

HEB

189

Revision Date: February 2, 1998 Dept. Affected: Revenue
 Title: Restrict Tobacco Sales/Possession BRU: Revenue Operations
 Component: Income and Excise Audit
 Sponsor: Representative Cowdory
 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 04
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						
1001 CBRF						
1048 University of AK receipts						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year cost \$ 0.0

POSITIONS:

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 Meyers, Director
 Division: Income and Excise Audit
 Approved by Commissioner: Wilson L. Condon
 Agency: Revenue

Phone: 269-6620
 Date: February 2, 1998
 Date: February 2, 1998

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Revision Date: _____ 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)

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						
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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						
10 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
 Division: Income and Excise Audit
 Approved by Commissioner: Wilson L. Condon
 Agency: Revenue

Phone: 269-6620
 Date: January 13, 1998
 Date: January 13, 1998

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FISCAL NOTE

STATE OF ALASKA

BILL NO: HB 189

1997 LEGISLATIVE SESSION

Revision Date: January 12, 1998 Dept. Affected: Public Safety
 Title: Restrict tobacco sales/possession BRU: DPS Statewide Support
 Component: Commissioner's Office
 Sponsor: Representative Cowdery
 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						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES ()						
Revenue Code						

FUNDING: (Thousands of Dollars)

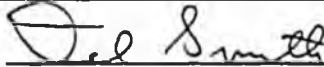
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of current year (FY 96) 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

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FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. SCS CSSSHB 189(HES)

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

(Thousands of Dollars)

Expenditures/Revenues	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
OPERATING EXPENDITURES						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES	0.0	0.0	0.0	0.0	0.0	0.0
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(Thousands of Dollars)

FUND SOURCE	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 98) cost: \$ 0.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

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

Prepared by: Jennifer Strickler, Administrative Manager Phone: 465-2144
 Division: Occupational Licensing Date: 1/30/98
 Approved by Commissioner: Deborah B. Sedwick Date: 1/30/98
 Agency: Commerce and Economic Development

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SENATE COMMITTEE REPORT

DATE: 2/2/98

FURTHER:

DATE TURNED
IN TO OFFICE: 5-5-98

Judiciary Committee considered CS FOR SPONSOR SUBSTITUTE FOR HB 189(JUD) am
"An Act relating to sale, gift, exchange, or distribution of tobacco and tobacco products."

and recommends:

- be replaced with § CS CS SS HB 189 (JUD)
- 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>Sean Russell</i>	<input checked="" type="checkbox"/>	<i>Mike Miller</i>	<input checked="" type="checkbox"/>		
CHAIR:		CHAIR: <i>John L. Taylor</i>	<input checked="" type="checkbox"/>		

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

<i>AMMID, PDA</i>	<i>2598</i>	<input checked="" type="checkbox"/>	

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

<i>DOR - Rev Opa</i>	<i>2/2</i>	<input checked="" type="checkbox"/>	
<i>DCED - Occup Lic</i>	<i>1/13</i>	<input checked="" type="checkbox"/>	

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

From the office of . . . Representative John J.
Cowdery

State Capitol Building, Room 416
Juneau, AK 99801
907-465-3879 phone
907-465-2069 fax

MEMORANDUM

TO: Senate Judiciary Committee
FROM: Rep. John J. Cowdery J.C.
DATE: Feb 12, 1998
RE: SCS CSSSHB 189 (HES)

SCS CSSSHB 189 (HES) SPONSOR STATEMENT

The purpose of HB 189 is to restrict access by minors to tobacco products. Restricted access is accomplished by banning self-service displays in retail establishments. The operative language in the bill is:

"... a person may not sell cigarettes, cigars, tobacco ... unless the sale occurs in a manner that allows only the sales clerk to control access to the ... tobacco..."

However, the bill provides an exemption for retail stores that sell primarily tobacco products and restrict access to persons 19 years of age and older. This provision will allow "tobacco boutiques" who specialize in tobacco products and accoutrements, to the near exclusion of other merchandize, to have public access to the tobacco products.

Self-service displays are notoriously susceptible to shop lifting and impulse buying by minors. Their elimination has proven to be a popular means of removing access by minors to cigarettes. More than 180 cities throughout the U.S. have already implemented prohibitions on self service displays. Three months ago, the Municipality of Anchorage passed an ordinance modeled after HB189.

Additionally, new language is added to the statute which requires that signs be posted near vending machines in employee break rooms where employees under the age of 19 may be present indicating that:

“possession of tobacco by a person under 19 years of age is prohibited under A.S. 11.76.105.”

Finally, another important provision in HB 189, is that it extends the offense of “selling tobacco to a minor,” to persons who are minors. Under current law, it is unprosecutable if an 18 year old sells to a minor. HB 189 closes that loophole.

Thank you for your consideration of this legislation.

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:

¹⁰⁶You 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 99501-1953
PHONE: (907) 269-5100
FAX: (907) 276-3697
- 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 COURT HOU
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 465-6735

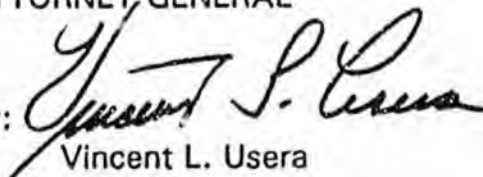
Bob Bartholomew
Department of Revenue

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

POSITION PAPER

CS 55 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 cigarette 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.

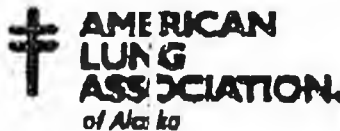
The figures for high school students reflect the greater ease with which this age group is able to purchase cigarettes:

- 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.)

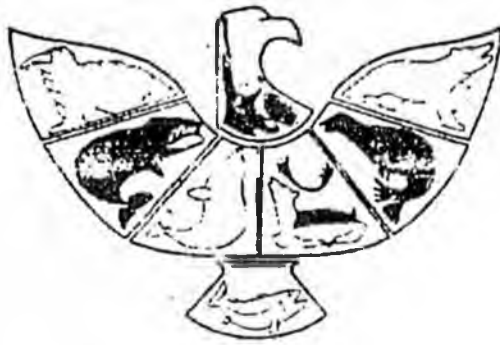
The standard of proof was changed to "knowingly" in the House Judiciary Committee as a result of increasing the penalty from a violation to a class A misdemeanor. CPKT does not believe a stronger penalty is necessary to reduce illegal sales to minors. What is needed is continuous, vigorous enforcement 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 (UD) 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 drafted 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.



Alaska Native Health Board

4201 Tudor Centre Dr., Suite 105
Anchorage, Alaska 99508

Phone: (907) 562-6006
FAX: (907) 563-2001

4/26/97 465-2069

Dear Rep. Cowdery:

I am writing this note to apologize for any misconception that might have arisen from the story that was published in this week's *Alaska Star*. In a story about HB 159 (sponsored by Pete Kott and co-sponsored by you and several others), I am quoted as saying that "the bill is co-sponsored by legislators who have in the past supported the tobacco industry." What I really said is that while some of the bill's sponsors might not be aware that this is a bad bill (supported by the tobacco industry), Eldon Mulder is not that naive. (Those of us on the other side are well aware of Eldon's ties to the tobacco industry.)

At the time I was interviewed I wasn't even aware that you are a co-sponsor of HB 159. I know from talking to you before the elections that you definitely are not sympathetic to the tobacco industry. I truly am sorry for any flak you might get from the *Alaska Star* article. (At least your name is not mentioned in the story.)

By the way, your proposal to prohibit self-service tobacco displays is excellent. If the tobacco industry feels it has any real chance of passing, they will fight it. I am hoping we can get the tobacco tax passed this year, then come back and advocate for further measures that really could help, such as the ban on self-service displays in your bill and the provision in Con Bunde's bill to allow kids to work with enforcement officials to identify those merchants who sell to minors.

Best wishes,
Anne Marie Holen

3. WITIANAKA HEALTH ASSOCIATION
5. RISTIAK AREA HEALTH CORPORATION
10. UGASHMIL
11. COOKS ENVIRONMENT ASSOCIATION
12. EASTERN ALUTIAN TRIBES
13. KODIAK AREA NATIVE ASSOCIATION
14. KAGAD ASSOCIATION

15. METANAKA AND AN COMMUNITY
16. UNKASOFT TRIBAL CONSORTIUM
17. N. E. VILLAGE OF EKULTIA
18. NATIVE VILLAGE OF TUPAK
19. NINE LIPS TRIBAL COUNCIL
20. NORTH-SIDE BOROUGH

21. NORTH-SIDE HEALTH CORPORATION
22. SOUTHWEST ALASKA TRIBES
23. SOUTHERN ALASKA FOUNDATION
24. SOUTH-EAST ALASKA REGIONAL HEALTH CONSORTIUM
25. ALASKA CHIEFS CONFERENCE
26. KUPARUK RIVER HEALTH CORPORATION
27. SOUTHWEST ALASKA TRIBES

Americans for Nonsmokers' Rights

Helping you breathe a little easier

YOUTH ACCESS TO TOBACCO

April 23, 1996

THE PROBLEM

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

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

Despite the fact that almost all states prohibit the sale and distribution of tobacco products to minors, tobacco is easily accessible to youth. Studies indicate that underage youth can purchase tobacco products 70 to 100 percent of the time from merchants and through vending machines (Altman et al, 1993). Youth themselves report that it is easy for them to purchase tobacco; the majority buy their own cigarettes (Cummings et al, 1992).

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

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

YOUTH ACCESS POLICIES

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

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

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

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

LICENSING TOBACCO RETAILERS

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

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

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

Options

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

TOBACCO VENDING MACHINES

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

Option One: Total Ban on Tobacco Vending Machines

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

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

Option Two: Partial Ban on Tobacco Vending Machines

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

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

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

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

Options

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

SINGLE CIGARETTES

Although the Federal Cigarette Labeling and Advertising Act prohibits the sale or distribution of cigarettes without the mandated warning label, some stores sell single cigarettes which are taken out of their packages and stored in cups and trays. This practice is illegal, unless the cigarettes are removed from their packages by the customer or in the presence of the customer (Manfreda, 1994). A study of street vendors in California found that almost half sold single cigarettes, and that youth were able to purchase them almost twice as often as adults (Leary, 1993). This occurred despite the fact that California prohibits all sales of single cigarettes.

Options

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

POSTING WARNING SIGNS

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

Options

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

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

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

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

SELF-SERVICE DISPLAYS

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

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

Options

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

FREE SAMPLING

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

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

January 28, 1998

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

- 1031 WEST JTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907)269-5100
FAX: (907)276-3697
- 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 COURT HOU
JUNEAU, ALASKA 99811-0300
PHONE: (907)465-3600
FAX: (907)465-6735

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

Dear Mr. Bartholomew:

¹⁰⁶You 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.

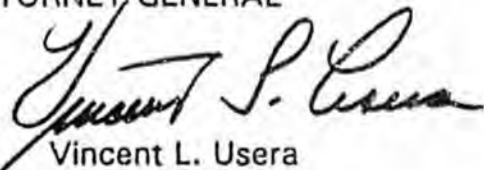
We hope this is of assistance to you. If you have any questions, please contact the undersigned at your convenience.

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



WESTERN PACIFIC DIVISION, ALASKA AREA OFFICE

RECEIVED
APR 23 1998
Ans'd.....

April 17, 1998

Senator Robin Taylor
Alaska State Legislature
State Capitol (MS 3100)
Juneau, AK 99801-1132

Dear Senator Taylor:

The American Cancer Society supports House Bill 189, a bill banning self-service displays. This bill has been in the Senate Judiciary Committee since early this session and we believe it is a good bill and worthy of your consideration.

During the tobacco tax campaign, we learned that while there were individuals who did not support a tobacco tax increase, many of those same people did support alternative methods of reducing youth access to tobacco products. House Bill 189 proposes several of those methods.

This bill will practically eliminate shoplifting and make it more difficult for underage youth to purchase tobacco. Not only does it prohibit self-service tobacco displays, which often are placed at eye level, near the candy and gum, it also encourages more interaction between the young customer and the clerk. If a youth asks for tobacco from a clerk, (as opposed to placing the tobacco on the counter themselves) this direct interaction increases the chance that the clerk will notice the customer is underage and refuse to sell.

Last Fall we supported the passage of an Anchorage ordinance similar to HB 189. This ordinance went into effect in early March and we are proud to say that the anecdotal evidence suggests the ordinance already has been a success. Shoplifting has plummeted and thereby eliminating one of the favorite ways for youths to obtain tobacco.

House Bill 189 is a proactive step in the right direction. After two years of consideration and review by several committees, the time has come for the Legislature to pass it.

Sincerely,

Diana Kuhns, C.O.O.
American Cancer Society,
Western Pacific Division

RECEIVED
APR 23 1998

Ans'd.....

P.O. Box 22970
Juneau , AK 99802
April 21, 1998

Senator Robin Taylor
Alaska State Legislature
State Capitol (MS 3100)
Juneau, Alaska 99801-1182

Dear Chairman Taylor:

I am writing to express support for HB 189 and to ask that you will allow this bill to go to the Senate floor for a vote. HB 189 is a good bill which will help to reduce youth access to tobacco products, a goal that we can all agree on. Thank you for caring about the health and future of our youth.

Sincerely,


Susan Mason-Bouterse

Alaska State Legislature

SENATE DISTRICT 1

Bayshore	Abbott Loop
Campbell	Bear Valley
Dimond	Bird Creek/Indian
Independence Park	Girdwood
Klatt	Glen Alps
Old Seward	Hillside
Southport	Huffman/O'Malley
Taku	Portage
	Rabbit Creek



SENATOR SEAN PARNELL

716 WEST 4TH AVENUE, SUITE 530
ANCHORAGE, ALASKA 99501
(907) 258-8194

While in Session:
STATE CAPITOL
JUNEAU, ALASKA 99801-1182
(907) 465-2995 1-800-365-2995

April 21, 1998

Anne Marie Holen
4201 Tudor Centre Dr. Suite 105
Anchorage, AK 99508

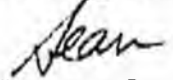
Dear Anne:

Thank you for your letter supporting HB 189, a bill relating to sale, gift, exchange, or distribution of tobacco and tobacco products.

HB 189 is currently in the Senate Judiciary Committee and has not yet been scheduled for a hearing. As you know, I have supported anti-tobacco legislation in the past and I plan on continuing to do so. When HB 189 comes up for a hearing I would have no trouble moving the bill from committee. However, whether to bring the bill up for a vote in Judiciary is the chairman's prerogative. By copying this letter to Senator Taylor, I am requesting a hearing on HB 189.

Thanks, again, for your letter. I appreciate hearing from you.

Best regards,


Senator Sean Parnell

cc. Senator Taylor

*Anne Marie:
Thanks for sending two letters.
I have responded to the
other letter under separate cover.
Best regards,
Sean*