

ALASKA LEGISLATURE

2252

HOUSE and SENATE FINANCE COMMITTEE FILES, 2001 - 2002

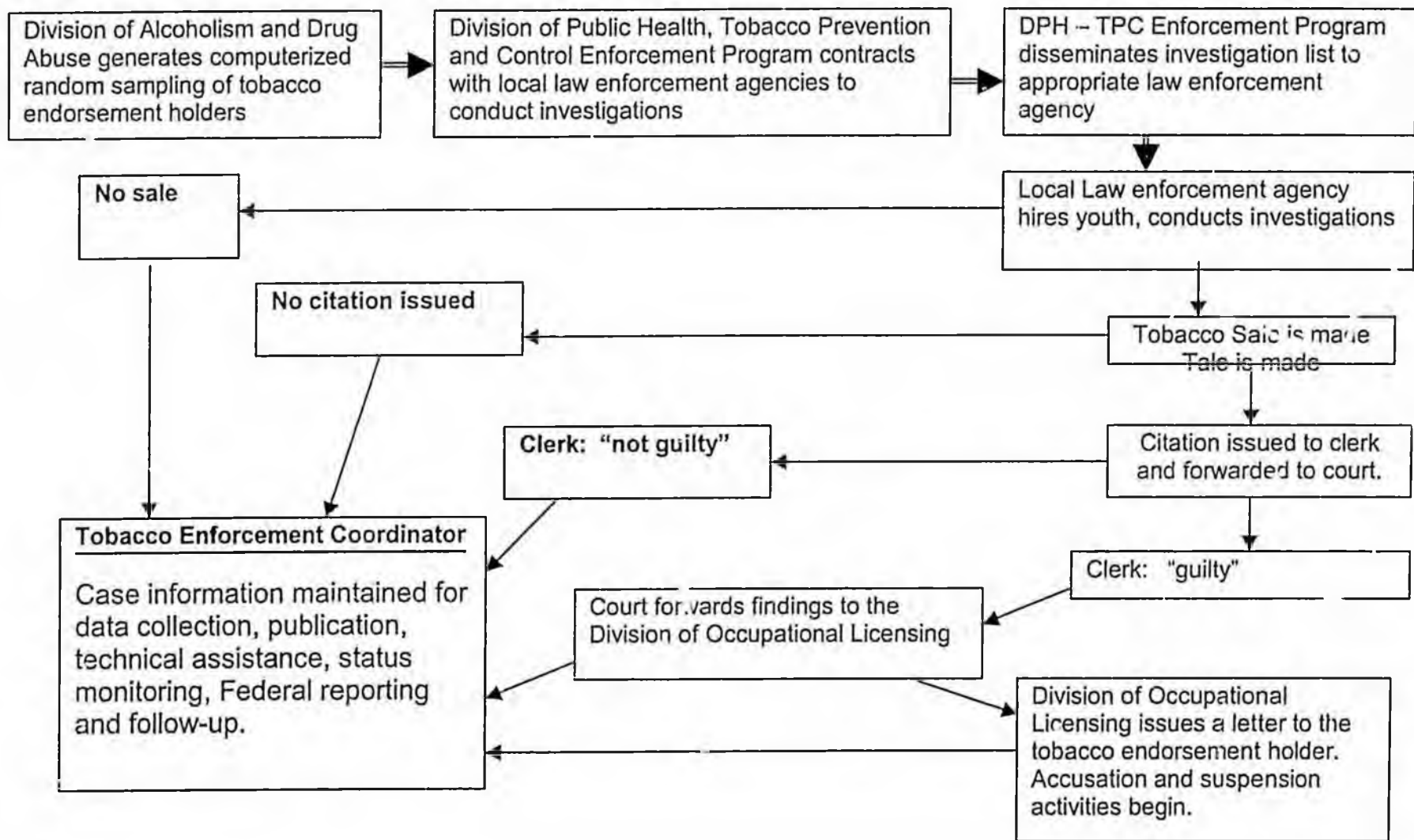
The enforcement program goal is to reduce the availability of tobacco products to children.

Enforcement is only one aspect of a comprehensive tobacco control strategy.

Without it, part of the message is missing.

WHY ENFORCEMENT?

- Enforcement deters youthful violators
- Enforcement sends a message that the community cares about its children.
- The health of Alaska's children depends on it.



Flow of Synar Survey Sample: Several agencies are involved in obtaining information for Federal reporting. DPH Tobacco Enforcement coordinates this effort.

Tobacco Enforcement Includes:

- Educating tobacco vendors
- Coordinating enforcement efforts
- Issuing citations to those who sell to minors
- Community education and development
- State and local agencies working together
- Law enforcement training
- Federal reporting

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“Enforcement of restrictions
on the sale of tobacco products to
minors

is potentially a very cost-effective
measure for saving lives...”

Joseph R. DeFranza, MD in Preventive
Medicine 32,168-174, (2001)

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One of the most effective ways to improve the health of Alaskans is to stop people from becoming addicted in the first place.



ALASKA STATE LEGISLATURE
REPRESENTATIVE JOHN HARRIS
STATE CAPITOL 513, JUNEAU, ALASKA 99801-1182 (907) 465-4859

Sectional Summary
CSHB 228 (Jud) – Tobacco Sales Enforcement

Section 1 – Amends AS 37.05.146(b)(4) to add tobacco endorsement fees to the list of “designated program receipts”.

Section 2 – Adds a new section (40.25.105) to allow Department of Revenue to disclose information to the attorney general and others to assure compliance with the Master Settlement Agreement. Person receiving information is bound to confidentiality as well.

Section 3 – Adds a new section (43.50.145): (Regards brands – not sales to minors) Department of Revenue would notify a licensee in writing when they have determined that a manufacturer has failed to comply. After the department notifies manufacturer of brands, the company has 30 days to destroy those brands or return them to the manufacturer or distributor. After that they become contraband and are subject to confiscation. The department may allow tax credit for returned or destroyed product.

Section 4 – Amends 43.70.075(a) Community and Economic Development. This section would require a business license tobacco endorsement **for each location** where tobacco products are sold. Current law only requires one tobacco endorsement statewide no matter how many stores or outlets are utilized by the business. It also adds that a person may not apply for an endorsement if an endorsement issued for the same location is currently suspended or revoked and indicates such endorsement would be void.

Section 5 – Amends AS 43.70.075(b) to raise the fee for a tobacco endorsement from \$25 to \$100. (Good for 2 years). Labor and Commerce committee added language to require the department to include vendor education material, describing the penalties for selling to minors, when it issues a business license with endorsement.

Section 6 – Amends AS 43.70.075(d) to provide for mandatory suspension of a tobacco endorsement following a conviction for a violation of AS 11.76.100, .106, or .107. This section also now includes civil fines, which have been reduced from the original HB 228. Provides a \$300 fine and 20 day suspension to be assessed for a first conviction; \$500

and 45 days for a second within 2 years; \$1,000 and 90 days for a third; and \$2,500 and one year suspension for a fourth conviction. Both fine and suspension are mandatory; in current statute, the suspension is discretionary, fines are nonexistent.

Section 7 – Amends 43.70.075(e) to clarify that the endorsement suspension is only for the location in which the violation occurs.

Section 8 – adds several new subsections to AS43.70.075.

(k) Adds language that allows for a civil conviction when someone violates (a), having an endorsement for each location that sells tobacco.

(l) This allows a person with vending machines to have one endorsement for all the vending machines, regardless of location. Changes made in Judiciary committee ensure that if the owner of the vending machine violates this section, the resulting suspension applies only to the vending machine where the violation occurred.

(m) This establishes the process for suspending the endorsement. The department will hand deliver, or send by certified mail, the notice of suspension, and pertinent information. The suspension will begin 30 days after receipt of the notice unless the endorsement holder requests a hearing within the timeline set in regulations. The hearing officer will use the preponderance of evidence test. This section includes the questions that the hearing officer will use to determine his/her findings.

(n) The commissioner has the option of accepting the hearing officer's findings, require more proceedings or reject the hearing officer's decision.

(o) If a person disregards the suspension, the department has the option of revoking the endorsement or increasing the period of suspension. This section also disallows that person from having or seeking an endorsement for up to 2 years.

(p) Provides that a person who sells tobacco products, but fails to post a sign that it is illegal to sell tobacco products to minors, may be assessed a civil fine of \$250 for each day of the violation, not to exceed \$5,000. The department may not suspend or revoke a tobacco endorsement for violation of the signage provision.

(q) This allows the department to establish the necessary regulations. It also states that the Administrative Procedures Act does not apply to these hearings.

(r) This section defines when a person has acted within the scope of the agency or business that has the endorsement. It also defines when a conviction occurs, as well as the civil process.

(s) Provides a civil penalty of up to \$250 per day (not to exceed \$5,000) for a person who sells tobacco products without obtaining a business license tobacco endorsement.

Section 9 – Adds a new subsection to AS 43.70.105 to require a person who sells tobacco products to have a business license and a tobacco endorsement.

Section 10 – This section gives the Department of Health and Social Services the authority to issue citations for certain tobacco offenses. The citation must be in writing and contain a notice to appear in court within at least 5 working days (not including holidays or weekends). It does not have to be signed by the person receiving the citation. This section lays out the department's responsibility for issuing citation books, and that the department will deposit the issued citation with the local court of jurisdiction. The department will need to make sure the citation form meets with court rules and includes essential information to be considered a lawful complaint. The Judiciary committee added "sideboards" to make sure that a peace officer, agent or employee of DHSS who will be issuing the citations is authorized by the commissioner to enforce this section.

Section 11 – Adds new uncodified law that includes establishment of regulations.

Section 12 – Allows existing endorsement holders to continue to use that endorsement for the balance of that endorsements timeframe.

Section 13 – Establishes immediate effective dates for sections 2-4, 11 and 12.

Section 14 – Establishes an effective date of July 1, 2001 for sections 1 and 5.

Section 15 – Establishes an effective date of January 1, 2002 for remaining sections.

CERTIFICATION AGREEMENT

I certify as follows:

1. Subject to appropriation by the legislature on or before June 30, 2001, the State of Alaska will commit \$481,687, in new State funds to ensure compliance with State laws prohibiting the sale of tobacco to individuals under the age of 18.

2. Subject to appropriation by the legislature on or before June 30, 2001, the State of Alaska will commit expenditures in fiscal year 2001 for tobacco prevention and compliance activities at a level not less than the level of such expenditures maintained by the State for fiscal year 2000, and adding to that level the additional funds for tobacco compliance activities agreed to in this certification.

3. Subject to appropriation by the legislature on or before June 30, 2001, the State will obligate the committed funds no later than July 31, 2001.

4. Subject to appropriation by the legislature on or before June 30, 2001, the State of Alaska will submit to the Substance Abuse and Mental Health Services Administration (SAMHSA) a report of all resources expended in fiscal year 2000 on tobacco prevention and compliance activities by program activity and a report on its obligation in fiscal year 2001 for tobacco prevention and compliance activities by program activity before July 31, 2001.

Date

By: _____

Tony Knowles
Governor of the State of Alaska



DEPARTMENT OF HEALTH & HUMAN SERVICES

Substance Abuse and Mental
Health Services AdministrationCenter for Mental Health Services
Center for Substance Abuse
Prevention
Center for Substance Abuse
Treatment
Rockville MD 20857

DEC 27 2000

The Honorable Tony Knowles
Governor of Alaska
P.O. Box 110001
Juneau, AK 99811-0001

Dear Governor Knowles:

On September 18, 2000, you received a letter from Health and Human Services (HHS) Secretary Donna Shalala concerning the recommendation of the Substance Abuse and Mental Health Services Administration (SAMHSA) that your State be found out of compliance with the "Synar Amendment," section 1926 of the Public Health Service Act, and its implementing regulations. The Synar program requires States to enforce their laws prohibiting the sale of tobacco products to minors. The letter also noted that the State risked losing 40 percent of its fiscal year (FY) 2000 Substance Abuse Prevention and Treatment (SAPT) Block Grant award. The Secretary's letter offered the State an opportunity for a hearing prior to making a final determination on this matter. Your State has elected this option, and we are now engaged in the hearing process. The purpose of this letter is to inform you of a new option provided for in this year's Appropriations Act for HHS.

Section 214 of the Omnibus Consolidated Appropriations Act

As you may know, on December 21, President Clinton signed into law the Omnibus Consolidated Appropriations Act (Pub. L. 106-554). This Act, among other things, appropriates FY 2001 funding for activities carried out by SAMHSA. Section 214 of this Act (provision enclosed) provides that funds appropriated by the Act may not be used to withhold substance abuse funding from a State pursuant to section 1926 if that "State certifies to the Secretary of Health and Human Services by March 1, 2001 that the State will commit additional State funds . . . to ensure compliance with State laws prohibiting the sale of tobacco products to individuals under 18 years of age."

In effect, this allows a State to avoid a potential 40 percent reduction in its SAPT Block Grant award by certifying to the following:

- That the State will commit in FY 2001 additional funds equal to one percent of the State's SAPT Block Grant award for each percentage point by which the State has missed its established FY 2000 retailer noncompliance target rate.
- That the State will maintain State expenditures in FY 2001 for tobacco prevention and compliance activities at a level that is not less than the level of such expenditures maintained by the State for FY 2000, and adding to that level the additional funds required under section 214.

Page 2 - The Honorable Tony Knowles

As indicated above, the amount of the new funding required to be committed by the State is determined by the percentage point difference between the State's negotiated noncompliance target rate and its noncompliance rate as reported in the State's FY 2000 SAPT Block Grant application. Since Alaska missed its FY 2000 target rate by 14 percentage points, your State would need to commit an amount equal to 14 percent of its FY 2000 SAPT Block Grant award. The new State funds required would amount to \$481,687 and are to be used to ensure compliance with the State's tobacco control laws.

Also, as indicated at section 214, the Secretary is to exercise discretion in enforcing the timing of the State's obligation of the committed funds as late as July 31, 2001. The State must also submit a report to the Secretary on all FY 2000 expenditures and all FY 2001 obligations for tobacco prevention and compliance activities by program activity by July 31, 2001.

Certifications Pursuant to Section 214

For States wishing to certify under section 214, we have enclosed a proposed certification agreement for your consideration. All certifications to commit additional State funds for tobacco enforcement programs are required to be made in writing, and signed by you as the State's Governor, and submitted to my attention by March 1, 2001, at the address below.

Acting Administrator
Substance Abuse and Mental Health
Services Administration
Parklawn Building, Room 12-105
5600 Fishers Lane
Rockville, MD 20857

Immediately following receipt by SAMHSA of the State's certification, SAMHSA will provide the State with a template for reporting its FY 2000 tobacco prevention and compliance expenditures and its FY 2001 obligations.

In order to provide guidance on the kind of activities that qualify as activities that will "ensure compliance with State laws prohibiting the sale of tobacco products to individuals under 18 years of age," SAMHSA has developed a matrix of allowable and unallowable expenditures (enclosed) for ensuring compliance and for fulfilling the terms of this agreement. Further, SAMHSA is prepared to provide technical assistance to your State regarding reporting on FY 2000 and FY 2001 expenditures and obligations.

Timing of the State's Expenditures of Committed Funds

Consistent with the discretion permitted under section 214 (d), the Department has determined that the State must obligate the committed funds by July 31, 2001.

Page 3 - The Honorable Tony Knowles**Issues Related to the Hearing Process**

Consistent with section 214, once the State certifies that it will commit additional funds for compliance activities in accordance with that section, the hearing process will be discontinued. In addition, if the State desires, we will agree to suspend any deadlines related to the hearing process while the State seeks to provide HHS with the certification. Please contact Judy J. Lewis at 301-443-1008 if you wish to suspend such deadlines.

If the State does not wish to provide us with a certification by March 1, 2001, and to obligate the funds by July 31, 2001, we will continue to pursue the penalty process. In such a case, of course, the State will be able to continue with its hearing. Finally, if the State certifies that it will commit additional State funds but fails to obligate such funds as provided in the agreement, the hearing process will be reinstated and, if unsuccessful, the State will be subject to the statutorily-required 40 percent penalty.

If you need further information or have any questions, please do not hesitate to contact me at 301-443-4795 or have your staff contact David Robbins, Acting Director, Division of State and Community Systems Development (DSCSD), Center for Substance Abuse Prevention (CSAP) at 301-443-0369.

I know that we both share the goal of reducing the illness and death caused by smoking. A strong, effective Synar program is a critical tool in our ability to reduce tobacco sales to minors. If we can prevent our young people from starting to smoke we will have taken a major step toward addressing this important public health problem. I believe that, working together, this is a goal we can achieve.

Sincerely yours,



Joseph H. Amry III, M.D.
Acting Administrator

Enclosures: Copy of Section 214
Certification Agreement
Matrix - Expenditures

cc: Ernie Turner, State Substance Abuse Agency Director
Bruce M. Botelho, Counsel to the State

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SEC. 213. None of the funds provided in this Act or in any other Act making appropriations for fiscal year 2001 may be used to administer or implement in Arizona or in the Kansas City, Missouri or in the Kansas City, Kansas area the Medicare Competitive Pricing Demonstration Project (operated by the Secretary of Health and Human Services).

SEC. 214. (a) Except as provided by subsection (c) none of the funds appropriated by this Act may be used to withhold substance abuse funding from a State pursuant to section 1926 of the Public Health Service Act (42 U.S.C. 800x-26) if such State certifies to the Secretary of Health and Human Services by March 1, 2001 that the State will commit additional State funds, in accordance with subsection (b), to ensure compliance with State laws prohibiting the sale of tobacco products to individuals under 18 years of age.

(b) The amount of funds to be committed by a State under subsection (a) shall be equal to 1 percent of such State's substance abuse block grant allocation for each percentage point by which the State misses the retailer compliance rate goal established by the Secretary of Health and Human Services under section 1926 of such Act.

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(c) The State is to maintain State expenditures in fiscal year 2001 for tobacco prevention programs and for compliance activities at a level that is not less than the level of such expenditures maintained by the State for fiscal year 2000, and adding to that level the additional funds for tobacco compliance activities required under subsection (a). The State is to submit a report to the Secretary on all fiscal year 2000 State expenditures and all fiscal year 2001 obligations for tobacco prevention and compliance activities by program activity by July 31, 2001.

(d) The Secretary shall exercise discretion in enforcing the timing of the State obligation of the additional funds required by the certification described in subsection (a) as late as July 31, 2001.

(e) None of the funds appropriated by this Act may be used to withhold substance abuse funding pursuant to section 1926 from a territory that receives less than \$1,000,000.

SEC. 215. Section 448 of the Public Health Service Act (42 U.S.C. 285g) is amended by inserting "gynecologic health," after "with respect to".

SEC. 216. None of the funds appropriated under this Act shall be expended by the National Institutes of Health on a contract for the care of the 288 chimpanzees acquired

Enclosure 2

CERTIFICATION AGREEMENT

I certify as follows:

1. The State of Alaska will commit \$ _____ in new State funds to ensure compliance with State laws prohibiting the sale of tobacco products to individuals under 18 years of age.
2. The State will maintain State expenditures in fiscal year 2001 for tobacco prevention and compliance activities at a level not less than the level of such expenditures maintained by the State for fiscal year 2000, and adding to that level the additional funds for tobacco compliance activities agreed to in this certification.
3. The State will obligate the committed funds by July 31, 2001.
4. By July 31, 2001, the State will submit to the Substance Abuse and Mental Health Services Administration (SAMHSA) a report of all State resources expended in fiscal year 2000 on tobacco prevention and compliance activities by program activity and a report on its obligations in fiscal year 2001 for tobacco prevention and compliance activities by program activity.

Date

Governor of the State of Alaska

Enclosure 3

Allowable compliance expenditures	Unallowable expenditures
regular compliance checks of tobacco retail outlets	youth tobacco prevention programs
targeted inspections of youth access law violators	adult tobacco prevention activities
tobacco retailer licensing/registration	youth tobacco cessation and counseling
tobacco retailer education	adult cessation and counseling
diversion programs for retailers who violate laws (e.g., clerk training, community service activities, posting warning signs)	tobacco morbidity and mortality surveillance systems
programs specifically designed to educate youth about retailer compliance with the Synar restrictions on the sale of tobacco products to minors.	cardiovascular disease and asthma prevention
	health-related surveys
	clean indoor air law enforcement
	oral health programs

Note: This matrix is enclosed for the purpose of providing additional guidance. It is descriptive in nature and, as such, is not designed to be a definitive list of allowable expenditures. A State may propose, for approval by SAMHSA, other creative and innovative activities designed to improve retailer compliance. As mentioned in the letter, SAMHSA will provide individual assistance to the State with regard to reporting obligations and expenditures.



AMERICAN LUNG ASSOCIATION®
of Alaska

FAX COVER SHEET

Date: 4/16/01

Fax #: 465-3749

To: John Manly

From: Christie McIntire at: (907) 276-5864 (phone)

Regarding: _____

Number of pages including cover: 15

500 West International Airport Road
Suite A
Anchorage, Alaska 99518-1105
Fax: (907) 565-5587

MAKING THE CASE:

State Tobacco Control Policy Briefing Papers

By

ADVOCACY INSTITUTE

Washington, DC

January 2000

POLICIES TO REDUCE YOUTH ACCESS TO TOBACCO

By
Advocacy Institute
Washington, DC
January 2000

Based on a paper by Joseph R. DiFranza, M.D., Associate Professor of Family and Community Medicine, University of Massachusetts Medical School and Nancy A. Rigotti, M.D., Director, Tobacco Research and Treatment Center Massachusetts General Hospital Harvard Medical School for the Advocacy Institute's Health Science Analysis Project, June 4, 1998.

POLICIES TO REDUCE YOUTH ACCESS TO TOBACCO

EXECUTIVE SUMMARY

In order to start smoking, young people must have access to tobacco products. There is abundant evidence that children can easily buy tobacco from stores and vending machines despite laws in all 50 states that ban the sale of tobacco to minors, because tobacco retailers do not comply with these laws and the laws have not been enforced until recently. The majority of cigarettes consumed by young people come from illegal sales to underage youths. Active enforcement of tobacco sales laws has the potential to curtail young people's access to tobacco products and thereby reduce the number of youths who take up smoking. Policies with this goal are widely advocated, have strong public support, and are a focus of federal, state, and local tobacco control efforts. There have been two actions at the federal government level. In 1992, Congress passed legislation (the so-called Synar amendment) requiring states to take action to reduce the sale of tobacco to minors in order to be eligible for substance abuse block grant funding. In 1996, the Food and Drug Administration issued regulations that established age 18 as the nationwide minimum age of sale for tobacco products.

The available evidence suggests that enforcement programs, which achieve a high level of merchant compliance with tobacco sales laws, may reduce youth access to tobacco and youth tobacco use. However, this requires strict law enforcement. If even 20 percent or less of merchants are breaking the law, youths will have little problem buying tobacco and enforcement will have no effect on tobacco use. Carefully enforced restrictions on youth access are an important component of any comprehensive strategy to reduce tobacco use among youths. However, youth access to tobacco is only one part of the complex problem of youth smoking. Efforts to reduce the supply of tobacco to youths are, by themselves, unlikely to be as effective as the same efforts combined with policies that reduce the demand for tobacco through increased prices and comprehensive restrictions on advertising and promotion. A youth access policy by itself might not have as large an impact on youth smoking and is not an acceptable substitute for a more comprehensive approach to reducing youth smoking.

Despite state laws, tobacco retailers continue to make over \$1.5 billion in illegal sales to minors each year. A carefully designed enforcement program will be necessary to withstand the strenuous efforts of tobacco retailers and the tobacco industry, both of which have opposed past efforts. Essential features of an effective enforcement program include:

- 1) licensing of vendors;
- 2) civil disposition of violations;
- 3) effective penalties;
- 4) frequent conduct of realistic inspections to test compliance with the law;
- 5) a mandated compliance rate of over 95 percent;
- 6) multiple layers of enforcement authority;
- 7) adequate and guaranteed funding; and
- 8) restrictions on self-service of tobacco.

POLICIES TO REDUCE YOUTH ACCESS TO TOBACCO

INTRODUCTION

Preventing young people from starting to smoke is a major public health priority.¹ These efforts must focus on children, because 88 percent of smokers start by the age of 18.² In the past, most public health efforts to reduce smoking among young people focused on reducing their *demand* for tobacco products. These efforts, which included school health education programs and mass media programs discouraging tobacco use, have had at best modest success and have been overwhelmed by environmental forces, such as tobacco advertising that appeals to children.³ As a result, adolescent smoking rates have risen, increasing by 32 percent between 1991 and 1997.⁴ Over the past decade, the public health community has developed a new approach to preventing youth smoking: reducing the *supply* of tobacco to youth.⁵ Policies with this goal are widely advocated, have strong public support,⁶ and are a focus of federal, state, and local tobacco control efforts.⁷ This paper identifies the elements needed to implement restrictions on youth access to tobacco.

SOURCES OF TOBACCO FOR YOUTHS

In order to interrupt the supply of tobacco to young people, it is important to understand how children obtain tobacco. In surveys, almost all children say that they get their first cigarette from a friend or sibling. After the first cigarette, friends are the major source of tobacco.⁸ As nicotine dependence develops, there is a need to find a more reliable source of tobacco. At this point, the young smoker typically begins to purchase his or her own tobacco and in turn provides it to friends.

When a youngster finds a merchant who will make an illegal sale, he or she may tell their friends, who may then return regularly to the same store. Some youths learn that certain clerks within a store will sell while others will not. One 11-year-old smoker told the first author that he had memorized the work schedule of the clerk at the drug store who would sell him cigarettes. Thus, even if only a few merchants in a community are willing to break the law, youths living in that community may experience little difficulty obtaining tobacco.⁹ It is also important to understand that even though half of young smokers list friends as a frequent source of tobacco, most of these friends are buying their tobacco from retailers. Thus, the majority of cigarettes consumed by youths come from illegal sales to underage youths.

Another source of tobacco for young smokers is shoplifting tobacco from stores. Up to 50 percent of young smokers admit to shoplifting tobacco at least once, and this source may become more prominent in the future if the purchase of tobacco becomes more difficult for youths. Self-service displays make tobacco available to shoplifters and may also make it easier for minors to purchase tobacco because they require the youth to have less interaction with a store clerk. A youth need not speak to the clerk if he or she can take the tobacco from a display and put it on the counter. Only 10 percent of young smokers report that parents and older relatives are a regular source of tobacco, and these are typically the older teenagers who have been smoking for years.¹⁰

In summary, the great majority of young tobacco users rely on tobacco retailers as their source of tobacco, either directly by purchasing or stealing the product, or indirectly by having their friends buy it. Reducing the sale of tobacco to children and curtailing

shoplifting of tobacco ought to decrease young people's access to tobacco and thereby decrease their tobacco use. Underage youths were estimated to consume over \$1.5 billion worth of tobacco in 1997.¹¹ Since then, both the price of tobacco and the prevalence of smoking among youths have increased substantially. This potential revenue provides a strong incentive to merchants to sell tobacco to children, even at the risk of a fine. Regulatory efforts to eliminate self-service displays, which could reduce shoplifting and make tobacco less accessible to youth, have been strongly opposed by retailers, who receive promotional allowances from tobacco manufacturers for putting self-service displays in their stores.

EFFECT OF STATE AND LOCAL ACTIONS TO REDUCE TOBACCO SALES TO YOUTHS

All 50 states and US territories prohibit tobacco sales to minors, but these laws have rarely been enforced.¹² Despite the universal existence of state laws banning tobacco sales to minors, multiple studies over the past decade have demonstrated that merchant compliance with these laws is low and that children can easily purchase tobacco from stores and vending machines.¹³

Improving compliance with tobacco sales laws has the potential to reduce the availability of tobacco to young people and thereby discourage smoking. The first efforts to do this focused on educating tobacco vendors about tobacco sales laws. This approach produced only partial improvement in merchant compliance and the effect was not sustained over time.¹⁴ Consequently, public health strategies shifted from educating merchants to actively enforcing the laws restricting tobacco sales to minors. Enforcement programs generally employ minors, who are supervised by public health

authorities, to make periodic attempts to purchase tobacco from stores and vending machines. Merchants who violate the law are fined and for repeated offenses can face suspension of their license to sell tobacco. Enforcement programs conducted by public health departments in several communities have consistently reduced the proportion of merchants who sell tobacco illegally to minors.¹⁵

Whether this translates into reducing young people's access to tobacco products or their tobacco use is less certain, in part because these programs are new and have received relatively little scientific study. So far, the results of these studies are mixed. Uncontrolled studies in several individual communities have found that enforcing tobacco sales laws reduces the prevalence of smoking among youths.¹⁶ In Woodridge, Illinois, strict enforcement against merchants and penalties for underage users resulted in a 69 percent decline in the smoking rate among young teens.¹⁷ Five years later, when the youths were 18 years old, smoking rates were reduced by 50 percent over rates in surrounding communities.¹⁸ This occurred despite the fact that by the age of 16 or 17, Woodridge youths could drive to the next town to buy tobacco. The fact that this intervention was effective even as the youths grew older suggests that many youths who were willing to try tobacco at the age of 13 or 14 may have matured beyond this susceptibility by age 16 or 17. Experiences similar to that in Woodridge have been reported in Leominster, Massachusetts, where smoking rates among young teenagers fell by 42 percent, and in communities in Washington, Minnesota and California.¹⁹

However, a controlled study in Massachusetts failed to demonstrate the effectiveness of enforcing tobacco sales laws.²⁰ The study compared three Massachusetts communities that enforced a tobacco sales law with three communities that did not. It reported that enforcing the law for two years

had no effect on teen smoking rates. Merchants' compliance with tobacco sales laws improved more in towns that enforced the law than in those that did not, but over two years adolescents living in towns with enforcement reported little drop in their ease of tobacco purchase and no decline in tobacco use. In short, enforcing a tobacco sales law for 2 years improved merchants' compliance but did not alter youths' access to tobacco or smoking behavior. An explanation for this discrepancy proposed by the authors is that reducing the accessibility of tobacco to youth requires a higher degree of merchant compliance with tobacco sales laws than was achieved in the study. Implementing an enforcement program proved to be more complex for communities than had been anticipated. Political, bureaucratic, legal, and logistical obstacles, including strong pressure from tobacco retailers, prevented health departments from conducting inspections as frequently as planned in the study design and from imposing penalties as aggressively as was intended by statute. As a result, 20 percent of the merchants in the communities were still selling tobacco to minors after two years of enforcement and this degree of compliance with the law was not enough to reduce the supply of tobacco to children.

In contrast to the Massachusetts study, another study, an experiment involving 14 small rural communities in Minnesota, found that communities that adopt and implement policies to restrict youth access to tobacco do affect young people's access to tobacco and tobacco use.²¹ Seven towns in the study were randomly assigned to participate in a community organizing effort whose goal was to change local policy and merchant behavior in order to reduce youth access to tobacco. The other seven towns received no special attention. After 32 months, the organizing effort led all seven towns to pass comprehensive local ordinances to limit youth access to tobacco, and the level of merchant compliance rose to 95

percent. Students in grades 8-10 in those towns had a slower rise in the rate of tobacco use over time, compared to students in the towns where no youth access efforts were being made. They made fewer attempts to purchase tobacco illegally and felt that tobacco was less accessible to them. The fact that merchant compliance exceeded 90 percent may explain why this study found an effect on youth smoking while the Massachusetts study did not. This intervention in the Minnesota study was also a broader one, consisting of community organizing, while in Massachusetts the intervention was limited to law enforcement only. Finally, it is possible that youth access policies work differently in different settings; in Minnesota, the setting was small rural towns while in Massachusetts it was larger urban communities.

It has been suggested that there may be a threshold effect to enforcement efforts; that is, if more than 5-10 percent of merchants in a community continue to break the law, youths will still find it easy to buy tobacco. This is supported by the observation that merchant compliance rates exceeded 90 percent in the two towns where reductions in teen smoking are best documented.²² If this is true, enforcement must be carried out with sufficient vigor to ensure that fewer than 5-10 percent of merchants are breaking the law in order to produce any public health benefit. This would also imply that states and communities that reduce the proportion of law breaking merchants to 20 percent have actually had little effect on the ability of youths to purchase tobacco, despite the apparent progress made. The threshold effect would also imply that banning cigarette vending machines alone would be expected to have little effect on youth access. Youths can easily switch to stores as their source of tobacco if vending machines are eliminated and stores continue to make illegal sales.

Taken together, the available evidence suggests, but does not definitely prove, that

there is a relationship between reductions in illegal sales to minors and decreases in youth tobacco use. However, more research is needed. Previous studies do suggest that enforcement which achieves very high levels of merchant compliance with tobacco sales laws can reduce young people's access to tobacco and their tobacco use. The data does not support the conclusion that restricting youth access to tobacco is a policy that can, all by itself, solve the problem of teen smoking. This is not surprising, since access is only part of the complex problem of youth tobacco use. What is needed is a comprehensive multifaceted strategy that can decrease both the supply of cigarettes to children and their demand for them. While some tobacco control advocates question the efficacy of youth access restrictions at all,²³ most agree that the evidence on youth access restrictions is sufficient to include this policy as a valuable part of a comprehensive strategy to reduce tobacco use.

POSSESSION LAWS

Many current laws do not prohibit minors' use or possession of tobacco products. Laws that prohibit tobacco possession by youths have been proposed and enacted in some states and communities. Proponents of these laws argue that the fact that the possession of tobacco is legal contradicts the health message given to youths about tobacco. Youths frequently question how tobacco can be so dangerous if it is legal for youths to use it. School officials have advocated penalties for youths to allow them to prevent crowds of young smokers from congregating outside of school property, creating a nuisance, and setting a bad example for younger students. Police have advocated possession laws because of the high incidence of tobacco use among delinquent youths. To combat crime by delinquent youths, police stop youths for possession of tobacco, and then search them for other drugs,

alcohol and weapons. The tobacco industry also supports possession laws. Tobacco control advocates assert that this support is based on self-interest; i.e., that laws making it illegal for youths to possess tobacco also make it more difficult for authorities to conduct compliance tests for law enforcement or research. Special immunity must be obtained from the prosecuting attorney and in some cases this has been denied. The tobacco industry has introduced legislation that relieves store owners of responsibility for illegal sales while placing the punishment on the underage smokers. (H.R. 2034, S.1530) The shifting of blame from the retailers and manufacturers to the children has been a common theme of industry-sponsored legislation.²⁴ Indeed, many bills provide for more severe penalties for the youngsters than for the corporations.²⁵ No study has evaluated whether the passage or enforcement of tobacco possession laws has a positive effect on youth's attitudes or behavior regarding tobacco. In the absence of any scientific evidence that making the possession of tobacco illegal is beneficial, it would be premature to adopt this approach as federal, state or local law.

OBSTACLES TO ENFORCEMENT OF TOBACCO SALES LAWS

In practice, effective enforcement of tobacco sales laws has been very difficult to implement due to a lack of secure funding and intense opposition from the tobacco industry and retailer trade associations. Although state governments were estimated to collect \$245 million in state excise taxes in 1997 from the illegal sale of tobacco to minors,²⁶ using some of that revenue to fund the enforcement of tobacco sales laws is not entertained. Furthermore, despite rhetoric to the contrary, a case can be made that tobacco manufacturers and retailers have made it a priority to obstruct the enforcement of these laws.²⁷ Doing so is

clearly in their financial self-interest for several reasons. Retailers have been illegally selling over \$1 billion of tobacco to minors each year, and a sizable minority of retailers does not want to relinquish this income.²⁸ Retailers also receive large revenues from promotional allowances for putting tobacco in self-service displays. In the long term, widespread enforcement of youth access laws could translate into a sizable reduction in the number of adult smokers and therefore in tobacco industry revenues.

The tobacco industry has led an often-successful campaign to undermine efforts to enforce restrictions on the sale of tobacco to minors. Pro-tobacco forces have successfully advocated legislation in many states that hampers enforcement efforts.²⁹ Several provisions are common to many of these bills. They frequently strip all local law enforcement officials of their authority to enforce the law. Sometimes, only a single person in the state is authorized to enforce the law. Preemption strips communities of the authority to address the problem through local laws. Loopholes are included to make prosecutions all but impossible. For example, many laws now require that prosecutors prove that the merchant "knowingly and intentionally" sold tobacco to a minor. Many laws prohibit enforcement agencies from freely using standard enforcement techniques. As a result of these tobacco industry successes, enforcement officials in many states face an impossible task. In some states, enforcement is hampered by the lack of tobacco vendor licensing. In other states, licensing is done by the revenue department, which treats lists of vendors as privileged information that cannot be shared with law enforcement officials. In most states, the sale of tobacco to minors must be prosecuted as a criminal offense through the court system rather than being handled administratively as a civil offense.

Opposition to enforcement has also come from retailers. Retailers have mounted

legal challenges to many laws that seek to address the problem of youth access. In many cases, the challenges have delayed enforcement in those communities. Additionally, the threat of legal challenges has been used successfully to intimidate communities from enacting these laws in the first place. Once laws have been enacted and enforced, retailers have mounted frivolous court challenges to their citations that tie up enforcement personnel and delay further enforcement activities. Merchant complaints and political pressure have resulted in many enforcement agencies conducting compliance tests using youths who are too young to be effective. A study has demonstrated that about half of merchants who are violating the law will make illegal sales only to youths who appear to be sixteen years of age or older.³⁰ These violators go undetected when youths who appear younger than 16 are used to conduct compliance tests. The only way to protect older adolescents from illegal sales is to use older adolescents to conduct the compliance tests.

While most merchants respond to enforcement by training their personnel to obey the law, others appear to direct their energies into circumventing the law. Since youths used for compliance testing are often forbidden from lying about their ages, some merchants have learned to expose these youths by asking for their age instead of proof of age. Some merchants coax kids by saying "if you say you are 18, I can sell them to you." If the youth will not lie about his or her age, the merchant concludes that the youth is part of a law enforcement activity and will not sell to that youth. Merchants have developed phone networks to tip each other off when they suspect that compliance tests are underway. Some merchants have learned to avoid prosecution by not selling tobacco to unfamiliar children. Since law enforcement programs do not send underage buyers into stores where they are known, some merchants will say "If

you are under 18, I can't sell them to you unless I know you".

When retailers have been prosecuted they have sometimes used their political clout to retaliate against enforcement agencies. Elected officials who are pro-retailer have threatened and cut the budgets for the enforcement agencies as punishment for enforcing the law. In some instances, this political intimidation has decimated enforcement programs.

CURRENT FEDERAL POLICIES TO REDUCE TOBACCO SALES TO YOUTHS

The Federal government has taken two actions to address youth access to tobacco: the Synar amendment and the FDA regulations. First, in 1992, Congress adopted legislation to encourage states to reduce the availability of tobacco to minors.³¹ This so-called Synar Amendment makes the receipt of federal block grants for substance abuse and mental health programs contingent upon states adopting and enforcing restrictions on the sale of tobacco to minors in a manner which can be "reasonably expected" to reduce the availability of tobacco to youth.³² Implementation of this law was delayed for over three years awaiting regulations issued by the Department of Health and Human Services.³³ These regulations only require states to achieve an 80 percent merchant compliance level.³⁴ Research cited above has demonstrated that compliance rates of 80 percent cannot be "reasonably expected" to reduce the availability of tobacco to youths. While the idea of encouraging states to enforce their laws is a good one, the DHHS regulations are likely to do little or nothing to reduce youth access to tobacco if states only meet the minimum compliance level.³⁵ Furthermore, the Synar amendment has proved to be awkward to implement. The federal government does not provide states with funding for this purpose and

specifically prohibits the use of block grant funds for enforcement. The state agencies that are at risk of losing their funding have no enforcement authority. The state agencies that do have enforcement authority have no incentive to enforce the law and no funding to do so.

The second federal government action is contained in the 1996 FDA regulations that address many aspects of youth access.³⁶ These include the following provisions: (1) cigarette vending machines are banned from locations where youths are allowed; (2) all tobacco products must be inaccessible to customers; (3) the free distribution of tobacco products is prohibited; (4) tobacco sales to customers under age 18 are prohibited; and (5) vendors must obtain photographic proof of age from any customer under 27 years of age. The FDA is currently enforcing only the last two (minimum age and ID) requirements while the other provisions are in litigation. The FDA is contracting with individual states to conduct compliance tests on their behalf for enforcement purposes. To enforce all of its tobacco regulations, the FDA has been budgeted \$39 million, a sum inadequate to enforce the law fully in all 50 states. Funding for FDA enforcement in future years is not guaranteed, which makes these activities politically vulnerable. While the current FDA staff is motivated to do an excellent job, a change in leadership could result in a complete halt to enforcement activities because the FDA is under no statutory mandate to adequately enforce the youth access provisions of its regulations.

Recommendations for state regulations include the following:

- A) Establish a minimum age equal to or higher than that established under federal law.
- B) Adopt the FDA restrictions regarding vending machines, free sampling, self-service, minimum package size, out of pack sales and point of purchase advertising.

These two provisions will allow state and local authorities to use state law to enforce the federal restrictions.

- C) Establish a state enforcement authority that would administer the license, directly receive federal funding, have primary responsibility to enforce the law and perform civil administrative disposition of violations.
- D) Ensure that government issued identifications such as driver's licenses carry some easily recognized indication that the person is under age. Some states do this with color, in others, the photo is in profile instead of face forward. These licenses greatly simplify the task of determining whether a person is old enough to buy tobacco. Some of the settlement dollars could be provided to states to facilitate any transition costs.
- E) All state and local law enforcement officials must be allowed to enforce the state law.
- F) Penalties for violations should primarily target store owners. Minimum penalties should be established as follows: First and all subsequent offenses against the clerk, \$250 fine. First offense against the license holder, \$500 fine. Second offense in a two-year period, \$1000 fine. Third offense in a two-year period, \$1000 fine and a three-business day suspension of the tobacco license. Fourth offense in a two-year period, \$1000 fine and a one-year loss of the tobacco license.
- G) Require state compliance rates to be above 90 percent within two years of the date of enactment.
- H) Require signs at each cash register stating the legal minimum age and providing a toll-free number to report illegal sales.
- I) Require government issued photographic proof of age for any customers under 27.
- J) Require that youths be prohibited from entering any tobacco-only stores, which are often exempt from smoking regulations and marketing restrictions.

COMPONENTS OF EFFECTIVE ENFORCEMENT

Given the many obstacles to enforcing tobacco sales laws, it may seem unrealistic to get 95 percent of merchants to obey the law. However, communities like Woodridge, Illinois, have found that with a serious enforcement effort, it is possible to approach 100 percent merchant compliance in a short period of time.⁶ A model for the effective and efficient enforcement of youth access laws based on the experience of cities in Massachusetts has been developed.⁶ According to this model, public health authorities license tobacco merchants, educate them about tobacco sales laws, and warn them that their compliance with the law will be tested. Then, compliance with the law is routinely tested by employing minors to attempt to purchase tobacco. The minors are closely supervised by adults during these activities. If an illegal sale is made, the vendor receives a citation. Penalties include fines and possible suspension of the license to sell tobacco for repeated violations.

For an initiative to be successful, tobacco industry opposition to enforcement efforts must be anticipated, and a system must be designed to guarantee that effective enforcement will occur. The essentials of a model enforcement system are described below. These criteria provide a structured format with which the legislative initiatives can be compared.

Licensing. Effective and efficient enforcement requires the licensing of tobacco vendors. Without a license, an enforcing agent does not know where tobacco is sold, who is responsible for violations, and where to mail a citation. It is estimated that enforcement inspections consume double the resources when vendors are not licensed (DiFranza, personal communication). License fees are a fair and convenient way to fund enforcement activities

since the cost of enforcement is borne by those who profit from the activity being regulated. Retailers sometimes oppose using license fees to fund enforcement out of fear that the licensing agency will continuously boost the fee out of financial self-interest, but there is no evidence that this has occurred.³⁷ State and federal enforcement have been significantly hampered by the fact that in many states it is difficult to obtain a list of tobacco vendors. This information is sometimes considered confidential tax information that cannot be disclosed to anyone. Indeed, the actual number of tobacco retailers is uncertain. The tobacco industry estimates 1,000,000. Two national industry groups estimate the number of tobacco vending machines at either 110,000 or 300,000.³⁸ Accurate figures are needed to plan enforcement inspections and estimate their cost.

An enforcement system will require the creation of a new licensing system. Several states do not currently license tobacco retailers and the retailers themselves in several states have fought very hard to oppose any form of licensing.³⁹ There must be a plan to handle licensing in those states that either do not license tobacco vendors or refuse to share their lists of licensees.

Civil disposition. The enforcing agency must be capable of dealing with infractions through administrative civil action against the license holder. Criminal prosecution wastes governmental resources and ties up the courts. It also reduces the certainty of punishment for violators if, for example, overburdened courts dismiss charges in order to clear their dockets.

Penalties. The law must provide for meaningful penalties against the license holder. FDA enforcement should focus on the owner of the establishment because it is the owner who is responsible for all health and safety issues. In light of the large potential income a vendor can make from illegal tobacco sales, the penalties must be substantial and should include provisions for license suspension and revocation for repeat offenses. While there is no argument

against also penalizing the clerk who makes the sale, license holders must be held accountable for the actions of their employees. The question is not "what is a fair penalty for selling tobacco to children?" but "what kind of penalty will it take to finally convince retailers to obey the law?" Minimum but not maximum penalties should be codified into law.

Compliance testing. The enforcing agency must be authorized to conduct realistic compliance tests without restrictions on how often these tests can occur or the manner in which they are conducted. The more often compliance tests are conducted, the greater the proportion of merchants who stop violating the law.⁴⁰ In several communities, it has been discovered that every merchant must be tested four times each year in order to maintain acceptable compliance rates. Youths employed as decoys should be able to act as real youths do. First, a state ban on compliance tests may prevent the FDA from enforcing its regulations. Second, it will not be possible to determine if a state is submitting fraudulent compliance rate reports if only state authorities are permitted to conduct compliance tests. Third, if researchers cannot conduct compliance tests, it will be impossible to conduct further public health experiments to determine if enforcing the law will reduce youth tobacco use.

Funding. The enforcing agency must have permanent funding sufficient to the task. As the funding requirements are directly proportional to the number of vendors, an annual licensing fee collected from each retailer is the most logical source of permanent funding. If only funds from any proposed tobacco settlement are used to fund enforcement, the enforcement system will have only a temporary base.

Minimum permissible compliance rates. Many youth access laws are not enforced at all and research has shown that half-hearted enforcement efforts do not reduce tobacco use among youths.⁴¹ The enforcing agency should

have a mandate to enforce the law with sufficient vigor to maintain compliance above 95 percent.

Enforcement redundancy. The enforcement system must have built-in redundancy. The model state law should include a provision that all state and local law enforcement agencies are authorized to enforce the law. State legislation sponsored by the tobacco industry typically strips local law enforcement officials of their authority to enforce the law.⁴²

Minimum age. It has been argued that 18 is not the ideal minimum age of tobacco purchase since it allows high school seniors to purchase tobacco. Minimum ages of 19, 20 or 21 would be more effective at keeping tobacco out of the high schools. Many retailers would like to see the same minimum age for alcohol and tobacco - age 21.

Self-service. The law should eliminate vending machines, free sampling and self-service of all tobacco products.

Impediments. There should be no other impediments to enforcing the law or prosecuting merchants.

Preemption. There should be no preemption of local authority to enact or enforce their own restrictions other than the preemption over anti-compliance testing provisions discussed above.

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HB

228

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

REPORTED OUT
MAY 06 2001
SENATE FINANCE
COMMITTEE

DATE: 5/4/01

FURTHER:

DATE TURNED IN TO OFFICE: 6 May 2001

Finance Committee considered CS FOR HOUSE BILL NO. 228(FIN)
SALE OF TOBACCO PRODUCTS

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:

- same title
- new title

House Bill:

- same title
- technical title
- new: SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#
DCED	5/6/01	139.1		
LAW	5/6/01	77.4		
H&SS	5/6/01	487.9		

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#
Revenue	4/13/01		✓	**1

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>			✓	
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
<i>[Signature]</i>			⊗	
<i>[Signature]</i>			✓	
<i>[Signature]</i>			✓	
COCHAIR: <i>[Signature]</i>			✓	
COCHAIR: <i>[Signature]</i>			✓	

REPORTED OUT
MAY 06 2001
SENATE FINANCE
COMMITTEE

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 228(L&C)
(H) Publish Date: 4/20/01

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue
Title: Sale of Tobacco Products BRU: Revenue Operations
Component: Tax Division
Sponsor: Representative Harris
Requester: House Labor and Commerce Committee Component Number: 2476

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
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 ()						
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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 (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached

Prepared by: Johanna Bales Phone 269-6628
Division: Tax Division Date/Time April 13, 2001, 10 a.m.
Approved by: Larry Persily, Deputy Commissioner Date 4/13/01
Agency: Department of Revenue

For distribution information, call the Governor's Legislative Office

Department of Revenue Bill Analysis

HB 228 – Tobacco Enforcement - April 13, 2001 - FN#1

The Department of Revenue supports HB 228, which would increase the penalties for selling cigarettes to individuals under the age of 19 and give the Department of Revenue new tools to enforce the nationwide Master Settlement Agreement (MSA) signed by the major cigarette producers and states.

Under the provisions of the MSA, entered into and subsequently adopted by the State of Alaska under AS 45.53, cigarette manufacturers that did not sign the MSA (nonparticipating manufacturers) must establish and fund escrow accounts for the benefit of the State of Alaska. If the state fails to enforce this provision of the MSA, the state can be sued by manufacturers that signed the MSA (participating manufacturers) and could potentially lose some or all of its payments under the agreement.

Alaska expects to receive approximately \$28 million each year from the MSA, provided the payments are not reduced for failing to enforce the provisions of the agreement.

The following sections of HB 228 would enhance the Department of Revenue's ability to protect the state's revenue from the MSA:

Section 3. Disclosure of information for compliance with the tobacco product Master Settlement Agreement.

The Department of Revenue is responsible for determining the amount of escrow payments that must be made by each nonparticipating manufacturer each year. The information used to determine the amount of the escrow payments comes from cigarette tax and tobacco product tax returns filed with the Department of Revenue. The Department of Law is responsible for suing those nonparticipating manufacturers that fail to make escrow payments. Although the Department of Revenue may provide information to the Department of Law at the time an official investigation begins, it is precluded from sharing this information with other states and entities that may aid the Department of Revenue in enforcing the MSA. We believe this section of the bill is needed to allow for increased sharing of information with the Department of Law and other entities, such as the National Association of Attorneys General and the Federation of Tax Administrators. Both of these agencies are heavily involved with aiding states in enforcing the provisions of the MSA.

Section 4. Notification of noncompliance; confiscation of noncomplying cigarettes.

The MSA was recognized and adopted by the State of Alaska effective June 3, 1999. For the period June 3, 1999, through December 31, 1999, the Department of Revenue identified 23 nonparticipating manufacturers that sold cigarettes into Alaska. Of these 23 nonparticipating manufacturers, only three have established and funded escrow accounts as required in AS 45.53. Section 4 of this bill would prohibit the state's cigarette and tobacco products licensees from importing and selling cigarettes made by nonparticipating manufacturers that have failed to comply with AS 45.53. This provision is needed to aid in the enforcement of the MSA and protect Alaska's current and future payments under the MSA.

MAY 06 2001

SENATE FINANCE
COMMITTEE

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: CS HB 228 (FIN)
() Publish Date: _____

Revision Date/Time (Note if correction): 5/6/2001 Dept. Affected: DCED
Title: An Act Relating to the offense of selling or giving tobacco to a minor BRU: Occupational Licensing
Component: Occupational Licensing
Sponsor: Rep. Harris
Requester: Senate Finance Committee Component Number: 2360

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services	100.5	100.5	61.7	0.0	0.0	0.0
Travel	10.0	10.0	10.0	0.0	0.0	0.0
Contractual	19.6	19.6	19.6	0.0	0.0	0.0
Supplies	5.0	5.0	5.0	0.0	0.0	0.0
Equipment	4.0	0.0	0.0	0.0	0.0	0.0
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	139.1	135.1	96.3	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (1156 RSS)*	100.0	100.0	100.0	100.0	100.0	100.0
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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 - 1007 inter-agency receipts	139.1	135.1	96.3	0.0	0.0	0.0
TOTAL	139.1	135.1	96.3	0.0	0.0	0.0

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time	1	1	1			
Part-time						
Temporary	1	1				

ANALYSIS: (Attach a separate page if necessary)

Provisions of the bill that affect AS 43.70 require a tobacco endorsement for each location where a business offers tobacco products for sale and simplify suspension of business license tobacco endorsements. A detailed explanation of the expenditures and revenue is attached.

Personal Services expenditures decrease in FY04 to reflect the elimination of the administrative clerk after the requirement for an endorsement for each location has been implemented.

*1156 - RSS is the revenue type. This means receipt supported services

Prepared by: Catherine Reardon, Division Director Phone 465-2538
Division: Occupational Licensing Date/Time 5/6/01 12:00 AM
Approved by: Deborah B. Sedwick, Commissioner Date 5/6/2001
Agency: Department of Community and Economic Development

For distribution information, call the Governor's Legislative Office

ANALYSIS: (continued)

CS HB 228(FIN) An Act relating to the offense of selling or giving tobacco to a minor...

Page 2 of 2 - FN #4

The expenditures provide the following in support of changes to AS 43.70, business license tobacco endorsements:

Personal Services: \$100.5

\$38.8 - 1 Administrative Clerk II, range 10, GGU, 12 months to process tobacco endorsement applications from each location, to disseminate information regarding the tobacco endorsement requirement, and to promote the proactive enforcement program. This position will be eliminated in FY04, after the requirement for an endorsement for each location has been implemented.

\$61.7 - 1 Investigator III, range 18, GGU, 12 months to prepare and coordinate cases, issue suspension notices, and present cases to the hearing officer if a hearing is requested.

Travel: \$10.0, for investigator and hearing officer travel.

Contractual Services: \$19.6

\$14.6 for contract hearing officer time based on approximately 3 days per case at \$975/case, and assuming 15 cases will go to a hearing in each fiscal year.

\$5.0 for printing forms, endorsements, and communications.

Supplies: \$5.0, for daily operations relating to tobacco endorsements

Equipment: \$4.0 in one-time costs for the clerk and investigator.

Revenue: \$100.0 in estimated Receipt Supported Services funds.

The revenue estimate is based on an increase in the annual number of endorsement's to 1,000 and a fee of \$100.

MAY 06 2001

SENATE FINANCE
COMMITTEE

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: CS HB 228 (FIN)
() Publish Date: _____

Revision Date/Time (Note if correction): 5/6/2001 Dept. Affected: Health & Social Services
Title: Relating to tobacco sales to minors and BRU: State Health Services
license endorsements for tobacco sales Component: Community Health/EMS Services
Sponsor: Rep. Harris
Requester: Senate (FIN) Component Number: 2078

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services	72.1	77.1	82.1			
Travel	60.9	60.9	60.9			
Contractual	344.4	344.4	344.4			
Supplies	2.0	2.0	2.0			
Equipment	8.5					
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	487.9	484.4	489.4	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1119 Tobac Sell	487.9	384.4	389.4			
Other (Statutorily Designated Rcpts.)		100.0	100.0			
TOTAL	487.9	484.4	489.4	0.0	0.0	0.0

Estimate of any current year (FY2001) cost: 230.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time	1	1	1	1	1	1
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Alaska's statewide tobacco-sales-to-minors enforcement efforts were funded for that past three years on a grant from the Food and Drug Administration (FDA). In March 2000 this funding ended abruptly when the US Supreme Court ruled that the FDA had no regulatory authority over tobacco. Since that time, funding has been diverted from community-based tobacco prevention and control efforts, as well as alcohol and drug abuse prevention and treatment, to continue enforcement activities. Currently, federal substance and alcohol abuse treatment funds are threatened to be reduced because of high tobacco sales to youth noncompliance rates.

An effective enforcement program includes community-based enforcement, year-round enforcement checks, accountability of sales staff and vendors, and vendor education and training. This bill would enable such a program. It also would provide revenues to offset part of the program costs. Program costs would include the following:

Prepared by: Karen Pearson, M.S. Phone (907) 465-3090
Division: Public Health Date/Time: _____
Approved by: Elmer A. Lindstrom, Special Assistant Date 5/6/01 1:12 PM
Agency: Department of Health & Social Services

For distribution information, call the Governor's Legislative Office

ANALYSIS: (continued)

\$72,095 for personnel costs include a full-time project coordinator, responsible for: (1) facilitating an inter-departmental working group with the Division of Public Health, the Division of Alcohol and Drug Abuse, the Civil and Criminal Divisions of the Department of Law, the Department of Public Safety, and the Division of Occupational Licensing; (2) developing an interagency working agreement; (3) developing vendor education; (4) coordinating enforcement efforts; (5) administering contracts with local police departments; and (6) facilitating community education and community development. This line also includes 10% of the existing tobacco prevention and control program manager who is responsible for coordinating the overall tobacco prevention and control program, as well as 25% of an existing part-time administrative clerk II. The expenditure line is projected to increase over the next 5 years to cover annual meritorious increases.

\$60,860 for travel costs include: (1) 18 coordination trips for project and program coordinators to meet with community-based partners and the Alaska Tobacco Control Alliance (ATCA); (2) transporting enforcement staff and youth to communities where investigations will occur; and (3) project coordinator attendance at the annual Synar conference.

\$344,400 in contractual services costs include: (1) contracts with local police departments and officers to conduct the enforcement checks (approximately 1,000 checks will occur each year); (2) contracts to design, print, and distribute vendor educational materials to assist vendors in meeting state law; (3) training of vendors in the use of these materials; (4) RSAs with the Departments of Law and Commerce and Economic Development for adjudicating noncompliance cases; and (5) other administrative costs.

\$2,000 is included for office supplies and program materials.

\$8,500 is included for computer equipment and a workstation in the FY02.

The legislature will reexamine the funding requirements for a tobacco enforcement program in FY05.

MAY 06 2001

SENATE FINANCE
COMMITTEE

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: CSHB 228 (FIN)
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
Title "An Act relating to the accounting of fees from BRU Civil Division
business license endorsements for tobacco products . . ." Component Fair Business Practices
Sponsor Representative Harris
Requester Senate Finance Committee Component No. 2206

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services	60.6	60.6	60.6			
Travel	0.2	0.2	0.2			
Contractual	9.4	9.4	9.4			
Supplies	0.8	0.8	0.8			
Equipment	6.5					
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	77.4	70.9	70.9	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1007 Interagency Receipts	77.4	70.9	70.9	0.0	0.0	0.0
TOTAL	77.4	70.9	70.9	0.0	0.0	0.0

Estimate of any current year (FY2001) cost: 0.0

POSITIONS

Full-time						
Part-time	1	1	1			
Temporary						

ANALYSIS: (Attach a separate page if necessary)

CSHB 228 (FiN) provides additional tools to prohibit the sale of tobacco to minors.

Several changes are made to the current requirement that a person selling tobacco products must have a tobacco endorsement attached to their state business license. The fee for a two-year tobacco endorsement would be increased from \$25 to \$100. The bill would require a tobacco endorsement for each location and outlet where the business sells tobacco products. Current law requires only one, no matter how many store locations or outlets a business uses to sell tobacco products. This change will make it easier to track locations or outlets where tobacco products are sold to be sure the tobacco tax and other laws are being uniformly followed. This change, as well as the increased endorsement fee, would help offset the increasing cost of the administration and enforcement of endorsement requirements. The bill establishes civil penalties in the form of significant fines for those who sell tobacco without an endorsement, for sale of gray market cigarettes, and failure to post required warning signs. It would

Prepared by: Joan M. Kasson Phone 465-5370
Division Attorney General's Office Date/Time 5/6/01 12:43 PM
Approved by: Joan M. Kasson for Bruce M. Botelho, Attorney General Date 5/6/01
Agency Department of Law

For distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

BILL NO. CSHB 228 (FIN)

ANALYSIS CONTINUATION

establish a streamlined administrative process for suspending the endorsements of those businesses who violate the state's laws on selling tobacco products to minors. It would also allow for the revocation of endorsements or an increase in the suspension period if the person continues the conduct which led to an endorsement during a suspension period.

A recent survey initiated by the Department of Health and Social Services indicated that nearly two-thirds of tobacco vendors in rural Alaska sold tobacco products to children, and more than one-third of the vendors in urban Alaska did. Federal law requires no more than a 20 percent noncompliance rate. In order to improve Alaska's noncompliance rate, DH&SS anticipates approximately 1,000 enforcement checks each year will be performed if this bill is enacted.

The Department of Law estimates the services of one-half of a full-time equivalent attorney position will be necessary to provide the necessary legal services associated with the compliance checks and the administrative process resulting from any noncompliance. This position will be funded by interagency receipts from the Department of Health and Social Services, and will be assigned to the Fair Business Practices section in the Anchorage office of the Civil Division.

This estimate is based on our prior experience with tobacco compliance checks and endorsement proceedings under current law. The few cases undertaken in FY99 took an average of 27 hours of attorney time each to complete. With the streamlined process intended by this bill, cases should move faster. However, none of the cases pursued in FY99 went to administrative hearing, which by requiring additional time, may offset the gains from the streamlined procedure to some extent.

Using the department's FY02 standard attorney cost schedule, the fiscal impact from this legislation for the Civil Division's Fair Business Practices section would be \$70,888. This cost includes clerical support, communications, space, supplies, data processing, and other normal overhead expenses. The standard cost does not include one-time new equipment purchases, and \$6,500 is added in FY02 for this purpose.

The legislature intends to reevaluate the program in FY05.

SENATE COMMITTEE REPORT

DATE: 5/1/01

FURTHER: Finance

DATE TURNED IN TO OFFICE: 5/4/01

State Affairs Committee considered

CS FOR HOUSE BILL NO. 228(FIN)

SALE OF TOBACCO PRODUCTS

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:

- same title
- new title

House Bill:

- same title
- technical title
- new: SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#
DHSS	4/25	✓		5
DCED	4/11	✓		4
LAW	4/12	✓		2
REVENUE	4/11		✓	1

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>K. L. E. Hill</i>			✓	
<i>Betty Lewis</i>	X			
CHAIR: <i>Gene Therman</i>			X	



ALASKA STATE LEGISLATURE
REPRESENTATIVE JOHN HARRIS
STATE CAPITOL 513, JUNEAU, ALASKA 99801-1182 (907) 465-4859

Sponsor Statement
HB 228 - Tobacco Sales Enforcement

Alaska has a huge problem with the sale of tobacco products to kids. In a recent survey of tobacco retailers initiated by the Department of Health and Social Services, it was determined that nearly 2/3 of vendors in rural Alaska sold tobacco products to children, while more than 1/3 of those in urban Alaska did.

This will take a toll on these young people if they continue to use tobacco products into their adult years, in terms of unnecessary illness and early death. It also continues to place a heavy burden on health care providers whose duty it is to help those who are battling tobacco related disease. The cost to the public will continue to spiral upward. Additionally, the state is liable, under the federal Synar amendment, for a penalty of \$1.5 million (to be deducted from its drug and alcohol abuse block grant) because the rate of sales to minors is above the 20 percent federal limit. If increased state enforcement effort of at least \$481,687.00 is approved through the fiscal notes for this bill, the Synar penalty will be lifted.

HB 228 seeks to derail some of the ever-growing problem of tobacco sales to minors – and the consequences down the road – by beefing up enforcement of state laws prohibiting the sale of tobacco products to minors, and it does so in several areas.

First, the CS proposes fining a business that sells tobacco to minors from \$300 on a first offense to \$2,500 on a fourth offense. It also provides for mandatory suspensions and possible revocation of the endorsement to sell tobacco products if multiple violations take place over a two-year period. The bill also gives authorized employees or agents of the Department of Health and Social Services the authority to issue citations for certain tobacco offenses.

The bill would increase revenues from tobacco vendors to help pay for enforcement efforts by raising the fee for a tobacco endorsement on a business license from \$25 to \$100. It would also require a separate endorsement for each location at which a retailer sells tobacco products. Current law requires only one, regardless of how many locations or outlets a business has in which it sells tobacco.

In sections unrelated to the problem of tobacco sales to minors, HB 228 also adds language to allow the Department of Revenue to keep better track of compliance with the tobacco settlement.

SENATE FINANCE COMMITTEE

SIGN-IN

HB 228-SALE OF TOBACCO PRODUCTS

NAME: A. Ir. Jr. J. J. J. Subject/Bill No: HB 228
Co./Dept./Title: Special Assistant Phone: 465-1613
Address: DHSE Zip: _____
Do you wish to testify? Yes No Respond To Questions

NAME: Catharine Truitt Subject/Bill No: HR 228
Co./Dept./Title: Director Division of Phone: 465-2537
OC Capital Budget Dept. D
Address: PO 110000 Zip: 99711
Do you wish to testify? Yes No Respond To Questions

NAME: ED SASSER Subject/Bill No: HR 228
Co./Dept./Title: Tobacco Subsidy Phone: 465 3126
Division of Public Health
Address: 200 110000 Zip: 99711
Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____
Do you wish to testify? Yes No Respond To Questions

HB

229

HFIN

FILE

Amendment to version "J"

By Craft.

CS FOR HOUSE BILL NO. 229()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY ~~deleted~~ Cruise ship head tax

Offered:
Referred:

Sponsor(s): REPRESENTATIVE STEVENS

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to taxation of income, taxation of alcoholic beverages, and
 2 apportionment of business income, and imposing an excise tax on travel on commercial
 3 passenger vessels providing overnight accommodations in the state's marine waters;
 4 increasing the motor fuel tax levied and collected on motor vehicles and on certain fuel
 5 for internal combustion engines not used in or in conjunction with a motor vehicle;
 6 directing separate accounting of amounts derived from motor vehicle licensing,
 7 registration, and transfers and related activities; authorizing the appropriation of the
 8 proceeds of the motor fuel tax on motor vehicles and the amounts separately accounted
 9 for in the special highway fuel tax account, redesignated as the special highway
 10 maintenance account and amended as to its purposes and limitations on its uses, to meet
 11 the costs of activities relating to motor vehicle licensing and registration and for the uses
 12 identified in the law establishing the account; and providing for an effective date."

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

2 * Section 1. AS 28.10 is amended by adding a new section to read:

3 Sec. 28.10.595. Separate accounting. Except as to the proceeds of fees for
4 which a different form of accounting and disposition is otherwise specifically provided
5 in this chapter,

6 (1) the fees collected by the department under this chapter shall be
7 deposited in the special highway maintenance account in the state general fund
8 described in AS 43.40.010(g); and

9 (2) the legislature may appropriate the annual estimated balance of the
10 funds from the special highway maintenance account for the purposes described in
11 AS 43.40.010(g).

12 * Sec. 2. AS 37.05.146(b)(4) is amended by adding a new subparagraph to read:

13 (AAA) special highway maintenance account
14 (AS 43.40.010(g)).

15 * Sec. 3. AS 43.20 is amended by adding a new section to read:

16 Sec. 43.20.009. Tax on individuals. (a) There is imposed for each taxable
17 year an income tax on the taxable income of every

18 (1) resident individual; and

19 (2) nonresident and part-year resident individual with income from
20 sources in the state.

21 (b) As soon as practicable after September 30 of each year, the department
22 shall publish the applicable tax rate under this subsection for the following calendar
23 year. The applicable tax rate is:

24 (1) four percent if, on September 30 of that year, the unaudited balance
25 in the budget reserve fund created by art. IX, sec. 17, Constitution of the State of
26 Alaska, was equal to or less than \$2,000,000,000;

27 (2) two percent if, on September 30 of that year, the unaudited balance
28 in the budget reserve fund created by art. IX, sec. 17, Constitution of the State of
29 Alaska, was more than \$2,000,000,000 but not more than \$2,500,000,000; or

30 (3) one percent if, on September 30 of that year, the unaudited balance
31 in the budget reserve fund created by art. IX, sec. 17, Constitution of the State of

1 Alaska, was more than \$2,500,000,000.

2 (c) For a resident individual, the tax under this section is the sum of the
3 taxpayer's taxable income multiplied by the tax rate described in (b) of this section.

4 (d) For a part-year resident individual or a nonresident individual, the tax
5 under this section shall be computed by applying the rate described in (b) of this
6 section to the individual's taxable income, and multiplying the result by a fraction, the
7 numerator of which is taxable income from all sources in the state and the
8 denominator of which is taxable income from all sources.

9 (e) In this section, "taxable income" has the meaning given in 26 U.S.C. 63
10 (Internal Revenue Code).

11 * Sec. 4. AS 43.20.021(a) is amended to read:

12 (a) Sections 26 U.S.C. 1 - 1399 and 6001 - 7872 (Internal Revenue
13 Code), as amended, are adopted by reference as a part of this chapter. These
14 portions of the Internal Revenue Code have full force and effect under this
15 chapter unless excepted to or modified by other provisions of this chapter.
16 However, nothing in this chapter or in AS 43.19 (Multistate Tax Compact) may
17 be construed as an exception to or modification of 26 U.S.C. 883, except that 26
18 U.S.C. 883(a)(1) does not apply to gross income derived by a corporation
19 organized in a foreign country from the international operation of a commercial
20 passenger vessel. In this subsection, "commercial passenger vessel" means a
21 vessel that is used in the common carriage of passengers in commerce;
22 "commercial passenger vessel" does not include a

23 (1) vessel with an overnight accommodation capacity for fewer
24 than 12 passengers;

25 (2) noncommercial vessel or a vessel operated by the state, the
26 United States, or a foreign government; or

27 (3) vessel licensed under AS 16.05.490 and used in charter service
28 for the recreational taking of fish and shellfish.

29 * Sec. 5. AS 43.20.030(a) is amended to read:

30 (a) If an individual, a corporation, or a partnership that has a corporation as a
31 partner, is required to make a return of income under the provisions of the Internal

1 Revenue Code, the individual, corporation, or partnership [IT] shall file with the
2 department, within 30 days after the federal return is required to be filed, a return
3 setting out

4 (1) the amount of tax due under this chapter, less allowable credits
5 and payments claimed against the tax; and

6 (2) other information that the department requires for the purpose of
7 carrying out the provisions of this chapter [THAT THE DEPARTMENT
8 REQUIRES].

9 * Sec. 6. AS 43.20.030(d) is amended to read:

10 (d) A taxpayer, upon request by the department, shall file with the taxpayer's
11 state return [FURNISH TO THE DEPARTMENT] a true [AND CORRECT] copy of
12 the tax return [WHICH THE TAXPAYER HAS] filed with the United States Internal
13 Revenue Service. Every taxpayer shall file an amended return with [NOTIFY] the
14 department, and remit any additional tax and interest due, within [IN WRITING
15 OF ANY ALTERATION IN, OR MODIFICATION OF, THE TAXPAYER'S
16 FEDERAL INCOME TAX RETURN AND OF A RECOMPUTATION OF TAX OR
17 DETERMINATION OF DEFICIENCY, WHETHER WITH OR WITHOUT
18 ASSESSMENT. A FULL STATEMENT OF THE FACTS MUST ACCOMPANY
19 THIS NOTICE. THE NOTICE SHALL BE FILED WITHIN] 60 days after a [THE]
20 final determination of the taxpayer's federal tax liability [MODIFICATION,
21 RECOMPUTATION OR DEFICIENCY, AND THE TAXPAYER SHALL PAY THE
22 ADDITIONAL TAX OR PENALTY UNDER THIS CHAPTER]. For purposes of
23 this subsection [SECTION], a final determination means [SHALL MEAN] the date
24 [TIME] that an amended federal return is filed, the date a federal [OR A NOTICE
25 OF DEFICIENCY OR AN] assessment is made, or the date the restrictions on
26 assessment are waived by [MAILED TO] the taxpayer [BY THE INTERNAL
27 REVENUE SERVICE, EXCEPT THAT IN NO EVENT WILL THERE BE A FINAL
28 DETERMINATION FOR PURPOSES OF THIS SECTION UNTIL THE
29 TAXPAYER HAS EXHAUSTED RIGHTS OF APPEAL UNDER FEDERAL
30 LAW].

31 * Sec. 7. AS 43.20.031(c) is amended to read:

1 (c) In computing the tax under this chapter, a corporation [THE
2 TAXPAYER] is not entitled to deduct any taxes based on or measured by net income.

3 * Sec. 8. AS 43.20.040 is repealed and reenacted to read:

4 Sec. 43.20.040. **Income from sources in the state.** (a) In this chapter,
5 income from sources in the state includes

6 (1) compensation for personal services rendered in the state;

7 (2) working in the state for salary or wages;

8 (3) income from real or tangible personal property located in the state;

9 (4) income from stocks, bonds, notes, bank deposits, and other
10 intangible personal property having a taxable or business situs in the state; however,
11 the receipt of interest income from intangible property in the state does not alone
12 establish a taxable or business situs in the state;

13 (5) rentals and royalties for the use of or for the privilege of using, in
14 the state, patents, copyrights, secret processes and formulas, good will, marks, trade
15 brands, franchises, and other property having a taxable or business situs in the state;

16 (6) income distributed from a trust established under or governed by
17 the laws of the state;

18 (7) income of whatever nature from a source with a taxable or business
19 situs in the state.

20 (b) Except as provided in (a)(4) of this section, in this section, income is from
21 a source with a taxable or business situs in the state if it is attributed to or derived from

22 (1) business facilities or property in the state;

23 (2) business, farming, or fishing activities in the state;

24 (3) conducting in the state the management or investment function for
25 intangible property;

26 (4) a partnership or limited liability company conducting business
27 activities in the state;

28 (5) a corporation transacting business activities in the state that has
29 elected to file federal returns under subchapter S of the Internal Revenue Code;

30 (6) any other activity from which income is received, realized, or
31 derived in the state.

1 (c) If a business, trade, or profession is carried on partly inside and partly
 2 outside the state, other than the rendering of purely personal services by an individual,
 3 the income from sources in the state shall be determined as provided in AS 43.19.

4 * Sec. 9. AS 43.20 is amended by adding a new section to article 1 to read:

5 Sec. 43.20.046. Individual income tax credits. (a) For a resident, the
 6 income tax imposed on that resident by another state or territory of the United States
 7 for the taxable year, on income derived from sources in that state or territory, is
 8 allowed as a credit against the tax under this chapter.

9 (b) The credit under (a) of this section is determined by multiplying the tax
 10 computed under this chapter by a fraction, the numerator of which is the income
 11 derived from sources in the other state or territory and the denominator of which is
 12 income derived from all sources. The credit under (a) of this section may not exceed
 13 the actual tax paid to the other state or territory.

14 (c) To the extent required by federal law, an individual is allowed as a credit
 15 against the tax under this chapter 10.2 percent of interest received by the individual in
 16 the taxable year upon obligations unconditionally backed by the full faith and credit of
 17 the United States.

18 (d) An individual is allowed only the state credits provided in this section.
 19 The total state credit allowed under this section may not exceed the tax liability for the
 20 taxable year for the individual. A credit may not be carried, in whole or in part, to a
 21 different taxable year.

22 * Sec. 10. AS 43.20.073(f) is amended to read:

23 (f) This section does not apply to taxpayers

24 (1) subject to AS 43.20.072 engaged in

25 (A) [(1)] the production of oil or gas from a lease or property in
 26 the state; or

27 (B) [(2)] the transportation of oil or gas by regulated pipeline in
 28 the state; or

29 (2) that operate a commercial passenger vessel: in this paragraph,
 30 "commercial passenger vessel" means a vessel that is used in the common
 31 carriage of passengers in commerce, but does not include a

1 (A) vessel with an overnight accommodation capacity for
2 fewer than 12 passengers:

3 (B) noncommercial vessel or a vessel operated by the state,
4 the United States, or a foreign government: or

5 (C) vessel licensed under AS 16.05.490 and used in charter
6 service for the recreational taking of fish and shellfish.

7 * Sec. 11. AS 43.20 is amended by adding a new section to read:

8 Sec. 43.20.171. Tax withholding on wages of individuals. (a) Every
9 employer making payment of wages, salaries, or crew shares

10 (1) shall deduct and withhold an amount of tax computed in a manner
11 to approximate the amount of tax due on those wages, salaries, or crew shares under
12 this chapter for that taxable year;

13 (2) shall remit the tax withheld to the department accompanied by a
14 return on a form prescribed by the department at the times required by the department
15 by regulation;

16 (3) is liable for the payment of the tax required to be deducted and
17 withheld under this section but is not liable to any individual for the amount of the
18 payment; and

19 (4) shall furnish to the employee on or before January 31 of the
20 succeeding year, or within 30 days after a request by the employee after the
21 employee's termination if the 30-day period ends before January 31, a written
22 statement on a form prescribed by the department showing

23 (A) the name and taxpayer identification number of the
24 employer;

25 (B) the name and social security number of the employee;

26 (C) the total amount of wages, salary, or crew shares for the
27 taxable year; and

28 (D) the total amount deducted and withheld as tax for the
29 taxable year.

30 (b) The department shall publish the rate of withholding required by this
31 section.

1 (c) In this section,

2 (1) "employee" includes an individual who receives compensation on a
3 crew share basis in connection with a commercial fishing activity;

4 (2) "employer" includes a person who pays compensation to an
5 individual on a crew share basis in connection with a commercial fishing activity.

6 * Sec. 12. AS 43.20.200(b) is amended to read:

7 (b) The same period of limitation upon the assessment and collection of taxes
8 imposed under this chapter and the same exceptions to it shall apply as provided in 26
9 U.S.C. 6501 - 6503 (Internal Revenue Code). In the case of additional tax due by
10 reason of a modification, recomputation, or determination of deficiency in a taxpayer's
11 federal income tax return, the period of limitation on assessment commences from the
12 date that the amended return [NOTICE] required in AS 43.20.030(d) is filed, and if
13 no amended return [NOTICE] is filed the tax may be assessed at any time.

14 * Sec. 13. AS 43.20.340 is amended by adding new paragraphs to read:

15 (12) "individual" means a natural person, married or unmarried, adult
16 or minor, subject to payment of income tax under 26 U.S.C. (Internal Revenue Code);

17 (13) "nonresident" means an individual who is not a resident or part-
18 year resident;

19 (14) "resident" means an individual who, for the entire taxable year,
20 was domiciled in the state or resided in the state.

21 * Sec. 14. AS 43.40.010(g) is amended to read:

22 (g) The proceeds of the revenue from the tax on all motor fuels, except as
23 provided in (e), (f), and (j) of this section, shall be deposited in a special highway
24 maintenance [FUEL TAX] account in the state general fund. The legislature may
25 appropriate the annual estimated balance of the funds from the account [IT] for (1)
26 the annual operating costs for the operating division or unit in the Department of
27 Administration that has the duties and responsibilities described in
28 AS 28.05.011(b)(1) - (7), including registration, titling, and transfer of motor
29 vehicles; (2) expenditure by the Department of Transportation and Public Facilities
30 directly or as matched with available federal-aid highway money for maintenance of
31 highways; and (3) for any other purpose. Money deposited in the account under

1 this subsection does not lapse into the unrestricted general fund unless otherwise
2 provided in an appropriation [, CONSTRUCTION OF HIGHWAY PROJECTS
3 AND FERRIES INCLUDED IN THE PROGRAM PROVIDED FOR IN
4 AS 19.10.150, INCLUDING APPROACHES, APPURTENANCES AND RELATED
5 FACILITIES AND ACQUISITION OF RIGHTS-OF-WAY OR EASEMENTS, AND
6 OTHER HIGHWAY COSTS INCLUDING SURVEYS, ADMINISTRATION, AND
7 RELATED MATTERS. ALL DEPARTMENTS OF THE STATE GOVERNMENT
8 AUTHORIZED TO SPEND FUNDS COLLECTED FROM TAXES IMPOSED BY
9 THIS CHAPTER SHALL PERFORM, WHEN FEASIBLE, ALL CONSTRUCTION
10 OR RECONSTRUCTION PROJECTS BY CONTRACT AFTER THE PROJECTS
11 HAVE BEEN ADVERTISED FOR COMPETITIVE BIDS, EXCEPT THAT, WHEN
12 FEASIBLE, ARRANGEMENTS SHALL BE MADE WITH POLITICAL
13 SUBDIVISIONS TO CARRY OUT THE CONSTRUCTION OR
14 RECONSTRUCTION PROJECTS. IF IT IS NOT FEASIBLE FOR THE WORK TO
15 BE PERFORMED BY STATE ENGINEERING FORCES, THE COMMISSIONER
16 OF TRANSPORTATION AND PUBLIC FACILITIES MAY CONTRACT ON A
17 PROFESSIONAL BASIS WITH PRIVATE ENGINEERING FIRMS FOR ROAD
18 DESIGN, BRIDGE DESIGN, AND SERVICES IN CONNECTION WITH
19 SURVEYS. IF MORE THAN ONE PRIVATE ENGINEERING FIRM IS
20 AVAILABLE FOR THE WORK THE CONTRACTS SHALL BE ENTERED INTO
21 ON A NEGOTIATED BASIS].

22 * Sec. 15. AS 43.40.010(h) is amended to read:

23 (h) All motor fuel tax receipts shall be paid into the general fund and
24 distributed to the proper accounts in the general fund. Valid motor fuel tax refund
25 claims shall be paid from the special highway maintenance [FUEL TAX] account in
26 the general fund.

27 * Sec. 16. AS 43.40.010 is amended by adding a new subsection to read:

28 (m) In addition to the tax on motor fuel levied under (a) and (b) of this section,
29 there is levied an additional tax of 10 cents a gallon on all motor fuel sold or otherwise
30 transferred within the state or consumed by a user. The levy made by this subsection
31 does not apply to motor fuel described in (a)(1) - (3) or to motor fuel described in

1 (b)(1) - (3) of this section.

2 * Sec. 17. AS 43.40.030(a) is amended to read:

3 (a) Except as specified in AS 43.40.010(j), a person who uses motor fuel to
4 operate an internal combustion engine is entitled to a refund of 13 [SIX] cents a gallon
5 if

6 (1) the tax on the motor fuel has been paid;

7 (2) the motor fuel is not aviation fuel, or motor fuel used in or on
8 watercraft; and

9 (3) the internal combustion engine is not used in or in conjunction with
10 a motor vehicle licensed to be operated on public ways.

11 * Sec. 18. AS 43.40.070 is amended to read:

12 Sec. 43.40.070. Refund warrants. Upon approval of a refund claim by the
13 department, a warrant shall be drawn on the special highway maintenance [FUEL
14 TAX] account in the general fund in favor of the applicant in the amount of the claim.

15 * Sec. 19. AS 43 is amended by adding a new chapter to read:

16 Chapter 52. Excise Tax on Passengers Traveling Aboard

17 Commercial Passenger Vessels.

18 Sec. 43.52.010. Levy of excise tax on passengers traveling aboard
19 commercial passenger vessels. There is imposed an excise tax on passengers
20 traveling in the marine waters of the state aboard a commercial passenger vessel that
21 provides overnight accommodations.

22 Sec. 43.52.020. Rate of tax. The tax imposed by this chapter is levied at a
23 rate of \$30 a passenger a voyage.

24 Sec. 43.52.030. Liability for payment of tax. (a) A passenger traveling in
25 the marine waters of the state aboard a commercial passenger vessel that provides
26 overnight accommodations is liable for the tax imposed by this chapter. The tax

27 (1) shall be collected by the person who provides the travel to the
28 passenger; and

29 (2) is due and payable to the department

30 (A) by the person who provides the travel to the passenger,
31 regardless of whether the person actually collects the tax from the passenger;

1 and

2 (B) in the manner and at the times required by the department
3 by regulation.

4 (b) A passenger is not liable for the tax under this chapter if that passenger
5 was liable for the tax within the preceding 30 days.

6 (c) A person who provides travel for a passenger who, under (b) of this
7 section, is not liable for the tax under this chapter is not required to collect and pay the
8 tax to the department if the person reasonably believes that the passenger is not liable
9 for the tax under (b) of this section.

10 **Sec. 43.52.040. Disposition of proceeds.** The proceeds from the tax imposed
11 by this chapter shall be deposited in the general fund.

12 **Sec. 43.52.050. Administration.** (a) The department shall

13 (1) administer this chapter; and

14 (2) collect, and supervise and enforce the collection of, taxes due under
15 this chapter and penalties as provided in AS 43.05.

16 (b) The department may adopt regulations to carry out the purposes of this
17 chapter.

18 **Sec. 43.52.900. Definitions.** In this chapter, unless the context otherwise
19 requires,

20 (1) "commercial passenger vessel" means a vessel that is used in the
21 common carriage of passengers in commerce; "commercial passenger vessel" does not
22 include a

23 (A) vessel with an overnight accommodation capacity for fewer
24 than 12 passengers;

25 (B) noncommercial vessel or a vessel operated by the state, the
26 United States, or a foreign government; or

27 (C) vessel licensed under AS 16.05.490 and used in charter
28 service for the recreational taking of fish and shellfish;

29 (2) "marine waters of the state" means the marine bays, sounds, rivers,
30 inlets, straits, passages, canals, Pacific Ocean, Gulf of Alaska, Bering Sea, and Arctic
31 Ocean within the territorial limits of the state, and all other bodies of marine water that

1 are wholly or partially within the state or are under the jurisdiction of the state;

2 (3) "passenger" means a person with whom a common carrier has
3 contracted for carriage from one place to another.

4 * Sec. 20. AS 43.60.010(a) is amended to read:

5 (a) Except as provided in (c) of this section, every [EVERY] brewer,
6 distiller, bottler, jobber, retailer, wholesaler, or manufacturer who sells alcoholic
7 beverages in the state or who consigns shipments of alcoholic beverages into the state,
8 whether or not the alcoholic beverages are brewed, distilled, bottled, or manufactured
9 in the state, shall pay on all malt beverages (alcoholic content of one percent or more
10 by volume), wines, and hard or distilled alcoholic beverages, the following taxes:

11 (1) malt beverages at the rate of \$1.42 [35 CENTS] a gallon or fraction
12 of a gallon;

13 (2) cider with at least 0.5 percent alcohol by volume but not more
14 than seven percent alcohol by volume, at the rate of \$1.42 a gallon or fraction of a
15 gallon;

16 (3) wine or other beverages, other than beverages described in (1) or
17 (2) of this subsection, of 21 percent alcohol by volume or less, at the rate of \$3.41
18 [85 CENTS] a gallon or fraction of a gallon; and

19 (4) [(3)] other beverages having a content of more than 21 percent
20 alcohol by volume at the rate of \$18.40 [\$5.60] a gallon.

21 * Sec. 21. AS 43.60.010 is amended by adding a new subsection to read:

22 (c) A brewer shall pay a tax at the rate of 35 cents a gallon on sales of the first
23 60,000 barrels of beer sold in the state each fiscal year beginning July 1, 2003, for beer
24 produced in the United States if the producing brewery meets the qualifications of 26
25 U.S.C. 5051(a)(2). To qualify for the tax rate under this subsection, the brewer must
26 file with the department a copy of a Bureau of Alcohol, Tobacco and Firearms
27 acknowledged copy of the brewer's Notice of Brewer to Pay Reduced Rate of Tax
28 required under 27 C.F.R. 25.167 for the calendar year in which the fiscal year begins
29 for which the partial exemption is sought. If proof of eligibility is not received by the
30 department before June 1, the tax rate under this subsection does not apply until the
31 first day of the second month after the month the notice is received by the department.

1 For purposes of applying this subsection, a barrel of beer may contain no more than 31
2 gallons.

3 * Sec. 22. AS 43.05.085; AS 43.20.012, 43.20.013, and 43.20.072(d) are repealed.

4 * Sec. 23. AS 43.52.010, 43.52.020, 43.52.030, 43.52.040, 43.52.050, and 43.52.900 are
5 repealed.

6 * Sec. 24. The uncodified law of the State of Alaska is amended by adding a new section to
7 read:

8 APPLICABILITY. Sections 4 and 10 of this Act apply to tax years beginning on or
9 after the effective dates of secs. 4 and 10 of this Act.

10 * Sec. 25. The uncodified law of the State of Alaska is amended by adding a new section to
11 read:

12 INDIVIDUAL INCOME TAX RATE FOR 2003. The tax rate for 2003 under
13 AS 43.20.009, added by sec. 3 of this Act, is four percent.

14 * Sec. 26. The uncodified law of the State of Alaska is amended by adding a new section to
15 read:

16 TRANSITION: FLOOR STOCK TAXES. (a) There is imposed on every person
17 holding a license or permit under AS 04.11 a floor stock tax. The floor stock tax is imposed
18 once on those alcoholic beverages for sale or distribution that are in the person's possession or
19 under the person's control at 12:01 a.m. on the effective date of this section, including cider
20 with at least 0.5 percent alcohol by volume but not more than seven percent alcohol by
21 volume.

22 (b) The tax is imposed at the rate required under AS 43.60.010(a), as amended by
23 sec. 20 of this Act, less any tax actually paid on the same product under AS 43.60.010(a) at
24 the rate in effect on the day before the effective date of this section.

25 (c) The provisions of AS 43.05 and AS 43.10 apply to the administration,
26 enforcement, and collection of the floor stock tax levied by this section.

27 (d) A person subject to the floor stock tax shall file a return on a form prescribed by
28 the department not later than 30 days after the effective date of the section.

29 * Sec. 27. The uncodified law of the State of Alaska is amended by adding a new section to
30 read:

31 TRANSITION: REGULATIONS. The Department of Revenue may proceed to adopt

1 regulations necessary to implement the provisions of this Act. The regulations take effect
2 under AS 44.62 (Administrative Procedure Act), but not before the effective date of the
3 provision being implemented.

4 * Sec. 28. The uncodified law of the State of Alaska is amended by adding a new section to
5 read:

6 CONDITIONAL EFFECT. Sections 4, 10, 23, and 24 of this Act take effect only if
7 the validity of the tax imposed by AS 43.52 enacted by sec. 19 of this Act is challenged in
8 court and a court order finding the tax invalid is entered, becomes final, and is no longer
9 subject to appeal or petition for certiorari. The commissioner of revenue shall notify the
10 lieutenant governor and the revisor of statutes of the date of the court order described in this
11 section.

12 * Sec. 29. If secs. 4, 10, 23, and 24 of this Act take effect under sec. 28 of this Act, they
13 take effect on January 1 of the year following the year in which the court order described in
14 sec. 28 of this Act is no longer subject to appeal or petition for certiorari.

15 * Sec. 30. Section 27 of this Act takes effect immediately under AS 01.10.070(c).

16 * Sec. 31. Sections 1, 2, and 14 - 18 of this Act take effect July 1, 2002.

17 * Sec. 32. Except as provided in secs. 29 and 31 of this Act, this Act takes effect January 1,
18 2003.

3/26/02

Withdrawn

AMENDMENT #3

OFFERED IN THE HOUSE

By: Rep. Whitaker

TO: CSHB229(FIN), Draft Version "O"

- 1 Page 2, line 13, through page 7, line 15:
- 2 Delete all material, and renumber subsequent sections accordingly.

This removes sections:

3 - Tax on individuals

4 - amends to require individuals file a return to the state within 30 days of federal return

5 - allows amended returns and requires remittance of additional tax and interest if due

6 - amends AS43.20.031 to read "a corporation" instead of "taxpayer"

7 - Income from sources in the state

8 - Individual income tax credits

9 - Tax withholding on wages of individuals

10 - affecting amended returns

11 - definitions

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 229 (L&C)
(H) Publish Date: 2/19/02

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue
Title: Education Tax on Employment BRU: Revenue Operations
Component: Tax Division
Sponsor: Representative Stevens
Requester: House Finance Committee Component Number: 2476

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services	43.6	87.2	87.2	87.2	87.2	87.2
Travel						
Contractual	14.1	28.2	28.2	28.2	28.2	28.2
Supplies	1.0	2.0	2.0	2.0	2.0	2.0
Equipment	16.0					
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	74.7	117.4	117.4	117.4	117.4	117.4

CAPITAL EXPENDITURES	50.0					
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CHANGE IN REVENUES (increased)	16,199.7	38,732.7	38,732.7	38,732.7	38,732.7	38,732.7
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	124.7	117.4	117.4	117.4	117.4	117.4
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL						

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time	1	2	2	2	2	2
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

For revenue estimating purposes, we assume a little less than one-half of the estimated annual proceeds of the new tax would be withheld from worker paychecks and remitted to the state in the first six months of calendar 2003 (the last six months of Fiscal 2003). Actual revenues would depend on the timing of withholding and any refunds. We also assume -- for purposes of this fiscal note -- that the tax would take effect Jan. 1, 2003, coinciding with a state personal income tax, as discussed in Sections 2 and 3 of the Labor and Commerce committee substitute.

Operating expenses reflect what the department believes would be necessary to provide quality taxpayer services.

We also assume that the tax collected by employers would be remitted with personal income tax withholding payments, and that self-employed workers would remit their tax with their individual income tax returns.

Prepared by: Carl Meyer and Michael Williams, Revenue Auditors
Division: Tax Division
Approved by: Larry Persily, Deputy Commissioner
Agency: Department of Revenue

Phone 465-4773 or 465-3682
Date/Time 2/16/02 10:00 AM
Date 02/16/2002

For distribution information, call the Governor's Legislative Office

COMMITTEE COPY

Discussion

Section 1 amends AS 43 by adding a new chapter to impose an education tax.

AS 43.45.011 provides that the tax is \$100 a year on each individual 19 years of age or older who is employed or self-employed in the state.

AS 43.45.021 provides that an employer is to deduct and withhold \$50 from the employee's wages in each of the first two regular payrolls of the tax year, or the first two payrolls following initial employment. The employer must then remit the withheld tax to the department on or before the last day of the month following the calendar quarter in which the tax was withheld from the employee. No deduction shall be made if the employee can prove to the employer that the \$100 tax has previously been paid. The department is to provide a return form for the employer to withhold the tax.

AS 43.45.031 provides that an employer, upon request of the employee, shall furnish a record of the tax withheld from the employee. The department is to provide a form for this purpose.

AS 43.45.041 provides that the tax shall be deposited into the state general fund, accounted for separately, and may be appropriated by the legislature for education. The deposit and appropriation is not intended to create a dedicated fund.

Section 2 provides that the tax takes effect only if an act imposing an individual income tax is passed by the Twenty-Second Alaska State Legislature and becomes law.

Section 3 provides that the act takes effect on the later of (1) the effective date of an individual income tax passed by the Twenty-Second Alaska State Legislature, and (2) January 1, 2003.

Analysis

We presume the intent of the bill is not to apportion the tax based upon days or months worked during the year, but rather to levy the full \$100 tax on an individual who is either employed or self-employed on any day during the tax year. Therefore, it is possible for the tax to exceed the wages if an individual works only a day or two during the tax year.

It is also possible that the \$50 required to be withheld in the first two payroll periods will exceed the actual amount of the earned wages. Since the employer is only required to deduct the tax from the first two payrolls of the employee, it is unclear whether the employer must continue to withhold in subsequent payrolls or whether the employee must remit the additional tax. However, we note there is no provision in the bill for an employee to make payment of any tax owing.

An individual working two jobs at the beginning of the year will have both employers withhold \$50 in tax in the first payroll period. Since the two jobs cover the same time period, the employee will not be able to prove to either employer that the tax has already been paid. The employee may then establish in the second payroll period that the entire tax has already been paid so that neither employer needs to withhold any further tax.

Education Tax on Employment
CSHB 229(L&C)
February 15, 2002
Page 3 of 3 - FN#1

We see no compelling reason why the department needs to provide a form for an employer to furnish to an employee showing the amount of tax withheld. The payroll check issued to the employee should show all amounts withheld from compensation and that should be a sufficient record of withholding.

The department interprets "employed in the state" to include individuals who receive compensation for personal services rendered in the state but who otherwise may be considered employed in another state for such things as unemployment insurance, as well as self-employed individuals who engage in business activities in the state.

The bill as written would appear to apply to United States military personnel on active duty in the state but who retain a legal residence in another state. The Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C.) may preclude the application of the tax to these individuals.

The bill provides that the tax liability is that of the individual, and the employer only has the obligation to deduct the tax and remit it to the department. The tax liability is not that of the employer as the employer is not the taxpayer. If the employer fails to meet the remittance obligation, or fails to do so timely, the state may proceed under AS 43.05.220 to collect the amount required to be deducted and remitted, but there does not appear to be any civil penalty or interest provisions that would apply to the employer. The department believes that AS 43.05.220(a) and AS 43.05.225 should apply to the amounts required to be remitted by the employer.

Revenue

The Alaska Department of Labor estimates that in 2000 the number of resident and nonresident workers with unique Social Security numbers was 362,873. This differs from the 2000 Alaska Department of Labor annual average monthly employment estimate of 284,000 because it is a measurement of the number of unique workers, not jobs. For example, in any given year a business might employ more than one worker for the same job. However, this does not include the estimated 16,700 federal government workers or 33,796 self-employed workers.

The data on self-employed workers is from the Internal Revenue Service and is adjusted for individuals who might have more than one job or not have any earnings in a particular year. The number of federal workers comes from the Department of Labor. The total number of workers is then reduced by 26,042 to account for workers under the age of 19.

Prepared by Carl Meyer and Michael Williams

Alaska State Legislature

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Representative Gary Stevens

Sponsor Statement – House Bill 229

-Updated February 20, 2002-

“An Act imposing a tax on employment; and providing for an effective date.”

HB 229 would impose a tax of \$100 a year on each employed individual age 19 or older, including the self-employed. Under this bill, the employer would deduct \$50 from the employee's salary on each of their first two regular payrolls after January 1 of the calendar year. A provision has been added to prevent this tax from being taken out more than once when the employee provides proof to their new employer that the tax has already been satisfied.

The accompanied fiscal note from the Tax Division of the Department of Revenue states that it will take \$74,700 in general fund money the first year of implementation to operate the new tax program. On the other side of the ledger, the division has previously projected over \$38 million will be raised yearly in new revenue as a result of this legislation.

The tax collected under AS 43.45.021 would be deposited into the state's general fund, but accounted for separately. In turn, the legislature may then appropriate the amounts collected under this section for education.

This authorization is not intended to create a dedication of funds in violation of art. IX, sec. 7, of the Constitution of the State of Alaska.

Back up material for HB 229 / SB 165



SENATOR ALAN AUSTERMAN

Alaska State Legislature

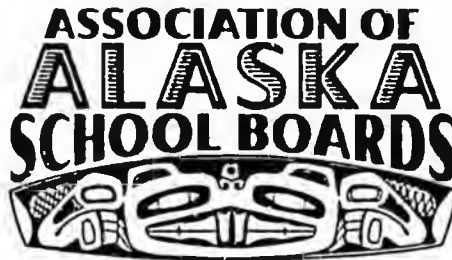
Interim: 112 Mill Bay Road, Kodiak, Alaska 99615 (907) 486-8872 • Session: State Capitol, Juneau, Alaska 99801 (907) 465-2487
senator_alan_austerman@legis.state.ak.us

WHAT SB 165 CAN ACCOMPLISH

- Senate Bill 165 would impose a tax of \$100 per year on each employed individual age 19 or older, including the self-employed.
- Under this bill, the employer would deduct \$50 from the employee's salary on each of their first two regular payrolls after January 1 of the calendar year.
- Out-of-state workers would have this amount deducted from their first two paychecks whenever they begin work.
- The fiscal note with this legislation indicates that in FY2003 over \$38 million will be raised yearly in new revenue as a result of this legislation.
- The cost to the general fund for the first year of implementation to operate the new tax program will be \$822,000.
- This legislation is a step towards paying for some of the proposed increases to education such as the general fund dollars needed to add \$145 for the base student allocation for school funding as called for in SB 1, which is almost \$29 million.
- If we continue exhausting the Constitutional Budget Reserve to balance the state budget rather than generate new revenue streams we are deficit spending. The end result of this raid on the CBR will be that prospective Permanent Fund Dividend dollars will be all that is left to tap.
- The people of Alaska are vocal on two subjects: protect the Permanent Fund and support and increase funding for education. SB 165 can be part of a long-range plan to accomplish both goals.

DISTRICT C

Kodiak Archipelago • Southeast Islands



Advocates for Alaska's Youth

Position Paper
HB 229 / SB 165 Education Tax on Employment

April 2001

The Association of Alaska School Boards (AASB) supports legislation that will enhance revenue generating measures of the State of Alaska. SB 165 Education Tax on Employment is one such measure.

Decreased oil production and a dwindling Constitutional Budget Reserve continue to fuel discussion of a long range fiscal plan for Alaska. Over the last five years state policymakers have tightened their collective budget belt. Now it is time to consider the other side of the coin—enhancing state revenues.

AASB's goal is to obtain a stable source of funding for the state's largest constitutionally mandated responsibility—education.

Alaska lawmakers have it within their grasp to address three essential components of education funding:

1. Appropriations based on need (Adequacy Study)
2. Appropriate distribution of funds (School Cost Study)
3. Maintaining buying power (inflation proofing formula/ Funding Task Force)

An education tax on employment, generating in the neighborhood of \$35 million annually, would help underwrite efforts to stabilize education funding.

The vast majority in the education community and the public support recent education reforms—standards and testing of those standards. Alaska has made remarkable gains in these areas. Schools are reporting significant changes in the way they do business. Alaska schools are requesting the support and resources necessary to ensure that every classroom is prepared to deliver on the promise that no child is left behind.

Forward thinking will maximize our financial resources *and* address the fiscal gap. Forward thinking can create a plan for a future that doesn't include cutting essential education services to our children. SB 165 is a step in the right direction.

Introduced by: Manager Jensen
Requested by: Assembly
Drafted by: Borough Clerk
Introduced: 04/05/2001
Adopted: 04/05/2001

KODIAK ISLAND BOROUGH
RESOLUTION NO. 2001-23

A RESOLUTION OF THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH
SUPPORTING SENATE BILL 165 CREATING AN EDUCATION HEAD TAX
AS PART OF SENATE BILL 1 AS A COMPREHENSIVE APPROACH
TO FILL ALASKA'S MOUNTING BUDGET GAP

WHEREAS, Senate Bill 165 would impose an annual tax of \$100 on each Alaskan worker age 19 or older, including the self-employed; and

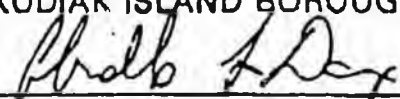
WHEREAS, the collected revenue would be deposited into the state's general fund and accounted for separately. In turn, the legislature may then appropriate the collected revenue, as set forth in this section, to education funding; and

WHEREAS, the Department of Revenue would collect between \$35 and \$36 million annually in new revenue; and

WHEREAS, Senate Bill 1 needs to generate \$29 million to increase the base student allocation for school funding; and the revenue raised would cover the \$29 million costs proposed in Senate Bill 1 which would increase funding for education;

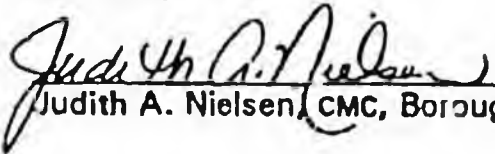
NOW, THEREFORE, BE IT RESOLVED BY THE KODIAK ISLAND BOROUGH ASSEMBLY that the Kodiak Island Borough Assembly urges the Twenty-Second Legislature to adopt Senate Bill 165.

ADOPTED BY THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH
THIS FIFTH DAY OF APRIL, 2001

KODIAK ISLAND BOROUGH


Gabrielle LeDoux, Borough Mayor

ATTEST:



Judith A. Nielsen, CMC, Borough Clerk

APR. 3. 2001 1:49PM

SSD DISTRICT OFFICE
SITKA SCHOOL DISTRICT
www.ssd.k12.ak.us

NO. 544 P. 2

PO Box 179
Sitka, Alaska 99835
Phone: (907) 747-8622
Fax: (907) 966-1260



April 2, 2001

Senator Alan Austerman
State Capitol
Juneau, AK 99801-1182

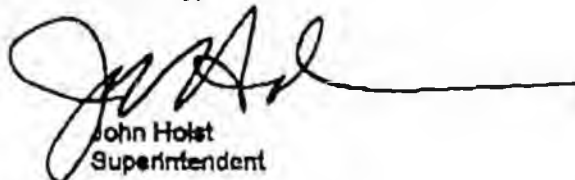
Dear Senator Austerman:

It is a pleasure to endorse your latest bill, SB 165, Head Tax.

There has been far too little discussion about a long-term fiscal plan which must include new sources of revenue. I see this bill simply as a re-instatement of the old "school tax", adjusted for inflation over the time it was originally instituted.

I applaud you for the leadership you are showing by being involved with colleagues who share your interest in the development of a fiscal plan. I am certain that the Sitka School District Board of Education will support your efforts in any way that can.

Sincerely,



John Holst
Superintendent

"Educating Today's Children to Become Tomorrow's Leaders"

Subject: Re: information

Date: Mon, 19 Mar 2001 11:38:25 -0900

From: Larry Persily <Larry_Persily@revenue.state.ak.us>

Organization: Department of Revenue

To: Suzanne Hancock <Suzanne_Hancock@iegis.state.ak.us>

CC: Stephen C Slotnick <neil_slotnick@revenue.state.ak.us>,
Brett Fried <brett_fried@revenue.state.ak.us>,
Larry Meyers <larry_meyers@revenue.state.ak.us>

Suzanne,

Our recollection of the old \$10 school head tax is as follows:

- * Every wage earner in the state paid the \$10 out of his or her first paycheck.
- * Employers collected and remitted the money.
- * Workers who had more than one job during a calendar year would have the \$10 deducted from the first paycheck at each job and could apply for refunds from the state (though few did).
- * Self-employed Alaskans paid the \$10 as part of their personal income tax return.
- * Non-working Alaskans did not pay the tax.

If you reimposed the tax at \$100 per worker, to be deducted from the first paycheck of every wage earner:

- * You would collect between \$35 million and \$36 million a year.
- * You would have to set up a system for refunds to workers who had multiple jobs, unless you wanted them to pay \$100 for each job. Although few people filed for the \$10 refunds, we would expect most people would file for the \$100 refunds.
- * And you would have a problem collecting from self-employed Alaskans and out-of-staters. Without an income tax return, you would have to set up a self-reporting return to collect the \$100 from such people.

As for cost of administering the problem, it would be easiest if you didn't bother with self-employed Alaskans. You could then have the employers handle all the work and report and remit the money through the quarterly employment security (unemployment taxes) report. We'd guess at maybe \$500,000 a year to process, collect, audit, etc.

But, if you wanted to be fair and charge the same \$100 tax to self-employed Alaskans and out-of-staters, you would need tax returns and staff at Revenue to handle the workload (and to keep taxpayers honest, especially self-employed people who live out of state). Such a tax program could run maybe \$2 million a year to administer.

Let me know if you have any questions.

Larry

3/26/02

22-LS0842\O.2

Kurtz

3/25/02

withdrawn
AMENDMENT 2

OFFERED IN THE HOUSE

BY REPRESENTATIVE CROFT

TO: CSHB 229(FIN), Draft Version "O"

- 1 Page 2, lines 19 - 30:
- 2 Delete all material and insert:
- 3 "(b) The tax rate is four percent."
- 4
- 5 Page 10, lines 11 - 14:
- 6 Delete all material.
- 7
- 8 Renumber the following bill sections accordingly.
- 9
- 10 Page 11, line 5:
- 11 Delete "Section 22"
- 12 Insert "Section 21"
- 13
- 14 Page 11, line 7:
- 15 Delete "secs. 23 and 24"
- 16 Insert "secs. 22 and 23"

22-LS08420
Kurtz
3/23/02

adopted

CS FOR HOUSE BILL NO. 229(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVE STEVENS

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to taxation of income; relating to taxation of alcoholic beverages;
 2 increasing the motor fuel tax levied and collected on motor vehicles and on certain fuel
 3 for internal combustion engines not used in or in conjunction with a motor vehicle;
 4 directing separate accounting of amounts derived from motor vehicle licensing,
 5 registration, and transfers and related activities; authorizing the appropriation of the
 6 proceeds of the motor fuel tax on motor vehicles and the amounts separately accounted
 7 for in the special highway fuel tax account, redesignated as the special highway
 8 maintenance account and amended as to its purposes and limitations on its uses, to meet
 9 the costs of activities relating to motor vehicle licensing and registration and for the uses
 10 identified in the law establishing the account; and providing for an effective date."

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

12 * Section 1. AS 28.10 is amended by adding a new section to read:

1 **Sec. 28.10.595. Separate accounting.** Except as to the proceeds of fees for
2 which a different form of accounting and disposition is otherwise specifically provided
3 in this chapter,

4 (1) the fees collected by the department under this chapter shall be
5 deposited in the special highway maintenance account in the state general fund
6 described in AS 43.40.010(g); and

7 (2) the legislature may appropriate the annual estimated balance of the
8 funds from the special highway maintenance account for the purposes described in
9 AS 43.40.010(g).

10 * **Sec. 2.** AS 37.05.146(b)(4) is amended by adding a new subparagraph to read:

11 (AAA) special highway maintenance account
12 (AS 43.40.010(g)).

13 * **Sec. 3.** AS 43.20 is amended by adding a new section to read:

14 **Sec. 43.20.009. Tax on individuals.** (a) There is imposed for each taxable
15 year an income tax on the taxable income of every

16 (1) resident individual; and

17 (2) nonresident and part-year resident individual with income from
18 sources in the state.

19 (b) As soon as practicable after September 30 of each year, the department
20 shall publish the applicable tax rate under this subsection for the following calendar
21 year. The applicable tax rate is:

22 (1) four percent if, on September 30 of that year, the unaudited balance
23 in the budget reserve fund created by art. IX, sec. 17, Constitution of the State of
24 Alaska, was equal to or less than \$2,000,000,000;

25 (2) two percent if, on September 30 of that year, the unaudited balance
26 in the budget reserve fund created by art. IX, sec. 17, Constitution of the State of
27 Alaska, was more than \$2,000,000,000 but not more than \$2,500,000,000; or

28 (3) one percent if, on September 30 of that year, the unaudited balance
29 in the budget reserve fund created by art. IX, sec. 17, Constitution of the State of
30 Alaska, was more than \$2,500,000,000.

31 (c) For a resident individual, the tax under this section is the sum of the

1 taxpayer's taxable income multiplied by the tax rate described in (b) of this section.

2 (d) For a part-year resident individual or a nonresident individual, the tax
3 under this section shall be computed by applying the rate described in (b) of this
4 section to the individual's taxable income, and multiplying the result by a fraction, the
5 numerator of which is taxable income from all sources in the state and the
6 denominator of which is taxable income from all sources.

7 (e) In this section, "taxable income" has the meaning given in 26 U.S.C. 63
8 (Internal Revenue Code).

9 * Sec. 4. AS 43.20.030(a) is amended to read:

10 (a) If an individual, a corporation, or a partnership that has a corporation as a
11 partner, is required to make a return of income under the provisions of the Internal
12 Revenue Code, the individual, corporation, or partnership [IT] shall file with the
13 department, within 30 days after the federal return is required to be filed, a return
14 setting out

15 (1) the amount of tax due under this chapter, less allowable credits
16 and payments claimed against the tax; and

17 (2) other information that the department requires for the purpose of
18 carrying out the provisions of this chapter [THAT THE DEPARTMENT
19 REQUIRES].

20 * Sec. 5. AS 43.20.030(d) is amended to read:

21 (d) A taxpayer, upon request by the department, shall file with the taxpayer's
22 state return [FURNISH TO THE DEPARTMENT] a true [AND CORRECT] copy of
23 the tax return [WHICH THE TAXPAYER HAS] filed with the United States Internal
24 Revenue Service. Every taxpayer shall file an amended return with [NOTIFY] the
25 department, and remit any additional tax and interest due, within [IN WRITING
26 OF ANY ALTERATION IN, OR MODIFICATION OF, THE TAXPAYER'S
27 FEDERAL INCOME TAX RETURN AND OF A RECOMPUTATION OF TAX OR
28 DETERMINATION OF DEFICIENCY, WHETHER WITH OR WITHOUT
29 ASSESSMENT. A FULL STATEMENT OF THE FACTS MUST ACCOMPANY
30 THIS NOTICE. THE NOTICE SHALL BE FILED WITHIN] 60 days after a [THE]
31 final determination of the taxpayer's federal tax liability [MODIFICATION,

1 RECOMPUTATION OR DEFICIENCY, AND THE TAXPAYER SHALL PAY THE
2 ADDITIONAL TAX OR PENALTY UNDER THIS CHAPTER]. For purposes of
3 this subsection [SECTION], a final determination means [SHALL MEAN] the date
4 [TIME] that an amended federal return is filed, the date a federal [OR A NOTICE
5 OF DEFICIENCY OR AN] assessment is made, or the date the restrictions on
6 assessment are waived by [MAILED TO] the taxpayer [BY THE INTERNAL
7 REVENUE SERVICE, EXCEPT THAT IN NO EVENT WILL THERE BE A FINAL
8 DETERMINATION FOR PURPOSES OF THIS SECTION UNTIL THE
9 TAXPAYER HAS EXHAUSTED RIGHTS OF APPEAL UNDER FEDERAL
10 LAW].

11 * Sec. 6. AS 43.20.031(c) is amended to read:

12 (c) In computing the tax under this chapter, a corporation [THE
13 TAXPAYER] is not entitled to deduct any taxes based on or measured by net income.

14 * Sec. 7. AS 43.20.040 is repealed and reenacted to read:

15 **Sec. 43.20.040. Income from sources in the state.** (a) In this chapter,
16 income from sources in the state includes

17 (1) compensation for personal services rendered in the state;
18 (2) working in the state for salary or wages;
19 (3) income from real or tangible personal property located in the state;
20 (4) income from stocks, bonds, notes, bank deposits, and other
21 intangible personal property having a taxable or business situs in the state; however,
22 the receipt of interest income from intangible property in the state does not alone
23 establish a taxable or business situs in the state;

24 (5) rentals and royalties for the use of or for the privilege of using, in
25 the state, patents, copyrights, secret processes and formulas, good will, marks, trade
26 brands, franchises, and other property having a taxable or business situs in the state;

27 (6) income distributed from a trust established under or governed by
28 the laws of the state;

29 (7) income of whatever nature from a source with a taxable or business
30 situs in the state.

31 (b) Except as provided in (a)(4) of this section, in this section, income is from

1 a source with a taxable or business situs in the state if it is attributed to or derived from

2 (1) business facilities or property in the state;

3 (2) business, farming, or fishing activities in the state;

4 (3) conducting in the state the management or investment function for
5 intangible property;

6 (4) a partnership or limited liability company conducting business
7 activities in the state;

8 (5) a corporation transacting business activities in the state that has
9 elected to file federal returns under subchapter S of the Internal Revenue Code;

10 (6) any other activity from which income is received, realized, or
11 derived in the state.

12 (c) If a business, trade, or profession is carried on partly inside and partly
13 outside the state, other than the rendering of purely personal services by an individual,
14 the income from sources in the state shall be determined as provided in AS 43.19.

15 * **Sec. 8.** AS 43.20 is amended by adding a new section to article 1 to read:

16 **Sec. 43.20.046. Individual income tax credits.** (a) For a resident, the
17 income tax imposed on that resident by another state or territory of the United States
18 for the taxable year, on income derived from sources in that state or territory, is
19 allowed as a credit against the tax under this chapter.

20 (b) The credit under (a) of this section is determined by multiplying the tax
21 computed under this chapter by a fraction, the numerator of which is the income
22 derived from sources in the other state or territory and the denominator of which is
23 income derived from all sources. The credit under (a) of this section may not exceed
24 the actual tax paid to the other state or territory.

25 (c) To the extent required by federal law, an individual is allowed as a credit
26 against the tax under this chapter 10.2 percent of interest received by the individual in
27 the taxable year upon obligations unconditionally backed by the full faith and credit of
28 the United States.

29 (d) An individual is allowed only the state credits provided in this section.
30 The total state credit allowed under this section may not exceed the tax liability for the
31 taxable year for the individual. A credit may not be carried, in whole or in part, to a