

**HB**

**276**



# Alaska Native Health Board

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

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

April 28, 2005

Representative Lesil McGuire  
Chair, House Judiciary Committee  
State Capitol, Room 118  
Juneau, AK 99801-1182

**Dear Representative McGuire:**

I am writing on behalf of Alaska Native Health Board urging you to oppose House Bill 276. HB 276 functionally eliminates the state's right to suspend tobacco endorsements when a store sells tobacco products to a minor. It is a step backward in the fight to stamp out youth tobacco use and undermines the state's position on enforcement, a key component to tobacco prevention and control.

Despite the falling smoking prevalence rates of Alaskan youth, smoking among young Alaska Natives is 30 to 40% higher than non-Natives, and half of youth Native smokers start by the age of 13. Furthermore, in the last few years, the use of smokeless tobacco has *risen* nearly 10% among Alaska Native young women.

While we celebrate the recent decline of youth smoking rates, there is clearly reason for continuing concern. To carry on the successes of the past 5 years, we must stay the course and maintain current penalties for violations of the law. The present system is both fair and effective.

Please do your part to combat youth tobacco use and vote against HB 276.

Sincerely,

Annette Marley, MPH

ALEUTIAN/PRIBILOF ISLANDS ASSOCIATION  
ARCTIC SLOPE NATIVE ASSOCIATION  
BRISTOL BAY AREA HEALTH CORPORATION  
CHUGACHMIUT  
COPPER RIVER NATIVE ASSOCIATION  
EASTERN ALEUTIAN TRIBES  
KODIAK AREA NATIVE ASSOCIATION

MANILAO ASSOCIATION  
METLAKATLA INDIAN COMMUNITY  
MT. SANFORD TRIBAL CONSORTIUM  
NATIVE VILLAGE OF EKLUITNA  
NATIVE VILLAGE OF TYONEK  
NNILCHIK TRADITIONAL COUNCIL  
NORTH SLOPE BOROUGH

NORTON SOUND HEALTH CORPORATION  
SELDOVIA VILLAGE TRIBE  
SOUTH CENTRAL FOUNDATION  
SOUTHEAST ALASKA REGIONAL HEALTH CONSORTIUM  
TANANA CHIEFS CONFERENCE  
YUKON-KUSKOKWIM HEALTH CORPORATION  
VALDEZ NATIVE TRIBE



State of Alaska  
Department of Community and Economic Development  
Division of Occupational Licensing  
BUSINESS LICENSE PROGRAM  
P.O. Box 110806  
Juneau, Alaska 99811-0806  
E-mail: license@dced.state.ak.us

## TOBACCO ENDORSEMENT PENALTIES

It is the responsibility of each business license tobacco endorsement licensee to be familiar with the proper sales of tobacco. This notice of tobacco endorsement penalties is provided in accordance with Alaska Statute 43.70.075(b).

### Improper Sales of Tobacco Products

*Requirement:* A person who holds a tobacco endorsement, or an agent or an employee of a person who holds an endorsement acting within the scope of the agency or employment must comply with the following laws –

- a. AS 11.76.100 -- Selling or giving tobacco to a minor
- b. AS 11.76.106 -- Selling tobacco outside controlled access
- c. AS 11.76.107 -- Failure to supervise cigarette vending machine

**Penalty:** A person who is convicted of violating the laws is subject to the actions listed below against the tobacco endorsement. Illegal placement of tobacco vending machines is also subject to the same penalties against the tobacco endorsement of the vending machine owner.

- (1) 20 days suspension, and \$300 civil penalty;
- (2) 45 days suspension, and \$500 civil penalty, if within 24 months, the person, agent, or employee while acting within the scope of the agency or employment, was convicted once;
- (3) 90 days suspension, and \$1,000 civil penalty, if within 24 months, the person, agent, or employee while acting within the scope of the agency or employment, was convicted twice;
- (4) One year suspension, and \$2,500 civil penalty, if within 24 months, the person, agent, or employee while acting within the scope of the agency or employment, was convicted more than twice.

AS 43.70.075(d)

### Tobacco Endorsement Required

*Requirement:* A person, agent, or employee while acting within the scope of the agency or employment must comply with the following -

- a. AS 43.70.075(a) -- The need to obtain a tobacco endorsement
- b. AS 43.70.075(g) -- The selling of cigarettes other than the amount of cigarettes contained in the manufacturer's original cigarette pack or contained in a cigarette carton or box; or incorrectly labeled.

**Penalty:** A person who violates this section is subject to a tobacco endorsement suspension or lose the right to obtain a tobacco endorsement for a period of not more than

- (1) 45 days; or
- (2) 90 days, if within 24 months, the person, agent, or employee while acting within the scope of the agency or employment, violates a provision of this section.

AS 43.70.075(k)

### **Vending Machine Business**

AS 43.70.075(a) and AS 43.70.075(l)

**Requirement:** *A business license and a tobacco endorsement are required to sell tobacco products from a vending machine in a location or outlet as a retailer.*

**Penalty:** If the endorsement of a person owning a vending machine for sale of tobacco products is suspended or revoked, the owner may not sell cigarettes, cigars, or other products containing tobacco during the suspension or revocation period through the use of vending machines at the location or outlet where the violation occurred. The vending machine may not be used at another location or outlet for the sale of tobacco products.

### **Tobacco Endorsement Sign**

AS 43.70.075(f) and AS 43.70.075(p)

**Requirement:** *A person holding a tobacco endorsement is required to post the warning sign provided by the department, in a conspicuous location to a person purchasing or consuming tobacco products on the premises.*

**Penalty:** A person holding an endorsement who fail to post the sign is subject to a civil penalty of not more than \$250 for each day of the violation. The penalty imposed may not exceed \$5,000.

### **Business License Required**

AS 43.70.075(i) and AS 43.70.075(s)

**Requirement:** *A person who sells cigarettes, cigars, tobacco, or other products containing tobacco as a retailer must have a business license and a tobacco endorsement.*

**Penalty:** A person who violates the requirement to hold a current business license and tobacco endorsement is subject to a civil penalty of not more than \$250 for each day of the violation. The penalty imposed may not exceed \$5,000.

The civil penalty may be imposed in addition to a suspension of a business license endorsement or the right to obtain a business license endorsement.



**AMERICAN LUNG  
ASSOCIATION<sup>®</sup>**  
*of Alaska*

500 W. International Airport Rd., Ste. A  
Anchorage, Alaska 99518

# FAX

**Date:** April 28, 2005 **Page 1 of 3**

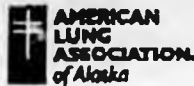
**To:** Vanessa Tondini, Judiciary aide, Representative Lesil McGulre  
**Phone:** 465-2995  
**Fax:** 465-6592

**From:** Michelle Toohey for Alaskans for Tobacco Free Kids  
**Phone:** 644-6418  
**Fax:** 565-5587

**Re:** HB 276

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Please see the attached letter opposing House Bill 276 currently in the House Judiciary Committee. We would appreciate it if you would please copy and distribute this letter to the committee members. Thank you for your attention in this matter. Vanessa, if you have questions, please feel free to give me a call. mt



# Alaskans for Tobacco-Free Kids

April 28, 2005

Representative Lesli McGuire  
Chair, House Judiciary Committee  
State Capitol, Room 118  
Juneau, AK 99801-1182

Re: House Bill 276 "An Act relating to business license endorsements for tobacco products, to holders of business license endorsements for tobacco products, and to the employees and agents of holders of business license endorsements for tobacco products."

Dear Representative McGuire,

Alaskans for Tobacco-Free Kids is writing to express our strong opposition to House Bill 276. The legislation strikes at the heart of Alaska's efforts to deter smoking among kids. HB 276 effectively handicaps the enforcement component of illegal tobacco sales to minors, a cornerstone of the tobacco prevention and control program.

HB 276 would, for all practical purposes eliminate the state's ability to take away vendors' rights to sell tobacco when there's been an illegal sale. Without endorsement suspension, there is no financial incentive on the part of the vendor (the party profiting from the sale of tobacco), to comply. In fact, history shows us that suspension has been necessary. Prior to 2003, undercover sting operations found that more than 30 percent of Alaskan tobacco outlets were unlawfully selling cigarettes and other tobacco products to minors. During 2003, after endorsement suspensions were put in place, illegal sales to youth fell to 10 percent.

Companies who hold the privilege of a license to sell a legal, yet deadly and addictive product must also bear the serious responsibility for the sales of this product to kids. The company is the entity making the profit from sales of tobacco and therefore the company must bear the responsibility to hire capable, responsible, trainable and competent employees who follow the policy of not selling tobacco to those under the age of 19.

## Saving lives using Alaska's Tobacco Settlement

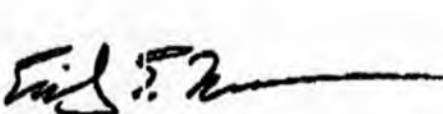
Alaskans for Tobacco-Free Kids • c/o American Cancer Society • 1057 W Fireweed Lane, Suite 204 • Anchorage, Alaska 99503

Phone: 907-277-8696 • Outside Anchorage: 1-800-478-9355 • 907-263-2073 Fax  
[www.akctobaccofreekids.org](http://www.akctobaccofreekids.org)

The system for enforcement of illegal sales of tobacco that Alaska has in place is working! High School smoking rates dropped by 50 percent from 1995 to 2003. The Department of Health and Social Services attributes the renewed effort to reduce illegal sales and increased enforcement action as a key piece in Alaska's comprehensive tobacco prevention and control program.

Please reject the policy set forth in HB 276 and retain Alaska's current law regarding illegal tobacco sales and enforcement procedures already in place.

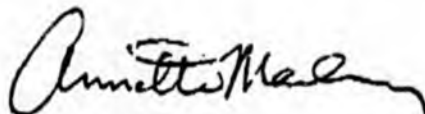
Sincerely



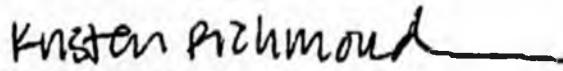
Emily Nenon  
American Cancer Society



Christie Garbe  
American Lung Association of Alaska



Annet Marley  
Alaska Native Health Board



Kristen Richmond  
American Heart Association - Alaska Affiliate





**A L A S K A  
TOBACCO CONTROL ALLIANCE**

**Resolution Opposing House Bill 276**

**"An Act relating to business license endorsements for tobacco products, to holders of business license endorsements for tobacco products, and to the employees and agents of holders of business license endorsements for tobacco products."**

**Whereas** the Centers for Disease Control and Prevention recommends the revocation of licenses for tobacco sales to minors as a best practice for tobacco prevention and control

**Whereas** the state of Alaska Department of Health and Social Services credits renewed efforts to reduce illegal sales of tobacco to youth through improved vendor training and increased enforcement actions across Alaska with the steep drop in youth smoking

**Whereas** House Bill 276 would eliminate the ability to take away vendor's rights to sell tobacco and leave little financial incentive to comply

**Whereas**, previously without endorsement suspension, Alaska exceeded federal limits on sales to minors and risked over \$600,000 in federal substance abuse prevention/treatment funding

**Whereas** tobacco sales to youth has dropped 50% from 1995 until 2003

**Whereas** high school smoking rates have dropped by 50% from 1995 until 2003

**Therefore** be it resolved that the Alaska Tobacco Control Alliance opposes House Bill 276.

## ATCA Membership 2005

**Ms. Shanwne Albright**  
 Director of Tobacco Countermarketing  
 American Lung Association of Alaska  
 500 W. International Airport Rd., Ste. A  
 Anchorage AK 99518  
 Phone: (907) 844-6403; Fax: (907) 865-5587  
 shanwne@aklung.org

**Ms. Rosemary Allen**  
 Counselor  
 Railbelt Mental Health and Addiction  
 PO Box 159  
 Nenana AK 99760  
 Phone: (907) 832-5557; Fax: (907) 832-5564  
 queenroseallen@yahoo.com

**Mr. Johnny Anasoguk**  
 Tobacco Prevention Coordinator  
 Koyuk Tobacco Prevention  
 PO Box 53030  
 Koyuk AK 99753  
 Phone: (907) 963-9651; Fax: (907) 963-2353  
 arlene@kawerak.org

**Ms. Jayne Andreen**  
 Health Promotion Unit Manager  
 Alaska DPH-DHSS-CHEMS  
 PO Box 110816  
 Juneau AK 99811-0816  
 Phone: (907) 465-5729; Fax: (907) 465-2770  
 jayne\_andreen@health.state.ak.us

**Ms. Rita Anniskett**  
 Technical Coordinator  
 Alaska Native Health Board  
 3700 Woodland Dr., Site 500  
 Anchorage AK 99517  
 Phone: (907) 743-6112; Fax: (907) 563-2001  
 ranniskett@anhb.org

**Ms. Jenna App**  
 Advocacy Manager  
 American Heart Association  
 1067 W Fireweed Lane, Ste. 100  
 Anchorage AK 99503  
 Phone: (907) 263-2018; Fax: (907) 263-2045  
 jennifer.app@heart.org

**Ms. Teresa Ay'ojlak**  
 Health Aide  
 Manokotak Health Center  
 P.O. Box 29  
 Manokotak AK 99828  
 Phone: (907) 289-1077; Fax: (907) 291-2015  
 tayojlak@bbahc.org

**Mr. Robert Babiak**  
 Branch Manager  
 AC Value Grocery Store  
 P.O. Box 490  
 Dillingham AK 99578  
 Phone: (907) 842-5444; Fax: (907) 842-2413  
 acdlil@nushtel.com

**Ms. Beth Baker MD**  
 Pulmonary MD  
 2841 DeBarr Road, Ste. 50  
 Anchorage AK 99506  
 Phone: (907) 276-2811; Fax: (907) 276-2810  
 dalsymae@mtaonline.net

**Ms. Theresa Ballot**  
 Village Health Educator  
 Maniilaq Health Education  
 Buckland AK  
 Phone: (907) 494-2224; Fax:

**Ms. Veva Becker**  
 Education Chairperson  
 Interior Alaska Cancer Association  
 4137 Rosebud Lane  
 Fairbanks AK 99709  
 Phone: (907) 479-8938; Fax:

**Ms. Darleen Beltz**  
 Health Facility Surveyor  
 Alaska Division DPH-DHSS-ADA  
 P.O. Box 240 249, DHSS/DBH  
 Anchorage AK 99524  
 Phone: (907) 269-3790; Fax: (907) 269-3786  
 darleen\_beltz@health.state.ak.us

## ATCA Membership 2005

**Ms. Caroline Big Joe**  
Community Health Aide  
Birch Creek Clinic  
P.O. Box KBC  
Fort Yukon AK 99740  
Phone: (907) 221-2557; Fax: (907) 221-2536

**Mr. Nell Biloff**  
Pastor  
Seventh Day Adventist Church  
PO Box 777  
Palmer AK 99645  
Phone: (907) 745-2260; Fax: (907) 745-2240  
p7da@mtaonline.net

**Ms. Stephanie Bombay**  
Grassroots Youth Manager  
Pennsylvania Alliance to Control Tobacco  
3001 Old Gettysburg Rd.  
Camp Hill PA 17011  
Phone: (717) 541-5844; Fax: (717) 541-8828  
sbombay@alapa.org

**Mr. Dan Boone**  
Clean Indoor Air Organizer  
Homer Clean Indoor Air Organization  
P.O. Box 1783  
Homer AK 99603  
Phone: (907) 235-3779; Fax:  
daboone@cosmicamer.net

**Ms. Karlene Borja**  
Tobacco Cessation Counselor  
Tanana Chiefs Conference  
1408 19th Avenue  
Fairbanks AK 99709  
Phone: (907) 479-5500; Fax: (907) 459-3912  
karlene.borja@tanana.chiefs.org

**Mr. Bill Bouwens MPH**  
Concerned Citizen  
519 E. 10th Avenue  
Anchorage AK 99501  
Phone: (907) 258-6253; Fax:  
bcbouwens@earthlink.net

**Ms. Katherine Brian**  
Partnership Program Manager  
Cancer Information Service-Pacific Region  
PO Box 19024  
Seattle WA 98109  
Phone: (206) 667-1117; Fax: (206) 667-7792  
kbrian@fhcrc.org

**Mr. Wilbur Brown Jr.**  
Health Educator I  
SEARHC/Health Promotions  
222 Tongass Dr.  
Sitka AK 99835  
Phone: (907) 966-8745; Fax:  
wilbur.brown@searhc.org

**Ms. Althea Buckingham**  
Volunteer  
Commission on Health Issues and Community Concerns  
118D Harvest Way  
Sitka AK 99835  
Phone: (907) 747-8514; Fax:  
althea@alaska.com

**Ms. Sherry Byers LCSW**  
Psychotherapist/Hypnotherapist  
Holistic Medical Clinic  
P.O. Box 82869  
Fairbanks AK 99708  
Phone: (907) 451-7100; Fax:  
sherbyers@yahoo.com

**Ms. Barbara Cadden**  
Retired  
P.O. Box 99  
Palmer AK 99645  
Phone: (907) 745-2811; Fax: (907) 745-2891  
aristar@mtaonline.net

**Ms. Joan Cahill**  
Volunteer Activist/Chair  
Juneau Clean Air  
1750 Evergreen Avenue  
Juneau AK 99801  
Phone: (907) 466-2058; Fax: (907) 586-2057  
jcahill@alaskapermfund.com

**ATCA Membership :005**

**Ms. Justina Camilleri**  
 Counselor III  
 NSB Children and Youth Services  
 PO Box 69 / CYS  
 Barrow AK 99723  
 Phone: (907) 852-0213; Fax: (907) 852-0463  
 justina.camilleri@north-slope.org

**Ms. Terri Campbell**  
 Health Education Specialist  
 Alaska Department of Education  
 801 W. 10th St., Ste 20C  
 Juneau AK 99801  
 Phone: (907) 465-8719; Fax: (907) 465-2713  
 terri\_campbell@eed.state.ak.us

**Ms. Charlotte Charles**  
 Nicotine Dependence Counselor  
 Nicotine Control Department  
 P.O. Box 2078  
 Bethel AK 99559  
 Phone: (907) 543-6210; Fax: (907) 543-6366  
 charlotte\_charles@yf.hc.org

**Ms. Doreen Clark**  
 Nurse  
 North Slope Borough Public Health  
 P.O. Box 69  
 Barrow AK 99723  
 Phone: (907) 852-0270; Fax: (907) 852-2856  
 doreen.clarks@north-slope.org

**Ms. Darcel Cleary**  
 Union Labor  
 Box 522  
 Tok AK 99780  
 Phone: contact thru Charlene Cleary; Fax:

**Ms. Charlene Cleary**  
 Counselor/Educator  
 Tanana Chiefs Conference Alcohol Program  
 PO Box 83  
 Tok AK 99780  
 Phone: (907) 883-5185; Fax: (907) 883-4332  
 charlene.cleary@tanachiefs.org

**Ms. Barbara Cole PhD**  
 Director of Community Heart and Stroke Initiatives and State  
 health alliances  
 American Heart Association  
 1057 W Fireweed Lane, Ste. 100  
 Anchorage AK 99505  
 Phone: (907) 263-2017; Fax: (907) 263-2045  
 barbara.cole@heart.org

**Ms. Rebekah Conner**  
 Program Coordinator  
 Children and Youth Services  
 PO Box 1595  
 Barrow AK 99723  
 Phone: (907) 852-0263; Fax: (907) 842-0463  
 rebekah.conner@north.slope.org

**Ms. Nancy Cornwell**  
 Tobacco Program Manager  
 SOA Tobacco Prevention and Control/Epidemiology  
 PO Box 240249  
 Anchorage AK 99524  
 Phone: (907) 269-8868; Fax: (907) 269-5446  
 Nancy\_Cornwell@health.state.ak.us

**Ms. Heather Coulehan**  
 Training and Technical assistance  
 Akeela Inc.  
 4111 Minnesota Drive  
 Anchorage AK 99503-8448  
 Phone: (907) 585-1228; Fax: (907) 258-6052  
 hcoulehan@akeela.org

**Ms. Jeanmarie Crumb**  
 Independent Consultant  
 3700 Woodland Dr., Ste 500  
 Anchorage AK 99517  
 Phone: (907) 345-6912; Fax:  
 crumb\_jeanmarie@hotmail.com

**Ms. E. Ingrid Cumberlandge**  
 Coordinator  
 Eastern Aleutian Tribes, Inc.  
 PO Box 527  
 Sand Point AK 99661  
 Phone: (907) 383-6074; Fax: (907) 383-6078  
 voyingrid@aol.com

## ATCA Membership 2005

**Ms. Lorraine Elstad**  
Rn at Mt. Edgecombe Hospital  
Southeast Alaska Regional Health Consortium  
222 Tongass Ave.  
Sitka AK 99835  
Phone: (907) 747-3309; Fax: (907) 968-8444  
lorraine.elstad@searhc.org

**Ms. Melanie Emerick**  
Hunik Zoo Editor  
Tanana Chiefs Conference, Inc.  
201 First Avenue, Ste 300  
Fairbanks AK 99701  
Phone: (907) 452-8251, x3166; Fax: (907) 452-3950 (call first)  
melanie.emerick@tananachiefs.org

**Ms. Cindy Emery**  
Office Manager  
American Cancer Society  
1057 W. Fireweed Lane, Ste. 204  
Anchorage AK 99503  
Phone: (907) 263-2078; Fax: (907) 263-2073  
cindy.emery@cancer.org

**Ms. Carrie Enoch**  
Nicotine Dependence Counselor  
Yukon Kuskokwim Health Corporation  
P.O. Box 287  
Bethel AK 99559  
Phone: (907) 543-6312; Fax: (907) 543-6368  
carrie\_enoch@ykhc.org

**Ms. Samantha Epchook**  
Nicotine Counselor  
Yukon Kuskokwim Health Corp. Tobacco Cessation  
PO Box 528  
Bethel AK 99859  
Phone: (907) 543-8411; Fax: (907) 543-8618  
samantha\_epchook@ykhc.org

**Mr. Elliott Epstein**  
Tobacco Enforcement Officer  
State of Alaska Dept. of Health and Social Services  
PO Box 110616  
Juneau AK 99811  
Phone: (907) 468-8406; Fax: (907) 465-2770  
elliott\_epstein@health.state.ak.us

**Ms. Marian Estelle**  
Wellness Coordinator  
Rural Alaska Community Action Program  
PO Box 200908  
Anchorage AK 99520  
Phone: (907) 279-2511; Fax: (907) 278-2309  
marian@ruralcap.com

**Dr. Dan Etulain PhD**  
President  
North Star TV Network  
520 Lake Street  
Sitka AK 99835  
Phone: (907) 747-8200; Fax: (907) 747-8440  
foxnet@ptialaska.net

**Dr. Ruth Etzel M.D. Ph.D.**  
Research Director  
Southcentral Foundation  
4320 Diplomacy Drive, Suite 2630  
Anchorage AK 99506  
Phone: (907) 729-3230; Fax: (907) 729-3265  
RAEtzel@annic.org

**Ms. Myrtice Evalt**  
Health Educator I  
Bristol Bay Area Health Corporation  
PO Box 130  
Dillingham AK 99576  
Phone: (907) 842-9320; Fax: (907) 842-9468  
mevalt@bbahc.org

**Mr. Dick Farris**  
Village Grant Writer  
Tanana Chiefs Conference  
122 First Avenue  
Fairbanks AK 99701  
Phone: (907) 452-8251 ext. 3246; Fax: (907) 459-3957  
dfarris@tananachiefs.org

**Mr. Kenneth Farrow**  
Executive Director  
Alpha Omega Life Care Inc.  
PO Box 1009  
Delta Junction AK 99737  
Phone: (907) 895-4104; Fax: (907) 895-4143  
asca@wildak.net

## ATCA Membership 2005

**Ms. Andrea Fenaughty**  
Epidemiologist  
State of Alaska DHS, Div of Public Health, Section of  
Epidemiology  
PO Box 240249  
Anchorage AK 99524  
Phone: (907) 269-8025; Fax: (907) 269-5448  
andrea\_fenaughty@health.state.ak.us

**Dr. Gary Ferguson**  
Naturopath/Integrative Medicine  
Eastern Aleutian Tribe  
3380 C Street Ste. 1C  
Anchorage AK 99503  
Phone: (907) 277-1440; Fax: (907) 277-1446  
gary.f@gcl.net

**Ms. Michelle Ferrera**  
4381 E Birchwood Dr.  
Wasilla AK 99654  
Phone: (907) 357-1238; Fax:

**Mr. Steve Foy**  
Counselor  
Dillingham High School  
P.O. Box 170  
Dillingham AK 99578  
Phone: (907) 842-8733; Fax: (907) 842-4395  
stevef@dcad.k12.ak.us

**Ms. Keri Frazier**  
Mental Health Clinical Supervisor  
Railbelt Mental Health and Addictions  
PO Box 159  
Nenana AK 99760  
Phone: (907) 832-5557; Fax: (907) 832-5564

**Ms. Jill Gates**  
3637 W 100th  
Anchorage AK 99516  
Phone: ; Fax:  
jgates@alaska.net

**Mr. David Fenn**  
Tobacco Initiative Project Manager  
Southcentral Foundation  
4320 Diplomacy Drive, Suite 2830 (PCC) Administrative  
Anchorage AK 99507  
Phone: (907) 729-4220; Fax: (907) 729-3285  
dcfenn@anms.org

**Mr. Jim Ferguson**  
Physician Assistant  
North Sound Health Corp  
PO Box 966  
Nome AK 99762  
Phone: (907) 443-3404; Fax: (907) 4433610  
jferguson@nshcorp.org

**Ms. Charlene Florence**  
Youth Alcohol Program Manager/Alcohol Director  
Ninilchik Traditional Council  
P.O. Box 39368  
Ninilchik AK 99639  
Phone: (907) 567-3970, ext. 1017; Fax: (907) 567-3948  
char@ninilchiktribe-nsn.gov

**Ms. Jean Frank**  
Volunteer  
Partnership for Tobacco Free Sitka  
623 DeGross St.  
Sitka AK 99835  
Phone: (907) 747-8244; Fax:  
jfrank@seamo.org

**Ms. Christie Garbe**  
Chief Executive Officer  
American Lung Association of Alaska  
500 W. International Airport Rd., Suite A  
Anchorage AK 99518  
Phone: (907) 644-6404; Fax: (907) 585-5587  
christie@alung.org

**Ms. Chris Gay**  
Executive Coordinator  
American Lung Association of Alaska  
500 W Intl Airport Road #1  
Anchorage AK 99518  
Phone: (907) 644-6413; Fax: (907) 565-5587  
chrsgay@alung.org

## ATCA Membership 2005

**Mr. Nick Gonzalez**  
Support Center for Tobacco Program Manager  
Alaska Native Health Board  
3700 Woodland Drive, Ste. 500  
Anchorage AK 99517  
Phone: (907) 743-6118; Fax: (907) 563-2001  
ngonzales@anhb.org

**Ms. Nicole Gray**  
Counselor  
Arctic Women-In-Crisis  
P.O. Box 275  
Barrow AK 99723  
Phone: (907) 852-0261; Fax: (907) 852-2472  
birdsingsdifferent@yahoo.com

**Ms. Krie Green**  
Parent/Comm. Coordinator/Smoking Cessation Counselor  
  
Children's Hospital at Providence Alaska Medical Center  
3200 Providence Drive, P.O. Box 196604  
Anchorage AK 99519-6604  
Phone: (907) 261-5815; Fax: (907) 261-5834  
kgreen1@provak.org

**Ms. Jeanie Greene**  
Television Producer  
Jeanie Greene Productions  
8218 Old Seward Hwy  
Anchorage AK 99158  
Phone: (907) 563-7440; Fax: (907) 563-9309  
jeaniegreene@ak.net

**Ms. Laura Greffenius**  
Volunteer  
P.O. Box 110992  
Anchorage AK 99511  
Phone: (907) 344-4014; Fax:  
lauragreff@gci.net

**Ms. Helen Gregorio**  
Community Health Representative  
Bristol Bay Area Health Corporation  
P.O. Box 211  
Togiak AK 99878  
Phone: (907) 493-5185; Fax: (907) 493-5183  
hgregorio@bbahc.org

**Ms. Melinda Hager**  
Nurse/Exercise Physiologist  
Providence Alaska Medical Center  
3200 Providence Drive, P.O. Box 196604  
Anchorage AK 99505  
Phone: (907) 261-2033; Fax: (907) 261-4823  
mhager@provak.org

**Ms Joelle Hall**  
Owner  
Hall Consulting  
PO Box 770246  
Eagle River AK 99577  
Phone: (907) 688-3667; Fax: (907) 688-2852  
joelle@ak.net

**Ms. Ruffinla Hanson**  
Tobacco Grant Coordinator  
Petersburg Indian Association  
PO Box 1418  
Petersburg AK 99831  
Phone: (907) 772-3636; Fax: (907) 772-3637  
piageneral@gci.net

**Mr. John Havrilek**  
Tribal Administrator  
Petersburg Indian Association  
P.O. Box 1770  
Petersburg AK 99833  
Phone: (907) 772-2990; Fax: (907) 772-2991  
piatrd@gci.net

**Ms. Glenda Hazelwood**  
Instructor/Program Director  
Choices for Teens  
P.O. Box 1013  
Homer AK 99603  
Phone: (907) 235-4931; Fax: (907) 235-1915  
sunshine\_5600@hotmail.com

**Ms. Susan Heaston**  
Grant Administrator  
North Slope Borough  
PO Box 927  
Barrow AK 99723  
Phone: (907) 852-0467; Fax: (907) 852-4145  
susan.heaston@north-slope.org

**ATCA Membership 2005**

**Ms. U. Grayce Hein**  
 Primary Medical Care  
 Ketchikan Indian Community  
 2980 Tongass  
 Ketchikan AK 99801  
 Phone: (907) 225-0320; Fax: (907) 247-4808  
 ghein@kictribe.org

**Ms. Kate Herring**  
 Policy Coordinator  
 Alaska Native Health Board  
 3700 Woodland Dr, Suite 500  
 Anchorage AK 99517  
 Phone: (907) 743-6102; Fax: (907) 320-7061  
 kherring@anhb.org

**Ms. Kate Herring**  
 Policy Coordinator  
 Alaska Native Health Board  
 3700 Woodland Dr, Suite 500  
 Anchorage AK 99517  
 Phone: (907) 743-6102; Fax:  
 kherring@anhb.org

**Ms. Mindy Hertzog**  
 Tobacco Health Educator  
 Alaska Native Medical Center/Health Education  
 4320 Diplomacy Dr  
 Anchorage AK 99508  
 Phone: (907) 729-4194; Fax: (907) 729-1824  
 mihertzog@anmc.org

**Ms. Vanessa Hiratsuka**  
 Public Health Educator  
 Alaska Native Health Board  
 7601 Regal Mountain Dr.  
 Anchorage AK 99504  
 Phone: (907) 589-1036; Fax:  
 vhiratsuka@hotmail.com

**Ms. Sarah Hoffman**  
 Community Relationship Manager  
 American Cancer Society  
 1057 W. Fireweed Lane Suite 204  
 Anchorage AK 99503  
 Phone: (907) 263-2068; Fax: (907) 263-2073  
 sarah.hoffman@cancer.org

**Ms. Anne Holen**  
 volunteer  
 393 Novlew Avenue  
 Homer AK 99603  
 Phone: ; Fax:

**Mr. Jim Hornaday**  
 Attorney  
 3691 Ben Walters Lane #2  
 Homer AK 99603  
 Phone: (907) 235-2173; Fax:

**Ms. Sheila Howe**  
 Volunteer  
 NE Community Council  
 340 Bunnell St.  
 Anchorage AK 99508-2363  
 Phone: (907) 333-2225; Fax:  
 s.r.howe@alaska.net

**Ms. Richard Howe**  
 Volunteer  
 NE Community Council  
 340 Bunnell St.  
 Anchorage AK 99508-2363  
 Phone: (907) 333-2225; Fax:  
 r.v.howe@alaska.net

**Ms. Kathleen James RN**  
 Cardiac/Pulmonary Rehabilitator  
 Providence Alaska Medical Center/Cardiac Rehab.  
 3200 Providence Drive, P.O. Box 196604  
 Anchorage AK 99519-6604  
 Phone: (907) 743-6131; Fax: (907) 261-4823  
 knjames@provaak.org

**Ms. Vera James**  
 Volunteer  
 7841 Snow View Drive  
 Anchorage AK 99507  
 Phone: (907) 337-0537; Fax:  
 dverajames@hotmail.com

## ATCA Membership : 005

**Ms. Priscella Joe**  
 Helping families in need of assistance  
 TWDS Fee Agent of Tetlin, AK  
 PO Box TTL  
 Tetlin AK 99779  
 Phone: (907) 324-2302; Fax: (907) 324-2310

**Mr. Steve Johnson**  
 Public Health Educator  
 Municipality of Anchorage, DHHS  
 825 L Street, P.O. Box 196850  
 Anchorage AK 99501  
 Phone: (907) 343-4822; Fax: (907) 343-4004  
 johnsonsv@ci.anchorage.ak.us

**Mr. Jason Johnson**  
 Health Education Coordinator  
 Maniilaq Association - Health Education  
 P.O. Box 43  
 Kotzebue AK 99752  
 Phone: (907) 442-7178; Fax: (907) 442-7129  
 jjohnson@maniilaq.org

**Mr. Nathan Johnson**  
 Division Manager, Health Planning and Promotion  
 Anchorage DHSS  
 PO Box 196850  
 Anchorage AK 99519  
 Phone: (907) 343-8513; Fax: (907) 249-7530  
 JohnsonND@muni.org

**Ms. Jeeni Jurvig**  
 Case Coordinator  
 Anchorage Wellness Court for State Offenders  
 Phone: ; Fax:

**Ms. Ruthamae Karr**  
 1701 Second Ave. #11  
 Fairbanks AK 99701  
 Phone: (907) 479-3109; Fax:  
 ruthamaekarr@hotmail.com

**Ms. Wanda Katinszky**  
 Program Coordinator  
 State of Alaska, DPH, Section of Epidemiology,  
 Comprehensive Cancer Control Program  
 PO Box 240249  
 Anchorage AK 99524-0249  
 Phone: (907) 269-8032; Fax: (907) 269-5446  
 wanda\_katinszky@health.state.ak.us

**Ms. Ellen Keane**  
 Treatment Adviser  
 Southeast Alaska Regional Health Consortium  
 3013 Blueberry Hills Rd.  
 Juneau AK 99801  
 Phone: (907) 586-4041; Fax:  
 ellenk@gcl.net

**Ms. Annette Keith**  
 P.O. Box 88  
 Healy AK 99743  
 Phone: (907) 682-1230; Fax:  
 brent@usibell.com

**Ms. John Kelly**  
 Consultant  
 Choices for Teens  
 P.O. Box 1013  
 Homer AK 99603  
 Phone: (907) 235-4991; Fax:  
 atoa@homerblz.com

**Mr. Mark Kelty**  
 Risk Manager, Div. Of Environmental Health and Eng.  
 Alaska Native Tribal Health Consortium  
 1901 S. Bragaw, Ste 200  
 Anchorage AK 99504  
 Phone: (907) 729-3535; Fax: (907) 729-4090  
 (((mkelty@anthe.org))) no listserve

**Ms. Cheryl Kilgore**  
 Executive Director  
 Interior Neighborhood Health Clinic  
 1849 Gilam Way, Suite D  
 Fairbanks AK 99701  
 Phone: (907) 455-4567; Fax: (907) 455-4682  
 cherylk@innhc.org

**ATCA Membership 2:005**

**Ms. Laverne Kimoktok**  
Tobacco Prevention Coordinator  
Native Village of Koyuk  
PO Box 53090  
Koyuk AK 99753  
Phone: (907) 963-9651; Fax: (907) 963-2353  
koyukiga@gci.net

**Mr. Bruce Klein**  
Executive Director  
Nome Community Center  
PO Box 98  
Nome AK 99762  
Phone: (907) 443-5259; Fax: (907) 443-2990  
nccdir@nomecc.org

**Ms. Rebecca Kleinachmidt**  
Tobacco Cessation Coordinator  
Ketchikan General Hospital Recovery Center  
3100 Tongass Ave  
Ketchikan AK 99901  
Phone: (907) 228-7845; Fax: (907) 228-8409  
RKleinachmidt@peacehealth.org

**Ms. Nancy Knapp**  
Program Director-Wisewoman  
Southeast Alaska Regional Health Consortium  
222 Tongass Dr.  
Sitka AK 99835  
Phone: (907) 966-8746; Fax: (907) 966-2489  
nancy.knapp@searhc.org

**Ms. Ann Marie Knotbe RN**  
Registered Nurse  
110 W. Caribou Ave.  
Palmer AK 99645  
Phone: (907) 748-2211; Fax:  
cbolling@ak.net

**Ms. Rose Knox**  
Nurse Educator  
Southcentral Foundation/ AI,MC  
4750 Pine Valley Ct.  
Anchorage AK 99508  
Phone: (907) 729-3146; Fax: (907) 729-1824  
rdknox@anmc.org

**Mr. Arum Kone**  
Tobacco Control  
Kodiak Area Native Association  
3449 East Rezanof  
Kodiak AK 99815  
Phone: (907) 488-3710; Fax: (907) 488-3498  
arum.kone@kanawel.org

**Ms. Lynda Koski**  
Nurse/Patient Educator  
SEARHCWISEWOMAN  
3245 Hospital Dr  
Juneau AK 99801  
Phone: (907) 364-4450; Fax: (907) 463-6621  
lynda.koski@searhc.org

**Ms. Martina Kurzer**  
City Commission of Health Needs and Human Services  
City of Sitka  
PO Box 6484  
Sitka AK 99835  
Phone: (907) 747-3101; Fax:  
mkurzer@gci.net

**Ms. Marge Larson**  
Director of Programs  
American Lung Association of Alaska  
500 W. International Airport Rd., Ste A  
Anchorage AK 99518  
Phone: (907) 644-6405; Fax: (907) 565-5587  
marge@alung.org

**Ms. Marie Lavigne**  
Cancer Information Service Partnership Program  
Coordinator  
Alaska Native Tribal Health Consortium  
4000 Ambassador Drive C-DCHS  
Anchorage AK 99508  
Phone: (907) 729-2817; Fax: (907) 729-2924  
mjlavigne@anmc.org

**Mr. Mike Layne**  
Grant Administrator  
North Slope Borough  
P.O. Box 69, ATTN: TP&C  
Barrow AK 99723  
Phone: (907) 852-0467 ext: 232; Fax: (907) 852-0463  
michael.layne@north-slope.org

## ATCA Membership :005

**Ms. Sharon Leippi**  
 Legal Secretary  
 PO Box 243033  
 Anchorage AK 99524  
 Phone: (907) 272-2525; Fax: (907) 277-9859  
 alaskarecipes@hotmail.com

**Ms. Jackie Lewis-Ward**  
 Counselor III  
 NSB- Health Department  
 PO Box 2342  
 Barrow AK 99723  
 Phone: (907) 852-0288; Fax: (907) 852-0315  
 jackie.ward@northslope.org

**Mr. Elmer Lindstrom**  
 Special Projects Coordinator  
 Alaska DPH, Office of the Commissioner  
 P.O. Box 110801  
 Juneau AK 99811-0801  
 Phone: (907) 465-1613; Fax: (907) 465-3068  
 elmer\_lindstrom@health.state.ak.us

**Ms. Diana Lucero**  
 Program Coordinator  
 Breathe Free Mat-Su  
 851 E Westpoint Dr. #104  
 Wasilla AK 99654  
 Phone: (907) 373-7982; Fax: (907) 373-4959  
 breathefree@kidsarepeople.org

**Ms. Mary MacFarlane MD**  
 Pediatrician  
 Fairbanks Clinic  
 1919 Lathrop Suite 100  
 Fairbanks AK 99701  
 Phone: (907) 452-1431; Fax: (907) 452-8935

**Ms. Annette Marley MPH**  
 Policy Analyst  
 Alaska Native Health Board  
 3700 Woodland Dr., Ste 500  
 Anchorage AK 99508  
 Phone: (907) 743-6110; Fax: (907) 563-2001  
 amarley@anhb.org

**Mr. Walt Maslen**  
 Tobacco Control Coordinator  
 Manillaq Association  
 PO Box 43  
 Kotzebue AK 99752  
 Phone: (907) 442-7128; Fax: (907) 442-7250  
 wmaslen@manillaq.org

**Ms. Susan Mason-Boutersse RN**  
 Executive Director  
 Sunshine Community Health Center  
 PO Box 41  
 Talkeetna AK 99676  
 Phone: (907) 733-2273; Fax: (907) 733-9249  
 smason@boutersse.com

**Ms. Ginger Mayer**  
 Grant Administrator  
 Tobacco Control Alliance of the Kenai Peninsula  
 145 Kaslof  
 Soldotna AK 99685  
 Phone: (907) 260-3832; Fax:  
 tcap@gci.net

**Ms. Mary McCarty**  
 Public Health Nursing Director  
 Nome Health Center  
 P.O. Box 1710  
 Nome AK 99762  
 Phone: (907) 443-3221; Fax: (907) 443-4869  
 mccarty@nshcorp.org

**Ms. Bryn McElroy**  
 Tobacco Educator  
 Railbelt Mental Health and Addictions  
 PO Box 159  
 Nenana AK 99760  
 Phone: (907) 832-5557; Fax:  
 muffin22@hotmail.com

**Ms. Kat McElroy**  
 Clinical Supervisor-Substance Abuse  
 Railbelt Mental Health and Addictions  
 P.O. Box 159  
 Nenana AK 99760  
 Phone: (907) 832-5557; Fax: (907) 832-5564  
 poppekatt@mosquidonet.com

## ATCA Membership :005

**Mr. Andy McLaughlin**  
Community Health Aide  
Chenega Bay Clinic  
P.O. Box 8029  
Chenega Bay AK  
Phone: (907) 573-5119; Fax: (907) 573-5148

**Ms. Kelly McManus**  
Health Educator  
Southcentral Foundation  
4320 Diplomat Drive, PCC-HED  
Anchorage AK 99517  
Phone: (907) 729-4991; Fax: (907) 729-1824  
kmcmanus@anmc.org

**Ms. Jaylyn Merrill**  
Ketchikan CIA Organizer/Pathworks Exec. Director  
Tongass Tob. Free Alliance  
1471 Tongass Ave.  
Ketchikan AK 99901  
Phone: (907) 225-4310; Fax: (907) 225-8604  
sldd3@yahoo.com

**Mr. Jim Miller**  
Alcohol Program Coordinator  
Port Graham Recovery  
P.O. Box 6627  
Port Graham AK 99603  
Phone: (907) 284-2202; Fax: (907) 284-2280  
jmill@pgrs@hotmail.com

**Ms. Ina Modde**  
Attitude Behavior Coach & Motivational Educator  
Student  
P.O. Box 202  
Sand Point AK 99661  
Phone: (907) 383-2418; Fax:  
modde@arctic.net

**Ms. Alexandria Modigh-Hicks**  
Director of Nicotine Control & Research  
Yukon Kuskokwim Health Center  
PO Box 528  
Bethel AK 99559  
Phone: (907) 543-6588; Fax: (907) 543-6368  
Alexandria\_Modigh@ykhc.org

**Ms. Sara Moore**  
Counselor  
Soldotna High School  
425 W. Marydale  
Soldotna AK 99669  
Phone: (907) 262-7411; Fax: (907) 262-4288  
smoore@kpbod.k12.ak.us

**Ms. Rachel Muir**  
Public Health Nurse  
State of Alaska  
P.O. Box 1489  
Dillingham AK 99578  
Phone: (907) 842-5981; Fax: (907) 842-4398  
rachel\_muir@health.state.ak.us

**Ms. Judith Muller**  
Cancer Implementation Coordinator  
Office of Alaska Native Cancer Research ANTHC  
4000 Ambassador Drive C-DCHS  
Anchorage AK 99508  
Phone: (907) 729-4437; Fax:  
jmmuller@anmc.org

**Ms. Jenny Murray**  
Policy Coordinator  
Alaska Native Health Board  
3700 Woodland Dr, Suite 500  
Anchorage AK 99517  
Phone: (907) 743-6115; Fax: (907) 583-2001  
jmurray@anhb.org

**Mr. Eric Myers**  
2834 Knik Ave.  
Anchorage AK 99517  
Phone: (907) 248-3356; Fax: (907) 248-3366  
eriom@alaska.net

**Ms. Nancy Napolilli**  
Program Manager Food & Safety Sanitation  
Alaska Dept. of Environmental Conservation  
555 Cordova Street  
Anchorage AK 99501  
Phone: (907) 269-7583; Fax: (907) 269-7510  
nancy\_napolilli@dec.state.ak.us

## ATCA Membership :005

**Ms. Carrie Ness**  
Partnership Program Coordinator  
Cancer Information Services-Pacific Region  
P.O. Box 19024, MS J2-400  
Seattle WA 98109-1024  
Phone: (206) 667-5477; Fax: (206) 667-7792  
cness@fncrc.org

**Ms. Emily Nenon**  
Alaska Advocacy Manager  
American Cancer Society  
1057 W. Firwood Ln Ste 204  
Anchorage AK 99503  
Phone: (907) 263-2097; Fax: (907) 263-2073  
Emily.Nenon@cancer.org

**Ms. Caroline Nevak**  
Media/Outreach Coordinator  
Yukon-Kuskokwim Health Corporation  
YKHC Village Operations, P.O. Box 528  
Bethel AK 99559  
Phone: (907) 543-6415; Fax: (907) 543-6143  
caroline\_nevak@ykhc.org

**Mr. Albert Ningsulook**  
Volunteer  
P.O. Box 41  
Shishmaref AK 99702  
Phone: (907) 649-2072; Fax: (907) 649-2083

**Ms. Suzanne Nolan**  
Ninth Grade Teacher  
Star of the North Secondary School  
2945 Foras Rose Court  
North Pole AK 99705  
Phone: (907) 490-9015; Fax: (907) 490-9021  
snolan@northstar.k12.ak.us

**Ms. Deb Nyquist**  
Program Director  
Dena'ina Health Clinic  
418 Frontage Road, Suite 200  
Kenai AK 99611  
Phone: (907) 335-2132; Fax: (907) 283-2289  
dnyquist@kenaitze.org

**Ms. Teri O'Connor**  
Deputy Program Manager  
SOA Tobacco Prevention & Control Program  
3601 C Street Suite 722  
Anchorage AK 99505  
Phone: (907) 269-8815; Fax: (907) 269-5446  
Teri\_Oconnor@health.state.ak.us

**Ms. Diane Oglivie**  
Training and Technical Assistance  
Akeela, Inc.  
4111 Minnesota Drive  
Anchorage AK 99587  
Phone: (907) 565-1239; Fax: (907) 258-6052  
doglivie@akeela.org

**Mr. Doug Osbourne**  
Health Educator  
Southeast Alaska Regional Health Consortium  
222 Tongass Drive  
Sitka AK 99836  
Phone: (907) 966-8734; Fax: (907) 966-8750

**Ms. Laurie Osterby**  
LPN  
Federal Occupational Health  
101 12th St., Box 21 -Room B36  
Fairbanks AK 99701  
Phone: (907) 458-0540; Fax: (907) 458-0541  
lo\_26@hotmail.com

**Ms. Patty Owen**  
Health Program Manager  
Alaska DPH/DHSS  
P.O. Box 110610  
Juneau AK 99811-0616  
Phone: (907) 485-2738; Fax: (907) 485-3030  
patty\_owen@health.state.ak.us

**Ms. Cynthia Paniyak**  
IGAP Environmental Director  
Chevak Traditional Council  
P.O. Box 140  
Chevak AK 99563  
Phone: (907) 858-7827; Fax: (907) 858-7812  
ctcenvironmental@hotmail.com

## ATCA Membership 2005

**Ms. Heather Parker**  
Dental Hygienist  
Kodiak Area Native Association  
3449 E. Rezanof  
Kodiak AK 99615  
Phone: (907) 486-9800; Fax: (907) 486-4897  
heather.parker@kaz.web.org

**Ms. Rowena Paul**  
Tribal Council Member/Environmental Coordinator  
Tetlin Tribal Council  
PO Box TTL  
Tetlin AK 99779  
Phone: (907) 324-2305; Fax: (907) 324-2131  
rowena\_paul\_ak@yahoo.com

**Mrs. Marti Pausback**  
Tobacco Trainer and Technical Assistance Coordinator  
Akeela Inc.  
4111 Minnesota Drive  
Anchorage AK 99503  
Phone: (907) 565-1200; Fax: (907) 267-5034  
mpausback@akeela.org

**Ms. Belva Pearce**  
School Speaker  
Lamgectomee Group  
7342 Zurich Street  
Anchorage AK 99507  
Phone: (907) 349-8493; Fax: (907) 349-2177  
rookie1@men.com

**Mr. Ron Perry**  
Mental Health Clinician  
Railbelt Mental Health and Addiction  
PO Box 16  
Healy AK 99743  
Phone: (907) 883-2719; Fax: (907) 883-2598  
railbelt@mtaonline.net

**Ms. Julie Peters**  
TATU Coordinator  
National Council on Alcohol and Drug Dependence  
211 4th Street Suite 102  
Juneau AK 99801  
Phone: (907) 463-3755; Fax: (907) 463-2539  
jpeters@ncaddj@ak.net

**Ms. Brandy Peterson**  
Youth Tobacco Program Director  
American Lung Association of Alaska  
5636 Tudor Square Ct.  
Anchorage AK 99504  
Phone: (907) 644-6411; Fax: (907) 565-5587  
brandy@aklung.org

**Mr. Derek Peterson**  
1504 Selkirk Road  
Sandpoint ID 83864  
Phone: (208) 255-7093; Fax:  
derek@catchersofdreams.net

**Ms. Erin Peterson**  
Evaluation Coordinator  
State of Alaska Tobacco Prevention and Control Program  
3601 C Street, Ste 510  
Anchorage AK 99503  
Phone: (907) 269-8131; Fax: (907) 561-1898  
erin\_peterson@health.state.ak.us

**Ms. Natasha Petrofsky**  
Health Educator II/Tobacco Cessation Coordinator  
Southeast Alaska Regional Health Consortium  
222 Tongass Drive  
Sitka AK 99835  
Phone: (907) 966-8991; Fax: (907) 966-8941  
natasha.petrofsky@searhc.org

**Ms. Alissa Phelps**  
Public Health Specialist/Evaluator  
State of Alaska EPI, Tobacco Prevention and Control  
Program  
380 C Street, Suite 722  
Anchorage AK 99501  
Phone: (907) 269-4636; Fax: (907) 269-5446  
alissa\_phelps@health.state.ak.us

**Ms. Karen Pletnikoff**  
Aleutian/Pribilof Islands Association  
201 E 3rd Ave  
Anchorage AK 99517  
Phone: (907) 222-4286; Fax: (907) 222-4273  
karenp@aplai.com

## ATCA Membership 2005

**Ms. Rocky Plotnick**  
Diabetes Prevention Program  
SEARHC  
3245 Hospital Dr  
Juneau AK 99801  
Phone: (907) 364-4458; Fax: (907) 463-5877  
rockyplotnick@earthlink.net

**Dr. Hal Post**  
Licensed Psychologist  
8407 Village Parkway  
Anchorage AK 99504  
Phone: (907) 338-5488; Fax:  
zhnp@alaska.net

**Mr. Michael Powell**  
Community Grants Coordinator  
State of Alaska  
3601 C Street, Ste. 7.22  
Anchorage AK 99503  
Phone: (907) 269-8167; Fax: (907) 269-5446  
michael\_powell@health.state.ak.us

**Dr. Alice Rarig Ph.D.**  
Health Planner  
Alaska Division of Public Health  
P.O. Box 110818  
Juneau AK 99811-0618  
Phone: (907) 465-1285; Fax: (907) 465-8637  
alice\_rarig@health.state.ak.us

**Ms. Donna Reese**  
Alaska W.O.T.M Youth Awareness Coordinator  
Moose Youth Awareness Program  
2297 Outside Blvd.  
North Pole AK 99705  
Phone: (907) 459-6411; Fax: (907) 488-0114  
djr\_choices@men.co.n

**Ms. Caroline Renner MPH**  
Director Nicotine Research & Control Program Manager  
Alaska Native Tribal Health Consortium  
4201 Tudor Centre Dr., Ste 105  
Anchorage AK 99508  
Phone: (907) 729-2925; Fax: (907) 729-2924  
ccrenner@anmc.org

**Ms. Pat Reynaga**  
Call Center Manager  
Providence Hospital (Quilline)  
3200 Providence Drive, P.O. Box 196604  
Anchorage AK 99508  
Phone: (907) 550-3319; Fax: (907) 550-3398  
preynaga@provak.org

**Ms. Mary Reynolds**  
Patient Educator  
SEARHC  
PO Box 3215  
Sitka AK 99835  
Phone: (907) 966-8819; Fax: (907) 966  
mary.reynolds@searhc.org

**Ms. Elizabeth Ripley**  
Director/Marketing and PR  
Valley Hospital  
PO Box 1887  
Palmer AK 99645  
Phone: (907) 352-2819; Fax: (907) 352-2865  
e.ripley@valley-hosp.com

**Mr. Dan Rivera**  
Manager  
Providence Cancer Therapy Center  
3200 Providence Dr.  
Anchorage AK 99508  
Phone: (907) 261-3186; Fax: (907) 261-3665  
drivera1@provak.org

**Ms. Jeanne Roche**  
Director, Alaska Cancer Registry  
Alaska Division of Public Health-Epi  
3601 C Street, Ste 540, P.O. Box 240249  
Anchorage AK 99524  
Phone: (907) 269-8037; Fax: (907) 561-1886  
jeanne\_roche@health.state.ak.us

**Mr. Aaron Rostad**  
Youth Pastor  
Kahumana Youth Services All Nations Community Church  
P.O. Box 832  
Barrow AK 99723  
Phone: (907) 862-5466; Fax:  
skreech@tds.net

## ATCA Membership :2005

**Mr. David Rumph**  
Dependency Counselor  
Presbyterian Hospitality House  
626 Second St. Grae 11 #204  
Fairbanks AK 99701  
Phone: (907) 456-6415; Fax: (907) 456-6402  
davidrumphjr@yahoo.com

**Ms. Diane Russo**  
Dietitian/Health Educator  
Southcentral Foundation/Traditions of the Heart  
4320 Diplomacy Dr. Suite 1114  
Anchorage AK 99508  
Phone: (907) 729-4184; Fax: (907) 729-1824  
darusso@anmc.org

**Ms. Kristy Saunders**  
Volunteer  
BreatheFree Mat-Su  
201 Anna Street  
Palmer AK 99645  
Phone: (907) 745-4773; Fax:  
rogers@mtaonline.net

**Ms. Beth Shober**  
Health Education Specialist  
Alaska Department of Education  
801 W. 10th Ave., Ste 200  
Juneau AK 99801-1984  
Phone: (907) 485-8719; Fax: (907) 465-2713  
beth\_shober@eed.state.ak.us

**Ms. Annette Siemens**  
Health Aide Coordinator  
Chugachmiut Field Office  
P.O. Box 2088  
Seward AK 99884  
Phone: (907) 224-3076, ext. 1; Fax: (907) 224-5870  
annettesie@aol.com

**Ms. Stacey Simmons**  
Case Manager/Tobacco Grant Coordinator  
Kodiak Area Native Association  
3449 East Rezanof Drive  
Kodiak AK 99815  
Phone: (907) 486-9817; Fax: (907) 486-9898  
stacey.simmons@kanaweb.org

**Ms. Ruth Simpson**  
National Council on Alcoholism and Drug Dependence Juneau

211 4th Avenue  
Juneau AK 99801  
Phone: (907) 489-3765; Fax: (907) 463-2539  
rsimpson-ncaddj@ak.net

**Mr. Roy Smart**  
Substance Abuse Counselor  
Nenana Public School  
PO Box 10  
Nenana AK 99760  
Phone: (907) 832-5484; Fax:  
smart4\_99@yahoo.com

**Ms. Juanita Smith**  
UAF Student  
16 Fairwell Apt. D  
Fairbanks AK 99701  
Phone: (907) 457-3100; Fax:  
aaiuk@myway.com

**Ms. Jacquelyn Smith**  
Noatak IRA Council  
P.O. Box 88  
Noatak AK 99761  
Phone: (907) 485-2173; Fax: (907) 485-2137  
jsmith@manllaq.org

**Ms. Margie Smith**  
Wellness Coordinator  
Arctic Slope Native Association, Ltd.  
P.O. Box 1232  
Barrow AK 99723  
Phone: (907) 852-2762; Fax: (907) 852-2106  
msmith@asna.alaska.ihs.gov

**Ms. Cindy Spanyers**  
CIA Organizer  
Alaska Native Health Board  
15380 Glacier Highway  
Juneau AK 99801  
Phone: (907) 790-3931; Fax: (907) 790-8883 (call first)  
menno@ptalaska.net

**ATCA Membership :005**

**Mr. John Stein**  
Executive Director  
BreatheFree Mat-Su/Kids are People Inc.  
851 East Westpoint Drive, Ste 104  
Wasilla AK 99654  
Phone: (907) 373-8018; Fax: (907) 373-4959  
kap@kidsarepeople.org

**Ms. Rita Stevens**  
President  
Kodiak Area Native Association/Kodiak Impac Tobacco  
Alliance  
3449 East Rozanof Drive  
Kodiak AK 99815  
Phone: (907) 486-9800; Fax: (907) 486-9898  
rita.stevens@kanaweb.org

**Ms. Sue Steward**  
CHP/Medical Support/Tobacco Cessation Facilitator  
Chugachmiut  
PO Box 2088  
Seward AK 99684  
Phone: (907) 224-3018; Fax: (907) 224-5870  
sue@chugachmiut.org

**Ms. Katheryna Stiles**  
3700 Woodland Dr. Suite 500  
Anchorage AK 99517  
Phone: ; Fax:

**Mr. John Stinson**  
Phone: (907) 354-5610; Fax:

**Ms. Brooke Taylor**  
Community Relationship Manager  
American Cancer Society  
1057 W. Fireweed Lane Suite 204  
Anchorage AK 99503  
Phone: (907) 263-2072; Fax: (907) 263-2079  
brooke.taylor@cancer.org

**Ms. Stacy Theusch**  
Nicotine Program Specialist  
Alaska Native Tribal Health Consortium  
4201 Tudor Centre Dr., Ste 105  
Anchorage AK 99508  
Phone: (907) 729-3218; Fax: (907) 729-2924  
sttheusch@anmc.org

**Ms. Marilyn Thorson**  
Health Educator  
Bristol Bay Area Health Corporation  
P.O. Box 130  
Dillingham AK 99576  
Phone: (907) 842-5201; Fax: (907) 842-314  
mthorson@bbahc.org

**Ms. Janet Thurston**  
Certified Nurse Midwife/Family Nurse Practitioner  
Fairbanks Clinic  
496 Valley View Dr.  
Fairbanks AK 99712  
Phone: (907) 452-1711; Fax: (907) 452-8935  
thurston@goi.net

**Mr. Thomas Tilden**  
Health Educator I  
Bristol Bay Area Health Corporation  
PO Box 130  
Dillingham AK 99576  
Phone: (907) 842-9547; Fax: (907) 842-9488  
tilden@bbahc.org

**Ms. Melanie Titus**  
Bookkeeper  
Minto Village Council  
P.O. Box 26  
Minto AK 99758  
Phone: (907) 798-7112; Fax: (907) 798-7827  
melanie.titus@tananachiefs.org

**Ms. Michelle Toohy**  
Director of Public Advocacy  
American Lung Association of Alaska  
500 W. International Airport Rd., Ste A  
Anchorage AK 99518  
Phone: (907) 844-6418; Fax: (907) 585-5587  
michelle@alung.org

**ATCA Membership 2005**

**Mr. Jim Towle**  
Executive Director  
American Dental Society  
9170 Jewel Lake Rd., Ste. 203  
Anchorage AK 99502  
Phone: (907) 563-9063; Fax: (907) 563-9009  
jtowle@alaska.net

**Ms. Marya Tyler**  
Prevention Educator/Supervisor  
Ketchikan General Hospital Prevention Services (ADFY)  
1621 Tongass Ave., Ste. 100  
Ketchikan AK 99901  
Phone: (907) 247-4390; Fax: (907) 247-4293  
mtyler@peacehealth.org

**Ms. Sara VanOrmer**  
Substance Abuse Prevention  
Communities Organized for Health Options  
P.O. Box 805  
Craig AK 99921  
Phone: (907) 828-3812; Fax: (907) 826-2917  
coho@aptalaska.net

**Ms. Pauline Vestal**  
Tobacco Prevention Coordinator  
Native Village of Noatak  
PO Box 89  
Noatak AK 99761  
Phone: (907) 485-2031; Fax: (907) 485-2137  
pauline.vestal@manillaq.org

**Ms. Edith Vorderstrasse**  
Barrow Mayor  
City of Barrow  
P.O. Box 629  
Barrow AK 99723  
Phone: (907) 852-5211; Fax: (907) 852-5211  
barrowmayor@cityofbarrow.org

**Ms. Shelley Wallace**  
Health Educator/Dietitian  
Bristol Bay Area Health Corporation  
P.O. Box 130  
Dillingham AK 99576  
Phone: (907) 842-9548; Fax: (907) 842-9488  
swallace@bbahc.org

**Mr. Stephen Warren**  
Partnership for a Tobacco-Free Sitka  
Alaska for Tobacco Free Kids  
203 Airport Road D-2 B  
Sitka AK 99835  
Phone: (907) 738-3635; Fax: (907) 747-3363  
warren\_family@hotmail.com

**Ms. Sue Anne Weaver**  
Tutor/Adviser  
Burchell High School  
HC 32 Box 6525L  
Wasilla AK 99654  
Phone: (907) 373-7775; Fax:  
dustin@matnet.com

**Ms. Martha Welle**  
Village Health Educator  
Manillaq Association  
PO Box 154  
Noorvik AK 99763  
Phone: (907) 536-2321; Fax: (907) 636-2321  
angmauna@noorvik@yahoo.com

**Dr. Brad Whistler DMD**  
Dental Officer  
Alaska DPH/MCFH  
P.O. Box 110612  
Juneau AK 99811-0612  
Phone: (907) 465-8628; Fax: (907) 465-3416  
brad\_whistler@health.state.ak.us

**Ms. Jaylyn White**  
Regional Cancer Control Manager  
American Cancer Society  
728 134th St., SW, Suite 101  
Everett WA 98204  
Phone: (425) 322-1126; Fax: (425) 741-8949  
jaylyn.white@cancer.org

**Mr. Wesley Whitt**  
Certified Teacher  
Anchorage School District  
7841 Snowview Dr.  
Anchorage AK 99507  
Phone: (907) 279-0671 ext. 1210; Fax: (907) 563-2006  
wesleywhitt@hotmail.com

## ATCA Membership 2005

**Ms. Traci Wiggins**  
Executive Director  
Railbet Mental Health and Addictions  
PO Box 169  
Nenana AK 99760  
Phone: (907) 832-5557; Fax: (907) 832-5564  
mha@mtaonline.net

**Ms. Brenda Wilson**  
Village Based Counselor  
Eastern Aleutian Tribes, Inc.  
P.O. Box 206  
King Cove AK 99612  
Phone: (907) 497-2311; Fax: (907) 497-3110  
brendaw@gol.net

**Rev. Tawana Wilson**  
Minister  
St. Paul Evangelical Church  
P.O. Box 221215  
Anchorage AK 99522  
Phone: (907) 742-2544; Fax:

**Ms. Violet Yeaton**  
Clean Indoor Air Specialist  
Port Graham Village Council  
P.O. Box 5510  
Port Graham AK 99603  
Phone: (907) 284-2227; Fax: (907) 284-9937  
vyeaton@yahoo.com

**Ms. Marrienne Young**  
Health Aide  
PO Box TTL  
Tetlin AK 99779  
Phone: (907) 324-2151; Fax: (907) 324-2165  
myoung\_99779@yahoo.com

**Ms. Patricia Young**  
Village Americorps Member  
Tetlin Tribal Council  
PO Box TTL  
Tetlin AK 99779  
Phone: (907) 324-2307; Fax: (907) 324-2131

**Ms. Kristie Young**  
Tribal Administrator  
Tetlin Tribal Council  
P.O. Box 813  
Tok AK 99780  
Phone: (907) 883-2021; Fax: (907) 883-2021 (call first)  
kristie\_young\_ak@yahoo.com

**Ms. Joan Zemke**  
Tobacco Program Coordinator  
Kodiak Area Native Association/Kodiak Inupac Tobacco  
Alliance  
3449 East Rezanof Drive  
Kodiak AK 99615  
Phone: (907) 486-9845; Fax: (907) 486-9898  
joan.zemke@kanaweb.org

**Ms. Stephanie Zidel-Chandler**  
PO Box 110616  
Juneau AK 99811-0616  
Phone: (907) 465-8611; Fax: (907) 465-2770  
icechip6@hotmail.com

**Ms. JoAnne Zito-Brause**  
Media Program Director  
SOA Tobacco Prevention & Control/Epidemiology  
PO Box 240249  
Anchorage AK 99524  
Phone: (907) 269-3498; Fax: (907) 561-1896  
joanne\_zito-brause@health.state.ak.us

# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 276  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_  
 Title Business License Tobacco Endorsement  
 Sponsor Kott  
 Requester Judiciary

Dept. Affected: Commerce  
 RDU Occupational Licensing (117)  
 Component Occupational Licensing  
 Component No. 2360

**Expenditures/Revenues (Thousands of Dollars)**

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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>						
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<b>CHANGE IN REVENUES ( 1176 )</b>	*	*	*	*	*	*
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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 1156 - Receipt Supported Services						
<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 (FY2005) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

HB 276 amends the business licensing tobacco endorsement statutes to allow civil penalties to be assessed against an agent or an employee of a business owner who holds a tobacco endorsement instead of penalties being assessed only against the business owner who holds a tobacco endorsement. This bill will generate new revenue from civil penalties however, an amount cannot be established since the penalty is dependent on a violation occurring and the severity of the violation. New funds are not required to implement this bill.

Prepared by: Jennifer Strickler, Administrative Manager Phone (907) 465-2144  
 Division: Occupational Licensing Date/Time 4/26/05 12:06 PM  
 Approved by: Edgar Blatchford, Commissioner Date 4/26/2005  
 Agency: Commerce, Community, and Economic Development

# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
Bill Version: HB276-DHSS-DBH1-04-26-05  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_

Dept. Affected: Health & Social Services

Title BUSINESS LICENSE ENDORSEMENT AND SALE OF TOBACCO TO MINORS

RDU Behavioral Health

Component Behavioral Health Grants

Sponsor KOTT

Requester HOUSE (JUD)

Component No. 2669

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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>						
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<b>CHANGE IN REVENUES (0)</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts	( 654.7)	( 654.7)	( 654.7)	( 654.7)	( 654.7)	( 654.7)
1003 GF Match						
1004 GF	654.7	654.7	654.7	654.7	654.7	654.7
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
Other(Specify Type-do not abbreviate)						
<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 (FY2005) cost: \_\_\_\_\_

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This Bill removes the ability of the State to temporarily suspend the business tobacco endorsement of an establishment if an employee of that business sells tobacco to a minor.

If passed, this legislation could impact the overall federal Substance Abuse Prevention and Treatment (SAPT) Block Grant award by 1% for each 1% over the targeted sell rate of 20%. For example, in FY2005 our Block Grant award is \$4,676,744. If our SYNAR sell rate for 2005 is 30%, the penalty to Alaska would be \$467,674.

The highest sell rate Alaska has experienced since the inception of SYNAR was 34% - 14% over the 20% benchmark. Based on a 34% sell rate, the fiscal impact to DBH would be \$654,700 or 1% penalty for every 1% over the 20% requirement.

Prepared by: Bill Hogan, Director  
Division: Behavioral Health  
Approved by: Joel S. Gilbertson, Commissioner  
Agency: Department of Health and Social Services

Phone 465-3166  
Date/Time \_\_\_\_\_  
Date 04/26/2005

# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB276-LAW-C&FB-4 26  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: LAW  
 Title "An Act relating to business license RDU CIVIL  
endorsements for tobacco products..." Component Commercial and Fair Business  
 Sponsor Representative Kott Collections and Support  
 Requester House Judiciary Component No. \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	*****	*****	*****	*****	*****	*****

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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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-Interagency Receipts	*****	*****	*****	*****	*****	*****
<b>TOTAL</b>	*****	*****	*****	*****	*****	*****

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This bill amends AS 43.70.075 (Alaska Business License Act) in several respects. First, it creates a structure of civil penalties for agents or employees of a holder of a business license tobacco endorsement, if that agent or employee is convicted of selling tobacco to a minor. (Under current law, the agent or employee would be subject to a fine for violating AS 11.76.100, but not subject to a an additional civil penalty). The Department of Law expects an additional workload may be created by passage of this legislation because low-wage employees will not be able to pay the civil penalties and will as a result, want to take the matter to a hearing. The Collections and Support Section may become responsible for collecting the unpaid fines, increasing an already overburdened section with additional collection responsibility. Second, the bill adds a new section to AS 43.70.075 that would impose a structure of sanctions on license-holders: license-holders who have a training program addressing

Prepared by: Kathryn Daughhete, Director Phone 465-3673  
 Division Administrative Services Division Date/Time 4/27/05 8:27 AM  
 Approved by: Kathryn Daughhete for David Márquez, Attorney General Date 4/27/2005  
 Agency Department of Law

**FISCAL NOTE**

**STATE OF ALASKA  
2005 LEGISLATIVE SESSION**

**BILL NO. HB269-LAW-Env-4-20-01**

**ANALYSIS CONTINUATION**

tobacco sales would be subject to monetary penalties if their agents or employees sell to minors; license-holders without a program would be subject to suspensions of their tobacco endorsements as well as civil penalties. The Department anticipates an increase in the number of hearings requested by license holders of tobacco endorsements. In addition, because the bill expands the issues that are considered at a hearing requested by a license-holder, the Department also expects that these hearings could require increased time for preparation and participation in the hearing process. The Department of Law currently has an RSA with Health and Social Services to assist with enforcing existing tobacco sales laws. It is expected that the increased workload resulting from passage of this legislation would be paid for by that client. In the capital budget, the Department of Law has a request for replacement of the collections data-base. If that appropriation comes to pass, it will streamline the collections process and allow for expansion without increased cost. Without the appropriation, the Collections section will not be able to expand beyond its current capacity; increased demand will slow the system down, not create new revenue.

# ALASKA STATE LEGISLATURE

**Chair:**  
Legislative Council

**Member:**  
Community and Regional Affairs  
Judiciary  
Labor and Commerce – Vice Chair



**Session:**  
Alaska State Capitol  
Juneau, AK 99801-1182  
Phone: (907) 465-3777  
Fax: (907) 465-2819  
Toll Free (877) 861-5688

**Interim:**  
10928 Eagle River Road – Suite 238  
Eagle River, AK 99501-2133  
Phone: (907) 694-8944  
Fax: (907) 694-8945

**REPRESENTATIVE PETE KOTT**  
DISTRICT 17 – EAGLE RIVER

## Memorandum

To: Representative Lesil McGuire  
Chair, House Judiciary Committee

From: Representative Pete Kott

Date: 21 April 2005

Re: HB 276 "An act relating to business license endorsements for tobacco products, to holders of business license endorsements for tobacco products, and to the employees and agents of holders of business license endorsements for tobacco products."

Dear Chairman McGuire,

I respectfully request that HB 276 to be scheduled for a hearing in House Judiciary Committee at your earliest possible convenience.

Thank you for your consideration.

# ALASKA STATE LEGISLATURE

**Chair:**  
Legislative Council

**Member:**  
Community and Regional Affairs  
Judiciary  
Labor and Commerce – Vice Chair



**Session:**  
Alaska State Capitol  
Juneau, AK 99801-1182  
Phone: (907) 465-3777  
Fax: (907) 465-2819  
Toll Free (877) 861-5688

**Interim:**  
10928 Eagle River Road – Suite 238  
Eagle River, AK 99501-2133  
Phone: (907) 694-8944  
Fax: (907) 694-8945

## REPRESENTATIVE PETE KOTT DISTRICT 17 – EAGLE RIVER

### Sponsor Statement For HB 276

HB 276 amends the current Alaska Statute AS 43.70.075 dealing with the sale of tobacco to minors to:

- Stiffen financial penalties for noncompliance by employees and employers
- Recognize employers who have put education, monitoring and enforcement programs into effect and encourages others to do so
- Establish more predictable and fairer due process for the hearing of citations
- Encourage employees to be more diligent in checking ID at the point of sale.

More specifically the changes to the statute achieve the goals in the following ways:

#### Stiffening Penalties for Non-Compliance

- HB 276 increases the minimum fines for employers with education, monitoring and enforcement programs per violation from the current levels of \$300, \$500, \$1,000 and \$2,500 to \$750, \$1000, \$2,500 and \$3,500 respectively.
- HB 276 increases the minimum fines for employers without effective education, monitoring and enforcement programs per violation from the current levels of \$300, \$500, \$1,000 and \$2,500 to \$500, \$750, \$1,500 and \$2,500 respectively, in addition to having its tobacco endorsement suspended for a pre-determined period of time.
- HB 276 creates a separate fine for employee's violation of AS 43.70.075 in addition to fines already described at AS 11.76.100(f) (both dealing with the sale of tobacco to minors).

#### Recognizing and Encouraging Education, Monitoring and Enforcement Programs

- HB 276 would allow employers to demonstrate internal education, monitoring and enforcement programs as mitigating factors in administrative hearing resulting from violations.
- HB 276 provides that if no employer-sponsored education, monitoring and enforcement program is in effect at the time of an alleged violation, then the employer (1) Faces

suspension of its tobacco endorsement and higher fines than under current law (2) Is not afforded the opportunity to present evidence of mitigating factors or other circumstances at the administrative hearing.

Would require employees to sign a statement that they understand it is against the law to sell tobacco to minors and that they will bear some of the responsibility personally if they violate the law.

#### Establishing More Predictable and Fairer Due Process

- HB allows qualifying employers (employers with documented education, monitoring and enforcement programs) to assert defenses and provide evidence at administrative hearings for endorsement suspension regardless of the disposition of a case against the violating employee. Under current law, employers have little to no chance to present their own cases if an employee pleads no contest or guilty. This should encourage more employers to create education, monitoring and enforcement programs to prevent the sale of tobacco to minors.

Encourages Employees to be more diligent in checking ID at the Point of Sale

- Would require employees to sign a statement that they understand it is against the law to sell tobacco to minors and that they will bear some of the responsibility personally if they violate the law.
- Creates a separate cause of action against the employee for violating the statute in addition to AS 11.76.100(f).

#### Summary

With these changes to Alaska's statute, dealing with the illegal sale of tobacco to minors will still have the toughest suspension penalties of any state of the country and it will have stronger financial penalties than most other states, including Alaska's current statute.

The changes could also make Alaska one of the strongest states in the country in terms of employer-sponsored education, monitoring and enforcement programs, and lead to even better federal compliance.

Alaska has had good success in curbing underage smoking recently thanks to beefed up enforcement efforts by the State. The statute enacted by the Alaska Legislature in 2001 was a good first step towards curbing underage smoking, but more must be done.

We must look to employers to improve their own internal operation every day, and we should punish those employers who choose not to comply and recognize those responsible employers who do make strong internal efforts at curbing underage smoking in a fair, balanced, and reasonable manner.