

**HB**

**189**

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  
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.

# FISCAL NOTE

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

BILL NO. SCS CSSSHB 189(HES)

Revision Date: \_\_\_\_\_  
 Title: An Act relating to sale, gift, exchange, or distribution  
of tobacco products.  
 Sponsor: Reps. Cowdery, Austerman, Ryan  
 Requestor: Senate HESS

Department: Commerce and Economic Development  
 BRU: Occupational Licensing  
 Component: Operations  
 COMPONENT SERIAL NO. 1844

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						
<b>TOTAL OPERATING</b>	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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FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	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  
 Division: Occupational Licensing  
 Approved by Commissioner: Deborah B. Sedwick  
 Agency: Commerce and Economic Development

Phone: 465-2144  
 Date: 1/30/98  
 Date: 1/30/98

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# FISCAL NOTE

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

BILL NO. SSHB 189

Revision Date: \_\_\_\_\_  
 Title: "An Act relating to sale of tobacco and tobacco products..."  
 Sponsor: Rep. Cowdery  
 Requestor: (H) JUD

Department Affected: Administration  
 BRU: Office of Public Advocacy  
 Component: Office of Public Advocacy  
 COMPONENT SERIAL NO. 43

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

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

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

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

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

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary )  
 There is no fiscal impact to the Department of Administration.

Prepared by Erant McDee Director  
 Division Office of Public Advocacy

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

Approved by Commissioner Mark Bover  
 Agency Department of Administration

Date: 4/25/97

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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						
<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>

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

**FUNDING: (Thousands of Dollars)**

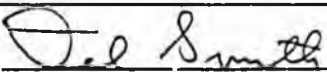
1002 Federal Receipts						
1003 GE Match						
1004 GE						
1005 GE/Program Receipts						
1006 GE/MHTIA						
Other						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

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

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# FISCAL NOTE

**STATE OF ALASKA**  
**1998 LEGISLATIVE SESSION**

**BILL NO. CSSSHB 189(JUD)AM**

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

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						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
CHANGE IN REVENUES	0.0	0.0	0.0	0.0	0.0	0.0

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

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

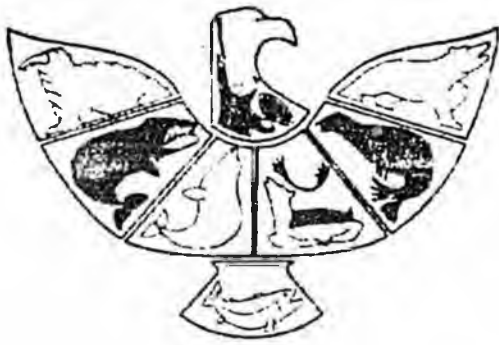
POSITIONS						
FULL-TIME						
PART-TIME						
TEMPORARY						

**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: <u>465-2144</u>
Division:	Occupational Licensing	Date: <u>1/12/98</u>
Approved by Commissioner:	Deborah B. Sedwick	Date: <u>1/12/98</u>
Agency:	Commerce and Economic Development	

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# 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,

Ann Marie Holen

ALUTIAN PEOPLE ISLANDS ASSOCIATION  
ARISTOCHLENA HEALTH CORPORATION  
CHUGACHMIL  
COFFELINE NATIVE ASSOCIATION  
EASTERN ALUTIAN TRIBES  
KODIAK AREA NATIVE ASSOCIATION  
MANILAU ASSOCIATION

NETLAH ALUTIAN COMMUNITY  
MT. SANFORD TRIBAL CONSORTIUM  
NATIVE VILLAGE OF ELLITNA  
NATIVE VILLAGE OF IYONER  
NUNILCHIK TRADITIONAL COUNCIL  
NORTH SHORE BROTHERHOOD

NORTON SOUND HEALTH CORPORATION  
SITKA NATIVE TRIBE  
SOUTHCENTRAL FOUNDATION  
SOUTH EAST ALASKA REGIONAL HEALTH CONSORTIUM  
TANANA CHIEFS CONFERENCE  
YUKON-KUSKOKWIM HEALTH CORPORATION  
YALDEZ NATIVE TRIBE

# 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 (Alman et al, 1989). Youth themselves report that it is easy for them to purchase tobacco; the majority buy their own cigarettes (Cummings et al, 1992).

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

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

## YOUTH ACCESS POLICIES

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

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

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

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

## LICENSING TOBACCO RETAILERS

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

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

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

### Options

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

## TOBACCO VENDING MACHINES

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

### *Option One: Total Ban on Tobacco Vending Machines*

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

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

### *Option Two: Partial Ban on Tobacco Vending Machines*

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

Requiring the machines to be placed at least 25 feet from any entrance may improve the effectiveness of a partial ban. This prevents placement of the machines in unattended lobbies and entrances. Define adult only locations carefully. For instance, exempting the bar area of 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, 1989). A study of stores in southern California found that almost half sold single cigarettes, and that youth were able to purchase them almost twice as often as adults (Leary, 1993). This occurred despite the fact that California prohibits all sales of single cigarettes.

#### Options

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

### POSTING WARNING SIGNS

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