a person to provide small samples of tobacco without charge or for a nominal fee to a person 19 years of age or older for the purpose of promoting retail sales, if the samples are provided in a retail store that sells primarily tobacco, or at trade shows or conventions from which the general public is excluded, or in conjunction with a separate sale of tobacco by a retailer, manufacturer, or distributor.

There has apparently been some discussion, on the part of tobacco industry representatives, that state jurisdiction of tobacco promotions is preempted by 15 U.S.C. 1334(b), which places responsibility for regulating tobacco advertising at the federal level. It is the Department of Law's view, however, that the distribution of free samples falls under 15 U.S.C. 1332(6), which places the responsibility for the regulation of the distribution of tobacco, whether for sale or not, at the state level. If the bill is approved and is then subsequently challenged in court, the department will handle a challenge using its existing staff. Consequently, fiscal note costs are not required.

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 2, 1990

FURTHER REFERRALS:

JUDICIARY

Date of Committee Action: 2/20/90

The HEALTH, EDUCATION, & SOCIAL SERVICES Committee considered: HB 466

HOUSE BILL NO. 466 RELATING TO TOBACCO AND TOBACCO PRODUCTS

"An Act relating to tobacco."

RECOMMENDATIONS:

- [] be replaced with _____ [] the same title
[] have attached amendment(s) [] a new title
[X] do pass
[] do not pass
[] no recommendation
[] individual recommendations
[] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- [] fiscal impact _____
[X] zero fiscal note DP5
[] zero with analysis _____

- [] fiscal note(s) _____
[] zero fiscal note(s) _____
[] zero fn/analysis _____

SIGNING DO PASS:

SIGNING:

(Check approp. column)

Do Not
Pass
No Rec
Amend

J. Ellis
Ms. K. ...
Cheri Dauch
Peter ...

	Do Not Pass	No Rec	Amend
<u>Monte Beyer</u>		<u>X</u>	

J. Ellis
Chairman's Signature

State of Alaska

Committees

CO-CHAIR, HOUSE JUDICIARY
VICE-CHAIR, HOUSE LABOR AND COMMERCE
HOUSE HEALTH, EDUCATION
AND SOCIAL SERVICES



P.O. BOX V
JUNEAU, ALASKA 99811
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(SESSION)
914 CLAY COURT
ANCHORAGE, ALASKA 99503
(907) 276-6844

Representative Max F. Gruenberg, Jr.
District 11
Spenard, Upper Midtown Anchorage

February 20, 1990

MEMORANDUM

TO: Members of House HESS Committee
FROM: Representative Max Gruenberg *mx*
RE: HB 466, "An Act relating to tobacco"

I would very much appreciate your support for HB 466, the anti-tobacco sample bill.

Under the present law, it is legal to give adults unsolicited free samples of cigarettes and other tobacco products.

This bill prohibits giving away tobacco products in order to promote retail sales except in limited circumstances, such as in tobacco shops or conventions.

Deaths and serious illnesses from tobacco use are some of society's most serious substance abuse problems. This bill discourages tobacco use by prohibiting this type of aggressive marketing.

If you have any questions about the bill, please contact me or my staff attorney, Mark Handley, at 465-4986.

Thank you.

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Public Safety
 Title: Relating to tobacco and BRU: Alaska State Troopers
tobacco products
 Sponsor: Rep. Gruenberg, et al. Component: Detachments
 Requestor: House HESS

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not included)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER/PROG RCPT						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact anticipated.

Prepared by: Francis C. Allan
 Division: Alaska State Troopers

Phone: 269-5691
 Date: 02/08/90

Approved by Commissioner: Arthur English
 Agency: Department of Public Safety

Date: _____
 Page 1 of 1

2/8/90

February 9, 1990

MEMORANDUM

Re: H.B. 466 -- Prohibition on Tobacco
Product Sampling on Alaska

Representative Gruenberg has introduced a bill (H.B. No. 466) that, if enacted, would effectively ban the promotional distribution of free cigarette samples to adults. The bill would permit the distribution of free samples in only extremely limited circumstances: at retail stores primarily selling tobacco, closed conventions or trade shows, and in conjunction with a separate sale of tobacco. The proposed ban on sampling to adults is unwarranted and would conflict with federal law.

The purpose of cigarette sampling is not to recruit new smokers but to promote new brands or reintroduce old ones. Sampling is a promotional practice designed to secure for such unfamiliar brands a share of the existing, highly competitive cigarette market. Leading brands rarely are distributed in sample form. If the purpose of sampling were to recruit new smokers, the most popular brands would be distributed -- not the least familiar.

A sampling ban is not necessary to prevent the distribution of cigarettes to minors. Those who seek to ban cigarette sampling often claim that such a ban is the only way to keep free cigarette samples away from minors. Rarely is there any solid evidence of any significant problem in this

regard. The cigarette manufacturers insist on strict controls to prevent cigarette samples from reaching minors. Moreover, Alaska law already prohibits the distribution of tobacco products to any person under 19. Alaska Code § 11.76.100(a). The law also prohibits the purchase of tobacco by persons under 19 years of age. Id. § 11.76.105(a). Violation of either prohibition is punishable by a fine of up to \$300. Id. § 12.55.035. Enforcement of the existing law against distributing cigarettes to minors can solve any problem that may be thought to exist.

A sampling ban would violate the Federal Cigarette Labeling and Advertising Act. This is the federal law that regulates cigarette advertising and promotion. The statute contains a "preemption" provision that states as follows:

"No requirement or prohibition based on smoking and health shall be imposed under State law with respect to the advertising or promotion of any cigarettes." 15 U.S.C. § 1334(b).

The federal law assures uniformity in the advertising and promotion of a nationally marketed product and thereby "protect[s] the interests of the national economy." *Cipollone v. Liggett Group, Inc.*, 789 F.2d 181, 187 (3d Cir. 1986), cert. denied, 479 U.S. 1043 (1987). A sampling ban obviously would frustrate that purpose.

Antismoking advocates themselves recognize that state and local sampling bans are preempted by the federal law. The legislative history of the law clearly shows that Congress viewed sampling a form of cigarette "advertising or

promotion" within the meaning of the federal law. The Coalition on Smoking OR Health and the American Medical Association have urged Congress to repeal the "preemption" provision of the federal law precisely because of the obstacle it presents to state and local action in this area. The AMA stated that repeal of the "preemption" provision is --

"essential to enable state and local jurisdictions, that have been precluded from taking certain regulatory actions on tobacco products, to act responsibly and regulate prohibitions on the advertising or promotion of tobacco products based on public health concerns."

Finally, a sampling ban would violate the equal protection guaranty of the Fourteenth Amendment which requires that state laws must be "rational" -- that is, they must have some hope of accomplishing their stated purpose. A sampling ban would not reduce cigarette consumption among either adults or minors, and thus would not be "rational." In 1986, a federal district court in Oklahoma invalidated a ban on liquor advertising as "irrational" because the evidence did not establish that the ban would accomplish its stated purpose -- curtailing liquor consumption in the state. *Oklahoma Broadcasters Ass'n v. Crisp*, 636 F. Supp. 978, 992 (W.D. Okla. 1986). H.B. 466 would suffer from the same infirmity.

* * *

For the foregoing reasons, H.B. No. 466 should be rejected by the Alaska House of Representatives.

COVINGTON & BURLING



ALASKA DIVISION, INC.

RECEIVED
FEB 1 1990

February 28, 1990

Members of the House Judiciary Committee
Alaska State Legislature

RE: HB466

Tobacco is the nation's leading preventable cause of death and disease, responsible for roughly 30% of all cancer deaths, including 90% of lung cancers, 75% of cancers of the mouth, larynx and esophagus, and 50% of bladder and pancreas cancer.

Smoking is only superficially a matter of individual choice; it is more fundamentally, the product of social and economic forces, especially the advertising, marketing, and public relations practices of the tobacco industry.

There are appropriate, achievable, and effective public health policies that can significantly reduce the toll taken by tobacco. The primary obstacle to implementing these policies is the propaganda and opposition of the tobacco industry.

Tobacco use is not a simple matter of free individual choice. Tobacco use is drug addiction comparable to cocaine and heroin addiction. Tobacco use is a major health issue that must be addressed by appropriate public health policies.

Last year tobacco killed more Americans than heroin, cocaine, alcohol, AIDS, fires, homicide, suicide and automobile accidents combined. Alaskans have the opportunity to lead the way in tobacco control legislation. Unfortunately, we already lead the U.S. in male lung cancer death.

This is not the time for the tobacco industry to be telling us that we're discriminating against smokers. Nor is it time to let up in our efforts to control a substance that, if it were an artificial sweetener, would never have made it to market.

Sincerely,

A handwritten signature in cursive script, appearing to read "A. H. Koenig".

A. H. Koenig

Director of Public Issues

Alaska Division, American Cancer Society

February 26, 1990

MEMORANDUM

Re: Federal Preemption of Proposed
Tobacco Product Sampling Ban

House Bill 466, which generally would prohibit the promotional distribution of cigarettes and other tobacco products in the State of Alaska -- to adults as well as to minors -- would be preempted by the Federal Cigarette Labeling and Advertising Act and would violate equal protection.

1. Federal Preemption. The Federal Cigarette Labeling and Advertising Act provides in pertinent part:

"(b) No requirement or prohibition based on smoking and health shall be imposed under State law with respect to the advertising or promotion of any cigarettes." 15 U.S.C. § 1334(b)

Antismoking advocates have been urging Congress to repeal this preemption provision precisely because of the obstacle it presents to state and local action in this area. The Coalition on Smoking OR Health has urged repeal of the preemption provision on this ground.^{1/} Similarly, the American Medical Association, has stated:

"The repeal of the state preemption [provision] would allow states to regulate the advertising, labeling and promotion of cigarettes within their borders. * * * The proposed preemption repeal is essential to enable state and local jurisdictions, that have been precluded from taking certain

^{1/} See Hearing on H.R. 4543 before the Subcomm. on Transportation, Tourism and Hazardous Materials of the House Comm. on Energy and Commerce, 100th Cong., 2d Sess. 319-20 (1988) (statement of the Coalition on Smoking OR Health).

regulatory actions on tobacco products, to act responsibly and regulate prohibitions on the advertising or promotion of tobacco products based on public health concerns."^{2/}

Proponents of H.B. 466 would be in an awkward position if they asserted that the preemption provision does not stand in the way of the proposed sampling ban while at the same time the antismoking lobby is telling Congress that it does.

The Federal Cigarette Labeling and Advertising Act represents "a carefully drawn balance" between providing the public with information about smoking and health -- through mandated health warnings and otherwise -- "and protecting the interests of the national economy." Cipollone v. Liggett Group, Inc., 789 F.2d 181, 187 (3d Cir. 1986), cert. denied, 107 S. Ct. 906 (1987).^{3/} Congress adopted the preemption provision so that "commerce and the national economy" would not be "impeded by diverse [and] nonuniform * * * advertising regulations" (see 15 U.S.C. § 1331(2)) based on smoking and health. The preemption provision was specifically drafted to

^{2/} Id. at 355 (statement of the American Medical Association).

^{3/} Three other federal Courts of Appeal have reached the same conclusion. Stephen v. American Brands, Inc., 825 F.2d 312, 313 (11th Cir. 1987) (per curiam); Palmer v. Liggett Group, Inc., 825 F.2d 620, 622, 626, 629 (1st Cir. 1987); Roysden v. R.J. Reynolds Tobacco Co., 849 F.2d 230 (6th Cir. 1988).

prevent state or local bans or restrictions on cigarette advertising or promotion.

That cigarette "advertising or promotion" includes sampling is clear both from the interpretation of the statutory language given by the Federal Trade Commission and from the legislative history of the statute itself. In the federal statute, Congress directed the Federal Trade Commission to report annually to Congress on "current practices and methods of cigarette advertising and promotion," and to make appropriate legislative recommendations. 15 U.S.C. § 1337(b). Sampling consistently has been treated as a form of "advertising or promotion" by the FTC.

In 1978, for example, the FTC discussed "the use of other forms of current cigarette advertising and promotion," including "advertising of special events [and] free samples." FTC Report to Congress Pursuant to the Public Health Cigarette Smoking Act for the Year 1978, p. 4. In 1977, the FTC noted that, in addition to promotion through the print media and outdoor advertising, "the cigarette companies in 1977 increased the distribution of free samples to encourage smokers to try a particular brand." FTC Report to Congress Pursuant to the Public Health Cigarette Smoking Act for the Year 1977, p. 7. A 1981 FTC staff report referred to sampling as a "promotional technique" and a "form of advertising." An FTC Staff Report in 1981 on the Cigarette Advertising Investigation, p. 2-6.

He
Left out
"Likely" in
HRS ORAC
presentation

Courts would likely give considerable weight to the FTC view that sampling is a form of cigarette advertising and promotion. Apart from the strong deference normally given to an administrative agency's interpretation of a statute that it is directed to implement, the courts frequently have characterized brand sampling as a form of advertising or promotion. See, e.g., Indian Coffee Corp. v. Proctor & Gamble Co., 482 F. Supp. 1104, 1106 (W.D. Pa. 1980) ("Consumer promotions were aimed directly at the consumer, and included free samples, refunds, premium offers, and * * * consumer coupons.").

The FTC's interpretation of the statutory language is firmly supported by the legislative history of the statute. That sampling is a form of cigarette advertising or promotion was taken for granted during the hearings on the 1969 legislation. For example, in opposing a broadcast advertising ban, the President of the National Association of Broadcasters observed that sampling was a form of "promotion" to which the broadcast advertising ban would not apply.^{4/} Congressman Harvey stressed that the tobacco companies "advertise[d] not only in the communications field, on radio and on television,

^{4/} Cigarette Advertising and Labeling: Hearing on H.R. 6543 before the Consumer Subcomm. of the Senate Commerce Comm., 91st Cong., 1st Sess. 146 (1969) ("Senate Subcommittee Hearing") (letter of Oct. 8, 1969, from Vincent T. Wasilewski to Chairman Moss). See also 115 Cong. Rec. 38,738 (1969) (remarks of Sen. Goodell).

but they do extensive advertising in newspapers, on billboards, by direct mail, [and] by other media of all kinds."^{5/}

At the same time, others recommended that Congress not limit itself to banning broadcast advertising but impose restrictions on all cigarette advertising, including sampling. Arthur De Moss, President, National Liberty Life Insurance Company, urged "[e]ffective legislation to restrict all cigarette advertising * * *. This would include written as well as visual advertising, and would prohibit as well the giving of free samples of cigarettes to anyone, regardless of age."^{6/} Congress, of course, rejected this advice.

The cigarette industry resisted more severe advertising restrictions by pointing to its voluntary Cigarette Advertising Code. Under Article IV, concerning "Advertising Standards," Section 1 provides:

"All cigarette advertising and promotional activities shall be subject to the following:

* * *

(b) Sample cigarettes shall not be distributed to persons under twenty-one years of age.

(c) No sample cigarettes shall be distributed or promotional efforts

^{5/} Cigarette Advertising and Labeling: Hearing before the House Comm. on Interstate and Foreign Commerce, 91st Cong., 1st Sess. 209 (1969) (emphasis added). See also id. at 343 (remarks of Rep. Kuykendall).

^{6/} Id. at 1351.

conducted on school, college, or university campuses * * *."7/

The cigarette industry repeatedly represented that schools and colleges were to be "put absolutely off limits to cigarette advertising and other promotions like the distribution of free samples. Sampling to persons under 21 was ruled out in any event."8/ Industry representatives repeatedly cited the distribution of sample cigarettes as one type of "cigarette advertising in other media."9/ The Senate report on the 1969 legislation noted the industry's position that,

"with respect to all other advertising [than broadcast advertising], they would avoid advertising directed to young persons, and would continue to abstain from advertising in school and college publications, would continue not to distribute sample cigarettes or engage in promotional activities on school and college campuses * * *."10/

Some sampling ban proponents have nevertheless asserted that the preemption provision in the 1969 law was

7/ Id. at 1313.

8/ Id. at 1285 (statement of Robert B. Meyner, Administrator of the Cigarette Advertising Code) (emphasis added).

9/ Senate Subcommittee Hearing at 79 (statement of Joseph F. Cullman III, Chairman, Philip Morris, Inc.).

10/ S. Rep. No. 566, 91st Cong., 1st Sess. 9 (1969). See also Senate Subcommittee Hearing at 121 (statement of Senator Goodell characterizing distribution of sample cigarettes as a type of cigarette advertising); id. at 87 (letter of July 28, 1969, from Mr. Cullman to Chairman Moss, to the same effect); id. at 144 (letter of Sept. 2, 1969, from Mr. Cullman to Chairman Moss, to the same effect).

intended only to prohibit state requirements concerning the content of cigarette advertising. However, Congress in 1969 considered and rejected a version of Section 1334(b) that might have supported this interpretation of the provision.

H.R. 6543, as passed by the House, provided in Section 5(b):

"No statement relating to smoking and health shall be required in the advertising of any cigarettes the packages of which are labeled in conformity with the provisions of this Act." 115 Cong. Rec. 16,275 (1969) (emphasis added).

As passed by the Senate and approved by the Conference Committee, however, Section 5(b) provided:

"No other requirement or prohibition based on smoking and health shall be imposed by any state statute or regulation with respect to the advertising or promotion of any cigarettes the packages of which are labeled in conformity with the provisions of this Act." H.R. Rep. No. 897, 91st Cong., 2d Sess. 1, 5 (1970) (emphasis added).

It was this broadened version of the preemption provision that Congress enacted in 1969, replacing a narrower version that had been enacted in 1965. Moreover, when Congress subsequently considered the legislation ultimately enacted as the Comprehensive Smoking Education Act of 1984, it squarely rejected an attempt to narrow the reach of Section 1334(b) to prohibit only state or local labeling requirements.^{11/} The Supreme Court has stated that it would be

^{11/} Compare H.R. 3979, § 6(c), as introduced, with H.R. 3979, (footnote cont'd)

"improper * * * to give a reading to [a statute] that Congress considered and rejected." Pacific Gas & Electric Co. v. State Energy Resources Conservation & Development Comm'n, 461 U.S. 190, 194 (1983).

Thus, it is clear that sampling is a form of cigarette "advertising or promotion" shielded from state and local regulation by Section 1334(b) of the Federal Cigarette Labeling and Advertising Act. Congress intended Section 1334(b) to reach state and local restrictions on this and all other forms of cigarette "advertising or promotion." The sampling ban proposed for Alaska would be invalid under that preemption provision.

2. Equal Protection. Because the proposed sampling ban would be so clearly invalid under the Federal Cigarette Labeling and Advertising Act, it is unlikely that a court would find it necessary to consider the constitutional questions presented by H.B. 466. However, it should be noted that a federal District Court in Oklahoma has invalidated a state ban on liquor advertising as "irrational," and therefore impermissible under the Equal Protection Clause, because the evidence did not establish that the ban would accomplish its stated purpose -- curtailing liquor consumption in the state.

(footnote cont'd)

as reported by the House Energy and Commerce Committee. H.R. Rep. No. 805, 98th Cong., 2d Sess. 27 (1984).

Oklahoma Broadcasters Ass'n v. Crisp, 636 F. Supp. 978, 992
(W.D. Okla. 1986). The proposed ordinance banning cigarette
sampling in Alaska would suffer from the same infirmity.

COVINGTON & BURLING

Original sponsor(s): REP. GRUENBERG, Navarre, Ellis, Brown, C.Davis, M.Davis, Donley, Finkelstein, Goll, Hanley, Hudson, Jacko, Koponen, Kubina, Menard, Ulmer

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 466 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

8 * Section 1. AS 11.76.100(a) is amended to read:

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

11 (1) knowingly sells, exchanges, or gives [A CIGARETTE, A
12 CIGAR, TOBACCO, OR A PRODUCT CONTAINING] tobacco to a person under 19
13 years of age; or

14 (2) maintains a vending machine that dispenses [CIGARETTES,
15 CIGARS, TOBACCO, OR PRODUCTS CONTAINING] tobacco and that is accessi-
16 ble to persons under 19 years of age.

17 * Sec. 2. AS 11.76.105(a) is amended to read:

18 (a) A person under 19 years of age may not purchase [A CIGA-
19 RETTE, A CIGAR, TOBACCO, OR A PRODUCT CONTAINING] tobacco in this
20 state.

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

22 Sec. 11.76.108. RETAIL PROMOTION OF TOBACCO. (a) Except as
23 provided in (b) of this section, a person may not provide tobacco to
24 another person without charge or for a nominal fee, for the purpose of
25 promoting retail sales.

26 (b) A person may provide small samples of tobacco without charge
27 or for a nominal fee to a person 19 years of age or older for the
28 purpose of promoting retail sales, if the samples are provided

29 (1) in a retail store that sells primarily tobacco;

1 (2) at a trade show or convention from which the general
2 public is excluded; or

3 (3) in conjunction with a separate sale of tobacco by a
4 retailer, manufacturer, or distributor.

5 (c) A person who provides tobacco in violation of this section
6 is guilty of a violation.

7 * Sec. 4. AS 11.81.900(b) is amended by adding a new paragraph to read:

8 (58) "tobacco" means a cigarette as defined in AS 43.50.170
9 or tobacco product as defined in AS 43.50.390.
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76-10-110
CRIMINAL CODE
76-10-110. Violations — Classification of offenses.

- (1) It shall be an infraction for any person to violate Section 76-10-106.
(2) It shall be an infraction for any person to violate Section 76-10-108 or 76-10-109.
(3) The executive director of the Department of Health or local health departments may institute an action, in a court of appropriate jurisdiction, to enjoin repeated violations of Section 76-10-108 or 76-10-109.

History: C. 1953, 76-10-110, enacted by L. 1976, ch. 10, § 5; 1986, ch. 78, § 5.

Compiler's Notes. — The 1986 amendment substituted "an infraction" for "a class C misdemeanor" and "or" for "and" in Subsection (2); and in Subsection (3) substituted "The execu-

tive director of the Department of Health or local" for "Local boards of," inserted "departments" after "Health or local," and substituted ", in a court of appropriate" for "in any court with," and "or" for "and."

76-10-111. Prohibition of gift or free distribution of smokeless tobacco.

- (1) The Legislature finds that smokeless tobacco, or chewing tobacco, is harmful to the health of individuals who use those products because research indicates that they may cause mouth or oral cancers; that the use of smokeless tobacco among juveniles in this state is increasing rapidly; and that it is necessary to restrict the gift of these products in the interest of the health of the citizens of this state.
(2) It is unlawful for a manufacturer, wholesaler, and retailer to give or distribute without charge any smokeless tobacco or chewing tobacco in this state. Any person who violates this section is guilty of a class C misdemeanor for the first offense, and is guilty of a class B misdemeanor for any subsequent offense.

History: C. 1953, 76-10-111, enacted by L. 1986, ch. 66, § 2.

Effective Dates. — Laws 1986, ch. 66, § 3 makes the act effective on July 1, 1986.

76-10-112. Prohibition of distribution of cigarettes or other tobacco products — Exceptions.

- (1) Except as provided in Subsection (2), it is unlawful for a manufacturer, wholesaler, or retailer to give or distribute cigarettes or other tobacco products in this state without charge. Any person who violates this subsection is guilty of a class C misdemeanor for the first offense and a class B misdemeanor for any subsequent offense.
(2) Cigarettes and other tobacco products may be distributed to adults without charge at professional conventions where the general public is excluded.
(3) The prohibition described in Subsection (1) does not apply to retailers, manufacturers, or distributors who give cigarettes or other tobacco products to persons of legal age upon their purchase of cigarettes or other tobacco products.

History: C. 1953, 76-10-112, enacted by L. 1989, ch. 193, § 1.
Effective Dates. — Laws 1989, Chapter 193

became effective on April 24, 1989, pursuant to Utah Const., Art. VI, Sec. 25.

DISTRIBUTION OF TOBACCO PRODUCTS

325F.76 DEFINITIONS.

Subdivision 1. **Terms.** For the purposes of sections 325F.76 to 325F.78, the terms defined in this section have the meanings given them.

Subd. 2. **Chewing tobacco.** "Chewing tobacco" means loose tobacco or a flat compressed cake of tobacco that is inserted into the mouth.

Subd. 3. **Distribute.** "Distribute" means to give products to the general public at no cost or at nominal cost for product promotional purposes.

Subd. 4. **Package.** "Package" means a pack, box, or container of any kind in which a smokeless tobacco product is offered for sale, sold, or otherwise distributed.

Subd. 5. **Person.** "Person" means any individual, partnership, corporation, or other business or legal entity.

Subd. 6. **Smokeless tobacco.** "Smokeless tobacco" means chewing tobacco or tobacco snuff.

Subd. 7. **Tobacco snuff.** "Tobacco snuff" means a small amount of shredded, powdered, or pulverized tobacco that may be inhaled through the nostrils, chewed, or held in the mouth of an individual user.

History: 1986 c 352 s 1

325F.77 PROMOTIONAL DISTRIBUTION.

Subdivision 1. [Repealed, 1987 c 395 s 5]

Subd. 2. [Repealed, 1987 c 399 s 5]

Subd. 3. **Legislative intent.** Because the state prohibits both the use of tobacco products by minors and the furnishing of tobacco products to minors, and because the enforcement of an age-related restriction on the promotional distribution of tobacco products is impractical and ineffective, it is the intent of the legislature to control the distribution of these products and discourage illegal activity by prohibiting all promotional distribution, except as allowed in this section.

Subd. 4. **Prohibition.** No person shall distribute smokeless tobacco products or cigarettes, cigars, pipe tobacco, or other tobacco products suitable for smoking, except that single serving samples of tobacco may be distributed in tobacco stores.

History: 1986 c 352 s 2; 1987 c 399 s 3,4

325F.78 REMEDIES.

The attorney general may institute a civil action in the name of the state of Minnesota in the district court for an injunction prohibiting any violation of section 325F.77. The court, upon notice to the defendant of not less than five days, and upon proof that defendant has engaged in the practice prohibited by section 325F.77, may enjoin the future commission of the practice. The court may impose a civil penalty in an amount not to exceed \$5,000 for each violation. The attorney general may recover costs and disbursements, including costs of investigation and reasonable attorneys fees.

History: 1986 c 352 s 3

ARE STATE AND LOCAL GOVERNMENTS PREEMPTED
FROM BANNING THE FREE DISTRIBUTION
OR SAMPLING OF TOBACCO PRODUCTS?

While representatives of the tobacco industry are likely to argue that any ban on the free distribution of cigarettes and other tobacco products, or "sampling," by state or local governments is preempted by federal law, a careful reading of the applicable laws and legal principles leads to the conclusion that the enactment of such a ban is permissible and is not preempted by federal law.

1. What are the federal laws that must be examined to determine whether a state or local government may lawfully ban the free distribution or sampling of tobacco products?

There are only two federal laws that address these issues. They are the Federal Cigarette Labeling and Advertising Act, as amended by the Comprehensive Smoking Education Act of 1984, 15 U.S.C. Sections 1331-1340, and the Comprehensive Smokeless Tobacco Education Act of 1986, 15 U.S.C. Sections 4401-4406.

The text of the relevant provisions of these acts is as follows:

The Federal Cigarette Labeling and Advertising Act: 15
U.S.C. Section 1334

- (a) No statement relating to smoking and health, other than the statement required by Section 1331 of the Title, shall be required on any cigarette package.
- (b) No requirement or prohibition based on smoking and health shall be imposed under state law with respect to the advertising or promotion of any cigarettes the packages of which are labeled in conformity with the provisions of this Chapter.

The Comprehensive Smokeless Tobacco Education Act: 15
U.S.C. Section 4406

- (b) No statement relating to the use of smokeless tobacco products and health, other than the statement required by Section 4402 of this Title, shall be required by any state or local statute or regulation to be included on

any package or in any advertisement (unless the advertisement is an outdoor billboard advertisement) of a smokeless tobacco product.

2. Why doesn't the Federal Cigarette Labeling and Advertising Act prohibit a state or local government from banning the free distribution of cigarette products?

There are three main reasons why the Federal statute does not preempt state or local action in this area. They are:

- A. A ban on free sampling is a restriction on the distribution, not the promotion of cigarettes. While the Federal Cigarette Labeling and Advertising Act preempts efforts to restrict "the promotion" of cigarettes, it does not preempt state or local efforts to limit or restrict the "distribution" of cigarettes. A state or local government remains free to restrict when and where and to whom cigarettes may be sold. A ban on the free sampling or free distribution of cigarettes is a restriction on the "distribution" of cigarettes, not on the "promotion" of cigarettes. This conclusion is confirmed by Section 1332 of the Act, which defines the terms "sale or distribution" as including "sampling or other distribution not for sale." Thus, just as a state or local government remains free to restrict the sale of cigarettes to minors or to prohibit the sale of cigarettes in schools or other facilities populated largely by minors, a state or local government remains free to limit the "distribution" of cigarettes by banning their free distribution and sampling.
- B. A ban on free sampling is consistent with the goals and purposes of the Federal Act. The preemption provision in the Federal Cigarette Labeling and Advertising Act must be examined in the context of the declared Congressional policy and purpose of the Act. The preemption provision was enacted to insure that state and local governments did not take actions which were inconsistent with the purposes of the Act.

15 U.S.C. Section 1331 states that Congress had two goals in the enactment of the Federal Cigarette Labeling and Advertising Act. First, Congress wished to inform the public about the hazards of cigarettes. Second, Congress did not want to unnecessarily impede the cigarette manufacturer's ability to sell cigarettes "by diverse, non-uniform, and confusing cigarette labeling and advertising regulations with respect to any relationship between smoking and health." 15 U.S.C. Section 1331(2).

A ban on the free sampling and free distribution of cigarette products is not inconsistent with the policy and purposes of the Federal Cigarette Labeling and Advertising Act, nor does it set up conflicting and confusing requirements that will otherwise impede the ability of cigarette manufacturers to market their products. The preemption provision was enacted to prohibit state and local restrictions on advertising and promotion that would make it difficult or impossible for a manufacturer to conduct a national advertising and promotional campaign. A ban on the free distribution of cigarette products within a particular jurisdiction does not conflict with this goal.

- C. A ban on free sampling may be enacted for reasons other than smoking and health. Even if the federal statute is considered to preempt an effort to ban the free sampling of cigarettes when such a prohibition is "based on smoking and health" considerations, a state and local government is free to enact such a ban if it does so to avoid congestion on its streets, to control or reduce litter, to protect pedestrians from annoyance and invasion of their privacy, or to avoid facilitating the availability of cigarettes and other tobacco products to minors. The preemption provision is limited to laws enacted based on "smoking and health" considerations only.

3. Does the Federal Cigarette Labeling and Advertising Act provision that says "No Requirement or Prohibition Based on Smoking or Health Shall be Imposed Under State Law with Respect to the Advertising and Promotion" of cigarettes preempt a state or local government from banning the free distribution of cigarettes?

Probably not. The tobacco industry argues that a ban on the free distribution of cigarettes amounts to a prohibition on its promotional efforts and, therefore, is preempted by the federal statute. No court has explicitly addressed this issue yet. Nonetheless, there are sound reasons for concluding that the Federal Cigarette Labeling and Advertising Act does not preempt a state or local government from banning the free distribution, or sampling, of cigarettes.

4. Does the Comprehensive Smokeless Tobacco Health Education Act of 1986 preempt state or local governments from banning the free distribution, or sampling, of smokeless tobacco products?

No. The preemption provision in the Smokeless Tobacco Act is careful and narrowly limited. It only prevents a state or local government from enacting a statute that requires a different warning label required by the federal statute. State and local governments remain free otherwise to limit or restrict the advertisement of these products and to limit or prohibit any promotional efforts for smokeless tobacco products that take place within their jurisdiction.

Compiled by the Coalition on Smoking or Health, a public policy project supported by the American Cancer Society, the American Heart Association, and the American Lung Association, Washington, D.C.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

March 2, 1990

The Hon. Max Gruenberg
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

STEVE COWPER, GOVERNOR

REPLY TO:

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JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
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Re: HB 466 -- (prohibition on the
free distribution or sampling
of tobacco products)

Dear Representative Gruenberg:

You have asked us if the state is preempted by federal law from enacting a prohibition on the free distribution or sampling of tobacco products. There is a prohibition against providing free tobacco in HB 466.

Because of the short period of time in which our response has been requested, we have not done an extensive analysis of this issue. However, our initial review leads us to believe that while it may be a close question, there is a legitimate argument that the state is not preempted by federal law from enacting a prohibition against the free distribution or sampling of tobacco products.

Under the supremacy clause of the United States Constitution, Article VI, cl. 2, Congress can pass laws that will completely govern an area, thus preempting any state action in that area. However, in determining whether state action is preempted in any particular area we must analyze whether there is an actual conflict between state and federal legislation and whether there was an intent behind the federal legislation to preclude state action. See Florida Lime & Avocado Growers v. Paul, 373 U.S. 132 (1962).

House Bill 466 states (with certain exceptions for tobacco stores and trade conventions), "A person may not provide tobacco to another person without charge or for a nominal fee, for the purpose of promoting retail sales." HB 466, p. 1, lines 23-25. Federal statute provides that "no requirement or prohibition based on smoking and health shall be imposed under State law with respect to the advertising or promotion of any cigarettes [when the packages are properly labelled]." 15 U.S.C.A. 1334(b) (1970).

The key question is whether or not giving away tobacco is "advertising or promotion." While giving away tobacco could be considered part of a promotional scheme, it is not "advertising" in the traditional sense. Furthermore, under 15 U.S.C.A. 1332(6) (1970), Congress defined the term "sale or distribution" as "including sampling or any other distribution not for sale." If Congress had meant to preempt state action in this area it arguably would have used the same terms ("sale or distribution") in 15 U.S.C.A. 1334(b) and would have clearly stated that states cannot interfere with the sale or distribution of tobacco. By not doing so, even though Congress has obviously taken action in this field, states do not appear to be explicitly forbidden from enacting legislation limiting the distribution of tobacco.

This analysis is further supported by the rule of statutory construction that states:

Where one statute deals with a subject in general terms, and another deals with a part of the same subject in a more detailed way, the two should be harmonized if possible; but if there is any conflict, the latter will prevail, regardless of whether it was passed prior to the general statute, unless it appears that the legislature intended to make the general act controlling.

2A C. Sands, Sutherland Statutory Construction 51.05, at 315 (4th ed. 1973) (footnotes omitted), cited in State v. Green, 586 P.2d 595, 602 (Alaska 1978).

House Bill 466 and federal law can be read in harmony with one another. Promotion is a general term, and does not necessarily cover the distribution of an item. Furthermore, even if the two laws did conflict, prohibiting the distribution of tobacco could be found to simply specify in a "more detailed manner" something that is not allowed under the general ambit of "promotion."

Finally, Congress's statement of intent in 15 U.S.C.A. 1331 does not specifically preclude states from limiting distribution of tobacco. Rather, it precludes the states from enacting "diverse, nonuniform, and confusing cigarette labeling and advertising regulations with respect to any relationship between smoking and health." Id. At least three other states have enacted statutes similar to the one proposed by HB 466. As we have noted,

The Hon. Max Gruenberg
Alaska State Legislature

March 2, 1990
Page 3

although it may be a close issue, we believe the better view is that states are not automatically preempted from enacting a restriction on the free distribution of tobacco.

Sincerely yours,

DOUGLAS B. BAILY
ATTORNEY GENERAL

By: *Elizabeth J. Kerttula*
Elizabeth J. Kerttula
Assistant Attorney General

EJK:jf

State of Alaska

Committees

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Representative Max F. Gruenberg, Jr.
District 11
Spenard, Upper Midtown Anchorage

February 28, 1990

MEMORANDUM

TO: Members of the House Judiciary Committee

FROM: Representative Max Gruenberg, *MFG*

RE: HB 466, "An Act relating to tobacco."

I would very much appreciate your support for HB 466, the anti-tobacco sample bill.

Under the present law, it is legal to give adults unsolicited free samples of cigarettes and other tobacco products.

This bill prohibits giving away tobacco products in order to promote retail sales except in limited circumstances, such as in tobacco shops or conventions.

Deaths and serious illnesses from tobacco use are some of society's most serious substance abuse problems. This bill discourages tobacco use by prohibiting this type of aggressive marketing.

If you have any questions about the bill, please contact me or my staff attorney, Mark Handley, at 465-4986.

Thank you.

Anch Daily News 2/20/90

Smoking costs U.S. \$52 billion

Alaska lowest — \$82 million yearly

By MARLENE CIMONS
Los Angeles Times

WASHINGTON — Health care expenses and productivity losses associated with smoking-related disease cost the United States more than \$52 billion every year, according to a government report released Tuesday.

The Department of Health and Human Services, in a national status report to Congress, estimated that illness caused by smoking imposes an average economic burden of \$1 billion per state, although some states run much higher tabs than others.

California, the most populated state, has the highest estimated cost of \$5.8 billion, the report said. Alaska was lowest, with \$82 million annually. Following California, in order, were New York, Texas, Pennsylvania, Illinois, Ohio and Michigan.

Annual expenses related to smoking-related disease average \$221 for every man, woman and child in the nation, ranging from a low of \$56 a person in Utah to \$284 per capita in Rhode Island, the report said.

Most of the costs identified by the study are related to health care. It said that the expenses are borne indirectly by all Americans in the form of higher private and public insurance premi-

ums and the increased burden on publicly supported health care facilities and personnel.

"Each and every American, including those who don't even smoke, is paying a hidden tax ... for the consequences of smoking," Louis W. Sullivan, the secretary of Health and Human Services, said in testimony before a Senate committee considering anti-smoking legislation.

"My view," Sullivan said, "is straightforward and simple: No smoking."

The report was immediately assailed by the Tobacco Institute, which said that "to assume that smokers impose a cost on society is a misapplication of a valid economic theory."

Brennan Dawson, a spokeswoman for the industry group, said that "smokers pay their own (insurance) premiums, so they cover their own costs."

Further, she said, "if people are less productive, that's not a cost to society — they bear the burden through lower pay, less frequent job promotions, or getting fired."

The report said that smoking causes more premature deaths than cocaine, heroin, alcohol, fire, automobile accidents, homicide and suicide combined.

POSITION PAPER
House Bill 466

"An Act relating to tobacco."

BACKGROUND

This bill would restrict the availability of tobacco, especially to minors, and place limits on methods of distributing tobacco. It would make it a violation to sell or give tobacco to a person under 19 years of age (herein called a minor), or to allow access of such persons to vending machines dispensing tobacco. It also defines the class of products so restricted more generally than earlier versions of the bill, as "tobacco," rather than naming examples of tobacco products. In addition, it defines as a violation the distribution of tobacco to any person without charge or at nominal cost for the purpose of promoting retail tobacco sales, with some exceptions involving sales of tobacco to adults, or at promotional conventions and trade shows not open to the public.

ANALYSIS

The following statistical and research data was obtained from two principle sources: a 1989 report of the Surgeon General to Congress, "Reducing the Health Consequences of Smoking, 25 Years of Progress" (SGR), and a report dated February 20, 1990 to Congress by the Center for Disease Control's Office on Smoking and Health, "Smoking and Health, A National Status Report, 2nd Edition" (OSH).

Limiting access of minors to tobacco is an important public health measure for the following reasons:

1. Virtually all adult smokers began using tobacco before age 20. Research indicates that if persons do not begin smoking by age 20, they rarely do so later. Those who begin smoking early in life have more trouble quitting, smoke more heavily, and have a higher risk of developing smoking related disease. Delaying the onset of smoking behavior, therefore, will likely have the effect of reducing both the incidence of new smokers and the prevalence of smoking and the associated adverse health effects. Limiting access of minors to tobacco as a means of reducing prevalence is supported by numerous health organizations, including the World Health Organization and the American Medical Association. it is

believed to be one of the best means available to prevent minors from beginning to smoke (SGR).

2. The Surgeon General's report states that retailers are the primary source of tobacco used by minors. Vending machines and free samples are both cited as sources of tobacco for the youngest children, possibly due to refusal by retailers to sell to them directly because of statutory restrictions. Therefore, this bill may be particularly effective in preventing tobacco use by this group, which is arguably the least able to make informed judgments about using tobacco and is at the greatest risk for adverse health effects if they begin using tobacco.

3. Tobacco use has clearly been shown to cause, or increase the risk of, some of the leading causes of mortality in the United States, including cancer, heart disease, and stroke. In fact, smoking causes more premature deaths than cocaine, heroine, alcohol, fire, automobile accidents, homicide, and suicide combined (OSH).

4. Smoking is an especially serious health problem in Alaska, which has the highest rate of both smoking and lung cancer mortality in the country. The OSH report states, based on 1985 data, that while the national smoking prevalence rate is 26.5 percent, in Alaska the rate for persons over 20 is 43.4 percent for males and 28.9 percent for females. A recent survey of Alaska adolescents' health-related behavior suggest that smoking prevalence in this group may be much higher, particularly in rural areas. The OSH report states that the direct and indirect costs of smoking-related adverse health effects to Alaska residents is \$82.3 million annually, and that the smoking-attributable years of potential life lost for Alaskans is 4,762 years.

The right of states to restrict tobacco use has a long, legal history in the United States, dating to a Supreme Court decision in 1900. In general, the federal government has not restricted the distribution of tobacco, leaving this to the states (SGR). Forty-three states and the District of Columbia have laws that restrict minors' access to tobacco, and in 29 of those states the age is 18 or older. Twelve states and at least 12 municipalities have laws restricting the distribution of samples of tobacco products.

The SGR enumerates three policies to restrict use of tobacco by minors, and they are just those contained in this

bill: 1) restrict sale and distribution of free tobacco to minors; 2) ban use or possession by minors; and 3) restrict access by minors to vending machines.

The likely effect of this bill would be to discourage tobacco use. In particular, it would tend to prevent young people from beginning to smoke, or limit the amount they smoke, by limiting their access to tobacco. It would not limit the activities of adults who already choose to use tobacco except in the area of making gifts or sales of tobacco to minors.

POSITION

The Department of Health and Social Services strongly supports this bill.

Recommended by: *Sally Mead*
Sally Mead, Coordinator
Office of Prevention

Date: 3/6/90

Approved by: *Myra M. Munson*
Myra M. Munson, Commissioner
Department of Health and
Social Services

Date: 3/4/90

Original sponsor(s): REP. GRUENBERG, Navarre, Ellis, Brown, C.Davis,
M.Davis, Donley, Finkelstein, Goll, Hanley, Hudson, Jacko, Koponen, Kubina,
Menard, Ulmer

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 466 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

8 * Section 1. AS 11.76.100(a) is amended to read:

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

11 (1) knowingly sells, exchanges, or gives [A CIGARETTE, A
12 CIGAR, TOBACCO, OR A PRODUCT CONTAINING] tobacco to a person under 19
13 years of age; or

14 (2) maintains a vending machine that dispenses [CIGARETTES,
15 CIGARS, TOBACCO, OR PRODUCTS CONTAINING] tobacco and that is accessi-
16 ble to persons under 19 years of age.

17 * Sec. 2. AS 11.76.105(a) is amended to read:

18 (a) A person under 19 years of age may not purchase [A CIGA-
19 RETTE, A CIGAR, TOBACCO, OR A PRODUCT CONTAINING] tobacco in this
20 state.

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

22 Sec. 11.76.108. RETAIL PROMOTION OF TOBACCO. (a) Except as
23 provided in (b) of this section, a person may not provide tobacco to
24 another person without charge or for a nominal fee, for the purpose of
25 promoting retail sales.

26 (b) A person may provide small samples of tobacco without charge
27 or for a nominal fee to a person 19 years of age or older for the
28 purpose of promoting retail sales, if the samples are provided

29 (1) in a retail store that sells primarily tobacco;

1 (2) at a trade show or convention from which the general
2 public is excluded; or

3 (3) in conjunction with a separate sale of tobacco by a
4 retailer, manufacturer, or distributor.

5 (c) A person who provides tobacco in violation of this section
6 is guilty of a violation.

7 * Sec. 4. AS 11.81.900(b) is amended by adding a new paragraph to read:

8 (58) "tobacco" means a cigarette as defined in AS 43.50.170
9 or tobacco product as defined in AS 43.50.390.

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