

**HB**

**79**

O-LS0348P  
Chenoweth  
4/16/97

CS FOR HOUSE BILL NO. 79( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES BUNDE, James

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the sale, possession, purchase, taxation, and regulation of  
2 products containing tobacco and to the offense of possession of tobacco by a  
3 person under 19 years of age."

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

5 \* Section 1. AS 11.76.100(b) is amended to read:

6 (b) Notwithstanding the provisions of (a) of this section,

7 (1) a person holding a business license endorsement issued under  
8 AS 43.70.075, or an agent or employee of a person who holds a business license  
9 endorsement issued under AS 43.70.075, may not be charged with a violation of  
10 (a)(1) of this section if the customer presented proof of age indicating that the  
11 owner and possessor of the proof of age was 19 years of age or over;

12 (2) a person who maintains a vending machine is not in violation of  
13 (a)(2) of this section if the vending machine is located

14 [(1)] on premises licensed as a beverage dispensary under

1 AS 04.11.090, licensed as a club under AS 04.11.110, or licensed as a package store  
2 under AS 04.11.150, [;] and

3 (A) at least 10 feet away from any entrance to the premises  
4 that the public may use [AS FAR AS PRACTICABLE FROM THE  
5 PRIMARY ENTRANCE]; and

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

9 (2) IN AN EMPLOYEE BREAK ROOM OR OTHER CONTROLLED  
10 AREA OF A PRIVATE WORK PLACE THAT IS NOT GENERALLY  
11 CONSIDERED A PUBLIC PLACE].

12 \* Sec. 2. AS 11.76 is amended by adding new sections to read:

13 **Sec. 11.76.102. Unlawful sale of products containing tobacco.** (a) A person  
14 commits the offense of unlawful sale of products containing tobacco if the person

15 (1) sells cigarettes

16 (A) that are not in their original, unopened package or container  
17 obtained from the distributor;

18 (B) in their original, unopened package or container if the  
19 cigarette package or container does not display a warning required by 15  
20 U.S.C. 1333; or

21 (C) in packs of fewer than 20 cigarettes per pack; or

22 (2) holds a business license endorsement under AS 43.70.075 and sells  
23 or offers for sale cigarettes, cigars, tobacco, or products containing tobacco at the  
24 person's retail outlet

25 (A) without assuring that the cigarettes, cigars, tobacco, or  
26 products containing tobacco are kept in a secure place as required by  
27 AS 43.70.075(f)(1);

28 (B) at which the person has failed to post the warning sign  
29 required by AS 43.70.075(f)(2);

30 (C) to a person under 19 years of age without complying with  
31 AS 43.70.075(f)(3); or

1 (D) without first giving the notice to an employee required by  
2 AS 43.70.075(g).

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

7 (c) A person who violates this section is guilty of a violation. Upon  
8 conviction, the court shall impose a fine of \$300.

9 **Sec. 11.76.104. Use of false identification to obtain tobacco by a person**  
10 **under 19 years of age.** (a) A person under 19 years of age may not knowingly  
11 present false or fraudulent proof of age for the purpose of purchasing a tobacco  
12 product.

13 (b) A person who violates this section is, upon conviction, guilty of a  
14 violation.

15 \* Sec. 3. AS 11.76.105 is amended to read:

16 **Sec. 11.76.105. Possession of tobacco by a person under 19 years of age.**

17 (a) A person under 19 years of age may not knowingly possess a cigarette, a cigar,  
18 tobacco, or a product containing tobacco in this state. This subsection does not apply  
19 to a person working in cooperation with a peace officer to make a controlled  
20 purchase of a product containing tobacco in order to obtain evidence of the  
21 commission of a violation of AS 11.76.100. However, if the person is under 18  
22 years of age and is a person for whom the disabilities of minority have not been  
23 removed under AS 09.55.590 and who has not arrived at the age of majority  
24 under AS 25.20.020, the provisions of this subsection do not apply unless the  
25 person has first obtained the approval of the person's parent or guardian to  
26 participate in the controlled purchase of a product containing tobacco [WHO IS  
27 A PRISONER AT AN ADULT CORRECTIONAL FACILITY].

28 (b) Possession of tobacco or a product containing tobacco in violation of  
29 (a) of this section by a person under 19 years of age [MINOR] is a violation. Upon  
30 conviction, the court shall impose a fine of \$300.

31 \* Sec. 4. AS 11.76.107(a) is amended to read:

1 (a) A person commits the offense of failure to supervise a cigarette vending  
2 machine if the person owns premises licensed as a beverage dispensary under  
3 AS 04.11.090 or licensed as a club under AS 04.11.110 or licensed as a package store  
4 under AS 04.11.150 and with criminal negligence fails to have an employee supervise  
5 a vending machine on those premises that dispenses cigarettes, cigars, tobacco, or  
6 products containing tobacco as required by AS 11.76.100(b)(2)(B)  
7 [AS 11.76.100(b)(1)(B)].

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

9 **Sec. 11.76.109. Definitions for AS 11.76.100 - 11.76.109.** In AS 11.76.100 -  
10 11.76.109, unless the context requires otherwise,

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

12 (2) "proof of age" means a valid driver's license or valid identification  
13 card made of or encased in plastic that contains a photograph of the holder and a  
14 statement of age or date of birth of the person;

15 (3) "tobacco product" or "product containing tobacco" means a product  
16 that contains tobacco and is intended for human consumption;

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

20 \* Sec. 6. AS 29.10 is amended by adding a new section to article 1 to read:

21 **Sec. 29.10.110. Home rule municipality taxing authority not preempted.**

22 The provisions of AS 43.50, relating to taxes on products containing tobacco, and  
23 AS 43.70.075, relating to business license endorsements authorizing sales of products  
24 containing tobacco, do not preempt a home rule municipality from adopting and  
25 enforcing additional requirements for the licensure, sale, and taxation of products  
26 containing tobacco or from developing tobacco-related education programs.

27 \* Sec. 7. AS 43.50.070 is amended to read:

28 **Sec. 43.50.070. Revocation of licenses.** (a) The department may suspend or  
29 revoke a license issued under AS 43.50.010 - 43.50.180

30 (1) for a criminally negligent violation of AS 11.76.100, 11.76.107, or  
31 a violation of AS 43.50.010 - 43.50.180 or a regulation of the department adopted

1 under AS 43.50.010 - 43.50.180;

2 (2) if a licensee ceases to act in the capacity for which the license was  
3 issued; or

4 (3) if a manufacturer, distributor, or wholesale distributor negligently  
5 sells tobacco or products containing tobacco to a nonlicensed retailer or a retailer  
6 whose license endorsement under AS 43.70.075 has been suspended or revoked.

7 (b) A person whose license is suspended or revoked may not sell cigarettes or  
8 permit cigarettes to be sold during the period of the suspension or revocation on the  
9 premises occupied or controlled by that person. A disciplinary proceeding or action  
10 is not barred or abated by the expiration, transfer, surrender, renewal, or extension of  
11 a license issued under AS 43.50.010 - 43.50.180. The department shall comply with  
12 the provisions of AS 44.62 ( [THE] Administrative Procedure Act [(AS 44.62)].

13 \* Sec. 8. AS 43.70.075 is amended to read:

14 Sec. 43.70.075. License endorsement. (a) A [UNLESS A PERSON HAS A  
15 BUSINESS LICENSE ENDORSEMENT ISSUED UNDER THIS SECTION, A]  
16 person may not

17 (1) sell cigarettes, cigars, tobacco, or products containing tobacco as  
18 a retailer unless, for each retail outlet at which cigarettes, cigars, tobacco, or  
19 products containing tobacco are to be sold, the person has obtained a business  
20 license endorsement issued under this section; an [. AN] endorsement required  
21 under this paragraph [SECTION] is in addition to any other license or endorsement  
22 required by law; or

23 (2) renew the business license endorsement required by (1) of this  
24 subsection unless the person complies with (i) of this section.

25 (b) The department, upon payment of a fee of \$100 [\$25], shall issue a  
26 business license endorsement to a person who applies for a business license under this  
27 chapter, and may renew the endorsement issued under this subsection for a fee of \$100  
28 [\$25]. The endorsement expires at the same time as the business license to which it  
29 attaches.

30 (c) The department

31 (1) shall refuse to issue an endorsement under this section to a

1 person who applies for an endorsement while an endorsement issued to the person  
2 for another retail outlet is suspended or revoked;

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

6 (d) Subject to (h) of this section, if [IF] a person who holds an endorsement  
7 issued under this section, or an agent or an employee of a person who holds an  
8 endorsement issued under this section acting within the scope of the agency or  
9 employment, has been convicted of violating AS 11.76.100, 11.76.102, or 11.76.107,  
10 or is found by the department to have violated [VIOLATES A PROVISION OF  
11 THIS SECTION OR] a regulation implementing this section adopted under  
12 AS 43.70.090, the department shall

13 (1) [MAY] suspend the endorsement for a period of

14 (A) 90 [NOT MORE THAN (1) 45] days; [OR]

15 (B) 180 [(2) 90] days [,] if within the past 24 months the  
16 person has been previously convicted of violating AS 11.76.100, 11.76.102, or  
17 11.76.107, or has been found by the department to have violated a provision  
18 of [THIS SECTION OR] a regulation implementing this section adopted under  
19 AS 43.70.090;

20 (C) one year if within the past 24 months the person has  
21 been previously convicted two times of violating AS 11.76.100, 11.76.102,  
22 or 11.76.107 or has been found by the department to have violated a  
23 provision of a regulation implementing this section adopted under  
24 AS 43.70.090; and

25 (2) permanently revoke the endorsement if within the past 24  
26 months the person has been previously convicted three or more times of violating  
27 AS 11.76.100, 11.76.102, or 11.76.107 or has been found by the department to  
28 have violated a provision of a regulation implementing this section adopted under  
29 AS 43.70.090.

30 (e) If a person who receives an endorsement under this section has multiple  
31 retail outlets, a suspension or revocation imposed under (d) of this section applies

1 only to the retail outlet in which the violation occurs.

2 (f) A person who holds a business license endorsement issued under this  
3 section

4 (1) may not sell or offer for sale cigarettes, cigars, tobacco, or  
5 products containing tobacco at the person's retail outlet unless the cigarettes,  
6 cigars, tobacco, or products containing tobacco are kept in a secure place; for  
7 purposes of this paragraph, "secure place" means

8 (A) a secure room, locked cabinet, or similar repository that  
9 is accessible only by the authorized employees of the person; or

10 (B) kept behind the counter accessible only to a salesperson  
11 or an employee of the person holding the business license endorsement if  
12 retail sales of the products containing tobacco are made at the counter;

13 (2) shall

14 (A) post on the licensed premises a warning sign as described  
15 in this paragraph; a [SUBSECTION. A] warning sign required by this  
16 paragraph [SUBSECTION] must be at least 6 inches by 18 inches and must  
17 read, in lettering at least 1.25 inches high: "The sale of tobacco products to  
18 persons under age 19 is illegal [.]";

19 (B) [A PERSON HOLDING AN ENDORSEMENT ISSUED  
20 UNDER THIS SECTION SHALL] display the warning sign in a manner  
21 conspicuous to a person purchasing or consuming tobacco products on the  
22 licensed premises; the [. THE] department shall, without charge, furnish  
23 warning signs required under this paragraph [SECTION] to a person who  
24 holds an endorsement issued under this section or a person who requests the  
25 sign with the intention of displaying it;

26 (3) shall, if the person holding a business license endorsement under  
27 this section or an agent or employee of the person holding the business license  
28 endorsement questions or has reason to question whether a customer purchasing,  
29 attempting to purchase, or otherwise procuring or attempting to procure  
30 cigarettes, cigars, tobacco, or a product containing tobacco has attained the age  
31 of 27 years, require the customer to furnish proof of age acceptable under this

1 paragraph; for purposes of this paragraph, a valid driver's license or a valid  
2 identification card is acceptable as proof of age when used for identification in the  
3 purchase of cigarettes, cigars, tobacco, or a product containing tobacco only if the  
4 license or identification card is made of or encased in plastic and contains a  
5 photograph of the license or card holder and a statement of age or date of birth.

6 \* Sec. 9. AS 43.70.075 is amended by adding new subsections to read:

7 (g) A person engaged in the retail business of selling a tobacco product shall  
8 notify each individual employed by that person as a retail sales clerk, before or at the  
9 time the individual commences work as a retail sales clerk, that state law

10 (1) prohibits the sale or distribution of a tobacco product to any person  
11 under 19 years of age and the purchase or receipt of a tobacco product by any person  
12 under 19 years of age; and

13 (2) requires that proof of age be demanded from a prospective  
14 purchaser or recipient if the person engaged in sale or distribution of the tobacco  
15 product has reason to believe that the prospective purchaser or recipient is not at least  
16 27 years of age.

17 (h) When the department acts under (d) of this section to suspend or revoke  
18 an endorsement issued under this section,

19 (1) if suspension or revocation is based on a conviction under  
20 AS 11.76.100, 11.76.102, or 11.76.107, notwithstanding AS 44.62.330 - 44.62.630 or  
21 another provision imposing a requirement of a hearing to determine whether the  
22 endorsement should be suspended or revoked, the department may act without holding  
23 a hearing;

24 (2) except as provided in (1) of this subsection, the department may not  
25 act without holding a hearing.

26 (i) The department shall develop and periodically offer a training course to  
27 persons engaged in the sale of products containing tobacco. The course must provide  
28 information to persons engaged in the sale of products containing tobacco regarding  
29 federal and state laws and regulations that apply to sales of products containing  
30 tobacco. Attendance at the course at least once in every two-year period is a condition  
31 of renewal of a business license endorsement under (a) of this section. The department

1 shall establish a fee to defray the cost of developing and offering the training cost and  
2 shall collect the fee from persons attending the training course.

3 \* Sec. 10. AS 43.70.080 is amended to read:

4 Sec. 43.70.080. Disposal of money. Except as provided in (b) of this  
5 section, [ALL] money collected by the department under this chapter shall be  
6 deposited in the general fund.

7 \* Sec. 11. AS 43.70.080 is amended by adding a new subsection to read:

8 (b) The money collected by the department under AS 43.70.075(b) shall be  
9 deposited in the general fund and separately accounted for under AS 37.05.142. The  
10 annual estimated balance in the account maintained by the commissioner of  
11 administration under AS 37.05.142 may be used by the legislature to make  
12 appropriations to establish and maintain a program that makes grants to support  
13 enforcement of AS 11.76.100 - 11.76.109. The appropriations authorized by this  
14 subsection are not intended to create a dedication in violation of art. IX, sec. 7,  
15 Constitution of the State of Alaska.

16 \* Sec. 12. AS 43.70.090 is amended to read:

17 Sec. 43.70.090. Regulations. The department

18 (1) may adopt regulations necessary to determine and collect the fees  
19 imposed by this chapter; and

20 (2) shall adopt regulations necessary to implement AS 43.70.075.

21 \* Sec. 13. AS 47.12.030(b) is amended to read:

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

29 (1) a traffic statute or regulation, or a traffic ordinance or regulation of  
30 a municipality;

31 (2) AS 11.76.104, relating to use of false identification for the

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purpose of purchasing tobacco, or AS 11.76.105, relating to the possession of tobacco by a person under 19 years of age;

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

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

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

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A BILL

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1 "An Act relating to the sale, possession, purchase, taxation, and regulation of  
2 products containing tobacco and to the offense of possession of tobacco by a  
3 person under 19 years of age."

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

5 \* Section 1. AS 11.76.100(b) is amended to read:

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

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

12 (A) at least 10 feet away from any entrance to the premises  
13 that the public may use; however, if compliance with the requirement is  
14 not possible, then as far as practicable from the primary entrance; and

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(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, but only if the employee break room or other controlled area is not accessible by employees who are under 19 years of age.

\* Sec. 2. AS 11.76 is amended by adding a new section to read:

**Sec. 11.76.103. Use of false identification to obtain tobacco by a minor.**

(a) A person under 19 years of age may not knowingly present false or fraudulent proof of age for the purpose of purchasing a tobacco product.

(b) A person who violates this section is, upon conviction, guilty of a violation.

\* Sec. 3. AS 11.76.105 is amended to read:

**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

(1) who is a prisoner at an adult correctional facility; or

(2) working in cooperation with a peace officer to make a controlled purchase of a product containing tobacco in order to obtain evidence of the commission of a violation of AS 11.76.100; however, if the person is under 18 years of age and is a person for whom the disabilities of minority have not been removed under AS 09.55.590 and who has not arrived at the age of majority under AS 25.20.020, the provisions of this paragraph do not apply unless the person has first obtained the approval of the person's parent or guardian to participate in the controlled purchase of a product containing tobacco.

(b) Possession of tobacco or a product containing tobacco in violation of (a) of this section by a person under 19 years of age [MINOR] is a violation and upon conviction is punishable by a fine of not less than \$300.

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

**Sec. 11.76.109. Definitions for AS 11.76.100 - 11.76.109.** In AS 11.76.100 -

1 11.76.109, unless the context requires otherwise,

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

3 (2) "proof of age" means a valid driver's license or valid identification  
4 card made of or encased in plastic that contains a photograph of the holder and a  
5 statement of age or date of birth of the person;

6 (3) "tobacco product" or "product containing tobacco" means a product  
7 that contains tobacco and is intended for human consumption;

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

11 \* Sec. 5. AS 29.10 is amended by adding a new section to article 1 to read:

12 **Sec. 29.10.110. Home rule municipality taxing authority not preempted.**

13 The provisions of AS 43.50, relating to taxes on products containing tobacco, and  
14 AS 43.70.075, relating to business license endorsements authorizing sales of products  
15 containing tobacco, do not preempt a home rule municipality from adopting and  
16 enforcing additional requirements for the licensure, sale, and taxation of products  
17 containing tobacco.

18 \* Sec. 6. AS 43.50.070 is amended to read:

19 **Sec. 43.50.070. Revocation of licenses.** The department may suspend or  
20 revoke a license issued under AS 43.50.010 - 43.50.180 (1) for a criminally negligent  
21 violation of AS 11.76.100, 11.76.107, or a violation of AS 43.50.010 - 43.50.180 or  
22 a regulation of the department adopted under AS 43.50.010 - 43.50.180; (2) if a  
23 licensee ceases to act in the capacity for which the license was issued; or (3) if a  
24 manufacturer, distributor, or wholesale distributor negligently sells tobacco or products  
25 containing tobacco to a nonlicensed retailer or a retailer whose license endorsement  
26 under AS 43.70.075 has been suspended or revoked. A person whose license is  
27 suspended or revoked may not sell cigarettes or permit cigarettes to be sold during the  
28 period of the suspension or revocation on the premises occupied or controlled by that  
29 person. A disciplinary proceeding or action is not barred or abated by the expiration,  
30 transfer, surrender, renewal, or extension of a license issued under AS 43.50.010 -  
31 43.50.180. The department shall comply with the provisions of AS 44.62 ( [THE]

1 Administrative Procedure Act [(AS 44.62)].

2 \* Sec. 7. AS 43.70.075(a) is amended to read:

3 (a) A [UNLESS A PERSON HAS A BUSINESS LICENSE ENDORSEMENT  
4 ISSUED UNDER THIS SECTION, A] person may not

5 (1) sell cigarettes, cigars, tobacco, or products containing tobacco as  
6 a retailer unless the person has obtained a business license endorsement issued  
7 under this section; an [ . AN] endorsement required under this paragraph [SECTION]  
8 is in addition to any other license or endorsement required by law;

9 (2) renew the business license endorsement required by (1) of this  
10 subsection unless the person complies with (i) of this section;

11 (3) sell cigarettes that are not in their original, unopened package  
12 or container obtained from the distributor, and the cigarettes in their original,  
13 unopened package may not be sold unless the cigarette package or container  
14 displays a warning required by 15 U.S.C. 1333.

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

16 (b) The department, upon payment of a fee of \$100 [\$25], shall issue a  
17 business license endorsement to a person who applies for a business license under this  
18 chapter, and may renew the endorsement issued under this subsection for a fee of \$100  
19 [\$25]. The endorsement expires at the same time as the license to which it attaches.

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

21 (d) If a person who holds an endorsement issued under this section, or an  
22 agent or an employee of a person who holds an endorsement issued under this section  
23 acting within the scope of the agency or employment, has been convicted of violating  
24 AS 11.76.100 or 11.76.107, or violates a provision of this section or a regulation  
25 implementing this section adopted under AS 43.70.090, the department

26 (1) may suspend the endorsement for a period of not more than

27 (A) 90 [(1) 45] days; [OR]

28 (B) 180 [(2) 90] days [,] if within the past 24 months the  
29 person has been previously convicted of violating AS 11.76.100 or 11.76.107  
30 [,] or a provision of this section or a regulation implementing this section  
31 adopted under AS 43.70.090;

1                    (C) one year if within the past 24 months the person has  
2                    been previously convicted two or more times of violating AS 11.76.100 or  
3                    11.76.107 or a provision of this section or a regulation implementing this  
4                    section adopted under AS 43.70.090; and

5                    (2) shall, if within the past 24 months the person has been  
6                    previously convicted three or more times of violating AS 11.76.100 or 11.76.107  
7                    or a provision of this section or a regulation implementing this section adopted  
8                    under AS 43.70.090, permanently revoke the endorsement.

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

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

13                    \* Sec. 11. AS 43.70.075(f) is amended to read:

14                    (f) A person who holds a business license endorsement issued under this  
15                    section

16                    (1) may not sell or offer for sale cigarettes, cigars, tobacco, or  
17                    products containing tobacco at the person's retail outlet unless the cigarettes,  
18                    cigars, tobacco, or products containing tobacco are kept in a secure place; for  
19                    purposes of this paragraph. "secure place" means

20                    (A) a secure room, locked cabinet, or similar repository that  
21                    is accessible only by the authorized employees of the person; or

22                    (B) kept behind the counter accessible only to a salesperson  
23                    or an employee of the person holding the business license endorsement if  
24                    retail sales of the products containing tobacco are made at the counter;

25                    (2) shall

26                    (A) post on the licensed premises a warning sign as described  
27                    in this paragraph; a [SUBSECTION. A] warning sign required by this  
28                    paragraph [SUBSECTION] must be at least 6 inches by 18 inches and must  
29                    read, in lettering at least 1.25 inches high: "The sale of tobacco products to  
30                    persons under age 19 is illegal [.]";

31                    (B) [A PERSON HOLDING AN ENDORSEMENT ISSUED

1 UNDER THIS SECTION SHALL] display the warning sign in a manner  
2 conspicuous to a person purchasing or consuming tobacco products on the  
3 licensed premises; the [. THE] department shall, without charge, furnish  
4 warning signs required under this paragraph [SECTION] to a person who  
5 holds an endorsement issued under this section or a person who requests the  
6 sign with the intention of displaying it;

7 (3) shall, if the person holding a business license endorsement under  
8 this section or an agent or employee of the person holding the business license  
9 endorsement questions or has reason to question whether a customer purchasing,  
10 attempting to purchase, or otherwise procuring or attempting to procure  
11 cigarettes, cigars, tobacco, or a product containing tobacco has attained the age  
12 of 27 years, require the customer to furnish proof of age acceptable under this  
13 paragraph; if the customer questioned does not furnish proof of age acceptable  
14 under this paragraph, or if a licensee, agent, or employee questions or has reason  
15 to question the validity of the proof of age furnished, the licensee, agent, or  
16 employee shall require the customer to sign a statement that the customer is 19  
17 years of age or older; for purposes of this paragraph, a valid driver's license or  
18 a valid identification card is acceptable as proof of age when used for  
19 identification in the purchase of cigarettes, cigars, tobacco, or a product  
20 containing tobacco if the license or identification card is made of or encased in  
21 plastic and contains a photograph of the license or card holder and a statement  
22 of age or date of birth.

23 \* Sec. 12. AS 43.70.075 is amended by adding new subsections to read:

24 (g) A person engaged in the retail business of selling a tobacco product shall  
25 notify each individual employed by that person as a retail sales clerk, before or at the  
26 time the individual commences work as a retail sales clerk, that state law

27 (1) prohibits the sale or distribution of a tobacco product to any person  
28 under 19 years of age and the purchase or receipt of a tobacco product by any person  
29 under 19 years of age; and

30 (2) requires that proof of age be demanded from a prospective purchaser  
31 or recipient if the person engaged in sale or distribution of the tobacco product has

1 reason to believe that the prospective purchaser or recipient is not at least 27 years of  
2 age.

3 (h) A person holding a business license endorsement under this section, or an  
4 agent or employee of the licensee, may not be charged under (d) of this section for a  
5 violation of AS 11.76.100(a)(1) if the person, agent, or employee secured in good faith  
6 a signed statement as provided in (f)(3) of this section, or the customer presented a  
7 valid driver's license or identification card indicating that the owner and possessor of  
8 the presented driver's license or identification card was 19 years of age or over.

9 (i) The Department of Commerce and Economic Development shall develop  
10 and periodically offer a training course to persons engaged in the sale of products  
11 containing tobacco. The course must provide information to persons engaged in the  
12 sale of products containing tobacco regarding federal and state laws and regulations  
13 that apply to sales of products containing tobacco. Attendance at the course at least  
14 once in every two-year period is a condition of renewal of a business license  
15 endorsement under (a) of this section.

16 (j) The department shall, by regulation, establish and maintain a procedure for  
17 processing reports of violations by persons selling products containing tobacco at retail  
18 of conduct described in (d) of this section.

19 \* Sec. 13. AS 43.70.080 is amended to read:

20 Sec. 43.70.080. Disposal of money. Except as provided in (b) of this  
21 section, [ALL] money collected by the department under this chapter shall be  
22 deposited in the general fund.

23 \* Sec. 14. AS 43.70.080 is amended by adding a new subsection to read:

24 (b) The money collected by the department under AS 43.70.075(b) shall be  
25 deposited in the general fund and separately accounted for under AS 37.05.142. The  
26 annual estimated balance in the account maintained by the commissioner of  
27 administration under AS 37.05.142 may be used by the legislature to make  
28 appropriations to establish and maintain a program that makes matching grants of not  
29 more than half the cost of the program to support the training courses described in  
30 AS 43.70.075(i). The appropriations authorized by this subsection are not intended to  
31 create a dedication in violation of art. IX, sec. 7, Constitution of the State of Alaska.

1 \* Sec. 15. AS 47.12.030(b) is amended to read:

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

9 (1) a traffic statute or regulation, or a traffic ordinance or regulation of  
10 a municipality;

11 (2) AS 11.76.103, relating to use of false identification for the  
12 purpose of purchasing tobacco, or AS 11.76.105, relating to the possession of  
13 tobacco by a person under 19 years of age;

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

15 (4) a parks and recreational facilities statute or regulation under  
16 AS 41.21; and

17 (5) AS 04.16.050, relating to possession, control, or consumption of  
18 alcohol.

0-LS0348VF  
Chenoweth  
3/7/97  
Rep. Bunde

CS FOR HOUSE BILL NO. 79( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY

Offered:  
Referred:

Sponsor(s): REPRESENTATIVE BUNDE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to sale, possession, and purchase of products containing tobacco  
2 and to the offense of possession of tobacco by a person under 19 years of age."

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

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

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

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

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

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

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(2) in an employee break room or other controlled area of a private work place that is not generally considered a public place, but only if the employee break room or other controlled area is not accessible by employees who are under 19 years of age.

\* Sec. 2. AS 11.76 is amended by adding a new section to read:

**Sec. 11.76.103. Use of false identification to obtain tobacco by a minor.**

(a) A person under 19 years of age may not knowingly present false or fraudulent proof of age for the purpose of purchasing a tobacco product.

(b) A person who violates this section is, upon conviction, guilty of a violation.

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

**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

(1) who is a prisoner at an adult correctional facility; or

(2) working in cooperation with a peace officer to make a controlled purchase of a product containing tobacco in order to obtain evidence of the commission of a violation of AS 11.76.100; however, if the person is under 18 years of age and is a person for whom the disabilities of minority have not been removed under AS 09.55.590 and who has not arrived at the age of majority under AS 25.20.020, the provisions of this paragraph do not apply unless the person has first obtained the approval of the person's parent or guardian to participate in the controlled purchase of a product containing tobacco.

(b) Possession of tobacco or a product containing tobacco in violation of (a) of this section by a person under 19 years of age [MINOR] is a violation and upon conviction is punishable by a fine of not less than \$300.

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

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

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

(2) "proof of age" means a valid driver's license or valid identification

1 card made of or encased in plastic that contains a photograph of the holder and a  
2 statement of age or date of birth of the person;

3 (3) "tobacco product" or "product containing tobacco" means a product  
4 that contains tobacco and is intended for human consumption;

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

8 \* Sec. 5. AS 43.70.075(b) is amended to read:

9 (b) The department, upon payment of a fee of \$100 [\$25], shall issue a  
10 business license endorsement to a person who applies for a business license under this  
11 chapter, and may renew the endorsement issued under this subsection for a fee of \$100  
12 [\$25]. The endorsement expires at the same time as the license to which it attaches.

13 \* Sec. 6. AS 43.70.075(d) is amended to read:

14 (d) If a person who holds an endorsement issued under this section, or an  
15 agent or an employee of a person who holds an endorsement issued under this section  
16 acting within the scope of the agency or employment, has been convicted of violating  
17 AS 11.76.100 or 11.76.107, or violates a provision of this section or a regulation  
18 implementing this section adopted under AS 43.70.090, the department may

19 (1) suspend the endorsement for a period of not more than

20 (A) [(1)] 45 days; [OR]

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

25 (2) suspend or revoke the endorsement for a period of one year if  
26 within the past 24 months the person has been previously convicted two or more  
27 times of violating AS 11.76.100 or 11.76.107 or a provision of this section or a  
28 regulation implementing this section adopted under AS 43.70.090.

29 \* Sec. 7. AS 43.70.075(f) is amended to read:

30 (f) A person who holds a business license endorsement issued under this  
31 section

1                   (1) may not sell or offer for sale cigarettes, cigars, tobacco, or  
2                   products containing tobacco at the person's retail outlet unless the cigarettes,  
3                   cigars, tobacco, or products containing tobacco are kept in a secure place: for  
4                   purposes of this paragraph, "secure place" means

5                   (A) a secure room, locked cabinet, or similar repository that  
6                   is accessible only by the authorized employees of the person: or

7                   (B) kept behind the counter accessible only to a salesperson  
8                   or an employee of the person holding the business license endorsement if  
9                   retail sales of the products containing tobacco are made at the counter;

10                  (2) shall

11                  (A) post on the licensed premises a warning sign as described  
12                  in this paragraph; a [SUBSECTION. A] warning sign required by this  
13                  paragraph [SUBSECTION] must be at least 6 inches by 18 inches and must  
14                  read, in lettering at least 1.25 inches high: "The sale of tobacco products to  
15                  persons under age 19 is illegal.";

16                  (B) [A PERSON HOLDING AN ENDORSEMENT ISSUED  
17                  UNDER THIS SECTION SHALL] display the warning sign in a manner  
18                  conspicuous to a person purchasing or consuming tobacco products on the  
19                  licensed premises; the [. THE] department shall, without charge, furnish  
20                  warning signs required under this paragraph [SECTION] to a person who  
21                  holds an endorsement issued under this section or a person who requests the  
22                  sign with the intention of displaying it;

23                  (3) shall. if the person holding a business license endorsement under  
24                  this section or an agent or employee of the person holding the business license  
25                  endorsement questions or has reason to question whether a customer purchasing,  
26                  attempting to purchase, or otherwise procuring or attempting to procure  
27                  cigarettes, cigars, tobacco, or a product containing tobacco has attained the age  
28                  of 19 years, require the customer to furnish proof of age acceptable under this  
29                  paragraph; if the customer questioned does not furnish proof of age acceptable  
30                  under this paragraph, or if a licensee, agent, or employee questions or has reason  
31                  to question the validity of the proof of age furnished, the licensee, agent, or

1 employee shall require the customer to sign a statement that the customer is 19  
2 years of age or older; for purposes of this paragraph, a valid driver's license or  
3 a valid identification card is acceptable as proof of age when used for  
4 identification in the purchase of cigarettes, cigars, tobacco, or a product  
5 containing tobacco if the license or identification card is made of or encased in  
6 plastic and contains a photograph of the license or card holder and a statement  
7 of age or date of birth.

8 \* Sec. 8. AS 43.70.075 is amended by adding new subsections to read:

9 (g) A person engaged in the retail business of selling a tobacco product shall  
10 notify each individual employed by that person as a retail sales clerk, before or at the  
11 time the individual commences work as a retail sales clerk, that state law

12 (1) prohibits the sale or distribution of a tobacco product to any person  
13 under 19 years of age and the purchase or receipt of a tobacco product by any person  
14 under 19 years of age; and

15 (2) requires that proof of age be demanded from a prospective purchaser  
16 or recipient if the person engaged in sale or distribution of the tobacco product has  
17 reason to believe that the prospective purchaser or recipient is not 19 years of age.

18 (h) A person holding a business license endorsement under this section, or an  
19 agent or employee of the licensee, may not be charged under (d) of this section for a  
20 violation of AS 11.76.100(a)(1) if the person, agent, or employee secured in good faith  
21 a signed statement as provided in (f)(3) of this section, or the customer presented a  
22 valid driver's license or identification card indicating that the owner and possessor of  
23 the presented driver's license or identification card was 19 years of age or over.

24 \* Sec. 9. AS 47.12.030(b) is amended to read:

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

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

(2) AS 11.76.103. relating to use of false identification for the purpose of purchasing tobacco or AS 11.76.105, relating to the possession of tobacco by a person under 19 years of age;

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

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

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

(7)

Date Referred to Committee: January 16, 1997

FURTHER REFERRALS:

Judiciary  
Finance

Date of Committee Action: 4/17/97

The STATE AFFAIRS Committee considered:

HB 79

HOUSE BILL NO. 79

MINOR IN POSSESSION OF TOBACCO

"An Act relating to the offense of possession of tobacco by a person under 19 years of age."

recommends it be replaced with the following committee substitute CS HB 79 (STA)  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) \_\_\_\_\_

| SIGNING WITH RECOMMENDATIONS | DP | DNP | NR | AM |
|------------------------------|----|-----|----|----|
| <i>Gannette James</i>        | ✓  |     |    |    |
| <i>[Signature]</i>           | ✓  |     |    |    |
| <i>[Signature]</i>           | ✓  |     |    |    |
| <i>[Signature]</i>           | ✓  |     |    |    |
| <i>[Signature]</i>           |    | ✓   |    |    |
| <i>[Signature]</i>           |    |     | ✓  |    |
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CHAIR'S SIGNATURE *Gannette James*

# Alaska State Legislature

**CHAIR**  
HOUSE HEALTH, EDUCATION  
& SOCIAL SERVICES COMMITTEE

**VICE-CHAIR**  
HOUSE JUDICIARY COMMITTEE

**MEMBER**  
LEGISLATIVE BUDGET & AUDIT COMMITTEE  
HOUSE SPECIAL COMMITTEE ON OIL & GAS  
SELECT COMMITTEE ON LEGISLATIVE ETHICS



**REPRESENTATIVE CON BUNDE**

District 18

**DURING SESSION**  
STATE CAPITOL, ROOM 104  
JUNEAU, AK 99801-1182  
(907) 465-4843 (800) 892-4843

**DURING INTERIM**  
716 W. FOURTH AVE.  
ANCHORAGE, AK 99501-2133  
(907) 258-8168

**E-MAIL**  
Representative\_Con\_Bunde@legis.state.ak.us

## SPONSOR STATEMENT HB 79

### **“An Act relating to the offense of possession of tobacco by a minor.”**

The problem of youth in possession of tobacco is pervasive in Alaska and throughout the United States. In 1992, the problem was addressed on a federal level by the passage of the Synar Amendment. This amendment requires states to conduct random, unannounced inspections of locations which sell tobacco and to show a reduction in illegal sales. States which do not conduct the inspections and reduce rates of illegal sales will lose some portion of their federal substance abuse block grants.

In order to reduce rates of nicotine addiction in youth and to ensure compliance with the Synar Amendment, members of the Alaska Tobacco Control Alliance (ATCA) have been seeking to undertake “compliance checks” to determine which merchants are selling tobacco to children. Compliance checks that involve having undercover youth attempt to buy tobacco, are equivalent to the “random unannounced inspections” specified by the Synar Amendment. However, because state law prohibits the possession of tobacco by youth, the youth who participate in compliance checks could conceivably be charged with breaking the law, and the adults who work with them could be charged with contributing to the delinquency of a minor.

HB 79 will ensure our state’s ability to conduct compliance checks consistent with the mandate of the Synar Amendment. This legislation adds a section to existing statute that will allow youth to work in tandem with law enforcement agencies to complete compliance checks relating to the sale of tobacco to youth.

If there are no compliance checks, there is no way to know which stores are selling tobacco to children. If police don’t know who is selling, they obviously cannot enforce the law. Youth will continue to purchase tobacco and become addicted to nicotine, and we will continue to see high rates of tobacco related death and disease in Alaska. In addition, many other substance abuse prevention and treatment efforts will suffer if federal substance abuse block grants are reduced.

I urge your positive support of this legislation. This legislation will eliminate current obstacles to carrying out compliance checks and will reduce illegal sales of tobacco.

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101


130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

## MEMORANDUM

April 1, 1997

**SUBJECT:** Draft CSHB 79 ( ), relating to sale, possession, and purchase of products containing tobacco, and related purposes -- sectional analysis (Work Order No. 0-LS0348\F)

**TO:** Representative Con Bunde  
ATTN: Patti Swenson

**FROM:** Jack Chenoweth  
Legislative Counsel 

The draft committee substitute makes amendments in two general areas:

Amendments principally relating to criminal provisions addressing the possession of tobacco by a person under 19 years of age:

**Bill section 2** adds a new codified section, AS 11.76.103, setting out the definition of the offense of "use of false identification by a minor." The offense applies to persons under 19 years of age. The provision sets the punishment of the offense as a "violation," that is, by payment of a fine of not more than \$300. AS 12.55.035(b)(5).

**Bill section 3** amends and extends the definition of the offense of "possession of tobacco by a minor," AS 11.76.105. Again, the offense applies to persons under 19 years of age. The new material following subsection (a)(2) exempts from the operation of the statute minors who assist law enforcement officers in making controlled purchases of products containing tobacco. The amendment to subsection (b) conforms reference to the actual definition of the offense in subsection (a) and requires, upon conviction, payment of a fine of \$300.

**Bill section 4** adds a new section to AS 11.76 supplying definitions for terms used in the sections defining offenses involving possession or use of products containing tobacco by persons under 19 years of age.

**Bill section 9:** AS 47.12.030(b) enumerates criminal offenses for which a minor--a person under 18 years of age--may be directly prosecuted in the district court. The amendment made to this bill section adds "use of false identification for the purpose of purchasing tobacco" under AS 11.76.103 as an offense for which a minor is subject to prosecution.

Representative Con Bunde

April 1, 1997

Page 2

Amendments relating to sale, possession, and purchase of products containing tobacco:

**Bill section 1:** AS 11.76.100(b) allows sales of tobacco products from vending machines under limited circumstances. One of those circumstances is if the vending machine is located in an "employee break room" or other controlled area of a private work place. The amendment at the top of page 2 further requires that the "employee break room" or other controlled area of a private work place is not accessible by a person under 19 years of age.

**Bill section 5:** AS 43.70 is the Alaska Business License Act. AS 43.70.075 concerns the endorsement to business licenses that permits the sale of cigarettes and other products containing tobacco. The amendments made to AS 43.70.075(b) increase the annual fee for the issuance or renewal of a business license endorsement permitting sale of products containing tobacco from \$25 to \$100.

**Bill section 6:** The amendment proposed to AS 43.70.075(d) increases the period of time during which an endorsement to a business license permitting sale of products containing tobacco may be suspended or revoked. For a third conviction under AS 11.76.100 (selling or giving tobacco to a person under 19 years of age), AS 11.76.107 (failure to supervise a cigarette vending machine), a provision applicable to endorsements to business licenses permitting the sale of products containing tobacco under AS 43.70.075, or a regulation of the Department of Revenue implementing AS 43.70.075, that occurs within a two-year period, the Department of Revenue may suspend or revoke the endorsement for up to one year.

**Bill section 7:** A duty is imposed under AS 43.70.075(f) on the holder of a business license endorsement that permits the sale of products containing tobacco. The amendment proposed in this bill section adds two additional duties: a duty, under paragraph (1), to keep those products in a secure place pending sale, and a duty, under paragraph (3), to question a person who may appear not to be 19 years of age and to require the person to furnish proof of age or sign a statement affirming that the person is at least 19 years of age.

**Bill section 8:** Two new subsections are proposed to be added to AS 43.70.075. Under proposed subsection (g), retailers are required to inform new employees of certain requirements under state law relating to prohibition on sales of products containing tobacco to a person under 19 years of age and the enforcement of the prohibition. Under proposed subsection (h), a retailer holding an endorsement allowing sale of a tobacco product, or an agent or employee of a retailer, may not be prosecuted under the statute defining the offense of sales to persons under 19 years of age if, in conjunction with the sale, the retailer, agent, or employee was shown sufficient identification attesting to the person's age, or the person signed the statement affirming that the person was at least 19 years of age.

JBC:pl:jdr  
97-082.plm

Enclosure

**BREAK THE RULES,  
PAY THE PRICE!**

*Retailers  
who sell to minors  
risk penalties of  
— \$250 —  
or even more.*

*To make sure retailers  
follow the rules, State and  
local officials will work  
with FDA to monitor  
retailers across the  
country.*

*Also, customers  
witnessing the sale of  
tobacco products to a  
youngster or another  
violation, can report it to  
FDA by calling toll-free:*

**1-888-FDA-4KIDS**

**RETAILERS AND EMPLOYEES,  
THESE RULES AFFECT YOU**

**Starting February 28, 1997**

- ◆ Do not sell cigarettes or smokeless tobacco to anyone under 18.\*
- ◆ Check photo ID for anyone under 27.

**Starting August 28, 1997**

- ◆ Sell products only in a direct, face-to-face exchange. (No vending machines or self-service displays permitted except in places that never have anyone under 18 present.)
- ◆ Do not sell single cigarettes ("loosies") or packs with fewer than 20 cigarettes ("kiddie packs").
- ◆ Only accept coupons for redemption from adults at the store, not through the mail.
- ◆ Do not give out any free samples of cigarettes or smokeless tobacco.
- ◆ *Inside* your store: Have all tobacco ads and promotional material that have any pictures or colors removed. Use only ads or material with black text on a white background. (Exception: Inside places that never have anyone under 18 present, pictures or colors are permitted if the ads are not visible from the outside and cannot be removed.)
- ◆ *Outside* your store: Have all outdoor tobacco ads and promotional material (including on store windows) that are within 1,000 feet of a school or public playground removed. Beyond 1,000 feet, use only ads or material with black text on a white background.
- ◆ Do not give hats, t-shirts, or any other gift or item to anyone in exchange for a tobacco proof-of-purchase or as part of a sale of cigarettes or smokeless tobacco.

\* The age may be higher in your state.



Official Business  
Penalty for Private Use \$300

DEPARTMENT OF HEALTH & HUMAN SERVICES  
Public Health Service  
Food and Drug Administration HF-23  
Rockville MD 20857

**CHILDREN  
&  
TOBACCO**  
**A Retailer's Guide  
To the New  
Federal Regulations**

## RETAILER, IT'S UP TO YOU

- ◆ *Each day, nearly 3,000 American youngsters become regular smokers. Of these, 1,000 will die early from tobacco-related diseases.*
- ◆ *As a retailer, you can help protect kids from the dangers of tobacco and nicotine addiction.*
- ◆ *President Clinton recently announced new FDA rules to make it much harder for kids to get cigarettes and smokeless ("spit") tobacco. The rules also will help make these products less appealing to youngsters.*

**BUT IT'S UP TO  
YOU TO MAKE THESE  
RULES WORK.**



FOOD AND DRUG ADMINISTRATION

## WHICH ONE IS 16?



Melissa

Amy

*Can you tell?  
If they walked into your  
store, would you know  
which one was under 18?  
To eliminate the guesswork,  
FDA requires you to card  
anyone who is  
under 27.*

Melissa is 16. Amy is 25.

## RETAILERS, YOU MAY BE WONDERING...

**Q: Who is responsible if one of my clerks sells to someone under 18?**

**A: If one of your employees sells to a minor, you are responsible. That is why it is important for you to make sure your employees know the rules.**

**Q: How will anyone know if I'm selling tobacco to youngsters?**

**A: Adolescents, accompanied by State or local officials, will visit stores across the country to try to buy cigarettes and smokeless tobacco. Also, people who observe an illegal sale can report the violation using FDA's toll-free hotline.**

**Q: Aren't the FDA rules just the first step toward stopping me from selling tobacco to anyone?**

**A: No. FDA's only purpose is to reduce young people's use of tobacco. Cigarettes and smokeless tobacco are and will remain legal products for sale to adults. The FDA rules do not change that in any way.**

## GAIN THE RESPECT OF YOUR COMMUNITY

Parents, teachers, doctors, and others who live in your neighborhood and shop in your store want store owners and their employees to take the FDA rules seriously. Show them you put kids first. Follow the rules.



If you or your employees want more information, call FDA toll-free (1-888-FDA-4KIDS) or visit FDA's website ([www.fda.gov/](http://www.fda.gov/)).

## ENFORCING THE TOBACCO RULES

**Retailers  
who sell to minors  
risk penalties of  
—\$250—  
or even more.**

**To make sure retailers  
follow the rules, State and  
local officials will work  
with FDA to monitor  
retailers across the  
country.**

**Also, customers  
witnessing the sale of  
tobacco products to a  
youngster, or another  
violation, can report it to  
FDA by calling toll-free:**

**1-888-FDA-4KIDS**

## KNOW THE RULES

*Starting February 28, 1997*

- ◆ No sales of cigarettes or smokeless tobacco to anyone under 18.\*
- ◆ Photo ID check required for anyone under 27.

*Starting August 28, 1997*

- ◆ No vending machines or self-service displays except in places that never have anyone under 18 present. (Products sold only in a direct, face-to-face exchange.)
- ◆ No sales of single cigarettes ("loosies") or packs with fewer than 20 cigarettes ("kiddie packs").
- ◆ Coupons for cigarettes and smokeless tobacco redeemable only by adults in a store, not through the mail.
- ◆ No free samples of cigarettes or smokeless tobacco.
- ◆ No outdoor ads for cigarettes or smokeless tobacco (including on store windows) within 1,000 feet of a school or public playground.
- ◆ Tobacco ads generally must be in black text on a white background without pictures or colors. Color or picture ads are permitted only:
  - In any publication with a youth readership of 15% or less and fewer than 2 million youth readers; or
  - In places that never have anyone under 18 present.
- ◆ No give-away of any gift or item to anyone in exchange for a tobacco proof-of-purchase or as part of a sale of cigarettes or smokeless tobacco.
- ◆ No sale or give-away of hats, t-shirts, or other items identified with a tobacco brand.

*Starting August 28, 1998*

- ◆ No sponsorship of any sporting or other event, team, or entry identified with a tobacco brand. But, sponsorship in the corporate name is permitted.

\* The age may be higher in your state.



DEPARTMENT OF HEALTH & HUMAN SERVICES  
Public Health Service  
Food and Drug Administration HF-23  
Rockville MD 20857  
Official Business  
Penalty for Private Use \$300

# CHILDREN & TOBACCO

## A Guide To the New

## Federal Regulations

## NICOTINE ADDICTION: A CRISIS IN CHILDREN'S HEALTH

◆ *Each day, nearly 3,000 American youngsters become regular smokers. Of these, 1,000 will die early from tobacco-related diseases.*

◆ *You can help protect kids from the dangers of tobacco and nicotine addiction.*

◆ *President Clinton recently announced new FDA rules to make it much harder for kids to get cigarettes and smokeless ("spit") tobacco. The rules also will help make these products less appealing to youngsters.*

**BUT IT'S UP TO  
ALL OF US TO MAKE  
THESE RULES WORK.**



FOOD AND DRUG ADMINISTRATION

## WHICH ONE IS 16?



Melissa

Amy

*Can you tell  
which one is 16?*

*If they walked into a store,  
would the clerk know which  
one was under 18? To  
eliminate the guesswork,  
FDA requires retailers to  
card anyone who is  
under 27.*

Melissa is 16. Amy is 25.

## CHILDREN AND TOBACCO: DID YOU KNOW?

◆ 82 percent of adults who ever smoked had their first cigarette by their 18th birthday. More than half became regular smokers by that time.

◆ Smoking among 8th and 10th graders has risen 50 percent since 1991.

◆ Of 1,000 20-year-olds who continue to smoke, 6 will die prematurely from homicide, 12 from car accidents, and 500 from smoking.

◆ Studies show that minors succeed in buying cigarettes over-the-counter nearly 70 percent of the time and nearly 90 percent of the time from vending machines.

◆ In 1994, the tobacco companies spent more than \$4 billion on advertising and promoting their products.

◆ Thirty percent of 3-year-olds and 91 percent of 6-year-olds can identify Joe Camel as a symbol of smoking.

◆ Nearly 50 percent of kids who smoke, and 25 percent of those who don't, own at least one promotional item from a tobacco company.

## TOGETHER, WE CAN PROTECT OUR CHILDREN'S FUTURES

- Spread the word about the new rule throughout your community.
- Let retailers know these rules are important to you.
- Praise retailers who comply with the rules.
- If you see a clerk selling cigarettes or smokeless tobacco to a person under 18 (after February 28, 1997) or a tobacco product vending machine accessible to kids (after August 28, 1997), report it to FDA at **1-888-FDA-4KIDS**.
- Visit FDA's website ([www.fda.gov/](http://www.fda.gov/)).



STATE OF ALASKA  
HOUSE OF REPRESENTATIVES

Representative Jeannette James



P.O. Box 56622  
North Pole, AK 99705  
TEL 488-1546, FAX 488-4271

State Capitol  
Juneau, AK 99801  
TEL 465-3743, FAX 465-2381

M E M O R A N D U M

TO: Jeannette  
DATE: April 2, 1997  
FROM: Barbara *see*  
RE: House Bill 79, Minors in Possession of Tobacco

*(This is my memo to Jeannette explaining the CS!)*

---

The original HB 79 exempts minors from prosecution if they were working with law enforcement agencies to complete checks relating to the sale of tobacco to minors (under age 19). This allows Alaska to comply with the Synar Amendment which requires states to conduct such random inspections.

The CS adds several provisions making it more difficult for minors to obtain tobacco products:

**prohibits vending machines containing tobacco products from being accessible to minors,**

**sets a fine up to \$300 for minors using false identification to acquire tobacco products,**

**raises the business license endorsement fee permitting sale of tobacco products from \$25 to \$100,**

**allows the Department of Revenue to revoke the endorsement for up to one year for retailers who sell or give tobacco to a minor,**

**requires retailers to keep tobacco products in a secure place, and to question a person who appears not to be 19 years of age and to require the person to furnish proof of age or to sign a statement affirming he/she is at least 19 years old,**

**requires retailers to inform new employees of state laws regarding selling tobacco to minors, and provides for the retailer to not be prosecuted if the minor did show sufficient identification or signed a statement affirming he/she was at least 19 years old.**





04/17/97

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM

LTN1150

08:09:59

PARTICIPANT LIST (ALL PARTICIPANTS)

BY:HOM

TCN:70631 SCHEDULED FOR:04/17/97 08:00 TO 10:00

FOR:HOM

PUBLIC HEARING

HOUSE STATE AFFAIRS

LOCATION:HOMER

HB 79

MS.

LOIS

IRVIN

SELF

TESTIFY

## The Synar Amendment Provisions

The Synar Amendment amends the US Public Health Act by requiring states demonstrate that they are taking effective measures to enforce laws restricting access of tobacco to minors. If states fail to enforce the law, they may lose up to 40% of annual Substance Abuse Prevention and Treatment (SAPT) Block Grant funds. That equates to a loss of \$640,000 for the state of Alaska. It is currently illegal to sell or distribute tobacco products to anyone under 19 years of age through a retail store or a vending machine in Alaska

The Alaska Department of Health and Social Services Divisions of Public Health and Alcoholism and Drug Abuse are collaborating to implement the new Synar regulations. These regulations require every state to:

- o have in effect a youth access law,
- o conduct annual random, unannounced inspections of tobacco vendors to ensure compliance with the law,
- o enforce the law in a manner that reduces the availability of tobacco products to minors,
- o develop a strategy and time frame for achieving a compliance rate of greater than 80%.

The annual random inspections must be done in a way that provides a valid sample of outlets accessible to youth. This permits states to measure the percent of tobacco outlets who sell tobacco to young people. This is the first year compliance checks are being conducted statewide. In the past, health related community groups in Anchorage, Dillingham, Juneau, Ketchikan and Sitka did compliance checks in their communities. Each group documented that initially, 40% to 70% of outlets sell cigarettes and smokeless tobacco to youth. Merchant education and media coverage in some of these communities brought down the percentage of "successful buys" by teenagers.

Limiting access to tobacco products is one proven method of preventing youth from starting to smoke or chew. While tobacco use among adults has declined, use among teenagers has increased. The goal of Synar amendment is to prevent young people from ever starting to use tobacco.

## How the Synar Amendment was Implemented in Alaska

Retail tobacco vendors in 19 communities across the state were checked to determine their compliance to the state's tobacco restriction laws. The Department of Health and Social conducted spot checks of 134 merchants including sales over-the-counter and from vending machines. The compliance checks took place during the summer and through the end of the year.

Division of Alcoholism and Drug Abuse grantees and teen volunteers performed compliance checks in Anchorage, Barrow, Fairbanks, Homer, Kenai, Kodiak, North Pole, Palmer, Seward, Soldotna, Wasilla and Willow. Impact grantees and volunteers surveyed vendors in Bethel, Juneau, Ketchikan, Nome, Sitka, and Unalaska. In Valdez a local nonprofit was recruited to perform the checks. The groups followed a protocol developed by the Alaska Tobacco Vendor Compliance Work Group. Alaska used a procedure where underage youth attempted to purchase either cigarettes or smokeless tobacco from a sales clerk through a vending machine. When a sale was successful, the teen left the store and turned the tobacco product immediately over to an adult supervisor.

Results tallied show a statewide compliance rate of 64%. In the Anchorage/Mat-Su region 66% of the vendors complied with the law; the Interior/Northern region had 75% compliance; Southcentral/Southwest had 37% and Southeast had 78% compliance. All merchants involved received a follow-up letter informing them of their compliance status. Each merchant also received a copy of the Alaska statute regarding sales to minors.

In 1997 DADA amended a grant with the Alaska Council for the Prevention of Alcoholism and Drug Abuse to include Synar activities. The Council will revise the survey protocol, supervise the data collection, assist local grantees conducting the checks in their communities, and provide merchant education and follow-up.

The merchant education program focuses on four points:

- using a voluntary approach to obtain retailer compliance with tobacco restriction laws;
- developing and maintaining positive merchant relations in conducting our youth access reduction program;
- understanding the close financial and commercial relationship with tobacco companies and distributors;
- explaining why retailers should not sell tobacco to minors and how retailers can avoid selling tobacco to minors.

The content of effective merchant education programs emphasize youth health and child protection issues, the merchants' responsibility under tobacco sales laws, what practices merchants can institute to prevent tobacco sales to youth and tobacco sales to minors contradict community norms and values.

## Press Release

Monday, December 9, 1996

### **ALASKA MERCHANTS SAY TOBACCO, TEENS DON'T MIX** **Nearly two-thirds of those checked wouldn't sell to underage customers**

Sixty-four percent of Alaska merchants involved in compliance checks sponsored by the Department of Health and Social Services would not sell tobacco products to teens posing as would-be buyers.

The compliance checks involved 114 merchants in 17 Alaska communities. The checks were conducted during the summer and fall.

"We applaud those retailers who refuse to sell to underage youth and encourage all retailers to train their employees to prevent teenagers from purchasing cigarettes and other tobacco products," Health and Social Services commissioner Karen Perdue said Monday.

Preventing tobacco use among teens and promoting healthy lifestyles are two main goals of the department, Perdue said. Because the majority of smokers start before the age of 20, the department tries to prevent Alaska teens from starting in the first place. To help these prevention efforts, it is important to find out where kids are getting cigarettes and other tobacco products.

Retailers in 17 communities were selected at random and underage teens attempted to purchase tobacco products both over-the-counter and through vending machines. Results show that, statewide, 64 percent of the outlets checked refused to sell to underage buyers. In Anchorage, 66 percent refused, compared to 37 percent in the Southcentral / Southwest region, 75 percent in the Interior / Northern region and 78 percent in Southeast Alaska.

The high rate of compliance in Southeast is credited to the work of local DHSS sponsored coalitions like the Juneau Tobacco Prevention Network, Alaskans for Drug-Free Youth in Ketchikan and the Sitka Teen Resource Center, which all do regular compliance checks.

The Juneau Tobacco Prevention Network has seen a dramatic increase in compliance to tobacco restriction laws. According to Jeannie Monk of the network, 60 percent of vendors complied in April 1995, compared to 93 percent in April 1996.

In the Northern/Interior region, the Tanana Chiefs Conference and Nome Tobacco Control Alliance work to prevent teens from using tobacco. As more merchants become aware of the law, the state expects to see increased compliance, Perdue said. The goal is to achieve an 80 percent compliance rate by the year 2000.

-30-

For more information, contact Mary Collins, Research Analyst, Division of Alcoholism and Drug Abuse at 907-465-2071.

# THE NATION

## Crackdown on tobacco sales begins

■ *Government says states must catch and punish stores that sell cigarettes to teens*

B; LAURAN NEERGAARD

THE ASSOCIATED PRESS

**WASHINGTON** — The government is giving states seven months to figure out how to catch stores that sell cigarettes to teen-agers, beginning a national crackdown on illegal tobacco sales.

Congress in 1992 passed a law forbidding any store from selling tobacco to anyone under 18. The so-called Synar amendment, named for the late Oklahoma Rep. Mike Synar, requires states to enforce the sales ban.

But the Department of Health and Human Services never told states how to do the job — and

studies have estimated that teen-agers buy hundreds of millions of packs of cigarettes a year.

On Friday, HHS will publish regulations in the Federal Register spelling out how states must catch stores that break the law and punish them until they comply with enforcing the ban.

Enforcing the ban will help “stop illegal tobacco sales and discourage thousands of young people from striking the first match of a lifelong, life-threatening addiction,” President Clinton wrote Synar’s family in informing them of the new rules.

Synar died of brain cancer Jan. 9.

The Tobacco Institute called the regulations a “reasonable” way to fight teen smoking, something the industry contends it helps to do already by educating store clerks not to sell minors tobacco.

Under the new regulations, states must:

- By Sept. 1, provide the government a list of all stores that sell tobacco and develop an HHS-approved plan to do surprise inspections to catch illegal sales to minors. Failure can mean losing 20 percent of the state’s federal substance abuse grants.

- In fiscal year 1997, do enough surprise inspections to report scientifically how well states comply with the Synar amendment. Also, they must develop a government-approved time frame to meet the law’s sales goal. Each state can decide on its own how to deal with stores that break the law, and each will have a different deadline for final compliance, to reflect that some states already enforce the law better than others. Failure to comply will mean losing 30 percent of anti-substance-abuse grants.

- By fiscal 1998, the states must be on track to meet their compliance deadlines or risk losing 40 percent of federal health funding.

Minnesota Attorney General Hubert Humphrey III said the regulations will help states crack down on illegal sellers. But he said states still need the Food and Drug Administration to cut teen-agers’ demand for cigarettes.

“While the Synar amendment makes major strides, ... it will do nothing about the Joe Camel billboard that today sits in plain view of a playground adjacent to a school in St. Paul,” Humphrey said.

The FDA has proposed strict limits on tobacco marketing, including bans on ads attractive to teens or displayed where children gather, in an effort to cut underage smoking. An estimated 3 million teen-agers smoke.

# Tobacco Industry Youth Access Programs

One of the most instructive strategies of the tobacco industry is the development of its own youth access and education programs. The tobacco industry has aggressively disseminated these programs to businesses and elected officials, often when youth access legislation is pending (DiFranza and Brown, 1992; DiFranza and McAfee, 1992; McWhorter, 1991; Chilcote, 1992).

Under the guise of good corporate citizenship, these programs represent an attempt to improve the tobacco industry's credibility with elected officials, and stave off effective youth access policies (Roan, 1992).

There is an important instructive value to the tobacco industry's "prevention" programs. We have long relied on the tobacco industry's reactions to tobacco control strategies as a means of assessing our own effectiveness. If the tobacco industry promotes a given strategy, then that strategy is probably ineffective at controlling tobacco use (or may even backfire). Conversely, if the tobacco industry aggressively opposes a tobacco control effort, we have evidence that that particular strategy is effective.

## YOUTH ACCESS PROGRAMS

### *"It's the Law"*

This is a youth access program developed by the Tobacco Institute. The primary component of "It's the Law" is the distribution of blue signs with white and orange lettering which read: "It's the Law: We Do Not Sell Tobacco Products to Persons Under 18." In late 1990, the Tobacco Institute announced a \$10 million public relations campaign surrounding "It's the Law." In addition to posting signs, the program also includes:

- Support for legislation requiring adult *supervision* of tobacco vending machines.
- *Voluntary* restrictions on tobacco billboard placement and free sampling of tobacco products.
- Distribution of the Tobacco Institute/C.O.U.R.S.E Consortium booklet "Helping Youth Say No."

Not surprisingly, a 1992 study found "It's the Law" to be entirely ineffective in reducing youth access to tobacco products (DiFranza and Brown, 1992).

### *"Support The Law — It Works"*

This is R.J. Reynolds' "comprehensive" retail program. The program is most notable for having enlisted actor Danny Glover as its spokesman. "Support The Law—It Works" bears many similarities to the Tobacco Institute's "It's the Law," including a focus on signage and on framing smoking as an adult activity. Components of "Support the Law" include:

- Posting of signs aimed at youth which read:

"We Check I.D.'s"  
Support the Law.  
It Works!  
Age Restricted Product

- Public Service Announcements (PSA's) for TV, radio, and print.

Perhaps the most disturbing program element is the establishment of community coalitions to promote projects based on tobacco industry "prevention" programs. These industry-sponsored coalitions may mislead well-meaning community members into believing they have taken positive action to reduce youth tobacco use. The first of these coalitions was piloted in Fond du Lac, Wisconsin (Inter-Community Task Force on Youth Smoking, 1993).

## EDUCATION PROGRAMS

### *The Family C.O.U.R.S.E. Consortium/Tobacco: Helping Youth Say No*

Unveiled in 1990, the C.O.U.R.S.E. (Communication Through Understanding, Respect and Self-Esteem) Consortium was created by the Tobacco Institute. The C.O.U.R.S.E. "curriculum" includes two basic components: distribution of the booklet "Tobacco: Helping Youth Say No" and television PSA's with the theme "Smoking should not be a part of growing up." Both of these components are produced by the Tobacco Institute.

The themes underlying the C.O.U.R.S.E. "curriculum" or philosophy are familiar:

- Smoking is an adult activity.
- There are many adult activities children shouldn't engage in. Smoking is one of them. They do not yet have the maturity necessary to decide to smoke.

Although "Helping Youth Say No" is not specifically a youth access program, it has been sent to legislators and school board officials, often as they are considering tobacco control policies (DiFranza and McAfee, 1992). When the Oakland (CA) city council was considering a ban on tobacco vending machines, a tobacco industry representative testifying in opposition to the proposed ordinance offered to provide the booklets free of charge to all the schools in the city.

#### *"Right Decisions. Right Now."*

This R.J. Reynolds program includes posters and a brochure which reiterates many of the themes expressed in the Tobacco Institute's "Tobacco: Helping Youth Say No." The brochure, subtitled "How to Talk to Your Kids About Not Smoking Even if You Do," differs only in that it briefly acknowledges that smoking is a risk factor for developing disease. It has been promoted as an adjunct to the "Support the Law" campaign (Inter-Community Task Force on Youth Smoking, 1993).

## ANALYSIS

An analysis of the tobacco industry's programs gives us important guidance regarding what the tobacco industry regards as ineffective tobacco control interventions. Given their sophistication and vast resources, substantial credence should be given to the tobacco industry's assessments, and we recommend steering clear of policies which reinforce strategies and interventions they promote.

#### *Smoking as an "Adult Activity"*

The tobacco industry frames smoking as an "adult activity." This is an extremely effective strategy. First, adult activities are by definition attractive to many young people. Second, this strategy lumps smoking in with many other adult activities, such as making one's own choices, which are not inherently harmful. The tobacco industry has identified "'the forbidden fruit' appeal as an important factor in adolescent experimentation" with smoking (DiFranza and McAfee, 1992). Youth access policies should not promote the status of smoking as the forbidden fruit, which is much more attractive to rebellious youth.

#### *Punishing Children*

The tobacco industry favors programs and policies penalizing youth for purchasing and possessing cigarettes. The reason for this is obvious — attention is diverted from the tobacco industry's own culpability, and blame is laid on children and parents. It also lessens the perceived responsibility of merchants. Effective youth access policies should avoid all appearance or effect of punishing youth.

### *Signage*

The most common tobacco industry youth access strategy is the posting of signs directed at young people. Research has shown that this strategy does not reduce retailers' illegal sales to minors (DiFranza and Brown, 1992). Retailers using signs highly visible to youth may become unwitting accomplices in the tobacco industry's attempts to make smoking an enticing, "forbidden fruit" to youth.

# Protecting Youth from Tobacco Addiction

Restricting Access and Appeal of Tobacco  
Products to Children and Adolescents

COMMENT PERIOD  
EXTENDED  
TO JAN. 2, 1996

Information Resource  
and Referral Guide

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Centers for Disease Control and Prevention  
Office on Smoking and Health  
10/95



Reprinted by the  
U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES  
Public Health Service

**CDC**  
CENTERS FOR DISEASE CONTROL  
AND PREVENTION

## Teen Tobacco Use: In Perspective

### The Problem

1. More than 400,000 Americans die prematurely each year due to cigarette smoking. This is 1 out of every 5 deaths in the United States. Each year smoking is responsible for 5 million years of life lost.
2. Each day, more than 3,000 young people begin to smoke -- that's more than 1 million new smokers each year. Among teens who are regular smokers, 1 in 3 will die from smoking.
3. Lung cancer is the leading cause of cancer deaths for both men and women, blacks and whites. Each year more women die of lung cancer (59,000) than breast cancer (46,000). If we do not prevent tobacco use among our teenage girls, this epidemic will repeat itself in our future generations of women.
4. The decision to smoke is nearly always made in the teen years. Among adult smokers, 80% smoked their first cigarette before their 18th birthday -- and by this time 50% were already smoking daily. Among high school seniors who use smokeless tobacco, 73% had tried it by grade nine.
5. There has been no progress in reducing teenage smoking rates in the last decade despite continuing progress against adult smoking. The most recent data indicate that smoking among young people actually increased since 1991, with the largest increase among the youngest smokers. There was a 30% increase in smoking among 8th graders between 1991 and 1994. Between 1970 and 1986, the use of snuff increased 15 times and the use of chewing tobacco increased four times among male adolescents aged 17-19 years.
6. Young people who smoke like adults become addicted like adults. About two-thirds of adolescent smokers say they want to quit smoking, and 70% say they would not have started smoking if they could choose again. Three-fourths of young people who use tobacco daily (cigarettes or smokeless tobacco) report that they use it because "it's really hard to quit."
7. The only positive change in youth smoking behavior is the smoking rate among African American teens, which has markedly decreased. Today in America, a white high school senior is 4 times more likely to smoke cigarettes daily than his or her black counterpart (22% vs. 5%).
8. Teen smoking is one of the few early warning signs we have in public health. Teens who smoke are 3 times more likely than nonsmokers to use alcohol, 8 times more likely to use marijuana, and 22 times more likely to use cocaine. Smoking is also associated with a host of other risky behaviors such as fighting and engaging in unprotected sex.

August 10, 1995

Contact: FDA Press Office  
(301) 443-1130

## CHILDREN AND TOBACCO: THE FACTS

*The Clinton Administration is proposing a comprehensive and coordinated set of measures to significantly reduce the number of children and adolescents who become addicted to nicotine in cigarettes and smokeless tobacco (snuff and chewing tobacco). Children are becoming addicted to these products, with more than 80 percent of smokers beginning to smoke by age 18.*

*Smoking is the leading preventable cause of death in the United States, and health care costs associated with smoking soared to more than \$50 billion in 1993, according to the Centers for Disease Control and Prevention. While the proposed measures will continue to maintain the legal status of cigarettes and smokeless tobacco products for adults, they will reduce the easy access and strong appeal for children.*

*Preventing children from smoking is key to reducing the deadly toll of smoking. The Clinton Administration's plan will help parents provide their children with an environment in which to grow up healthy.*

### A Pediatric Disease

Children are becoming addicted to nicotine. The average teenage smoker starts at 14 1/2 years old and becomes a daily smoker before age 18. More than 80 percent of all adult smokers had tried smoking by their 18th birthday and more than half of them had already become regular smokers by that age. Studies show that if people do not begin to smoke as teenagers or children, it is unlikely they will ever do so.

Each and every day, another 3,000 young people become regular smokers, and nearly 1,000 of them will eventually die as a result of their smoking. Currently, more than 3 million children and adolescents smoke cigarettes, and 1 million adolescent boys currently use smokeless tobacco. Smoking by young people is rising sharply. Between 1991 and 1994, the percentage of eighth graders who smoke increased 30 percent, and the percentage of tenth graders who smoke increased 22 percent.

**Children tend to vastly underestimate the likelihood that they will become addicted to these products.** Although only 5 percent of daily smokers surveyed in high school said they would definitely be smoking five years later, close to 75 percent were smoking 7 to 9 years later. A survey conducted in 1992 found that approximately two-thirds of adolescents who smoked said they wanted to quit and 70 percent said they would not start smoking if they could make that choice again.

**Smoking: Leading Cause of Avoidable, Premature Death**

**Tobacco use takes enormous, deadly toll each year.** Tobacco products are responsible for more than 400,000 deaths each year due to cancer, respiratory illness, heart disease, and other health problems. Cigarettes kill more Americans each year than AIDS, alcohol, car accidents, murders, suicides, illegal drugs and fires combined. Smokers who die as a result of smoking would have lived on average 12 to 15 years longer if they had not smoked.

**The health care costs associated with tobacco use are rising.** The Centers for Disease Control and Prevention estimated that in 1993 the health care costs associated with smoking totalled \$50 billion: \$26.9 billion for hospital costs; \$15.5 billion for doctors; \$4.9 billion in nursing home costs; \$1.8 billion for prescription drugs and \$900 million for home-health care expenditures. The Office of Technology Assessment calculated the social costs attributable to smoking in 1990 at \$68 billion. That calculation was based on \$20.8 billion in direct health care costs and \$6.9 billion in lost productivity from disabilities and \$40.3 billion in lost productivity from premature deaths.

August 10, 1995

Contact: FDA Press Office  
(301) 443-1130

## CHILDREN AND TOBACCO: THE PROBLEM

### Easy Access

Despite state laws prohibiting the sale of tobacco to minors, children can easily buy these products. One study estimated that teenagers annually consume 516 million packs of cigarettes and 26 million containers of chewing tobacco. A review of 13 studies of over-the-counter sales found that on average, children and adolescents were able to successfully buy tobacco products 67 percent of the time.

- **Vending machines** are a primary source of tobacco products for young smokers. A study by the vending machine industry found that 22 percent of 13-year-old smokers use vending machines compared with 2 percent of 17-year-old smokers. The 1994 Surgeon General's Report found that young people were able to buy cigarettes in vending machines an average of 88 percent of the time.
- **Mail-order sales** provide no sure way of verifying age. Current industry practice only asks the consumer to provide a birth date or check box to verify age.
- **Self-service displays** allow children to easily obtain tobacco products. The Institute of Medicine, in its landmark 1994 report, "Growing Up Tobacco Free," concluded that placing tobacco products "out of reach reinforces the message that tobacco products are not in the same class as candy or potato chips."
- **Free samples** are obtained by children, including those in elementary school, despite industry code prohibiting distribution to anyone under 21. Free samples occur on street corners, at shopping malls and sporting events. A New Jersey survey found that one-third of high school students who were smokers or ex-smokers reported receiving free samples before age 16.

# FISCAL NOTE

**STATE OF ALASKA**  
**1997 LEGISLATIVE SESSION**

**BILL NO: HB 79**

Revision Date: 03/18/97 Dept. Affected: Public Safety  
 Title: Selling or Giving Tobacco to a Minor BRU: Alaska State Troopers  
 Component: Detachments  
 Sponsor: Rep. Bunde  
 Requestor: House State Affairs COMPONENT SERIAL NO. 0799

**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                 |            |            |            |            |            |            |
| <b>TOTAL OPERATING</b>        | <b>-0-</b> | <b>-0-</b> | <b>-0-</b> | <b>-0-</b> | <b>-0-</b> | <b>-0-</b> |
| <b>CAPITAL</b>                | <b>-0-</b> | <b>-0-</b> | <b>-0-</b> | <b>-0-</b> | <b>-0-</b> | <b>-0-</b> |
| <b>CHANGE IN REVENUES ( )</b> | <b>-0-</b> | <b>-0-</b> | <b>-0-</b> | <b>-0-</b> | <b>-0-</b> | <b>-0-</b> |
| Revenue Code                  |            |            |            |            |            |            |

**FUNDING: (Thousands of Dollars)**

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

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.)

This bill would not have any significant fiscal impact on AST.

Prepared By: F/Sgt. Robert Gorder Phone: 269-5511  
 Division: Alaska State Troopers Date: 03/18/97  
 Approved by Commissioner: Ronald L. Otte Date: 3/19/97  
 Agency: Department of Public Safety

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STATE OF ALASKA  
HOUSE OF REPRESENTATIVES

Representative Jeannette James



P.O. Box 56622  
North Pole, AK 99705  
TEL 488-1546, FAX 488-4271

State Capitol  
Juneau, AK 99801  
TEL 465-3743, FAX 465-2381

MEMORANDUM

**TO:** Representative Con Bunde  
**DATE:** February 5, 1997  
**FROM:** Representative Jeannette James  
**RE:** Minors and Tobacco

A handwritten signature in black ink, appearing to be "Jeannette James", written over the "FROM:" line of the memorandum.

-----

Recently you indicated your willingness to incorporate other provisions regarding minors use of tobacco into your House Bill 79. At yesterday's State Affairs meeting I said I would be introducing legislation myself, but I would prefer to add it to your existing bill if possible. Items of interest to me would be:

1. Raising the minimum age for purchasing tobacco to 21.
2. Disallowing cigarette vending machines except where customers are required to be age 21 or older.
3. Requiring grocery stores to keep tobacco products behind their

counters.

4. Enforcing requirements to check purchaser's I.D., and requiring a picture I.D.
5. Making stiffer penalties for vendors who violate the law, i.e. maximum fine \$500 for first offense, \$750 for second, and suspension of license for third offense (or even stiffer, suspend license for first offense).
6. In addition to enforcing penalties against the vendors who sell tobacco to minors, I think we should impose meaningful penalties against the minors themselves who possess tobacco illegally. For example:

First offense, up to \$250 fine;

Second offense, up to \$500 fine;

Third offense, lose driver's license, same as for possession of alcohol.

Let me know when we can get together to discuss incorporating these provisions into HB 79.

Thanks for your help.

Alaska State Legislature

CHAIR  
HOUSE HEALTH, EDUCATION  
& SOCIAL SERVICES COMMITTEE

VICE-CHAIR  
HOUSE JUDICIARY COMMITTEE

MEMBER  
LEGISLATIVE BUDGET & AUDIT COMMITTEE  
HOUSE SPECIAL COMMITTEE ON OIL & GAS  
SELECT COMMITTEE ON LEGISLATIVE ETHICS



REPRESENTATIVE CON BUNDE

District 18

DURING SESSION  
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JUNEAU, AK 99801-1182  
(907) 465-4843 (800) 892-4843

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E-MAIL  
Representative\_Con\_Bunde@legis.state.ak.us

MEMORANDUM

DATE: February 4, 1996  
TO: Representative Jeanette James  
Chair, House State Affairs Committee  
FROM: Rep. Bunde  
RE: House Bill 79

This memo is a request for a House State Affairs Committee hearing for HB 79, "An Act relating to the offense of possession of tobacco by a person under 19 years of age."

A copy of the bill and the sponsor statement are attached to this request. Please contact Patti Swenson, ext 6824 with any questions that may arise.

Thank you for your consideration of this request.

*Get Patti  
Kath's bill ??*

*Patty says  
they made the  
changes we  
requested.*

RE Kott's bill -  
Cathy says this is  
expensive & will  
be liked by  
Dittus -

2/27 we didn't  
get changes  
to NE -

DA & SHERIDAN!  
see bill (11/29/79)

**HOUSE BILL NO. 159**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES KOTT, Mulder, Kohring

Introduced: 2/25/97

Referred: Labor and Commerce, Judiciary

**A BILL****FOR AN ACT ENTITLED**

1 "An Act relating to sale, possession, and purchase of tobacco and tobacco  
2 products; amending Rules 603 and 611(d), Alaska Rules of Appellate Procedure;  
3 and providing for an effective date."

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

5 \* Section 1. AS 11.76.100 is repealed and reenacted to read:

6           **Sec. 11.76.100. Selling or giving tobacco to a minor.** (a) A person commits  
7 the offense of selling or giving tobacco to a minor if the person is 19 years of age or  
8 older and negligently sells, exchanges, or gives a tobacco product to a person under  
9 19 years of age.

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

14           (c) Selling or giving tobacco to a minor is a violation and upon conviction is

1 punishable by a fine of not less than \$300.

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

3 **Sec. 11.76.105. Possession, purchase, or use of false identification to obtain**  
4 **tobacco by a minor.** (a) A person under 19 years of age may not knowingly

5 (1) possess or attempt to purchase a tobacco product in this state; or

6 (2) present false or fraudulent proof of age for the purpose of  
7 purchasing a tobacco product.

8 (b) A person who violates this section is, upon conviction, guilty of a  
9 violation.

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

11 **Sec. 11.76.107. Restrictions on sale of tobacco and tobacco products.** (a)  
12 A person may not sell or distribute a tobacco product unless

13 (1) the

14 (A) person also holds a license endorsement issued under  
15 AS 43.70.075;

16 (B) sale or distribution occurs on the retail premises; and

17 (C) person purchasing or receiving the tobacco product provides  
18 proof of age;

19 (2) the sale or distribution is a wholesale transaction by a person  
20 licensed as a manufacturer or distributor under AS 43.50.010; or

21 (3) the sale or distribution is by mail order.

22 (b) Except as provided in this subsection, a person may not sell or distribute  
23 a tobacco product by vending machine. The sale or distribution of a tobacco product  
24 through a vending machine is permitted if the vending machine is located in

25 (1) a factory, business, office, or other place that is not open to the  
26 public;

27 (2) a place that is open to the public but to which a person under the  
28 age of 19 years is denied access;

29 (3) a place where alcoholic beverages are sold for consumption on the  
30 licensed premises, but only if the vending machine is

31 (A) under the continuous supervision of the owner or lessee of

1 the licensed premises or an employee of the owner or lessee; and

2 (B) inaccessible to the public when the licensed premises is  
3 closed;

4 (4) other places, but only if the vending machine (A) is under the  
5 continuous supervision of the owner or lessee of the premises or an employee of the  
6 owner or lessee; (B) can be operated only by the activation of an electronic switch by  
7 the owner or lessee of the premises or an employee of the owner or lessee before each  
8 purchase; and (C) is inaccessible to the public when the licensed premises is closed;  
9 in any place where supervision of a vending machine, or activation of an electronic  
10 switch, is required by this paragraph, the person responsible for that supervision or the  
11 activation of the switch shall demand proof of age from a prospective purchaser if the  
12 person has reason to believe that the prospective purchaser is under 27 years of age

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

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

28 "I understand that state law prohibits the sale or distribution of  
29 a tobacco product to persons under 19 years of age and requires  
30 that proof of age be demanded from a prospective purchaser or  
31 recipient if I have reason to believe that the prospective

1 purchaser or recipient is under 27 years of age. I promise, as a  
2 condition of my employment, to observe this law."

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

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

8 (f) A person who violates this section is guilty of a violation and upon  
9 conviction shall be punished by a fine of \$100 for a first offense within a two-year  
10 period, \$500 for a second offense within a two-year period, and suspension of the  
11 license endorsement required under AS 43.70.075 for a period of not more than one  
12 year for a third or subsequent violation within a two-year period.

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

14 **Sec. 11.76.109. Definitions for AS 11.76.100 - 11.76.109.** In AS 11.76.100 -  
15 11.76.109, unless the context requires otherwise,

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

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

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

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

26 \* Sec. 5. AS 28.15 is amended by adding new sections to read:

27 **Sec. 28.15.195. Administrative revocation of minor's license to drive for**  
28 **tobacco offense.** (a) If a peace officer has probable cause to believe that a person  
29 who is not yet 19 years of age has possessed or attempted to purchase a tobacco  
30 product or presented false proof of age for the purpose of purchasing a tobacco product  
31 in violation of AS 11.76.105, the peace officer shall read a notice and deliver a copy

1 to the person. The notice must advise that

2 (1) the department intends to revoke the person's driver's license or  
3 permit, privilege to drive, or privilege to obtain a license or permit;

4 (2) the person has the right to administrative review of the revocation;

5 (3) if the person has a driver's license or permit, the notice itself is a  
6 temporary driver's license or permit that expires seven days after it is delivered to the  
7 person;

8 (4) revocation of the person's driver's license or permit, privilege to  
9 drive, or privilege to obtain a license or permit, takes effect seven days after delivery  
10 of the notice to the person unless the person, within seven days, requests an  
11 administrative review.

12 (b) After reading the notice under (a) of this section, the peace officer shall  
13 seize the person's driver's license or permit if it is in the person's possession and shall  
14 deliver it to the department with a sworn report describing the circumstances under  
15 which it was seized.

16 (c) Unless the person has requested an administrative review, the department  
17 shall revoke the person's driver's license or permit, privilege to drive, or privilege to  
18 obtain a license or permit, effective seven days after delivery to the person of the  
19 notice required under (a) of this section, upon receipt of a sworn report of a peace  
20 officer

21 (1) that the officer had probable cause to believe that the person is not  
22 yet 19 years of age and has possessed or attempted to purchase a tobacco product or  
23 presented false proof of age for the purpose of purchasing a tobacco product in  
24 violation of AS 11.76.105;

25 (2) that the peace officer has cited the person or arrested the person for  
26 a violation of AS 11.76.105;

27 (3) that notice under (a) of this section was provided to the person; and

28 (4) describing the circumstances surrounding the violation of the  
29 tobacco sales or proof of age provisions of AS 11.76.105.

30 (d) The department shall impose the revocation required under this section for  
31 a period of

1 (1) one year for a first violation; and

2 (2) two years for a second or subsequent violation.

3 (e) A revocation imposed under this section shall be consecutive to a  
4 revocation imposed under another provision of law, except that a revocation imposed  
5 under this section shall be concurrent with a revocation imposed under AS 28.15.183,  
6 28.15.185, or 28.15.187 that is based on the same incident. A department hearing  
7 officer may grant limited license privileges in accordance with the standards set out  
8 in AS 28.15.201 to a person whose driver's license, permit, or privilege was revoked  
9 under this section.

10 (f) In this section, "peace officer" does not include a person employed by the  
11 Department of Corrections.

12 **Sec. 28.15.197. Administrative review of revocation of license for tobacco**  
13 **offense.** (a) A person who has received a notice under AS 28.15.195(a) may make  
14 a written request for administrative review of the department's action. If the person's  
15 driver's license has not been previously surrendered to the department, it shall be  
16 surrendered to the department at the time the request for review is made.

17 (b) A request for review of the department's revocation under AS 28.15.195  
18 shall be made within seven days after receipt of the notice under AS 28.15.195, or the  
19 right to review is waived and the action of the department under AS 28.15.195(c) is  
20 final. If a written request for a review is made after expiration of the seven-day  
21 period, and if it is accompanied by the applicant's verified statement explaining the  
22 failure to make a timely request for a review, the department shall receive and consider  
23 the request. If the department finds that the person was unable to make a timely  
24 request because of lack of actual notice of the revocation or because of factors of  
25 physical incapacity such as hospitalization or incarceration, the department shall waive  
26 the period of limitation, reopen the matter, and grant the review request.

27 (c) Upon receipt of a request for review, if it appears that the person holds a  
28 valid driver's license and that the driver's license has been surrendered, the department  
29 shall issue a temporary driver's permit that is valid until the scheduled date for the  
30 review. A person who has requested a review under this section may request, and the  
31 department may grant for good cause, a delay in the date of the hearing. If necessary,

1 the department may issue additional temporary permits to stay the effective date of its  
2 action under AS 28.15.195(c) until the final order after the review is issued.

3 (d) A person who has requested a hearing under this section and who fails to  
4 appear at the hearing, for reasons other than lack of actual notice of the hearing or  
5 physical incapacity such as hospitalization or incarceration, waives the right to a  
6 hearing. The determination of the department that is based upon the officer's report  
7 becomes final.

8 (e) The hearing under this section must be held telephonically unless the  
9 person requesting the hearing requests in writing that the hearing not be held  
10 telephonically or the hearing officer determines that an in-person hearing is necessary  
11 as provided under AS 28.05.141(b).

12 (f) A review under this section shall be held before a hearing officer  
13 designated by the commissioner. The hearing officer shall have authority to

- 14 (1) administer oaths and affirmations;
- 15 (2) examine witnesses and take testimony;
- 16 (3) receive relevant evidence;
- 17 (4) issue subpoenas, take depositions, or cause depositions or  
18 interrogatories to be taken;
- 19 (5) regulate the course and conduct of the hearing;
- 20 (6) make a final ruling on the issue.

21 (g) The hearing for review of a revocation by the department under  
22 AS 28.15.195 shall be limited to the issue of whether the person possessed or  
23 attempted to purchase a tobacco product or presented false proof of age as prohibited  
24 by AS 11.76.105.

25 (h) The determination of the hearing officer may be based upon the sworn  
26 report of a peace officer if the sworn report is supported by probable cause based on  
27 personal observations as required under AS 28.15.195(a). The peace officer need not  
28 be present at the hearing unless either the person requesting the hearing or the hearing  
29 officer requests in writing before the hearing that the officer be present. If in the  
30 course of the hearing it becomes apparent that the testimony of the peace officer is  
31 necessary to enable the hearing officer to resolve disputed issues of fact, the hearing

1 shall be continued to allow the attendance of the peace officer.

2 (i) Upon written request of the person requesting the hearing, the hearing  
3 officer shall stay the hearing until the conclusion of related criminal proceedings. If  
4 the person requesting the hearing does not request a stay, testimony given by the  
5 person at the hearing is admissible against the person in a criminal trial.

6 (j) If the issue set out in (g) of this section is determined in the affirmative by  
7 a preponderance of the evidence, the hearing officer shall sustain the action of the  
8 department. If the issue is determined in the negative, the department's revocation  
9 action shall be rescinded.

10 (k) If the action of the department in revoking a nonresident's privilege to  
11 drive a motor vehicle is not administratively contested by the nonresident driver or if  
12 the departmental action is sustained by the hearing officer, the department shall give  
13 written notice of action taken to the motor vehicle administrator of the state of the  
14 person's residence and to any state in which that person has a driver's license.

15 (l) Within 30 days of the issuance of the final determination of the department,  
16 a person aggrieved by the determination may file an appeal in superior court for  
17 judicial review of the hearing officer's determination.

18 (m) The filing of an appeal under (l) of this section or a petition for review  
19 does not automatically stay the department's order or revocation. The court may grant  
20 a stay of the order or revocation under the applicable rules of court, after a motion and  
21 hearing, and upon a finding that there is a reasonable probability that the petitioner  
22 will prevail on the merits and that the petitioner will suffer irreparable harm if the  
23 order is not stayed.

24 \* Sec. 6. AS 43.50.070 is amended to read:

25 Sec. 43.50.070. Revocation or suspension of licenses. The department may  
26 suspend or revoke a license issued under AS 43.50.010 - 43.50.180 (1) for a criminally  
27 negligent violation of AS 11.76.100 [, 11.76.107] or a violation of AS 43.50.010 -  
28 43.50.180 or a regulation of the department adopted under AS 43.50.010 - 43.50.180;  
29 (2) if a licensee ceases to act in the capacity for which the license was issued; or (3)  
30 if a manufacturer, distributor, or wholesale distributor negligently sells tobacco or  
31 products containing tobacco to a nonlicensed retailer or a retailer whose license

1 endorsement under AS 43.70.075 has been suspended. The department may suspend  
 2 or revoke a license issued under AS 43.50.010 - 43.50.180 for a period of not more  
 3 than one year for a criminally negligent violation of AS 11.76.107. A person whose  
 4 license is suspended or revoked may not sell cigarettes or permit cigarettes to be sold  
 5 during the period of the suspension or revocation on the premises occupied or  
 6 controlled by that person. A disciplinary proceeding or action is not barred or abated  
 7 by the expiration, transfer, surrender, renewal, or extension of a license issued under  
 8 AS 43.50.010 - 43.50.180. The department shall comply with the provisions of  
 9 AS 44.62 ( [THE] Administrative Procedure Act [(AS 44.62)]).

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

11 (b) The department, upon payment of a fee of \$100 [\$25], shall issue a  
 12 business license endorsement to a person who applies for a business license under this  
 13 chapter, and may renew the endorsement issued under this subsection for a fee of \$100  
 14 [\$25]. The endorsement expires at the same time as the license to which it attaches.

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

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

22 (1) 45 days; [OR]

23 (2) 90 days, if within the past 24 months the person has been  
 24 previously convicted of violating AS 11.76.100 or 11.76.107, or a provision of this  
 25 section or a regulation implementing this section adopted under AS 43.70.090; or

26 (3) one year if within the past 24 months the person has been  
 27 previously convicted two or more times of violating AS 11.76.100 or 11.76.107 or  
 28 a provision of this section or a regulation implementing this section adopted under  
 29 AS 43.70.090.

30 \* Sec. 9. AS 47.12.030(b) is amended to read:

31 (b) When a minor is accused of violating a statute specified in this subsection,

1 other than a statute the violation of which is a felony, this chapter and the Alaska  
2 Delinquency Rules do not apply and the minor accused of the offense shall be charged,  
3 prosecuted, and sentenced in the district court in the same manner as an adult; if a  
4 minor is charged, prosecuted, and sentenced for an offense under this subsection, the  
5 minor's parent, guardian, or legal custodian shall be present at all proceedings; the  
6 provisions of this subsection apply when a minor is accused of violating

7 (1) a traffic statute or regulation, or a traffic ordinance or regulation of  
8 a municipality;

9 (2) AS 11.76.105, relating to the possession or purchase of tobacco,  
10 or use of false proof of age for the purpose of purchasing tobacco by a person  
11 under 19 years of age;

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

13 (4) a parks and recreational facilities statute or regulation under  
14 AS 41.21; and

15 (5) AS 04.16.050, relating to possession, control, or consumption of  
16 alcohol.

17 \* Sec. 10. AS 28.15.197(m), enacted in sec. 5 of this Act, has the effect of amending Rules  
18 603 and 611(d), Alaska Rules of Appellate Procedure, by prohibiting an automatic stay of the  
19 administrative revocation of a driver's license pending appeal or petition for review and by  
20 limiting the power of the court to stay the administrative revocation of a driver's license.

21 \* Sec. 11. TRANSITIONAL NOTICE PROVISION. Within 30 days after the effective  
22 date of this Act, the employee notice required under AS 11.76.107(d), enacted in sec. 3 of this  
23 Act, shall be given to employees engaged in the retail business of selling a tobacco product  
24 on the day before the effective date of this Act.

25 \* Sec. 12. This Act takes effect July 1, 1997.

STATE OF ALASKA  
HOUSE OF REPRESENTATIVES

Representative Jeannette James



P.O. Box 56622  
North Pole, AK 99705  
TEL 488-1546, FAX 488-4271

State Capitol  
Juneau, AK 99801  
TEL 465-3743, FAX 465-2381

MEMORANDUM

**TO:** Representative Con Bunde  
**DATE:** February 5, 1997  
**FROM:** Representative Jeannette James  
**RE:** Minors and Tobacco

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1. Raising the minimum age for purchasing tobacco to 21.
2. Disallowing cigarette vending machines except where customers are required to be age 21 or older.
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counters.

4. Enforcing requirements to check purchaser's I.D., and requiring a picture I.D.
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6. In addition to enforcing penalties against the vendors who sell tobacco to minors, I think we should impose meaningful penalties against the minors themselves who possess tobacco illegally. For example:

First offense, up to \$250 fine;

Second offense, up to \$500 fine;

Third offense, lose driver's license, same as for possession of alcohol.

Let me know when we can get together to discuss incorporating these provisions into HB 79.

Thanks for your help.

**Since we can't perform citizen's arrests on minors caught with tobacco, how about this:**

**In addition to enforcing stiff penalties against the vendors who sell tobacco to minors, how about making stiff penalties against the MINORS who possess tobacco.**

**Example:**

**First offense, up to \$250 fine**

**Second offense, up to \$500 fine**

**Third offense, lose driver's license, same as for possession of alcohol.**

*JCC*

# "Citizen's Arrest"

Sec. 12.25.030

## GROUND FOR ARREST BY PRIVATE PERSON OR PEACE OFFICER WITHOUT WARRANT.

(a) A private person or a peace officer without a warrant may arrest a person

(1) for a crime committed or attempted in the presence of the person making the arrest;

(2) when the person has committed a felony, although not in the presence of the person making the arrest;

(3) when a felony has in fact been committed, and the person making the arrest has reasonable cause for believing the person to have committed it.

(b) In addition to the authority granted under (a) of this section, a peace officer without a warrant may arrest a person when the peace officer has reasonable cause for believing that the person has committed a crime under, or violated conditions imposed as part of the person's release before trial on misdemeanor charges brought under

(1) AS 11.41.270 or AS 11.56.740; or

(2) AS 11.41, AS 11.46.330, or AS 11.61.120, or has violated an ordinance with elements substantially similar to the elements of a crime under AS 11.41, AS 11.46.330, or AS 11.61.120, when the victim is a spouse or former spouse of the person who committed the crime; a parent, grandparent, child, or grandchild of the person who committed the crime; a member of the social unit comprised of those living together in the same dwelling as the person who committed the crime; or another person who is not a spouse or former spouse of the person who committed the crime but who previously lived in a spousal relationship with the person who committed the crime or is in or has been in a dating, courtship, or engagement relationship with the person who committed the crime.

(c) *Repealed, Sec. 16 ch 61 SLA 1982.*

(d) In addition to the authority granted by (a) and (b) of this section, a peace officer without a warrant may arrest a person when the peace officer has reasonable cause for believing that the person has violated conditions imposed as part of the person's release before trial on felony charges brought under

(1) AS 11.41.100 - 11.41.320 when the victim is a spouse or former spouse of the person who committed the crime; a parent, grandparent, child, or grandchild of the person who committed the crime; a member of the social unit comprised of those living together in the same dwelling as the person who committed the crime; or another person who is not a spouse or former spouse of the person who committed the crime but who previously lived in a spousal relationship with the person who committed the crime or is in or has been in a dating, courtship, or engagement relationship with the person who committed the crime; or

(2) AS 11.41.410 - 11.41.455.

Applies only to Crimes -

("Crime" = can be jailed)

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.

A "violation" = can only be Fined.

# FISCAL NOTE

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

BILL NO. HB 79

Revision Date: \_\_\_\_\_  
 Title: "An Act relating to the offense of possession of tobacco..."  
 Sponsor: Rep. Bunde  
 Requestor: (H) STA

Department Affected: Administration  
 BRU: Public Defender Agency  
 Component: PublicDefender Agency  
 COMPONENT SERIAL NO. 1631

**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          |       |       |       |       |       |       |
| <b>TOTAL OPERATING</b> | 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                  |     |     |     |     |     |     |
| 1005 GF/Program Receipts |     |     |     |     |     |     |
| 1037 GF/Mental Health    |     |     |     |     |     |     |
| OTHER                    |     |     |     |     |     |     |
| <b>TOTAL</b>             | 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.)

This bill exempts from criminal liability minors who possess tobacco products while working as law enforcement undercover agents in sting operations only if they have parental/guardian consent. While this may reduce the numbers of willing agents, it will have no fiscal impact on the agency.

Prepared by: Barbara Brink, Acting Director  
 Division: Public Defender

Phone: 274-1684  
 Date: \_\_\_\_\_

Approved by Commissioner: Mark Boyer  
 Agency: Department of Administration

Date: 4/8/97

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# FAX TRANSMITTAL

STATE OF ALASKA  
DEPARTMENT OF COMMERCE  
AND ECONOMIC DEVELOPMENT

WILLIAM L. HENSLEY  
COMMISSIONER



DIVISION OF OCCUPATIONAL  
LICENSING  
P.O. BOX 110806  
JUNEAU, AK 99811-0806  
TELEPHONE: (907) 465-2534  
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TO: Barbara

DATE: 4/17/97

COMPANY: (H) State Affairs

FAX NO.: x2381

FROM: Jennifer Strickler

NUMBER OF PAGES: 4

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# FISCAL NOTE

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

BILL NO. CSHB 79(SA)

Revision Date: \_\_\_\_\_  
 Title: An Act relating to sale, possession, and purchase  
of products containing tobacco...  
 Sponsor: Representative Bunde  
 Requestor: House State Affairs

Department: Commerce and Economic Development  
 BRU: Occupational Licensing  
 Component: Operations  
 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           | 41.4         | 41.4         |              | 41.4         | 41.4         | 41.4         |
| TRAVEL                      | 0.0          | 0.0          | 0.0          | 0.0          | 0.0          | 0.0          |
| CONTRACTUAL                 | 28.5         | 13.5         | 13.5         | 13.5         | 13.5         | 13.5         |
| SUPPLIES                    | 1.0          | 1.0          |              | 1.0          | 1.0          | 1.0          |
| EQUIPMENT                   | 7.3          |              |              |              |              |              |
| LAND & STRUCTURES           |              |              |              |              |              |              |
| GRANTS, CLAIMS              |              |              |              |              |              |              |
| MISCELLANEOUS               |              |              |              |              |              |              |
| <b>TOTAL OPERATING</b>      | <b>78.2</b>  | <b>65.9</b>  | <b>65.9</b>  | <b>65.9</b>  | <b>65.9</b>  | <b>65.9</b>  |
| <b>CAPITAL EXPENDITURES</b> |              |              |              |              |              |              |
| <b>CHANGE IN REVENUES</b>   | <b>181.2</b> | <b>134.5</b> | <b>181.2</b> | <b>134.5</b> | <b>181.2</b> | <b>134.5</b> |

**FUND SOURCE**

(Thousands of Dollars)

|                          | FY 98       | FY 99       | FY 00       | FY 01       | FY 02       | FY 03       |
|--------------------------|-------------|-------------|-------------|-------------|-------------|-------------|
| 1002 Federal Receipts    |             |             |             |             |             |             |
| 1003 GF Match            |             |             |             |             |             |             |
| 1004 General Fund        | 78.2        | 65.9        | 65.9        | 65.9        | 65.9        | 65.9        |
| 1005 GF/Program Receipts |             |             |             |             |             |             |
| 1006 GF/MHTIA            |             |             |             |             |             |             |
| Other 1091 Designated PR |             |             |             |             |             |             |
| <b>TOTAL</b>             | <b>78.2</b> | <b>65.9</b> | <b>65.9</b> | <b>65.9</b> | <b>65.9</b> | <b>65.9</b> |

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

**POSITIONS**

|           | FY 98 | FY 99 | FY 00 | FY 01 | FY 02 | FY 03 |
|-----------|-------|-------|-------|-------|-------|-------|
| FULL-TIME | 1     | 1     | 1     | 1     | 1     | 1     |
| PART-TIME |       |       |       |       |       |       |
| TEMPORARY |       |       |       |       |       |       |

**ANALYSIS:** (Attach a separate page if necessary)

CSHB 79(SA) establishes penalties for individuals and businesses who sell or give tobacco or tobacco related products to minors. The bill also requires the department to develop and train persons in the sale of products containing tobacco regarding federal and state laws and regulations that apply to sales of products containing tobacco and is a condition of renewal of a business license with a tobacco endorsement. The bill also increases the tobacco endorsement fee from \$25 to \$100. Further explanation of the costs and revenue are shown on the attached.

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

Phone: 485-2144  
 Date: 4/17/97  
 Date: 4/17/97

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## FISCAL NOTE

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

BILL NO.: CSHB 79(SA)

ANALYSIS: (Continued)

### DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT FISCAL NOTE CALCULATIONS

Personal Services

\$ 41.4

An Occupational Licensing Examiner I, PFT, Range 12, position is needed to process and coordinate licensing renewal applications to ensure the necessary training has been obtained prior to renewal; coordinate and distribute training course material, monitor federal and state tobacco-related laws to initiate updates of training material, and maintain records on convictions of retail outlets whose tobacco endorsements must be suspended or revoked.

Contractual Services

\$ 28.5

Contractual Services are based on the following items -

- Development of the training course; \$15.0  
(One-time only)
- Production (printing/mailling) of training course material based on the assumption that each of the 884 tobacco endorsement businesses renewing in FY 98 have at least one additional retail outlet with a person who must take the course to be eligible for the retail outlet tobacco endorsement renewal. Assuming cost will be \$5.00 each to produce course material, 1,768 licensees x \$5.00; \$8.8
- Contractual-related costs for the one new position, such as communications (phones, postage, etc.); \$3.0
- Office Space least costs per year for the new position based on \$1.45 per sq ft x approx. 98 sq ft per position; \$1.7

Supplies

\$1.0

Provides daily operating desk top supplies for the new position.

|                   |                              |               |
|-------------------|------------------------------|---------------|
| <b>Equipment:</b> | <b>(One-time costs only)</b> | <b>\$7.3</b>  |
| Workstation       | 3.0                          |               |
| Phone/Install     | 1.3                          |               |
| Computer          | 2.0                          |               |
| File Cabinet      | <u>1.0</u>                   |               |
|                   | 7.3                          |               |
|                   | <b>Total Costs:</b>          | <b>\$78.2</b> |

**Revenue:** There are currently 884 business licenses with tobacco endorsements due for renewal in FY 98 that will be expected to pay the new fee at the 12/31/97 renewal. There are currently 656 business licenses with tobacco endorsements that will renew in FY 99 at the 12/31/98 renewal. Assuming licensing activity remains relatively constant, the revenue can be expected to repeat in subsequent years. The licensing of at least one additional retail outlet with tobacco endorsement is expected to generate additional revenue each year. The revenue is summarized as follow:

**FY 98**

|                                                                                                                         |             |
|-------------------------------------------------------------------------------------------------------------------------|-------------|
| a) <u>New revenue increase from \$25 to \$100: 884 x \$75 =</u>                                                         | \$66.3      |
| b) <u>Existing revenue @ \$25: 884 x \$25 =</u>                                                                         | 22.1        |
| c) <u>At least 1 additional retail outlet per licensee: 884 x \$100 =</u>                                               | 88.4        |
| d) <u>Training course material at \$15.00 each for 884 licensees plus 884 additional retail outlets: 1,768 x \$15 =</u> | <u>26.5</u> |

|                               |                 |
|-------------------------------|-----------------|
| <b>Total FY 98 Revenue:</b>   | <b>\$ 203.3</b> |
| <b>Less Existing Revenue:</b> | <b>- 22.1</b>   |
| <b>New Revenue:</b>           | <b>\$ 181.2</b> |

|                             |                 |
|-----------------------------|-----------------|
| <b>Total FY 98 Revenue:</b> | <b>\$ 203.3</b> |
| <b>Less FY 98 Costs:</b>    | <b>- 78.2</b>   |
| <b>Remaining Balance:</b>   | <b>\$ 125.1</b> |

**FY 99**

|                                                                                                                         |             |
|-------------------------------------------------------------------------------------------------------------------------|-------------|
| a) <u>New revenue increase from \$25 to \$100: 656 x \$75 =</u>                                                         | \$49.2      |
| b) <u>Existing revenue @ \$25: 656 x \$25 =</u>                                                                         | 16.4        |
| c) <u>At least 1 additional retail outlet per licensee: 656 x \$100 =</u>                                               | 65.6        |
| d) <u>Training course material at \$15.00 each for 656 licensees plus 656 additional retail outlets: 1,312 x \$15 =</u> | <u>19.7</u> |

|                               |                 |
|-------------------------------|-----------------|
| <b>Total FY 99 Revenue:</b>   | <b>\$ 150.9</b> |
| <b>Less Existing Revenue:</b> | <b>- 16.4</b>   |
| <b>New Revenue:</b>           | <b>\$ 134.5</b> |

|                             |                 |
|-----------------------------|-----------------|
| <b>Total FY 99 Revenue:</b> | <b>\$ 150.9</b> |
| <b>Less FY 99 Costs:</b>    | <b>- 55.9</b>   |
| <b>Remaining Balance:</b>   | <b>\$ 95.0</b>  |