

HB

189

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SSHB 189

Revision Date: _____
Title: "An Act relating to sale of tobacco and tobacco products..."

Department Affected: Administration
BRU: Office of Public Advocacy
Component: Office of Public Advocacy

Sponsor: Rep. Cowdery
Requestor: (H) JUD

COMPONENT SERIAL NO. 43

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 97) cost: \$ 0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

There is no fiscal impact to the Department of Administration.

Prepared by: Brant McGee, Director
Division: Office of Public Advocacy

Phone: 274-1684
Date: _____

Approved by Commissioner: Mark Boyer
Agency: Department of Administration

Date: 4/25/97

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. CSSSHB 189(L&C)

Revision Date: _____ Department: Commerce and Economic Development
 Title: An Act relating to sale, gift, exchange, or distribution BRU: Occupational Licensing
of tobacco and tobacco products;.... Component: Operations
 Sponsor: Reps. Cowdery, Austerman
 Requestor: House Judiciary COMPONENT SERIAL NO. 1844

Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
CHANGE IN REVENUES	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other 1091 Designated PR						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 97) cost: \$ 0.0

POSITIONS						
FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

The bill creates penalties for sale of tobacco to persons under 19 years of age and establishes conditions under which tobacco and tobacco products can be sold. No fiscal impact is anticipated by this bill.

Prepared by: Jennifer Strickler, Administrative Manager
 Division: Occupational Licensing
 Approved by Commissioner: William L. Hensley
 Agency: Commerce and Economic Development

Phone: 465-2144
 Date: 4/23/97
 Date: 4-24-97

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HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: April 21, 1997

FURTHER REFERRALS:

Date of Committee Action: 5/6/97

The JUDICIARY Committee considered:

HB 189

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 189

RESTRICT TOBACCO SALES/POSSESSION

"An Act relating to sale of tobacco and tobacco products; and providing for an effective date."

recommends it be replaced with the following committee substitute CS 55 HB 189 the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____ APPROVES PREVIOUS: (Dept/Date) _____
 fiscal note(s) _____ fiscal note(s) _____
 zero fiscal note(s) _____ zero fiscal note(s) DPS, REVENUE

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>Bryan D. Porter</i>	PORTER	<input checked="" type="checkbox"/>			
<i>Norm Rokeberg</i>	ROKEBERG	<input checked="" type="checkbox"/>			
<i>Uma Croft</i>	CROFT			<input checked="" type="checkbox"/>	
<i>Con Bunde</i>	BUNDE			<input checked="" type="checkbox"/>	
<i>Art Berkowitz</i>	BERKOWITZ			<input checked="" type="checkbox"/>	
<i>James Green</i>	GREEN	<input checked="" type="checkbox"/>			
<i>James James</i>	JAMES			<input checked="" type="checkbox"/>	

CHAIR'S SIGNATURE _____

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. CS SSHB 189 (L&C)

Revision Date: _____ Dept. Affected: Alaska Court System
 Title: Tobacco Sales BRU: Trial Courts
 Component: _____
 Sponsor: Rep. Cowdery
 Requestor: House Judiciary COMPONENT SERIAL NO. 768

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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Fund Source (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 97) cost: None

Positions

Full-Time						
Part-Time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: Doug Wooliver, Administrative Attorney
 Agency: Alaska Court System

Approved by: Stephanie J. Cole, Acting Administrative Director
 Agency: Alaska Court System

Phone: 264-8228
 Date: 04/28/97

Date: 04/28/97

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

1997 LEGISLATIVE SESSION

Revision Date: April 9, 1997
Title: Restrict tobacco sales/possession
Sponsor: Representative Cowdery
Requestor: H. Labor & Commerce

Dept. Affected: Public Safety
Component: DPS Statewide Support
Commissioner's Office
COMPLEMENT SERIAL NO. 0523

5:30p

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

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES ()	-0-	-0-	-0-	-0-	-0-	-0-
Code Revenue						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of current year (FY 97) impact: \$ _____

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 is anticipated to the Department of Public Safety

Prepared By: Sandy Perry-Provost, Special Assistant to the Commissioner

Phone: 465-4322

Division: Commissioner's Office

Date: 4/9/97

Approved by Commissioner: *Ronald L. Otte*

Date: 4/9/97

Agency: Ronald L. Otte, Dept. of Public Safety

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Revision Date: _____ Dept. Affected: Revenue
 Title: Restrict Tobacco Sales/Possession BRU: Alcoholic Beverage Control Board
 Component: Alcoholic Beverage Control Board
 Sponsor: Representative Cowdery
 Requestor: (H) L&C COMPONENT SERIAL NO. 100

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost \$ 0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

The proposed legislation would restrict sales of tobacco products to premises which have been issued a liquor license. The issue of enforcement has not been addressed and is not anticipated by ABC under the current version of the bill. Thus there would be no operating budget effect.

Prepared by: Doug Griffin, Director Phone: 277-8638
 Division: Alcoholic Beverage Control Board Date: April 9, 1997
 Approved by Commissioner: Wilson L. Condon *Wilson L. Condon* Date: April 9, 1997
 Agency: Revenue

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CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 189(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES COWDERY, Austerman

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to sale, gift, exchange, or distribution of tobacco and tobacco
2 products."

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 knowingly

7 [(1) NEGLIGENTLY] sells, exchanges, or gives a cigarette, a cigar,
8 tobacco, 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) A person who violates (a) of this section by selling, exchanging,
13 [SELLING] or giving tobacco to a person under 19 years of age [MINOR] is guilty
14 of a class B misdemeanor, except that, if within the five years preceding the

1 offense, the person has previously been convicted under this subsection or a law
 2 or ordinance of this or another jurisdiction with elements substantially similar to
 3 this section, the person is guilty of a class A misdemeanor [A VIOLATION AND
 4 UPON CONVICTION IS PUNISHABLE BY A FINE OF NOT LESS THAN \$300].

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

6 **Sec. 11.76.107. Restrictions of sales of tobacco and tobacco products.**

7 Except for sales of cigarettes by vending machine, a person may not knowingly sell
 8 cigarettes, cigars, tobacco, or a product containing tobacco unless the sale

9 (1) occurs in a manner that allows only the sales clerk to have access
 10 to the cigarettes, cigars, tobacco, or product containing tobacco prior to sale; or

11 (2) is a wholesale transaction and the person selling the cigarettes,
 12 cigars, tobacco, or products containing tobacco is licensed as a manufacturer or
 13 distributor under AS 43.50.010.

14 * Sec. 4. AS 43.50.070 is amended to read:

15 **Sec. 43.50.070. Revocation of licenses.** The department may suspend or
 16 revoke a license issued under AS 43.50.010 - 43.50.180 (1) for a **knowing**
 17 [CRIMINALLY NEGLIGENT] violation of AS 11.76.100, 11.76.107, or a violation
 18 of AS 43.50.010 - 43.50.180 or a regulation of the department adopted under
 19 AS 43.50.010 - 43.50.180; (2) if a licensee ceases to act in the capacity for which the
 20 license was issued; or (3) if a manufacturer, distributor, or wholesale distributor
 21 negligently sells tobacco or products containing tobacco to a nonlicensed retailer or a
 22 retailer whose license endorsement under AS 43.70.075 has been suspended. A person
 23 whose license is suspended or revoked may not sell cigarettes or permit cigarettes to
 24 be sold during the period of the suspension or revocation on the premises occupied or
 25 controlled by that person. A disciplinary proceeding or action is not barred or abated
 26 by the expiration, transfer, surrender, renewal, or extension of a license issued under
 27 AS 43.50.010 - 43.50.180. The department shall comply with the provisions of the
 28 Administrative Procedure Act (AS 44.62).

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

30 * Sec. 6. LEGISLATIVE INTENT CONCERNING HB 159. On the event that both this
 31 Act and a version of HB 159 pass the legislature during the same session of the Twentieth

- 1 Alaska State Legislature and become law, it is the intent of the legislature that both Acts be
- 2 given effect to the maximum extent possible.

HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: April 21, 1997

FURTHER REFERRALS:

Date of Committee Action: 5/5/97

The JUDICIARY Committee considered:

SSHB 189

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 189

RESTRICT TOBACCO SALES/POSSESSION

"An Act relating to sale of tobacco and tobacco products; and providing for an effective date."

RESCINDED

recommends it be replaced with the following committee substitute CSSS HB 189 (JUD) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____

APPROVES PREVIOUS: (Dept/Date) _____

fiscal note(s) _____

fiscal note(s) _____

zero fiscal note(s) _____

zero fiscal note(s) DPS, REVENUE

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>Ann Kately</i>	ROKEBERG	✓			
<i>Brian S. Porter</i>	PORTER	✓			
<i>Joseph J. Green</i>	GREEN				
<i>James J. James</i>	JAMES			✓	
<i>John B. Bunde</i>	BUNDE			✓	
<i>Chas. A. Berkowitz</i>	BERKOWITZ			✓	
<i>John W. Croft</i>	CROFT			✓	

CHAIR'S SIGNATURE *Joseph J. Green*

0-LS0711VH
Ford
5/6/97

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 189(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:

Referred:

Sponsor(s): REPRESENTATIVES COWDERY, Austerman

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to sale, gift, exchange, or distribution of tobacco and tobacco
2 products."

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 knowingly

7 [(1) NEGLIGENTLY] sells, exchanges, or gives a cigarette, a cigar,
8 tobacco, 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) A person who violates (a) of this section by selling, exchanging,
13 [SELLING] or giving tobacco to a person under 19 years of age [MINOR] is guilty
14 of a class B misdemeanor, except that, if within the five years preceding the

1 offense, the person has previously been convicted under this subsection or a law
2 or ordinance of this or another jurisdiction with elements substantially similar to
3 this section, the person is guilty of a class A misdemeanor [A VIOLATION AND
4 UPON CONVICTION IS PUNISHABLE BY A FINE OF NOT LESS THAN \$300].

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

6 **Sec. 11.76.107. Restrictions of sales of tobacco and tobacco products.**

7 Except for sales of cigarettes by vending machine, a person may not knowingly sell
8 cigarettes, cigars, tobacco, or a product containing tobacco unless the sale

9 (1) occurs in a manner that allows only the sales clerk to have access
10 to the cigarettes, cigars, tobacco, or product containing tobacco prior to sale; or

11 (2) is a wholesale transaction and the person selling the cigarettes,
12 cigars, tobacco, or products containing tobacco is licensed as a manufacturer or
13 distributor under AS 43.50.010.

14 * Sec. 4. AS 43.50.070 is amended to read:

15 **Sec. 43.50.070. Revocation of licenses.** The department may suspend or
16 revoke a license issued under AS 43.50.010 - 43.50.180 (1) for a knowing
17 [CRIMINALLY NEGLIGENT] violation of AS 11.76.100, 11.76.107, or a violation
18 of AS 43.50.010 - 43.50.180 or a regulation of the department adopted under
19 AS 43.50.010 - 43.50.180; (2) if a licensee ceases to act in the capacity for which the
20 license was issued; or (3) if a manufacturer, distributor, or wholesale distributor
21 negligently sells tobacco or products containing tobacco to a nonlicensed retailer or a
22 retailer whose license endorsement under AS 43.70.075 has been suspended. A person
23 whose license is suspended or revoked may not sell cigarettes or permit cigarettes to
24 be sold during the period of the suspension or revocation on the premises occupied or
25 controlled by that person. A disciplinary proceeding or action is not barred or abated
26 by the expiration, transfer, surrender, renewal, or extension of a license issued under
27 AS 43.50.010 - 43.50.180. The department shall comply with the provisions of the
28 Administrative Procedure Act (AS 44.62).

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

30 * Sec. 6. LEGISLATIVE INTENT CONCERNING HB 159. On the event that both this
31 Act and a version of HB 159 pass the legislature during the same session of the Twentieth

- 1 Alaska State Legislature and become law, it is the intent of the legislature that both Acts be
- 2 given effect to the maximum extent possible.

HB 189

Sec. 11.76.100. Selling or giving tobacco to a minor. (a) A person commits the offense of selling or giving tobacco to a minor if the person is 19 years of age or older and

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

(2) maintains a vending machine that dispenses cigarettes, cigars, tobacco, or products containing tobacco.

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

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

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

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

(2) in an employee break room or other controlled area of a private work place that is not generally considered a public place.

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

(d) Selling or giving tobacco to a minor is a violation and upon conviction is punishable by a fine of not less than \$300.

(e) The court shall forward a record of each person convicted under this section who holds a business license endorsement under AS 43.70.075, or who is an employee or agent of a person who holds a license endorsement under AS 43.70.075 to the Department of Commerce and Economic Development.

(f) The provisions of (a) of this section do not apply to a person who sells or gives tobacco to a minor, if the minor is a prisoner at an adult correctional facility. (§ 9 ch 166 SLA 1978; am § 2 ch 125 SLA 1988; am §§ 1, 2 ch 125 SLA 1990; am §§ 1 — 3 ch 113 SLA 1992)

Effect of amendments. — The 1988 amendment rewrote this section to the extent that a detailed comparison is impracticable.

The 1990 amendment added the exception at the beginning of subsection (a) and added subsections (e) and (f).

The 1992 amendment, effective September 20,

1992, in subsection (a), substituted "negligently" for "knowingly" in paragraph (1) and deleted "and that is accessible to persons under 19 years of age" from the end of paragraph (2); rewrote subsection (b); and, in subsection (d), added "and upon conviction is punishable by a fine of not less than \$300" to the end.

Sec. 11.76.105. Possession of tobacco by a minor. (a) A person under 19 years of age may not knowingly possess a cigarette, a cigar, tobacco, or a product containing tobacco in this state. This subsection does not apply to a person who is a prisoner at an adult correctional facility.

(b) Possession of tobacco by a minor is a violation. (§ 3 ch 125 SLA 1988; am § 3 ch 125 SLA 1990)

Cross references. — For statement of legislative purpose, see sec. 1, ch. 125, SLA 1988 in the Temporary and Special Acts.

Effect of amendments. — The 1990 amendment,

in subsection (a), substituted "knowingly possess" for "purchase" and added the second sentence, and substituted "Possession" for "Purchase" at the beginning of subsection (b).

Sec. 11.76.107. Failure to supervise cigarette vending machine. (a) A person commits the offense of failure to supervise a cigarette vending machine if the person owns premises licensed as a beverage dispensary under AS 04.11.090 or licensed as a club under AS 04.11.110 or licensed as a package store under AS 04.11.150 and with criminal negligence fails to have an employee supervise a vending machine on those premises that dispenses cigarettes, cigars, tobacco, or products containing tobacco as required by AS 11.76.100(b)(1)(B).

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 159(JUD)
 IN THE LEGISLATURE OF THE STATE OF ALASKA
 TWENTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
 Referred:

Sponsor(s): REPRESENTATIVES KOTT, Mulder, Kohring, Sanders, Ryan, Cowdery

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to sale, gift, exchange, possession, and purchase of tobacco and
 2 tobacco products; and providing for an effective date."

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

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

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

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

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

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

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

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

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

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

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

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

14 A person may not sell a tobacco product unless

15 (1) the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (1) 45 days; [OR]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5/5

**GAIL PHILLIPS
SPEAKER OF THE HOUSE**

REP. GREEN:

CAN WE PLEASE WAIVE

HB 162 & HB 170

OUT OF JUDICIARY?

NEED TO GET IN

POSITION FOR CALENDAR-

THANKS:

MW

0-LS0711VF

Ford

4/21/97

adopted

4/28/97

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 189()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY

Offered:

Referred:

Sponsor(s): REPRESENTATIVES COWDERY, Austerman

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to sale, gift, exchange, or distribution of tobacco and tobacco
2 products."

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

4 * Section 1. AS 11.76.100(d) is amended to read:

5 (d) A person

6 (1) who violates (a)(1) of this section by selling, exchanging,
7 [SELLING] or giving tobacco to a person under 19 years of age [MINOR] is guilty
8 of a class A misdemeanor, except that, if within the five years preceding the
9 offense, the person has previously been convicted under this subsection or a law
10 or ordinance of this or another jurisdiction with elements substantially similar to
11 this section, the person is guilty of a class C felony;

12 (2) who maintains a vending machine in violation of (a)(2) of this
13 section commits a violation and upon conviction is punishable by a fine of not less
14 than \$300.

1 * Sec. 2. AS 11.76.100 is amended by adding new subsections to read:

2 (g) A person may not sell cigarettes, cigars, tobacco, or a product containing
3 tobacco unless the sale

4 (1) occurs in a manner that allows only the sales clerk to have access
5 to the cigarettes, cigars, tobacco, or product containing tobacco prior to sale;

6 (2) is a wholesale transaction and the person selling the cigarettes,
7 cigars, tobacco, or products containing tobacco is licensed as a manufacturer or
8 distributor under AS 43.50.010; or

9 (3) is by vending machine as required under (b) of this section.

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

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

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

31 Each form signed by an individual shall indicate the date of signature. The employer

1
2

shall retain the form signed by an individual employed as a retail sales clerk until 120 days after the individual has left the employer's employ.

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 79(STA)

1 Page 8, line 5, following "date of birth":

2 Insert ";

3 (4) shall display the person's business license and the endorsement
4 obtained under this section in a conspicuous place at or closely proximate to the
5 point of sale of products containing tobacco at the person's retail outlet"

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 29(STA)
79

- 1 Page 6, line 14, following "days":
- 2 Insert "for the first offense"

- 3 Page 6, line 15:
- 4 Delete "within the past 24 months"
- 5 Insert "[WITHIN THE PAST 24 MONTHS]"

- 6 Page 6, line 17, following "has been":
- 7 Insert "previously"

- 8 Page 6, line 20:
- 9 Delete "within the past 24 months"

- 10 Page 6, line 22, following "has been":
- 11 Insert "twice previously"

- 12 Page 6, lines 25 - 26:
- 13 Delete "within the past 24 months"

- 14 Page 6, line 27, following "has been":
- 15 Insert "three times previously"

A M E N D M E N T

OFFERED IN THE HOUSE
TO: HB 234

BY REPRESENTATIVE ROKEBERG

1 Page 1, line 5, following "costs.":

2 Insert "(a)"

3 Page 1, following line 7:

4 Insert a new subsection to read:

5 "(b) A parent or legal guardian of a minor liable under (a) of this section for
6 the medical costs of an abortion is also liable for the medical costs of the abortion
7 unless the department determines that a statutory or constitutional right of
8 confidentiality would be infringed by a disclosure to the parent or guardian that the
9 abortion had occurred."

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE ROKEBERG

TO: HB 234

1 Page 1, line 7, following "child.":

2 Insert "The liability established under this section may not be enforced if enforcement
3 would violate a statutory or constitutional right of confidentiality related to abortion
4 decisions."

5 Page 4, following line 6:

6 Insert a new bill section to read:

7 "* Sec. 7. AS 47.25 is amended by adding a new section to read:

8 **Sec. 47.25.267. Protection of confidentiality.** Notwithstanding
9 AS 47.25.150, 47.25.220, and 47.25.240, the department may not implement
10 AS 47.25.150, 47.25.220, or 47.25.240 to the extent that implementation would violate
11 a statutory or constitutional right of confidentiality related to abortion decisions."

12 Renumber the following bill section accordingly.

Pertinent Statutes

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5/5/97
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Sec. 11.76.100. Selling or giving tobacco to a minor. (a) A person commits the offense of selling or giving tobacco to a minor if the person is 19 years of age or older and

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

(2) maintains a vending machine that dispenses cigarettes, cigars, tobacco, or products containing tobacco.

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

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

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

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

(2) in an employee break room or other controlled area of a private work place that is not generally considered a public place.

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

(d) Selling or giving tobacco to a minor is a violation and upon conviction is punishable by a fine of not less than \$300.

(e) The court shall forward a record of each person convicted under this section who holds a business license endorsement under AS 43.70.075, or who is an employee or agent of a person who holds a license endorsement under AS 43.70.075 to the Department of Commerce and Economic Development.

(f) The provisions of (a) of this section do not apply to a person who sells or gives tobacco to a minor, if the minor is a prisoner at an adult correctional facility. (§ 9 ch 166 SLA 1978; am § 2 ch 125 SLA 1988; am §§ 1, 2 ch 125 SLA 1990; am §§ 1 — 3 ch 113 SLA 1992)

Effect of amendments. — The 1988 amendment rewrote this section to the extent that a detailed comparison is impracticable.

The 1990 amendment added the exception at the beginning of subsection (a) and added subsections (e) and (f).

The 1992 amendment, effective September 20,

1992, in subsection (a), substituted "negligently" for "knowingly" in paragraph (1) and deleted "and that is accessible to persons under 19 years of age" from the end of paragraph (2); rewrote subsection (b); and, in subsection (d), added "and upon conviction is punishable by a fine of not less than \$300" to the end.

Sec. 11.76.105. Possession of tobacco by a minor. (a) A person under 19 years of age may not knowingly possess a cigarette, a cigar, tobacco, or a product containing tobacco in this state. This subsection does not apply to a person who is a prisoner at an adult correctional facility.

(b) Possession of tobacco by a minor is a violation. (§ 3 ch 125 SLA 1988; am § 3 ch 125 SLA 1990)

Cross references. — For statement of legislative purpose, see sec. 1, ch. 125, SLA 1988 in the Temporary and Special Acts.

Effect of amendments. — The 1990 amendment,

in subsection (a), substituted "knowingly possess" for "purchase" and added the second sentence, and substituted "Possession" for "Purchase" at the beginning of subsection (b).

Sec. 11.76.107. Failure to supervise cigarette vending machine. (a) A person commits the offense of failure to supervise a cigarette vending machine if the person owns premises licensed as a beverage dispensary under AS 04.11.090 or licensed as a club under AS 04.11.110 or licensed as a package store under AS 04.11.150 and with criminal negligence fails to have an employee supervise a vending machine on those premises that dispenses cigarettes, cigars, tobacco, or products containing tobacco as required by AS 11.76.100(b)(1)(B).

tion of offenses,
 see AS 12.55.]

S.

ents of sealed letters
 f disabled person
 lock device

(r) Failure to supervise a vending machine is a violation and upon conviction is punishable by a fine of not less than \$300.

(c) In this section, "supervise" means reasonably monitor the use of. (§ 4 ch 113 SLA 1992)

Sec. 11.76.110. Interference with constitutional rights. (a) A person commits the crime of interference with constitutional rights if

(1) the person injures, oppresses, threatens, or intimidates another person with intent to deprive that person of a right, privilege, or immunity in fact granted by the constitution or laws of this state;

(2) the person intentionally injures, oppresses, threatens, or intimidates another person because that person has exercised or enjoyed a right, privilege, or immunity in fact granted by the constitution or laws of this state; or

(3) under color of law, ordinance, or regulation of this state or a municipality or other political subdivision of this state, the person intentionally deprives another of a right, privilege, or immunity in fact granted by the constitution or laws of this state.

(b) In a prosecution under this section, whether the injury, oppression, threat, intimidation, or deprivation concerns a right, privilege, or immunity granted by the constitution or laws of this state is a question of law.

(c) Interference with constitutional rights is a class A misdemeanor. (§ 9 ch 166 SLA 1978)

Sec. 11.76.120. Opening or publishing contents of sealed letters. A person who wilfully opens or reads, or has opened and read, a sealed letter not addressed to the person, without authority to do so by the writer or by the person to whom it is addressed, or who wilfully, without the same authority, publishes a letter or portion of it, knowing it to have been opened without the authority of the writer or addressee, upon conviction, is punishable by imprisonment in jail not less than one month nor more than one year, or by a fine of not less than \$50 nor more than \$500. This section does not extend to or include an act made punishable by a law of the federal government. (§ 65-5-115 ACLA 1949)

Revisor's notes. — Formerly AS 11 20 660. Re-numbered in 1978.

Sec. 11.76.130. Interference with rights of disabled person. (a) A person commits the crime of interference with the rights of a disabled person if the person intentionally prevents or restricts

(1) a physically or mentally disabled person from having full and free pedestrian use of a street, highway, sidewalk, walkway, or other thoroughfare, to the same extent that any other person has a right to pedestrian use; or

(2) a physically disabled person from being accompanied or assisted by a certified service animal, without an extra charge for the service animal, in a common carrier, place of public accommodation, or other place to which the general public is invited, except as provided in (b) of this section.

(b) A physically disabled person who is accompanied or assisted by a certified service animal in a common carrier, place of public accommodation, or other place to which the general public is invited, is liable for property damage done by the animal.

(c) In this section

(1) "certified service animal" means an animal trained to assist a physically disabled person and certified by a school or training facility for service animals as having completed such training;

(2) "physically or mentally disabled" has the meaning given in AS 18.80.300.

Article 01. CIGARETTE TAX ACT

Sec. 43.50.010. License.

(a) A person may not sell, purchase, possess, or acquire cigarettes as a manufacturer, distributor, direct-buying retailer, vending machine operator, or buyer without a license.

(b) The department, upon application and payment of the fee, shall issue a license to each manufacturer, distributor, direct-buying retailer, vending machine operator, or buyer. The department shall adopt reasonable regulations that it considers necessary in respect to the application for and the issuance of licenses.

(c) The department may refuse to issue a license if there is reasonable cause to believe that the applicant has wilfully withheld information requested to determine the applicant's eligibility to receive a license, or if there is reasonable cause to believe that information submitted in the application is false or misleading and is not made in good faith.

(d) A license required by AS 43.50.010 - 43.50.180 is in addition to any other license required by law.

(e) A license issued under AS 43.50.010 - 43.50.180 must include

- (1) the name and address of the licensee;
- (2) the type of business to be conducted; and
- (3) the year for which the license is issued.

History -

(sec. 3 ch 187 SLA 1955; am sec. 38 ch 113 SLA 1980)

Sec. 43.50.020. Separate licenses.

If a person operates more than one place of business, the person must obtain a separate license for each place of business, except that a person operating one or more cigarette vending machines is considered to have only one place of business for the purpose of a license under AS 43.50.010 - 43.50.180. A person licensed only as a manufacturer, distributor, direct-buying retailer, vending machine operator, or buyer may not operate in another capacity unless the appropriate license for it is first secured. Each license shall be exhibited at the place of business for which it is issued and in the manner prescribed by the department.

History -

(sec. 4 ch 187 SLA 1955)

Sec. 43.50.030. License fees.

(a) For each license issued to a manufacturer, and for each renewal, the fee is \$5.

(b) For each license issued to a distributor or wholesaler-distributor, and for each renewal, the fee is \$50.

(c) For each license issued to a vending machine operator, and for each renewal, the fee is \$25.

(d) For each license issued to a direct-buying retailer, and for each renewal, the fee is \$25.

(e) For each license issued to a buyer, and for each renewal, the fee is \$25.

(f) A license may not be issued except upon the payment of the fee notwithstanding a statute or exemption to the contrary.

History -

(sec. 5 ch 187 SLA 1955; am sec. 1 ch 47 SLA 1964)

Sec. 43.50.035. Wholesaler-distributor license.

A person may qualify for a wholesaler-distributor license by furnishing a good and sufficient surety bond in an amount equal to twice the average monthly return and in no case less than \$5,000, payable to the department and approved by the Department of Law. If a wholesaler-distributor fails to pay the cigarette tax when due, the bond may be forfeited and the license revoked. The department may issue permits in place of bonds to resident holders of wholesaler-distributor licenses doing business wholly in the state who pay the tax before shipment.

History -

(sec. 2 ch 47 SLA 1964)

(a) Unless a person has a business license endorsement issued under this section, a person may not sell cigarettes, cigars, tobacco, or products containing tobacco as a retailer. An endorsement required under this section is in addition to any other license or endorsement required by law.

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

(c) The department may refuse to issue an endorsement under this section if there is reasonable cause to believe that the information submitted in the application is false or misleading and is not made in good faith.

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

(1) 45 days; or

(2) 90 days, if within the past 24 months the person has been previously convicted of violating AS 11.76.100 or 11.76.107, or a provision of this section or a regulation implementing this section adopted under AS 43.70.090.

(e) If a person who receives an endorsement under this section has multiple retail outlets, a suspension imposed under (d) of this section applies only to the retail outlet in which the violation occurs.

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

History -

(sec. 5 ch 125 SLA 1990; am sec. 6, 7 ch 113 SLA 1992)

Amendment Notes -

The 1992 amendment, effective September 20, 1992, in subsection (d), inserted a section reference in two places, substituted "may suspend" for "shall suspend", and inserted "not more than"; and added subsection (f).

Editors Notes -

Section 7, ch. 125, SLA 1990 provides that the endorsement requirement of (a) of this section "applies only upon issuance or renewal of a business license required under AS 43.70.020."

Sec. 43.50.390. Definitions.

In AS 43.50.300 - 43.50.390

- (1) "distributor" means a person who
 - (A) brings, or causes to be brought, a tobacco product into the state from outside the state for sale;
 - (B) makes, manufactures, or fabricates a tobacco product in the state for sale in the state; or
 - (C) ships or transports a tobacco product to a retailer in the state for sale by the retailer;
- (2) "licensee" means a distributor who is
 - (A) licensed under AS 43.50.320; or
 - (B) exempted by AS 43.50.320(g) from licensing under AS 43.50.320;
- (3) "the tax" means the tax levied by AS 43.50.300;
- (4) "tobacco product" means
 - (A) a cigar;
 - (B) a cheroot;
 - (C) a stogie;
 - (D) a perique;
 - (E) snuff and snuff flour;
 - (F) smoking tobacco, including granulated, plug-cut, crimp-cut, ready-rubbed, and any form of tobacco suitable for smoking in a pipe or cigarette;
 - (G) chewing tobacco, including cavendish, twist, plug, scrap, and tobacco suitable for chewing; or
 - (H) an article or product made of tobacco or a tobacco substitute, but not including a cigarette as defined in AS 43.50.170;
- (5) "wholesale price" means the established price for which a manufacturer sells a tobacco product to a distributor, after deduction of a discount or other reduction received by the distributor for quantity or cash.

APPROPRIATE FINES

Sec. 12.55.035. Fines.

(a) Except as provided in AS 12.55.036, upon conviction of an offense, a defendant may be sentenced to pay a fine as authorized in this section or as otherwise authorized by law.

(b) Except as provided in AS 12.55.036, upon conviction of an offense, a defendant who is not an organization may be sentenced to pay, unless otherwise specified in the provision of law defining the offense, a fine of no more than

(1) \$75,000 for murder in the first or second degree, attempted murder in the first degree, sexual assault in the first degree, sexual abuse of a minor in the first degree, kidnapping, or misconduct involving a controlled substance in the first degree;

(2) **\$50,000 for a class A, B, or C felony;**

(3) **\$5,000 for a class A misdemeanor;**

(4) \$1,000 for a class B misdemeanor;

(5) \$300 for a violation.

(c) Except as provided in AS 12.55.036, upon conviction of an offense, a defendant that is an organization may be sentenced to pay a fine not exceeding the greater of

(1) an amount that is

(A) \$500,000 for a felony offense or for a misdemeanor offense that results in death;

(B) \$200,000 for a class A misdemeanor offense that does not result in death;

(C) \$25,000 for a class B misdemeanor offense that does not result in death;

(D) \$10,000 for a violation;

(2) two times the pecuniary gain realized by the defendant as a result of the offense; or

(3) two times the pecuniary damage or loss caused by the defendant to another, or to the property of another, as a result of the offense.

(d) If a defendant is sentenced to pay a fine, the court may grant permission for the payment to be made within a specified period of time or in specified installments.

(e) In imposing a fine under (c) of this section, in addition to any other relevant factors, the court shall consider

(1) measures taken by the organization to discipline an officer, director, employee, or agent of the organization;

(2) measures taken by the organization to prevent a recurrence of the offense;

(3) the organization's obligation to make restitution to a victim of the offense, and the extent to which imposition of a fine will impair the ability of the organization to make restitution; and

(4) the extent to which the organization will pass on to consumers the expense of the fine.

History -

(sec. 12 ch 166 SLA 1978; am sec. 17 ch 45 SLA 1982; am sec. 26 ch 143 SLA 1982; am sec. 4 ch 59 SLA 1988; am sec. 18 ch 85 SLA 1988; am sec. 1, 2 ch 142 SLA 1990; am sec. 2 ch 71 SLA 1992; am sec. 2 - 4 ch 79 SLA 1994)

Cross References -

For classification of offenses, see AS 11.81.250; for sentences of imprisonment for felonies, see AS 12.55.125; for sentences of imprisonment for misdemeanors, see AS 12.55.135.

Amendment Notes -

The 1992 amendment, effective September 14, 1992, deleted the last two sentences in subsection (a).

The 1994 amendment, effective July 1, 1994, substituted "Except as provided in AS 12.55.036, upon" for "Upon" at the beginning of subsections (a)-(c).

Decisions -

No financial inquiry required. - Because the legislature amended this section in 1992, deleting the language in subsection (a) upon which DWI defendant relied, the language and thus the law in effect at the time of defendant's sentencing imposed no duty upon the court to inquire into defendant's ability to pay the fine imposed. *Dodge v. Municipality of Anchorage*, 877 P.2d 270 (Alaska Ct. App. 1994).

Court is under duty to consider defendant's earning capacity - in connection with any imposition of a fine or restitution. Failure to do so requires automatic reversal and remand. *Ashton v. State*, 737

P.2d 1365 (Alaska Ct. App. 1987) decided before 1992 amendment deleted requirement that court consider defendant's ability to pay).

Applied in Wright v. State, 651 P.2d 846 (Alaska Ct. App. 1982); Wilson v. State, 756 P.2d 307 (Alaska Ct. App. 1988).

Cited in Manderson v. State, 655 P.2d 1320 (Alaska Ct. App. 1983); Constantine v. State, 739 P.2d 188 (Alaska Ct. App. 1987); State v. Buza, 886 P.2d 1318 (Alaska Ct. App. 1994).

Article 03. CLASSIFICATION OF OFFENSES

Sec. 11.81.250. Classification of offenses.

(a) For purposes of sentencing under AS 12.55, all offenses defined in this title, except murder in the first and second degree, attempted murder in the first degree, sexual assault in the first degree, sexual abuse of a minor in the first degree, misconduct involving a controlled substance in the first degree, and kidnapping, are classified on the basis of their seriousness, according to the type of injury characteristically caused or risked by commission of the offense and the culpability of the offender. Except for murder in the first and second degree, attempted murder in the first degree, sexual assault in the first degree, sexual abuse of a minor in the first degree, misconduct involving a controlled substance in the first degree, and kidnapping, the offenses in this title are classified into the following categories:

(1) class A felonies, which characteristically involve conduct resulting in serious physical injury or a substantial risk of serious physical injury to a person;

(2) class B felonies, which characteristically involve conduct resulting in less severe violence against a person than class A felonies, aggravated offenses against property interests, or aggravated offenses against public administration or order;

(3) class C felonies, which characteristically involve conduct serious enough to deserve felony classification but not serious enough to be classified as A or B felonies;

(4) class A misdemeanors, which characteristically involve less severe violence against a person, less serious offenses against property interests, less serious offenses against public administration or order, or less serious offenses against public health and decency than felonies;

(5) class B misdemeanors, which characteristically involve a minor risk of physical injury to a person, minor offenses against property interests, minor offenses against public administration or order, or minor offenses against public health and decency;

(6) violations, which characteristically involve conduct inappropriate to an orderly society but which do not denote criminality in their commission.

(b) The classification of each felony defined in this title, except murder in the first and second degree, attempted murder in the first degree, sexual assault in the first degree, sexual abuse of a minor in the first degree, misconduct involving a controlled substance in the first degree, and kidnapping, is designated in the section defining it. A felony under Alaska law defined outside this title for which no penalty is specifically provided is a class C felony.

(c) The classification of each misdemeanor defined in this title is designated in the section defining it. A misdemeanor under Alaska law defined outside this title for which no penalty is provided is a class A misdemeanor.

History -

(sec. 10 ch 166 SLA 1978; am sec. 9, 10 ch 143 SLA 1982; am sec. 17, 18 ch 37 SLA 1986; am sec. 2, 3 ch 59 SLA 1988)

Cross References -

For increase in classification of misdemeanors committed in connection with a criminal street gang, see AS 12.55.137.

Amendment Notes -

The 1986 amendment inserted "sexual abuse of a minor in the first degree, misconduct involving a controlled substance in the first degree," in two places in the introductory language of subsection (a) and in the first sentence of subsection (b).

The 1988 amendment inserted "attempted murder in the first degree" in both sentences in the introductory paragraph of subsection (a) and in the first sentence in subsection (b).

Decisions -

For cases construing former AS 11.75.030, - which provided for the division of crimes into felonies and misdemeanors, see note to AS 11.81.900.

Applied in *State v. Clayton*, 584 P.2d 1111 (Alaska Ct. App. 1978); *Erhart v. State*, 656 P.2d 1199 (Alaska Ct. App. 1982); *Juneby v. State*, 665 P.2d 30 (Alaska Ct. App. 1983).

Quoted in *Griffith v. State*, 641 P.2d 228 (Alaska Ct. App. 1982).

Stated in *State v. Rastopsoff*, 659 P.2d 630 (Alaska Ct. App. 1983).

Cited in *Stiegele v. State*, 685 P.2d 1255 (Alaska Ct. App. 1984).

Article Notes -

Collateral References.- What constitutes lesser offenses "necessarily included" in offense charged, under Rule 31(c) of Federal Rules of Criminal Procedure, 11 ALR Fed. 173.

Proof of Age

Sec. 04.21.050. Proof of age.

(a) If a licensee or an agent or employee of the licensee questions or has reason to question whether a person entering licensed premises, or ordering, purchasing, attempting to purchase, or otherwise procuring or attempting to procure alcoholic beverages, has attained the age of 21 years or is entering without consent in violation of AS 04.16.049(a)(3) and has not attained the age of 16 years, that licensee, agent, or employee shall require the person to furnish proof of age acceptable under (b) of this section or proof of consent in a form determined by the board. If the person questioned does not furnish proof of age acceptable under (b) of this section, or if a licensee, agent, or employee questions or has reason to question the validity of the proof of age furnished, the licensee, employee, or agent shall require the person to sign a statement that the person is over the age of 21 or 16 years, as appropriate. This statement shall be made on a form prepared by and furnished to the licensee by the board.

(b) A valid driver's license or a valid identification card is acceptable as proof of age when used for identification in the purchase of alcoholic beverages and for securing entry to and remaining on premises where alcoholic beverages are sold if the license or identification card is made of or encased in plastic and contains a photograph of the license or card holder and a statement of age or date of birth.

(c) A licensee, or an agent or employee of the licensee, may not be charged for a violation of AS 04.16.051 - 04.16.052 if a signed statement as provided in (a) of this section is secured in good faith.

When a license or identification card is presented indicating that the owner and possessor of the presented driver's license or identification card is 21 or 16 years of age or over, as appropriate.

Alcohol Penalties

Sec. 04.16.051. Furnishing or delivery of alcoholic beverages to persons under the age of 21.

(a) A person may not furnish or deliver an alcoholic beverage to a person under the age of 21 years.

(b) This section does not prohibit the furnishing or delivery of an alcoholic beverage

(1) by a parent to the parent's child, by a guardian to the guardian's ward, or by a person to the legal spouse of that person if the furnishing or delivery occurs off licensed premises; or

(2) by a licensed physician or nurse to a patient in the course of administering medical treatment.

(c) Acts unlawful under AS 11.51.130 are not made legal by (b) of this section.

(d) A person acting with criminal negligence who violates this section is guilty of a class C felony if, within the five years preceding the violation, the person has been previously convicted under

(1) this section; or

(2) a law or ordinance of this or another jurisdiction with elements substantially similar to this section.

Article 02. PENALTIES AND FORFEITURES

Sec. 04.16.180. Penalties for violation.

(a) Except as provided in AS 04.11.015, AS 04.16.025, AS 04.16.050(b), 04.16.051, 04.16.200 - 04.16.210, and AS 04.21.065, a person who violates a provision of this title or a regulation adopted by the board is guilty, upon conviction, of a class A misdemeanor. Each violation is a separate offense.

(b) A suspension or revocation of a license ordered by the board under AS 04.11.370(4) and (5) shall be as follows:

(1) on first conviction the license of the premises involved may not be revoked, but may be suspended for not more than 45 days;

(2) on second conviction the license of the premises involved may not be revoked, but may be suspended for not more than 90 days;

(3) on third conviction the license of the premises involved may be suspended or revoked.

(c) In this section, the terms "second conviction" and "third conviction" include only convictions for violations that occur within five years of the first conviction. The terms refer to the cumulative number of convictions of a licensee of any combination of violations of the provisions of this title, regulations adopted under this title, or ordinances adopted under AS 04.21.010. The terms "second conviction" and "third conviction" include a conviction of the agent or employee of a licensee of a violation of a law, regulation, or ordinance if the conviction constitutes a ground for suspension or revocation under AS 04.11.370(5).

(d) This section does not affect the authority of the board to suspend or revoke a license when the board determines that continuance of activities under a license would not be in the best interests of the public.

Sec. 11.51.130.
Contributing to the
delinquency of a minor.

(a) A person commits the crime of contributing to the delinquency of a minor if, being 19 years of age or older or being under 19 years of age and having the disabilities of minority removed for general purposes under AS 09.55.590, the person aids, induces, causes, or encourages a child

(1) under 18 years of age to do any act prohibited by state law unless the child's disabilities of minority have been removed for general purposes under AS 09.55.590;

(2) under 18 years of age to enter or remain in the same room in a building where the unlawful sale of a drug occurs unless the child's disabilities of minority have been removed for general purposes under AS 09.55.590;

(3) under 16 years of age to be repeatedly absent from school, without just cause; or

(4) under 18 years of age to be absent from the custody of a parent, guardian, or custodian without the permission of the parent, guardian, or custodian or without the knowledge of the parent, guardian, or custodian, unless the child's disabilities of minority have been removed for general purposes under AS 09.55.590 or the person has immunity under AS 47.10.350 or 47.10.398(a); it is an affirmative defense to a prosecution under this paragraph that, at the time of the alleged offense, the defendant

(A) reasonably believed that the child was in danger of physical injury or in need of temporary shelter; and

(B) within 12 hours after taking the actions comprising the alleged offense, notified a peace officer, a law enforcement agency, or the Department of Health and Social Services of the name of the child and the child's location.

(b) Contributing to the delinquency of a minor is a class A misdemeanor.

MEMORANDUM

Representative John Cowdery

TO: Lisa / Rep. Green
FROM: Casey / Rep. Cowdery
DATE:
RE: O-LSO711\F
Cc:

NOTE:

We respectfully request that the Judiciary committee adopt CS SS HB 189 () document O-LSO711\F.

The new document has two changes:

1) Removes section 11.76.100 (g)(1)

Because one has a liquor license they are not automatically able to sell tobacco. They must also purchase a tobacco endorsement (Sec. 43.70.075), therefore the section (g)(1) is superfluous.

2) Removes Sec. 3.

By removing this section, this bill automatically becomes effective 90 days after passage.

REPRESENTATIVE JOHN J. COWDERY

CS HB 189 (L&C)
Explanation of Committee Substitute

This legislation will accomplish three things: 1) It will limit public access to tobacco products in retail premises 2) It will require employees to learn the relevant statute and sign an affidavit attesting to their understanding and 3) It will increase the penalties for selling tobacco to minors.

1) CS HB189 (L&C) simply limits public access to tobacco products in retail premises so that only the sales clerk will have access to any tobacco product prior to sale. This will ban self-service tobacco displays found today in many stores. Similar laws have been enacted in 171 cities around the U.S. *

Page 2, line 7 states "the sale occurs in a manner that allows only the sales clerk access to the cigarettes, cigars, tobacco..." This will limit how retail premises and tobacco shops present tobacco products, in that the products may not be available for customers to handle. Rather, if anyone wishes to buy tobacco, they must first contact the employee.

2) New to this substitute is a section that will require employees to verify the age of people whom they believe to be under 27 years old. Furthermore, retailers shall require their sales clerks to sign an affidavit stating that they understand it is illegal to sell tobacco to persons under the age of nineteen. We believe this will put more responsibility on retail employees who sell tobacco products.

3) There is a change in penalties as well. In current statute AS 11.76.100(2)(d) selling or giving tobacco to minors is punishable by a fine of not less than \$300. In this substitute version the fines are similar to contributing alcohol to a minor; a first violation is a class A misdemeanor -- with a fine of not more than \$5,000 AS.12.55.035(b)(3). If a second infraction occurs within five years the person will be guilty of a class C felony-- a possible \$50,000 fine AS.12.55.035(b)(2).

*Americans for Nonsmokers Rights

(907) 465-3879 • (907) 465-2069 Fax • State Capitol, Suite 416, Juneau, Alaska 99801
Toll Free (888) 269-3879 • (907) 258-8188 • 700 W. 4th Avenue, Anchorage, Alaska 99501

cc:Mail for: Lisa Kirsch

Subject: HB 189

From: Casey Sullivan 4/25/97 2:27 PM

To: Lisa Kirsch

Title 43,
Sec. 43.70.75(d)

This section has penalty provisions for 11.76.100
Albeit slight, it'll cover us.

MEMORANDUM

Representative John Cowdery

TO: Rep. Jeannette James
FROM: Rep. John J. Cowdery *J.C.*
DATE: May 3, 1997
RE: CS SS HB 189 ()
Cc: Rep. Joe Green, Chair, Judiciary, Rep. Bunde,
Rep. Berkowitz

NOTE:

The intent of this legislation is to restrict public access to tobacco in retail establishments and to increase the penalties for selling or giving tobacco to minors.

PENALTIES

CSSSHB 189() changes the penalties for selling/giving tobacco to a person under nineteen years of age from a violation that carries a fine of not less than \$300, to a class A misdemeanor carrying a penalty up to \$5,000 and imprisonment of not more than one year. A second offense would be a class C felony carrying a penalty up to \$50,000 and up to 5yrs imprisonment. It is not our intent to punish minors beyond the penalties now in statute, i.e., a violation.

SELF-SERVICE DISPLAYS

Regarding the ban on self-service displays, the Labor and Commerce Committee hearings showed that banning tobacco self-service displays is a very popular approach. Testimony was all positive. Eric Meyers, Diana Kuhns with the American Cancer Society, Pat Senner, Nancy Kuhn and Jenny Murray all testified in support of HB 189. HB 189 was the first bill to feature the self-service ban.

These same people testified moments later about HB 159. The age limit increase, from 19 to 21, and the tiered penalty provisions against minors were some of the less popular items. CSSSHB 189 does not increase the penalties for minors in possession of tobacco.

Attached is a summary of the tobacco related issues provided by Citizens to Protect Kids from Tobacco. I found this summary to be useful. My staff has correlated each issued with the three bills, to indicate if the issue is addressed in the bill.

TODAY

I would appreciate your support to make CSSSHB 189 the vehicle for the non-tax tobacco issue legislation.

QUESTIONS FROM JUDICIARY

There were a couple of questions that came up during the Judiciary committee meeting that I would like to clarify for your Sub-Committee.

1) *Lack of fiscal notes.*

I've checked with Annie Carpenetti with the Dept. of Law and she said that she won't be issuing a fiscal note due to lack of history.

2) *Use of the culpable mental state term "Negligence" in AS 11.76.100 (a)(1) is not the commensurate term to use with the stricter penalties (class A misdemeanor, class C felony) in CS SS HB 189 .*

For a class A misdemeanor, "Knowingly" is more appropriate and for the class C felony , "Recklessly" would be more appropriate. Mike Ford from Leg. Legal noted that including both definitions within the bill would be okay (see attached memo dated May 3, 1997). Mr. Ford's comments are consistent with an amendment offered by Representative Porter but rejected in the Judiciary committee. I recommend the sub-committee include such an amendment in the CS.

3) *Would the penalty provisions affect those people who are not retail shop owners (e.g. friends giving friends cigarettes)?*

A review of this issue with legal services indicates that the standard of culpability for these penalties would make it highly improbable

Thank you for your consideration.

Support Letters and Documents

SUPPORT



April 9, 1997

Representative John J. Cowdery
Alaska State Legislature
FAX #: 907-465-2069

ALASKA COUNCIL ON
PREVENTION OF
ALCOHOL AND DRUG
ABUSE, INC.

3833 DENALI STREET
SUITE 201

ANCHORAGE, ALASKA
99503

PHONE
907-258-6021

STATEWIDE
800-478-7738

FAX
907-258-6052

E-MAIL
prevent@alaska.net

Dear Rep. Cowdery:

Greetings! This letter concerns HB 189—*an Act relating to the sale of tobacco and tobacco products; and providing for an effective date.* On behalf of the Alaska Council on PREVENTION of Alcohol and Drug Abuse, I would like to provide some information which hopefully will assist in the decision-making process regarding this issue.

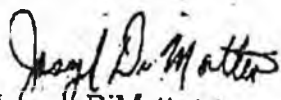
The following statistics were taken from the 1995 Youth Risk-Behavior Survey, which was funded by the Alaska Department of Health and Social Services and the Alaska Department of Education.

- The majority of Alaskan smokers (83.7%) began smoking between the ages 10 and 20 years. The median age for first time use is 13.
- Seventy-two percent of Alaskan high school students surveyed stated they tried cigarette smoking, compared to 69% nationally. Over 36% of Alaskan students surveyed use cigarettes currently (30% nationally) and 21% smoke daily (14% nationally).
- By the 12th grade, 29% of Alaskan students surveyed used smokeless tobacco frequently, compared to 22% nationally.

These statistics support the assertion that tobacco use among Alaskan students is higher than the national norm. This bill's passage would limit public access to tobacco products, thus making it difficult for minors to purchase. Regulations and accountability are established by setting guidelines on who can sell tobacco products. Lastly, this bill reinforces selling tobacco products to minors is an illegal and punishable offense.

Thank you for your time and attention to this important matter.

Respectfully,


Joseph DiMatteo
Executive Director

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 - PUBLIC INFORMATION
 - REFERRALS
 - RESOURCE LIBRARY



Americans for Nonsmokers' Rights

Helping you create a smoke-free world

ORDINANCES WHICH BAN SELF-SERVICE TOBACCO DISPLAYS

March 6, 1997

Belmont, CA	Utah, CA	Middleton, MA	Golden Valley, MN	Manville, NJ
Belvedere, CA	Union City, CA	Millis, MA	Litchfield, MN	Maurice River, NJ
Calistoga, CA	Vallejo, CA	Milton, MA	Montevideo, MN	Milltown Borough, NJ
Carpinteria, CA	Yountville, CA	Montague, MA	Monticello, MN	Monroe Township, NJ
Corte Madera, CA	Monte Vista, CO	Nahant, MA	Morris, MN	Monterey Township, NJ
Cotati, CA	Westbrook, ME	Needham, MA	Lavage, MN	Montvale, NJ
Estes Park, CA	Andover, MA	Newton, MA	Roseville, MN	Mt. Olive Township, NJ
Fairfax, CA	Arlington, MA	North Adams, MA	St. Louis Park, MN	New Milford, NJ
Fort Bragg, CA	Attleboro, MA	New Andover, MA	Shakopee, MN	North Plainfield, NJ
Healdsburg, CA	Bedford, MA	North Attleboro, MA	Shoreview, MN	Palisades Park, NJ
Hillsborough, CA	Bellingham, MA	Northampton, MA	Skakopee, MN	Park Ridge, NJ
Larkspur, CA	Billerica, MA	Norwood, MA	Wasceca, MN	Pequanook, NJ
Marin County, CA	Bolton, MA	Oak Bluffs, MA	Alexandria, NJ	Pine Beach, NJ
Mendocino Cnty, CA	Boxborough, MA	Orange, MA	Belleville Township, NJ	Princeton Borough, NJ
Mill Valley, CA	Canton, MA	Pittsfield, MA	Berkley Township, NJ	Princeton Township, NJ
Monterey Cnty, CA	Clinton, MA	Plainville, MA	Bernards Township, NJ	Readington Township, NJ
Napa, CA	Dedham, MA	Seekonk, MA	Bogota Borough, NJ	South Brunswick, NJ
Napa County, CA	Dover, MA	South Hadley, MA	Clinton Township, NJ	Stafford Township, NJ
Novato, CA	Easthampton, MA	Stockbridge, MA	East Greenwich, NJ	Upper Saddle River, NJ
Palo Alto, CA	Easton, MA	Tewksbury, MA	Edison, NJ	Chautauqua City, NY
Petaluma, CA	Gloucester, MA	Walpole, MA	Fairfield, Township, NJ	Bismark, ND
Poway, CA	Granby, MA	W. Springfield, MA	Franklin Township, NJ	Langdon, ND
Redlands, CA	Greenfield, MA	Westfield, MA	Galloway Township, NJ	Philadelphia, PA
Salinas, CA	Haverhill, MA	Wilbraham, MA	Hackensack, NJ	Austin, TX
San Anselmo, CA	Hingham, MA	Williamstown, MA	Hazlet Township, NJ	Wichita Falls, TX
San Mateo, CA	Holliston, MA	East Lansing, MI	Highland Park, NJ	Enoch, UT
San Mateo Cnty, CA	Holyoke, MA	Brooklyn Center, MN	Hillsborough Twp, NJ	Midvale City, UT
San Rafael, CA	Lawrence, MA	Chanhausen, MN	Howell Township, NJ	Pleasant Grove, UT
Santa Rosa, CA	Lee, MA	Chaska, MN	Jefferson Township, NJ	Riverton, UT
Sausalito, CA	Lenox, MA	Crookston, MN	Keypert, NJ	Fond du Lac, WI
Sebastopol, CA	Lexington, MA	Delano, MN	Lambertville, NJ	
Shafter, CA	Mansfield, MA	Duluth, MN	Leonia Borough, NJ	
Sonoma, CA	Marion, MA	Eden Prairie, MN	Little Egg Harbor, NJ	
Sonoma County, CA	Medfield, MA	Falcon Heights, MN	Madison, NJ	
Tiburon, CA	Methuen, MA	Fergus Falls, MN	Marlboro, NJ	

TOTAL ORDINANCES: 171

**These ordinances ban displays of tobacco that the public has access to without the assistance of a store employee. Some exempt cartons from this prohibition.*

May be reprinted with appropriate credit to Americans for Nonsmokers' Rights.

Only ordinances which have been personally reviewed and analyzed by ANR staff using standardized criteria will be included on ANR's ordinance lists. Omissions of particular ordinances may be the result of differences of opinion in interpretation, or because ANR staff have not yet analyzed the ordinance.

www.ansr.org/ordlist/ord

2530 San Pablo Avenue, Suite J • Berkeley, California 94702 • (510) 841-3032 / FAX (510) 841-3071

Americans for Nonsmokers' Rights

Helping you breathe a little easier

YOUTH ACCESS TO TOBACCO

April 23, 1996

THE PROBLEM

Tobacco addiction typically begins during childhood or adolescence. Approximately 75 percent of cigarette smokers tried their first cigarette before their 18th birthday (CDC, 1991). Initiation of daily smoking generally occurs during sixth through ninth grade (Johnston et al, 1992). Contrary to popular belief, youth tobacco use is on the rise. Although the daily smoking rate for high school seniors decreased from 29 percent to 20 percent between 1977 and 1981, the smoking rate decreased only an additional 1.8 percent through 1991 (Johnston et al. 1992; US DHHS, 1994). Recent studies indicate an end to the decline, 31.2 percent of seniors reported smoking in the last thirty days, a 12 percent increase since 1991 (Johnston, 1995).

These young tobacco users underestimate the addictive nature of nicotine. In a 1986 survey, only five percent of high school seniors believed they would be smoking 5 years later; in fact, an estimated 75 percent were smoking 7 to 9 years later (Johnston et al, 1992).

Despite the fact that almost all states prohibit the sale and distribution of tobacco products to minors, tobacco is easily accessible to youth. Studies indicate that underage youth can purchase tobacco products 70 to 100 percent of the time from merchants and through vending machines (Altman et al, 1989). Youth themselves report that it is easy for them to purchase tobacco; the majority buy their own cigarettes (Cummings et al, 1992).

The tobacco industry, including manufacturers and retailers, profit from these illegal sales. Researchers estimate that 947 million packs of cigarettes are sold annually to underage youth in the United States; representing total sales worth \$1.23 billion and a net profit of \$221 million (DiFranza and Tye, 1990).

Youth access policies are based on the hope that reducing access will lead to a reduction in youth consumption and addiction. The effectiveness of these policies cannot be measured simply in terms of reducing observed tobacco sales to minors. The ultimate measure is whether these policies reduce youth consumption of tobacco products. Before taking action, it is important to recognize that initiation into adulthood is one of the main reasons children start using tobacco. Because advertising portrays smoking as a mature, adult activity, children and youth draw the conclusion that one way to appear adult is to begin using tobacco. *Care should be taken to avoid strategies to reduce youth access which reinforce the image that smoking is a forbidden, and therefore, desirable activity.*

YOUTH ACCESS POLICIES

Passing a minimum age law which simply prohibits the sale and distribution of tobacco products to minors will not decrease youth access to tobacco. Policies must also address the locations and manner in which tobacco is sold or otherwise made available (Reynolds and Woodward, 1993). In addition, policies must include clear enforcement mechanisms and be actively enforced if they are to achieve their potential to reduce youth access.

The majority of state youth access laws focus on establishing a minimum age for purchase of tobacco products. State legislation has been largely unenforced and ineffective in reducing youth access (US OIG, 1992). The passage of an amendment to federal law, the Synar Amendment, may change this situation. This law requires states to adopt and enforce laws prohibiting tobacco sales and distribution to youth less than 18 years of age. States which fail to achieve specified reductions in youth sales rates risk losing a percentage of their federal funding for drug and alcohol prevention and treatment.

To date, the greatest successes in reducing youth access have been achieved at the local level (US DHHS, 1993b). Provisions that have been enacted at the local level include:

- licensing tobacco retailers
- banning or restricting tobacco vending machines
- banning self-service displays of tobacco products
- banning distribution of free samples or coupons for free samples of tobacco
- banning sale of single cigarettes

LICENSING TOBACCO RETAILERS

Licensing legislation requires merchants to buy a license to sell tobacco products *which can be suspended or revoked* if the merchant sells tobacco to minors. This creates a financial incentive for retailers to avoid illegal sales to minors. The profits lost by forfeiting the right to sell tobacco to adults exceed the typical \$100 to \$500 fine exacted for violations under most youth access legislation. License fees should be earmarked to fund enforcement activities.

Licensing ordinances should include strong enforcement provisions. Ordinances in Woodridge (IL) and King County (WA) have used underage "inspectors" who, under adult supervision, spot check retailer compliance. License fees cover the cost of enforcement efforts. Unfortunately, the King County ordinance was recently superseded by preemptive state legislation passed to satisfy the Synar Amendment, and the local enforcement activities have been dismantled.

Most licensing ordinances contain a graduated schedule of fines and penalties; suspension or revocation of a license is the last resort, after the retailer has continued to sell to minors. All tobacco products should be pulled from the shelves during the suspension or revocation period. Some ordinances allow the retailer to appeal license suspensions or revocations. To avoid frivolous appeals, the retailer should bear the costs of the appeal process.

Options

- Require a license for the retail sale of tobacco products. Earmark fees to fund enforcement efforts.
- Establish a graduated penalty system which culminates in suspension or revocation of the tobacco retail license for repeated sales to minors. Require tobacco products to be pulled from shelves during the suspension/revocation period.
- Establish a public appeal process for suspension or revocation of license. The retailer may be required to pay the costs of the appeals process.

TOBACCO VENDING MACHINES

A study commissioned by the vending machine industry found that 23 percent of youth that smoke use vending machines "often" or "occasionally" (NAMA, 1989). A recent study found an even higher percentage (37.8 percent) of youth that smoke who reported using vending machines "often" or "sometimes" (Cummings et al, 1992). Younger children rely more heavily on vending machines as a source of cigarettes (US DHHS, 1989). The NAMA study found that 13 year olds reported using a vending machine "often" 11 times more frequently than did 17 year olds (NAMA, 1989).

Option One: Total Ban on Tobacco Vending Machines

Both former Secretary of Health and Human Services Louis Sullivan and former Surgeon General C. Everett Koop have called for a total ban on cigarette vending machines. Unlike over-the-counter sales, vending machine sales to minors don't respond to merchant education programs (Altman et al. 1989) or to increased penalties and fines for sales to minors (Forster et al, 1992b).

Complete bans are relatively easy to enforce; the simple presence of a tobacco vending machine indicates a violation. A study of two cities with tobacco vending machines bans found complete compliance two years after the bans were enacted (Forster et al, 1992a).

Option Two: Partial Ban on Tobacco Vending Machines

A partial ban provides an exemption for tobacco vending machines placed in bars or other "adult only" locations, such as employee cafeterias or adult social clubs. These policies are less effective than total bans in preventing illegal sales to minors. Researchers from the University of Minnesota have demonstrated that underage youth experience high rates of success (78 percent) in purchasing cigarettes from vending machines placed in establishments characterized as adult locations (Forster et al, 1992b).

Requiring the machines to be placed at least 25 feet from any entrance may improve the effectiveness of a partial ban. This prevents placement of the machines in unattended lobbies and entrances. Define adult only locations carefully. For instance, exempting the bar area of a restaurant may fail to prevent sales to minors; 47 percent of youth using tobacco vending machines report that the machine was placed in a restaurant (NAMA, 1989).

Options

- Ban the sale of tobacco products through vending machines in all locations.
- Ban the sale of tobacco products through vending machines, providing an exemption for adult-only locations.
- Require that tobacco vending machines be placed at least 25 feet away from any entrance in an exempted location.

To derail strong vending machine policies, vending machine trade associations and the tobacco industry promote installing locking devices as an alternative to full or partial bans. This is an ineffective means of curtailing illegal sales to minors.

The state of Utah, which required their use until 1988, found that locking devices were rarely installed, and, where installed, seldom operating. In St. Paul, Minnesota, one year after a locking device ordinance was passed, 30 percent of the machines were not equipped with a locking device. Of those machines with a locking device, compliance deteriorated during the first year after the law was passed; from 30 percent sales to minors at three months, to 48 percent at one year (Forster et al, 1992a).

Locking device requirements entail a greater enforcement burden than complete bans (Forster et al, 1992a). Even when installed and operating, attendants may continue to sell cigarettes to underage youth.

SELF-SERVICE DISPLAYS

Self-service displays allow customers to acquire tobacco products without the intervention of a store employee. Tobacco companies offer retailers "slotting fees" for favorable placement of their products in the store, including placement of self-service displays.

Banning self-service displays may reduce youth access in two ways: (1) youth may be less likely to attempt purchase when they must request tobacco from a store employee, rather than handing the product to the sales clerk for checkout, and; (2) the absence of displays makes it more difficult to shoplift tobacco products.

Options

- Prohibit open displays of tobacco products which can be reached without the assistance of a store employee.

FREE SAMPLING

Distribution of free tobacco samples is a popular form of promotion for both cigarette and chewing tobacco manufacturers. Free tobacco samples frequently are distributed in locations where underage youth are likely to congregate: music festivals, rock concerts, sports events, zoos and fairs (Davis and Jason, 1988; Chudy et al, 1993).

Most states prohibit the distribution of tobacco samples to underage youth. In addition, the tobacco industry has a voluntary code addressing product sampling which prohibits the distribution of tobacco products to "any person whom they know to be under 21 years of age or who, without reasonable identification to the contrary, appears to be less than 21 years of age" (Tobacco Institute).

Despite these state laws, and the industry's voluntary code, free sampling of tobacco products in public areas and through the mail is a source of tobacco products for underage youth. A survey of underage youth found that 50 percent reported witnessing other people their age receiving free samples (Davis and Jason, 1988). The same study found that 20 percent of high school students and four percent of elementary students surveyed reported that they themselves had received free samples of tobacco products.

Options

- Ban distribution of free tobacco samples or coupons for free samples in publicly and privately owned property accessible to the general public.
- Ban the distribution of free tobacco samples through the mail.

SINGLE CIGARETTES

Although the Federal Cigarette Labeling and Advertising Act prohibits the sale or distribution of cigarettes without the mandated warning label, some stores sell single cigarettes which are taken out of their packages and stored in cups and trays. This practice is illegal, unless the cigarettes are removed from their packages by the customer or in the presence of the customer (Manfredi, 1989). A study of stores in southern California found that almost half sold single cigarettes, and that youth were able to purchase them almost twice as often as adults (Leary, 1993). This occurred despite the fact that California prohibits all sales of single cigarettes.

Options

Prohibit the sale or distribution of one or more cigarettes, other than in a sealed package which conforms to the federal labeling requirements, including the federal warning label.

POSTING WARNING SIGNS

Requiring warning signs stating that sales to minors are illegal does not lead to a reduction in sales to minors. A merchant education project in New York found that posting signs had no effect on the rate of sales. Although the intervention led to an increase in the number of stores posting warning signs (40 percent), those stores showed no significant reduction in sales to minors when compared to control stores which did not receive the intervention (Skretny et al, 1990). Studies conducted in Missouri and Texas also found that the likelihood of success was not significantly different for stores with and without warning signs (CDC, 1993).

The tobacco industry promotes warning signs. Posting of signs is the major component in the Tobacco Institute's program "It's the Law." Researchers have shown that this program does not reduce merchants' illegal sales to minors (DiFranza and Brown, 1992).

Posting warning signs where they are visible to minors presents tobacco as a "forbidden fruit" reserved for adults, and may encourage teen rebellion against adult rules (Carol, 1992; DuMelle, 1991). A study of youth susceptibility to smoking found that rebellious attitudes were associated with an increased susceptibility to smoking among adolescents (Pierce et al, 1993). If warning signs are required, they should be placed so as to be visible only to the sales clerk.

ENFORCEMENT ISSUES

Active enforcement is the most effective means to achieve long-term compliance (Altman et al, 1991; Feighery et al, 1991; Jason et al, 1991; Keay et al, 1993; Skretny et al, 1990; US OIG 1992). The ultimate goal of enforcement is compliance with the enacted youth access law. Compliance can be achieved by formal enforcement activities, or in some instances by community and merchant education activities. The activities described below are not mutually exclusive. Depending on available resources, and the needs of the community, they can be used alone or in combination. Funding to support enforcement and other compliance activities can be raised by earmarking revenues raised by tobacco retail license fees.

Designate an Enforcement Agency

A clearly designated enforcement agency is vital to the success of an enforcement scheme (US OIG 1992). Numerous studies note that enforcement of youth access laws is often a low priority with law enforcement officials; health agencies or other code enforcement agencies (e.g., City Manager) may be more responsive enforcement agencies (US OIG, 1992; Feighery et al, 1991; Chudy et al, 1993). Designation of a health agency for enforcement reinforces the message that youth access is a public health, rather than a law and order issue.

Community and Merchant Education

Many communities have undertaken community and merchant education activities as a substitute for or precursor to formal enforcement. Studies have shown that some of these interventions initially reduce rates of sales, but the effects deteriorate over time (Altman et al, 1991; Feighery et al, 1991). Community and merchant education activities may make eventual enforcement activities more palatable to the business community and the general public (Altman et al, 1991).

Citizen Complaints

The effectiveness of enforcement based on citizen complaints will vary with the community's level of concern regarding youth access to tobacco. Although it is important to provide a mechanism for citizens to file complaints against noncompliant merchants, this mechanism by itself may not generate enough enforcement activity to reduce tobacco sales to minors.

Undercover Buying Operations and Compliance Checks

Both undercover buying operations (UBOs) and compliance checks, called "stings" by some, involve the use of underage inspectors, accompanied by adult chaperones, who attempt to purchase tobacco products. UBOs do not entail any penalty to merchants who sell tobacco to minors, or otherwise violate provisions of youth access legislation. Rather, UBOs demonstrate the problem of tobacco sales to minors to the business community and the general public. In some instances, UBOs are used to warn merchants and are a precursor to enforcement.

Compliance checks are formal enforcement operations, in which merchants are penalized for violating provisions of youth access legislation.

Civil Lawsuits Based on Consumer Protection Statutes

In 1991, owners of Store 24, a Massachusetts-based convenience store chain, settled out of court with two individuals who sued the chain for violating state minimum age laws to sell them tobacco when they were minors (*Kyte v. Store 24*). As part of the settlement, the chain agreed to check proof of age before selling tobacco products to anyone not clearly of legal age. The so-called *Kyte Case* is the first lawsuit targeting the sales practices of tobacco retailers. This type of lawsuit is another way to seek compliance with youth access legislation.

Graduated System of Penalties

Whatever penalty system is adopted, it is important to establish a graduated system of penalties which are proportionate to the violation (US DHHS, 1990). Minor infractions of youth access legislation (e.g., failure to post a warning sign, first documented sale to a minor) should entail a smaller penalty than gross noncompliance (e.g., repeated sales to minors).

Civil vs. Criminal Penalties

Research consistently demonstrates the desirability of civil, rather than criminal penalties for violations of youth access legislation (Chudy et al, 1993; Feighery et al, 1991; US DHHS, 1990). These studies cite a variety of reasons for this recommendation: (1) the criminal justice system is overburdened with crimes which are considered a higher priority than tobacco sales to minors; (2) judges are reluctant to establish a criminal record for an otherwise law-abiding citizen; and (3) administrative processing of a civil penalty takes less time than adjudication through the criminal justice system; violators can be issued a citation similar to a traffic ticket.

Penalizing the Business Owner or the Sales Clerk

Penalizing owners for illegal sales to minors is preferable to citing sales clerks. Several studies document cases dismissed by judges who felt the owner, rather than the clerk, should be penalized or that the fine was an undue burden on a clerk earning minimum wage (Feighery et al, 1991; US OIG, 1992).

Citing the owner is also preferable from a practical standpoint. When the clerk is cited, noncompliant stores have no penalty, and therefore no significant incentive to avoid illegal sales. Owners can establish in-store policies and programs to train clerks to avoid illegal sales.

Citing the owner is also preferable from a practical standpoint. When the clerk is cited, noncompliant stores have no penalty, and therefore no significant incentive to avoid illegal sales. Owners can establish in-store policies and programs to train clerks to avoid illegal sales. Licensing schemes automatically place responsibility with the owner, who is levied the fine and risks eventual loss of license for repeated sales to minors.

Monetary Fines and License Suspensions

Penalties can include a combination of monetary fines for minor and first violations and suspension and/or revocation of a retail tobacco license for more serious violations (US DHHS, 1990). The loss of a tobacco retail license, and the ensuing loss of profits from legal sales to adults, is a strong incentive for merchants to closely monitor their tobacco sales.

Criminalization of Purchase or Possession by Minors

Criminalization of purchase and possession is a "blame the victim" strategy that shifts the blame from the responsible parties -- the tobacco industry and merchants who sell to minors (Carol, 1992; Altman et al, 1992). Criminalization reinforces the message of tobacco as a "forbidden fruit," unintentionally making tobacco use more desirable to youth (DuMelle, 1991; Carol, 1992; Altman et al. 1992). The tobacco industry has promoted criminalization of purchase and possession.

State laws which criminalize purchase and possession by minors create a barrier to enforcement efforts which use underage buyers (Altman et al, 1992). In order to conduct UBOs or stings, enforcement agencies must seek waivers from law enforcement officials. In some instances, law enforcement officials have declined to grant their permission to conduct UBOs and compliance checks.

Options

- Designate the health department or city manager to enforce the ordinance.
- Establish a graduated system of penalties for violations.
- Establish civil rather than criminal penalties.
- Penalize the retail owner for violations of youth access legislation.
- Establish a system of monetary fines and license suspension/revocation.

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Mary Pagenkopf

House Labor and Commerce Standing Committee, 4/18/97, 3:21 pm.