

**HB**

**189**

**SENATE COMMITTEE REPORT**

DATE: 5/10/97

FURTHER: Judiciary

DATE TURNED  
IN TO OFFICE: 2/2/98

HESS Committee considered

CS FOR SSHB NO. 189(JUD) am

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

and recommends:

be replaced with S CSCSSS HB 189 (HES)

adopt previous CS \_\_\_\_\_ (\_\_\_\_)

attached amendment(s)

adopt Letter of Intent by \_\_\_\_\_ Committee

further referral to the \_\_\_\_\_ Committee

**Senate Bill:**  
 same title  
 new title  
**House Bill:**  
 same title  
 technical title  
 new: SCR# \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>[Signature]</i>	<input checked="" type="checkbox"/>	<i>[Signature]</i>			<input checked="" type="checkbox"/>
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CHAIR: <i>[Signature]</i>	<input checked="" type="checkbox"/>	CHAIR:			

**NEW FISCAL NOTE(S):**

Department      Date      Zero      Fiscal

CSSSHB189  
(JUD)am  
SCS CSSS  
118/189(HES)  
  
(Cmte sub)

C+ED	1/12/98	<input checked="" type="checkbox"/>	
C+ED	1/30/98	<input checked="" type="checkbox"/>	
Revenue	1/13/98	<input checked="" type="checkbox"/>	
Revenue		<input checked="" type="checkbox"/>	

**PREVIOUS FISCAL NOTE(S):\***

Department      Date      Zero      Fiscal


APPROPRIATION -- no fiscal note

\*include fiscal notes accompanying Governor's bill

0-LS0711\K  
Ford  
1/15/98

Rep. Cowdery

Dean G  
Dept of Law

SENATE CS FOR CS FOR SS FOR HOUSE BILL NO. 189( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY

Sew. Loman - possibly raise fine amount

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES COWDERY, Austerman, Ryan

A BILL

FOR AN ACT ENTITLED

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

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

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

5 (a) A person commits the offense of selling or giving tobacco to a minor if the  
6 person

7 negligently - DoL recommends  
(1) ~~knowingly~~ sells a cigarette, a cigar, tobacco, or a product  
8 containing tobacco to a person under 19 years of age;

9 (2) is 19 years of age or older and knowingly [(1) NEGLIGENTLY  
10 SELLS,] exchanges [,] or gives a cigarette, a cigar, tobacco, or a product containing  
11 tobacco to a person under 19 years of age; or

12 (3) knowingly [(2)] maintains a vending machine that dispenses  
13 cigarettes, cigars, tobacco, or products containing tobacco.

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

1 (b) Notwithstanding the provisions of (a) of this section, a person who  
2 maintains a vending machine is not in violation of (a)(3) [(a)(2)] of this section if the  
3 vending machine is located

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

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

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

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

13 \* Sec. 3. AS 11.76.100(d) is amended to read:

14 (d) A person who violates (a) of this section by selling, exchanging,  
15 [SELLING] or giving tobacco to a person under 19 years of age [MINOR] is guilty  
16 of a class B misdemeanor, except that, if within the five years preceding the  
17 offense, the person has previously been convicted under this subsection or a law  
18 or ordinance of this or another jurisdiction with elements substantially similar to  
19 this section, the person is guilty of a class A misdemeanor [A VIOLATION AND  
20 UPON CONVICTION IS PUNISHABLE BY A FINE OF NOT LESS THAN \$300].

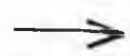
21 \* Sec. 4. AS 11.76.107 is amended by adding a new section to read:

22 Sec. 11.76.106. Restrictions of sales of tobacco and tobacco products.  
23 Except for sales of cigarettes by vending machine as provided under AS 11.76.100(b),  
24 a person may not knowingly sell cigarettes, cigars, tobacco, or a product containing  
25 tobacco unless the sale

26 (1) occurs in a manner that allows only the sales clerk to control access  
27 to the cigarettes, cigars, tobacco, or product containing tobacco prior to sale; or  
28 is a wholesale transaction and the person selling the cigarettes,  
29 cigars, tobacco, or products containing tobacco is licensed as a manufacturer or  
30 distributor under AS 43.50.010.

31 \* Sec. 5. AS 43.50.070 is amended to read:

*Under civil penalties, can go after store  
owner business license*



*legal opinion on retail vs wholesale*

AS 43.70.075 - business license endorsement  
Commerce can revoke endorsement - increase  
limitation - Dol recommend

*Dol recommends deletion of "Criminally"*

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**Sec. 43.50.070. Revocation of licenses.** The department may suspend or revoke a license issued under AS 43.50.010 - 43.50.180 (1) for a knowing [~~CRIMINALLY NEGLIGENT~~] violation of AS 11.76.100, 11.76.106, 11.76.107, or a violation of AS 43.50.010 - 43.50.180 or a regulation of the department adopted under AS 43.50.010 - 43.50.180; (2) if a licensee ceases to act in the capacity for which the license was issued; or (3) if a manufacturer, distributor, or wholesale distributor negligently sells tobacco or products containing tobacco to a nonlicensed retailer or a retailer whose license endorsement under AS 43.70.075 has been suspended. A person whose license is suspended or revoked may not sell cigarettes or permit cigarettes to be sold during the period of the suspension or revocation on the premises occupied or controlled by that person. A disciplinary proceeding or action is not barred or abated by the expiration, transfer, surrender, renewal, or extension of a license issued under AS 43.50.010 - 43.50.180. The department shall comply with the provisions of the Administrative Procedure Act (AS 44.62).

\* **Sec. 6. LEGISLATIVE INTENT CONCERNING HB 159.** On the event that both this Act and a version of HB 159 pass the legislature during the same session of the Twentieth Alaska State Legislature and become law, it is the intent of the legislature that both Acts be given effect to the maximum extent possible.

*Ellis - Breakroom "tighten up"*

Sheila

0-LS0711VL

Ford

1/27/98

SENATE CS FOR CS FOR SS FOR HOUSE BILL NO. 189(HES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE SENATE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Offered:

Referred:

Sponsor(s): REPRESENTATIVES COWDERY, Austerman, Ryan

A BILL

FOR AN ACT ENTITLED

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

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

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

5 (a) A person commits the offense of selling or giving tobacco to a minor if the  
6 person

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

9 (2) is 19 years of age or older and [(1)] negligently [SELLS],  
10 exchanges [,] or gives a cigarette, a cigar, tobacco, or a product containing tobacco to  
11 a person under 19 years of age; or

12 (3) negligently [(2)] maintains a vending machine that dispenses  
13 cigarettes, cigars, tobacco, or products containing tobacco.

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

1 (b) Notwithstanding the provisions of (a) of this section, a person who  
2 maintains a vending machine is not in violation of (a)(3) [(a)(2)] of this section if the  
3 vending machine is located

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

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

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

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

16 \* Sec. 3. AS 11.76.100(d) is amended to read:

17 (d) A person who violates (a) of this section by selling, exchanging,  
18 [SELLING] or giving tobacco to a person under 19 years of age [MINOR] is guilty  
19 of a violation and upon conviction is punishable by a fine of not less than \$300.

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

21 **Sec. 11.76.106. Restrictions of sales of tobacco and tobacco products.** (a)  
22 Except for sales of cigarettes by vending machine as provided under AS 11.76.100(b)  
23 or except as provided under (b) of this section, a person may not negligently sell  
24 cigarettes, cigars, tobacco, or a product containing tobacco unless the sale

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

27 (2) is a wholesale transaction and the person selling the cigarettes,  
28 cigars, tobacco, or products containing tobacco is licensed as a manufacturer or  
29 distributor under AS 43.50.010; this paragraph does not apply to wholesale transactions  
30 by a manufacturer or distributor if both wholesale and retail transactions occur on the  
31 same premises.

1 (b) This section does not apply to a retailer who restricts access to the  
2 premises to only those individuals who are 19 years of age or older.

3 \* Sec. 5. AS 43.50.070 is amended to read:

4 **Sec. 43.50.070. Revocation of licenses.** The department may suspend or  
5 revoke a license issued under AS 43.50.010 - 43.50.180 (1) for a [CRIMINALLY]  
6 negligent violation of AS 11.76.100, 11.76.106, 11.76.107, or a violation of  
7 AS 43.50.010 - 43.50.180 or a regulation of the department adopted under  
8 AS 43.50.010 - 43.50.180; (2) if a licensee ceases to act in the capacity for which the  
9 license was issued; or (3) if a manufacturer, distributor, or wholesale distributor  
10 negligently sells tobacco or products containing tobacco to a nonlicensed retailer or a  
11 retailer whose license endorsement under AS 43.70.075 has been suspended. A person  
12 whose license is suspended or revoked may not sell cigarettes or permit cigarettes to  
13 be sold during the period of the suspension or revocation on the premises occupied or  
14 controlled by that person. A disciplinary proceeding or action is not barred or abated  
15 by the expiration, transfer, surrender, renewal, or extension of a license issued under  
16 AS 43.50.010 - 43.50.180. The department shall comply with the provisions of the  
17 Administrative Procedure Act (AS 44.62).

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

19 (d) If a person who holds an endorsement issued under this section, or an  
20 agent or an employee of a person who holds an endorsement issued under this section  
21 acting within the scope of the agency or employment, has been convicted of violating  
22 AS 11.76.100, 11.76.106, or 11.76.107, or violates a provision of this section or a  
23 regulation implementing this section adopted under AS 43.70.090, the department may  
24 suspend the endorsement for a period of not more than

25 (1) 45 days; or

26 (2) 90 days [,] if, within the past 24 months, the person has been  
27 previously convicted of violating AS 11.76.100, 11.76.106, or 11.76.107, or a provision  
28 of this section or a regulation implementing this section adopted under AS 43.70.090.

**SENATE CS FOR CS FOR SS FOR HOUSE BILL NO. 189(HES)****IN THE LEGISLATURE OF THE STATE OF ALASKA****TWENTIETH LEGISLATURE - SECOND SESSION****BY THE SENATE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE**

Offered:

Referred:

Sponsor(s): **REPRESENTATIVES COWDERY, Austerman, Ryan****A BILL****FOR AN ACT ENTITLED**

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

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

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

5 (a) A person commits the offense of selling or giving tobacco to a minor if the  
6 person

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

9 (2) is 19 years of age or older and [(1)] negligently [SELLS],  
10 exchanges [,] or gives a cigarette, a cigar, tobacco, or a product containing tobacco to  
11 a person under 19 years of age; or

12 (3) [(2)] maintains a vending machine that dispenses cigarettes, cigars,  
13 tobacco, or products containing tobacco.

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

1 (b) Notwithstanding the provisions of (a) of this section, a person who  
2 maintains a vending machine is not in violation of (a)(3) [(a)(2)] of this section if the  
3 vending machine is located

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

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

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

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

16 \* Sec. 3. AS 11.76.100(d) is amended to read:

17 (d) A person who violates (a) of this section [SELLING OR GIVING  
18 TOBACCO TO A MINOR] is guilty of a violation and upon conviction is punishable  
19 by a fine of not less than \$300.

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

**Sec. 11.76.106. Selling tobacco outside controlled access.** (a) Except as provided in  
(b) of this section, a person may not sell cigarettes, cigars, tobacco, or a product containing  
tobacco unless the sale occurs in a manner that allows only the sales clerk to control access to  
the cigarettes, cigars, tobacco, or product containing tobacco.

(b) The provisions of (a) of this section do not apply if the sale

(1) is by vending machine under the provisions of AS 11.76.100(b);

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

(3) is by a retailer who sells primarily cigarettes, cigars, tobacco, or a product  
containing tobacco and who restricts access to the premises to only those individuals who are  
19 years of age or older.

(c) A person who violates this section is guilty of a violation and upon conviction is punishable by a fine of not less than \$300.

5 \* Sec. 5. AS 43.50.070 is amended to read:

6           **Sec. 43.50.070. Revocation of licenses.** The department may suspend or  
7           revoke a license issued under AS 43.50.010 - 43.50.180 (1) for a [CRIMINALLY]  
8           negligent violation of AS 11.76.100, 11.76.106, 11.76.107, or a violation of  
9           AS 4. .50.010 - 43.50.180 or a regulation of the department adopted under  
10           AS 43.50.010 - 43.50.180; (2) if a licensee ceases to act in the capacity for which the  
11           license was issued; or (3) if a manufacturer, distributor, or wholesale distributor  
12           negligently sells tobacco or products containing tobacco to a nonlicensed retailer or a  
13           retailer whose license endorsement under AS 43.70.075 has been suspended. A person  
14           whose license is suspended or revoked may not sell cigarettes or permit cigarettes to  
15           be sold during the period of the suspension or revocation on the premises occupied or  
16           controlled by that person. A disciplinary proceeding or action is not barred or abated  
17           by the expiration, transfer, surrender, renewal, or extension of a license issued under  
18           AS 43.50.010 - 43.50.180. The department shall comply with the provisions of the  
19           Administrative Procedure Act (AS 44.62).

20 \* Sec. 6. 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, 11.76.106, or 11.76.107, or violates a provision of this section or a  
25           regulation implementing this section adopted under AS 43.70.090, the department may  
26           suspend the endorsement for a period of not more than

27                   (1) 45 days; or

28                   (2) 90 days [,] if, within the past 24 months, the person has been  
29           previously convicted of violating AS 11.76.100, 11.76.106, or 11.76.107, or a provision  
30           of this section or a regulation implementing this section adopted under AS 43.70.090.

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

**Sec. 11.76.106. Selling tobacco outside controlled access.** (a) Except as provided in (b) of this section, a person may not sell cigarettes, cigars, tobacco, or a product containing tobacco unless the sale occurs in a manner that allows only the sales clerk to control access to the cigarettes, cigars, tobacco, or product containing tobacco.

(b) The provisions of (a) of this section do not apply if the sale

(1) is by vending machine under the provisions of AS 11.76.100(b);

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

(3) is by a retailer who sells primarily cigarettes, cigars, tobacco, or a product containing tobacco and who restricts access to the premises to only those individuals who are 19 years of age or older.

(c) A person who violates this section is guilty of a violation and upon conviction is punishable by a fine of not less than \$300.

# FISCAL NOTE

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

**BILL NO: HB 189**

Revision Date: January 12, 1998 Dept. Affected: Public Safety  
 Title: Restrict tobacco sales/possession BRU: DPS Statewide Support  
 Sponsor: Representative Cowdery Component: Commissioner's Office  
 Requestor: Senate HESS COMPONENT SERIAL NO. 0523

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

OPERATING	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
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 EXPENDITURES</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>
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CHANGE IN REVENUES ( ) Revenue Code						
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**FUNDING: (Thousands of Dollars)**

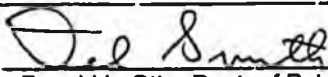
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

Estimate of current year (FY 98) 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.)

Prepared By: Sandy Perry-Provost, Special Assistant to the Commissioner Phone: 465-4322  
 Division: Commissioner's Office Date: January 12, 1998  
 Approved by Commissioner:  Date: January 12, 1998  
 Agency: Ronald L. Otte, Dept. of Public Safety

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

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Revision Date: February 2, 1998 Dept. Affected: Revenue  
 Title: Restrict Tobacco Sales/Possession BRU: Revenue Operations  
 Component: Income and Excise Audit  
 Sponsor: Representative Cowdery  
 Requestor: (S) HES COMPONENT SERIAL NO. 113

Expenditures/Revenues: (Thousands of Dollars)

	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
<b>OPERATING EXPENDITURES</b>						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CAPITAL EXPENDITURES</b>						
<b>CHANGE IN REVENUES ( )</b>						

FUND SOURCE (Thousands of Dollars)

	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
1002 Federal Recolpts						
1003 GF Match						
1004 GF						
1001 CBRF						
1048 University of AK recolpts						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

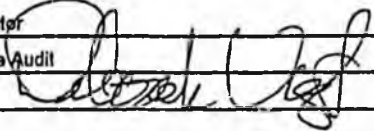
Estimate of any current year cost \$ 0.0

POSITIONS:

	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

The proposed legislation addresses restricting access to retail cigarettes. It is not anticipated that the cost of administering the tobacco tax program will be affected by this legislation.

Prepared by: Larry Moyers, Director  Phono: 269-6620  
 Division: Income and Excise Audit Date: February 2, 1998  
 Approved by Commissioner: Wilson L. Condon Date: February 2, 1998  
 Agency: Revenue

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Revision Date: \_\_\_\_\_ Dept. Affected: Revenue  
 Title: Restrict Tobacco Sales/Possession BRU: Revenue Operations  
 Component: Income and Excise Audit  
 Sponsor: Representative Cowdry  
 Requestor: (S) HES COMPONENT SERIAL NO. 113

Expenditures/Revenues: (Thousands of Dollars)

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY98) cost \$ 0.0

POSITIONS:

FULL-TIME					
PART-TIME					
TEMPORARY					

ANALYSIS: (Attach a separate page if necessary)

The proposed legislation lowers the standard under Title 11 upon which the Department of Revenue would follow for suspending or revoking a businesses tobacco license. When revocation or suspension takes place, the business has the right to utilize the administrative appeal process to challenge the departments action. It is hard to determine what effect this will have on the department's administrative hearing resources. No increased budgetary resources are requested at this time.

Prepared by: Larry Meyers, Director Phone: 269-6620  
 Division: Income and Excise Audit Date: January 13, 1998  
 Approved by Commissioner: Wilson L. Condon Date: January 13, 1998  
 Agency: Revenue

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REPRESENTATIVE JOHN J. COWDERY

CS SS HB 189 (JUD)

**Explanation of Committee Substitute**

This legislation will accomplish two things: 1) It will limit public access to tobacco products in retail premises and 3) It will increase the penalties for selling tobacco to minors.

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

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

2) There is a change in penalties as well. In current statute AS 11.76.100(2)(d) selling or giving tobacco to minors is punishable by a fine of not less than \$300. In this substitute version the fines are similar to contributing alcohol to a minor; a first violation is a class B misdemeanor -- with a fine of not more than \$1,000 AS.12.55.035(b)(3). If a second infraction occurs within five years the person will be guilty of a class A misdemeanor -- a possible \$5,000 fine AS.12.55.035(b)(3). Furthermore, we have amended the culpable mental state associated with selling/giving tobacco to minors from "negligently" to "knowingly". In the prosecution of this circumstance, knowingly is a more commensurate term to use with misdemeanor penalties.

I don't know if there will ever be an absolute answer to the problem of underage smoking. We can hope for healthy children through proper education, strong family values and proper enforcement of our laws. I feel this legislation is a small but proper step towards that direction and I urge the body for its passage.

\*Americans for Nonsmokers Rights

## Sponsor Statement for SSHB 189

This legislation will limit public access to tobacco products, create an affidavit for employees and increase the penalties for selling tobacco to minors.

As it is now, one can sell and purchase tobacco products on a licensed liquor premise, retailers who obtain a tobacco endorsement, or by licensed vending machines. HB 189 simply limits public access to tobacco products in retail premises. This bill will allow **only** the sales clerk to have access to any tobacco product prior to sale. This will ban self-service tobacco displays found today in many stores-- similar laws have been enacted in 171 cities around the U.S. Page 2, line 7 states "the sale occurs in a manner that allows only the sales clerk access to the cigarettes, cigars, tobacco". This will not limit how retail premises or tobacco shops store or present tobacco products. Rather if anyone wishes to buy tobacco, they must go through the employee.

New to this substitute is a section that will further require employees to card people whom employees believe to be under 27 -- which they already do now! Furthermore, tobacco retailers shall require their sales clerks to sign a form stating that they understand it is illegal to sell tobacco to persons under the age of nineteen. We believe this will put more responsibility on retail employees who sell tobacco products.

There is a change in penalties as well. In current statute, selling, giving or exchanging tobacco to minors was punishable by a fine, not less than \$300. In this legislation the fines are the same as contributing alcohol to a minor; a first violation is a class A misdemeanor--a \$5,000 fine. If a second infraction occurs within five years the person will be guilty of a class C felony--a possible \$50,000 fine.

## Mayor's Task Force on Youth



3245 Hospital Drive  
Juneau, Ak 99801  
907 463-5845  
Fax: 907 463-5877

Representative John Cowdery  
Alaska State Legislature  
Juneau, AK 99801-1182

October 22, 1997

Dear Representative Cowdery:

We were alarmed to learn that a sales person who is under the age of 19 is not in violation of Alaska law when he or she sells tobacco to a minor. Recently, the district attorney's office in Juneau was forced to void two citations to young sales clerks who the police caught selling tobacco to an eighteen year old! The statute states:

AS 11.76.100(a) "A person commits the offense of selling or giving tobacco to a minor if the person is 19 years of age or older and (1) negligently sells, exchanges, or gives a cigarette, a cigar, tobacco, or a product containing tobacco to a person under 19 years of age....."

Juneau's Mayor's Task Force on Youth is an active community forum of parents, educators, youth, counselors, police, adjudicators and concerned citizens. We have met twice a month since 1993 to make our community a safe, healthy place for our youth. One of our member groups, the Juneau Tobacco Prevention Network, has conducted tobacco compliance checks for three years and has been educating vendors about the laws regarding the sales of tobacco. Recently, the Network, our local police department, district attorney's office and office of the attorney general conducted a "sting" to enforce our tobacco sales laws. That is when this flaw in the law was discovered.

The legislature has made enforcing existing tobacco laws a priority in order to reduce our high incidence of teen tobacco addiction. We must make the laws apply to everyone especially those most likely to sell to their peers.

Our community will continue to actively cite and fine minors caught with tobacco products. We need your help to penalize the illegal sales. As the sponsor of HB189, please do what you can to close the gaping loophole in tobacco sales.

Sincerely,

Ron Gleason



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

8833 DENALI STREET  
SUITE 201

ANCHORAGE, ALASKA  
99503

PHONE  
907-258-6021

STATEWIDE  
800-478-7738

AX  
907-258-6052

E-MAIL  
prevent@alaska.net

SERVICES

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- COMMUNITY OUTREACH
- PUBLIC INFORMATION
- REFERRALS
- RESOURCE LIBRARY



April 9, 1997

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

Dear Rep. Cowdery:

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

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

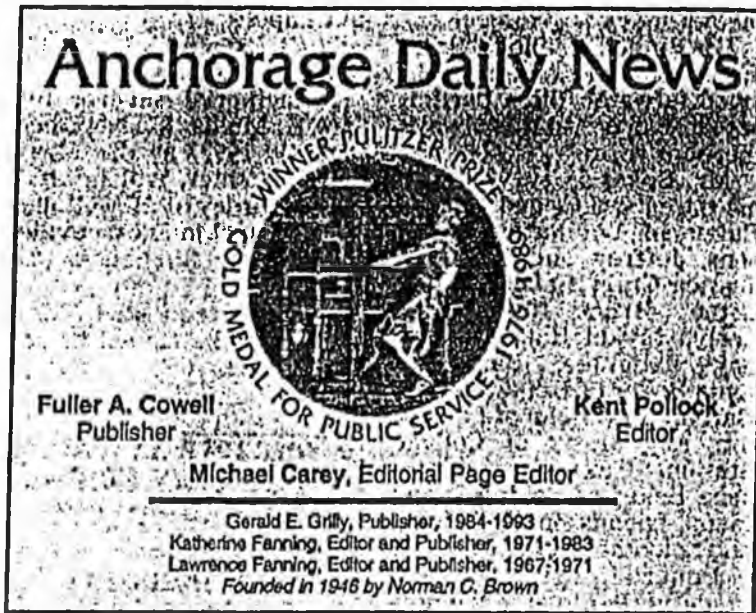
- The majority of Alaskan smokers (83.7%) began smoking between the ages 10 and 20 years. The median age for first time use is 13.
- Seventy-two percent of Alaskan high school students surveyed stated they tried cigarette smoking, compared to 59% nationally. Over 36% of Alaskan students surveyed use cigarettes currently (30% nationally) and 21% smoke daily (14% nationally).
- By the 12th grade, 29% of Alaskan students surveyed used smokeless tobacco frequently, compared to 22% nationally.

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

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

Respectfully,

  
Joseph DiMatteo  
Executive Director



## Tobacco sales

### Keeping cigarettes out of young hands

Anchorage Assembly member Kevin Meyer's proposed tobacco ordinance could help keep tobacco, out of the hands — and lungs — of minors.

The ordinance is similar to Rep. John Cowdery's bill, which flew through the House but languished in the Senate during the last legislative session.

Mr. Meyer's proposal is simple: All retail tobacco sales must be clerk-assisted. That means tobacco products would have to be located behind a counter and someone who wants a pack of cigarettes or a can of chew would have to ask the clerk for service. Cigarette vending machines would be allowed only in establishments that have liquor licenses — where you have to be 21 to get in anyway.

Mr. Meyer believes the ordinance would:

- Frighten some minors away from purchasing tobacco products.
- Remind the clerk to check the I.D. of the purchaser.
- Help prevent shoplifting.

The ordinance includes a \$300 fine for retailers that don't comply, which should provide enough money to help enforce the law. Police officers would be able to quickly assess which retailers are in compliance — all they'd have to do is walk in a store and see if the smokes and chew are behind a counter, out of reach of shoplifters.

Critics say the mea-

*warn them. Kevin Meyer's common-sense idea is one small step that could have a major effect.*

sure could cost retailers money and is more government intrusion into private enterprise.

But keep in mind: Tobacco is an addictive drug. There can be no good argument for displaying an addictive

drug next to the candy and gum.

For better or for worse, our society has decided that tobacco is a legal drug to sell to adults. OK, but let's do everything we can to make sure it's adults who are using it. Let's do what we can to make sure that those who light their first cigarette or chew their first snuff know exactly what they're getting into.

There is no magic method to keep children away from tobacco, just as there is no magic way to keep your children from repeating your mistakes, no matter how many times you warn them. Mr. Meyer's common-sense idea is one small step that could have a major effect.

Most new smokers are minors, young people who may be easily seduced into the belief that smoking will make them look older, glamorous or rebellious. For many though, by the time they realize that all their tobacco habit is giving them (if they're lucky) is wrinkles and a flatter wallet, it's too late. They're hooked.

Controlling access to tobacco products works well for at least one Anchorage retailer. As part of a recent remodeling, the Northway Mall Safeway moved its cigarettes into a case behind a counter. The case is locked when the counter is unstaffed.

Cindy Fleenor, manager of the store, said, "It's better business sense for us. There is not a chance in our stores that a minor can get ahold of cigarettes. We're including it in all of our newly remodeled stores, it's worked out so well."

□ The Anchorage Assembly will hold a public hearing on the tobacco ordinance beginning after 6:30 p.m. on Tuesday.



## **Tobacco measure good move**

It was a pleasure to attend the Anchorage Assembly meeting Nov. 11 and witness passage by unanimous vote of an ordinance banning self-service tobacco displays. This one simple measure will have an immediate impact on reducing youth access to tobacco. The Assembly members deserve a lot of credit for listening to the health arguments in favor of this ordinance, and this was a great example of government acting in the public interest.

It is quite possible that the tobacco industry will try to weaken the ordinance by requesting amendments and exceptions. We will be counting on the Assembly to stand firm in its goal to keep tobacco products out of the reach of children. The ordinance that passed Tuesday night is simple and easy to enforce, greatly enhancing its effectiveness. No changes are needed.

Many thanks to Kevin Meyer for sponsoring this excellent piece of legislation. I hope other Anchorage residents will take the time to contact their Assembly members to say thank you and urge them to keep up the good work in the effort to eliminate tobacco use by our youth.

— *Craig Harpel, executive director  
American Heart Association  
Alaska Affiliate*

# Municipality of Anchorage



P.O. BOX 196650  
ANCHORAGE, ALASKA 99519-6650  
TELEPHONE: (907) 333-0738

Anchorage Assembly  
Cheryl Clementson

November 18, 1997

Representative John J. Cowdery  
700 West 4<sup>th</sup> Avenue  
Anchorage, Alaska 99501

Dear Representative Cowdery:

Thank you for your letter of November 3rd, requesting support for AO 97-133, and sharing the results of the roll call vote for HB 189. I totally agree that this is indeed a non-partisan issue and a matter of public health. As you are probably aware by now, the Assembly unanimously passed the ordinance which bans tobacco self service displays. I believe that this measure will limit the access to tobacco for youth and hope that this strategy will prove to be effective in the reduction of smoking by youth. Thanks again for taking the time to write.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Cheryl Clementson'.

Cheryl Clementson  
Assemblymember

*Thanks also for  
your phone call!*

1  
2  
3 CLERK'S OFFICE  
4 AMENDED AND APPROVED  
5 Date: 11-11-97

Submitted by: Assembly Member Meyer  
Prepared by: Department of Law  
For reading: November 11, 1997

6 ANCHORAGE, ALASKA  
7 AO NO. 97-133(S)

8 AN ORDINANCE AMENDING ANCHORAGE MUNICIPAL CODE CHAPTERS 8.05 AND 14.60  
9 TO ENACT RESTRICTIONS ON CUSTOMER ACCESS TO TOBACCO AND TOBACCO  
10 PRODUCTS.  
11

12  
13 THE ANCHORAGE ASSEMBLY FINDS:

14  
15 WHEREAS, shoplifting is a significant criminal problem in Anchorage which contributes to a  
16 serious public health problem when the stolen items are tobacco and tobacco products;  
17

18 WHEREAS, smoking by minors is a serious public health problem that ultimately results in  
19 substantial expenditures by the Municipality; and  
20

21 WHEREAS, restricting access to tobacco in stores to sales clerks until the time of sale will tend to  
22 deter shoplifting, encourage proper checking of identification presented by potential purchasers and thereby  
23 reduce the risk of sales of tobacco and tobacco products to minors, and deter minors from attempting to  
24 purchase tobacco and tobacco products,  
25

26 NOW THEREFORE THE ANCHORAGE ASSEMBLY ORDAINS:

27  
28 Section 1: That the Anchorage Municipal Code is hereby amended to add a new section 8.05.454 to read  
29 as follows:  
30

31 8.05.454 Restrictions on sales of tobacco and tobacco products.  
32

33 A. It is unlawful for a person negligently to sell cigarettes, cigars, tobacco, or a product  
34 containing tobacco in any manner that allows any person but the sales clerk to control access  
35 to the cigarettes, cigars, tobacco, or product containing tobacco prior to sale.  
36

37 1. Subsection A. of this section does not apply to wholesale transactions in which the  
38 person selling the cigarettes, cigars, tobacco, or products containing tobacco is  
39 licensed as a manufacturer or distributor under AS 43.50.010.  
40

41 2. Subsection A. of this section does not apply to sales by vending machines which are  
42 located:

43 As far as practical

44 (a) ~~At least ten feet~~ from any entrance on the inside of the licensed premises of  
45 a valid, existing beverage dispensary license, a club license, or a package  
46 store license issued under Alaska Statutes 04.11.090, 04.11.110, and  
47 04.11.150 respectively; and  
48

49 (b) The location described in subsection A.2.(a) of this section is directly and

continually supervised by a person employed on the licensed premises when the vending machine is accessible to the public.

**Section 2:** That section 14.60.030 of the Anchorage Municipal Code is hereby amended to add a new Code Section, Offense, and Penalty/Fine to read as follows:

14.60.030      Fine Schedule

The fine schedule under this chapter is as follows:

<i>Code Section</i>	<i>Offense</i>	<i>Penalty/Fine</i>
	*   *   *   *   *	
<u>8.05.454</u>	<u>Restrictions of Sales of Tobacco and Tobacco Products</u>	<u>\$300.00</u>

**Section 3:** That this ordinance shall be effective on the <sup>one hundred twentieth (120th)</sup> ~~ninetieth (90th)~~ day after passage and approval by the Assembly.

PASSED AND APPROVED by the Anchorage Assembly this \_\_\_\_\_ day of \_\_\_\_\_, 1997.

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Municipal Clerk



**MUNICIPALITY OF ANCHORAGE  
ASSEMBLY MEMORANDUM**

NO. AM 953-97

Meeting Date: November 11, 1997

1       **From: Assemblymember Meyer**  
2       **Subject: AO 97-133(S) - Restrictions on Sales of Tobacco and Tobacco**  
3               **Products**

4  
5       Attached is a proposed substitute ordinance to AO 97-133. The only substantive  
6       changes are to clarify the definition of the offense, to add the word "negligently" to the  
7       definition of the offense in Subsection 8.05.454.A, and to add some findings describing  
8       the rationales for the proposed ordinance including:

- 9  
10           1.     To deter minors from attempting to purchase tobacco and tobacco  
11                    products;  
12  
13           2.     To deter shoplifting of tobacco and tobacco products; and  
14  
15           3.     To encourage sales clerks to properly check identification of purchasers of  
16                    tobacco and tobacco products

17  
18       Approval of AO 97-133(S) is recommended.

19  
20  
21       Respectfully submitted:

Prepared by:

22  
23  
24  
25       *Kevin Meyer*  
26       \_\_\_\_\_  
27       Kevin Meyer  
28       Assemblymember *gmm*

25       *Greg Moyer*  
26       \_\_\_\_\_  
27       Greg Moyer, Director  
28       Assembly Office

29  
30

**MUNICIPALITY OF ANCHORAGE**  
**Summary of Economic Effects - General Government**

**AO Number: 97-133(S)**

**Title: Restrictions on Sales of Tobacco and  
Tobacco Products**

**Sponsor: Assemblymember Meyer**

**Preparing Agency: Assembly Office**

**Others Affected: Transportation Inspection**

**CHANGES IN EXPENDITURE AND REVENUES (Thousands of Dollars)**

<i>Operating Expenditures</i>	<i>FY 94</i>	<i>FY 95</i>	<i>FY 96</i>	<i>FY 97</i>	<i>FY 98</i>
<i>1000 Personal Services</i>					
<i>2000 Supplies</i>					
<i>3000 Other Services</i>					
<i>4000 Debt Service</i>					
<i>5000 Capital Outlay</i>					
<b>TOTAL DIRECT COSTS:</b>					

<b>ADD: 6000 Charge from Others</b>					
<b>LESS: 7000 Charge to Others</b>					
<b>FUNCTION COSTS:</b>					

<b>REVENUES:</b>					
------------------	--	--	--	--	--

<b>CAPITAL:</b>					

<b>POSITIONS: FT/PT and Temp.</b>					

**Public Sector Economic Effects:**

*No substantial public sector economic effects anticipated.*

***Private Sector Economic Effects:***

*No substantial private sector economic effects anticipated.*

***Prepared by: Greg Moyer***

***Telephone: 343-4755***

***Date: 11-7-97***

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

January 28, 1998

Bob Bartholomew, Deputy Director  
Income and Excise Audit Division  
Department of Revenue  
P.O. Box 110420  
Juneau, Alaska 99811

Dear Mr. Bartholomew:

You have asked us to address the question of how the reenactment of AS 11.76.107 contained in HB 189 would affect a business having a distributor's or manufacturer's license, but that also engages in retail sales of tobacco products. The section provides that sales of cigarettes, cigars, or other products containing tobacco may only occur in one of two ways: either the tobacco products must be maintained in a manner that allows only the sales clerks to control access, or the products must be the subject of a wholesale transaction and the seller must be licensed as a manufacturer or distributor.

We understand this to require that a business having a manufacturer's or distributor's license that engages also in retail sales must maintain those tobacco products that are intended for retail sale in a manner that only allows a sales clerk access to the products. The business may make tobacco products available for sale in wholesale transactions as well, however, these products may not be available for sale in retail transactions unless the products are maintained under restricted access as required in subsection (1) of the statute.

We hope this is of assistance to you. If you have any questions, please contact the undersigned at your convenience.

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

- 1031 WEST 4TH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501-1994  
PHONE: (907) 269-5100  
FAX: (907) 278-3697
- KEY BANK BUILDING  
100 CUSHMAN ST., SUITE 400  
FAIRBANKS, ALASKA 99701-4679  
PHONE: (907) 451-2811  
FAX: (907) 451-2846
- P.O. BOX 110300-DIMOND COURTHOUS  
JUNEAU, ALASKA 99811-0300  
PHONE: (907) 465-3600  
FAX: (907) 465-6735

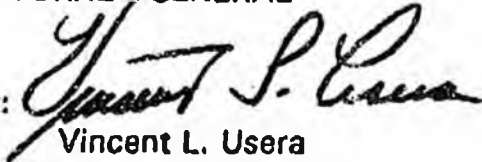
Bob Bartholomew  
Department of Revenue

January 28, 1998  
Page 2

Very truly yours,

BRUCE M. BOTELHO  
ATTORNEY GENERAL

By:



Vincent L. Usera  
Assistant Attorney General

VLU:ps

# Citizens To Protect Kids from Tobacco

1057 W. Fireweed Lane, Suite 204 • Anchorage, Alaska 99503 • (907) 277-8696 • Fax: (907) 263-2073

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## POSITION PAPER

### CS SS HB 189 (JUD) am REDUCING YOUTH ACCESS TO TOBACCO

January 12, 1998

#### The Need for Youth Access Restrictions

Citizens To Protect Kids from Tobacco is a statewide coalition of health organizations committed to reducing the addiction, disease, and death from tobacco use in Alaska.

Almost all new tobacco users are kids. Ninety percent of smokers start before age 19; the average age is 14.5 (1994 Surgeon General's Report). Therefore, any effective tobacco control program must include laws that address youth access to tobacco. In addition, studies have shown that such laws must be actively enforced to have significant impact.

The 1995 Youth Risk Behavior Survey administered by the Alaska Department of Health and Social Services found:

- 36.5% of high school students in Alaska are current smokers;
- 24.8% of middle school students (grades 7 and 8), are current smokers; the most common sources of cigarettes for youth who smoke is purchasing them, "borrowing" them, and stealing them; and
- 18.6% of smokers in middle school reported that their usual source of cigarettes is to steal them, for 37.2% "borrowing" was the most common source of the smokers, while 2.8% said they purchase their own cigarettes

The figures for high school students reflect the greater ease with which this age group is able to purchase cigarettes:

- 26.3% of high school smokers said their usual source of cigarettes was to buy them, 28% said they borrowed them, and 5.1% said they stole them.

#### Banning Self-Service Tobacco Displays

Almost 200 local governments, including Anchorage, have enacted laws to ban self-service tobacco displays.

A self-service display ban eliminates shoplifting of cigarettes. Research shows that it also increases the likelihood that a young customer will be "carded" (asked for



ID) when tobacco products are requested. Additionally, a ban is important because self-service displays are designed to attract young people and glamorize the use of tobacco products.

The Institute of Medicine's Committee on Preventing Nicotine Addiction in Children and Youths stated that "a youth access plan should include a statewide ban on self-service displays to prevent purchasing and shoplifting of tobacco products by youth" (*Growing Up Tobacco Free*, 1994).

CS SS HB 189 (IUD) am

Citizens To Protect Kids from Tobacco is pleased to see the interest in reducing nicotine addiction among youth reflected in H.B. 189, and we commend the bill's sponsors for proposing this legislation that seeks to reduce youth access to tobacco by requiring all retail tobacco sales to be clerk-assisted.

However, while the intent of the bill is excellent, CPKT is concerned that some of the provisions, as presently written, will inadvertently make it more difficult to keep tobacco products out of the hands of minors. We have two specific concerns and one additional suggestion:

1. *Enforcement and the Standard of Proof:* As currently proposed, the legislation would amend current law to both increase the penalty for a merchant selling tobacco as well as change the standard of proof required to convict a merchant from a "criminal negligence" standard to a "knowing" standard.

Citizens to Protect Kids from Tobacco does not support changing either because the practical effect will be to reduce and/or frustrate enforcement efforts. The current penalties (a fine and suspension of a tobacco sale license endorsement) are just, reasonable, and effective. A substantial increase in the penalties would likely make enforcement agencies less willing to undertake enforcement activities. More importantly, changing the required standard of proof for a conviction would have the unintended effect of making any enforcement efforts essentially impossible. (As a practical matter, it is virtually impossible to prove that a clerk knew that they sold to a minor short of a voluntary confession on the part of the vendor. Moreover, changing the standard to "knowingly" may discourage clerks from checking ID at all—that way, they can claim they didn't know the customer's age.)

The standard of proof was changed to "knowingly" in the House Judiciary Committee as a result of increasing the penalty from a violation to a class A misdemeanor. CPKT does not believe a stronger penalty is necessary to reduce illegal sales to minors. What is needed is continuous, vigorous enforcement of the law. Merchants who sell tobacco to kids need to be caught, convicted, and punished with a fine and suspension of their license to sell tobacco. Such penalties are provided for by existing law.

The new Anchorage ordinance referred to earlier, which retains the "negligence" standard and commensurate penalties in existing state law, provides a good model for legislation that is both practical and effective.

**2. *Repeal of Tobacco Vending Machines Restrictions:*** Another unintended effect of CS SS HB 189 (JUD) as presently drafted would be to repeal current law restricting the placement of cigarette vending machines. In the bill, language in AS 11.76.100 regarding tobacco vending machines has been deleted, with no substitute language provided. The effect would be to remove restrictions that currently limit cigarette vending machines to "adult only" locations and employee break rooms. Studies have shown that young people commonly buy cigarettes from vending machines if the machines are not restricted to "adult only" locations.

If there is any change in existing law, it should only be to remove the exception currently allowed for placement of vending machines in "an employee break room or other controlled area of a private work place that is not generally considered a public place" from existing statute. The recent Anchorage ordinance banning self-service tobacco displays provides a good model, as it allows tobacco vending machines only in locations licensed by the state to sell liquor. Such an amendment in state law would remove vending machines from workplaces where young people are employed.

**3. *Current Loophole Allowing Underaged Youth to Sell Tobacco:*** Current state statutes are crafted in such a way as to inadvertently permit underaged youth to sell cigarettes (as vendors or clerks) to other underaged youth and not be subject to a violation. The legislation should be amended to address this concern as well.