

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672

10282 HOUSE JUDICIARY

127

**HB**

**210**



Moved by  
Rokeberg,  
Adopted

AMENDMENT #1

OFFERED IN THE HOUSE

BY REPRESENTATIVE ROKEBERG

TO: CSHB 210( ), Draft Version "C"

1 Page 1, line 4, following "murder,":

2 Insert "felony"

3

4 Page 1, line 7, following "murder,":

5 Insert "felony"

6

7 Page 2, line 1:

8 Delete "AS 11.41.427 - 11.41.458"

9 Insert "AS 11.41.427 - 11.41.438 and 11.41.450 - 11.41.458"

Berkowitz

Adapted

Conceptual Amendment #2

Leave 16yr SOL for Class C felonies

adults only ← Sexual assault  
Sexual abuse of a minor



unless penetration



Class C's that involve sexual penetration  
are still SOL unlimited

BenKowitz

FAILS

Conceptual Amendment #3

do away w/ SOL in the civil code  
fix same stuff  
make equal across board

22-LS0782\C  
Luckhaupt  
4/3/01

*Adopted*

**CS FOR HOUSE BILL NO. 210( )**

**IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-SECOND LEGISLATURE - FIRST SESSION**

BY

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES MEYER, Guess, Dyson, Croft, Hudson

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to sexual assault and sexual abuse of a minor."

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

3 \* Section 1. AS 12.10.010 is amended to read:

4           **Sec. 12.10.010. General time limitations.** A prosecution for murder, sexual  
5 abuse of a minor, or felony sexual assault, may be commenced at any time. Except  
6 as otherwise provided by law, a person may not be prosecuted, tried, or punished for  
7 an offense other than murder, sexual abuse of a minor, or felony sexual assault,  
8 unless the indictment is found or the information or complaint is instituted no later  
9 than

10                           (1) 10 years after the commission of a felony offense in violation of  
11 AS 11.41.120 - 11.41.370, 11.41.450 - 11.41.530, [AS 11.41.120 - 11.41.530] or in  
12 violation of AS 11.46.400; or

13                           (2) five years after the commission of any other offense.

14 \* Sec. 2. AS 12.10.020(c) is amended to read:

15                           (c) Even if t. general time limitation has expired, a prosecution under

1           AS 11.41.427 - 11.41.458 [AS 11.41.410 - 11.41.458], AS 11.66.110 - 11.66.130, or  
2           former AS 11.41.430, for an offense committed against a person under the age of 18,  
3           may be commenced at any time.

4           \* **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to  
5           read:

6           APPLICABILITY. The extension of the statute of limitations for sexual abuse of a  
7           minor and felony sexual assault provided in sec. 1 of this Act applies to all offenses occurring

8                     (1) on or after the effective date of this Act; and

9                     (2) to all offenses occurring before the effective date of this Act if the statute  
10           of limitations applicable to that offense on the day before the effective date of this Act has not  
11           expired, including any specific time periods for that offense under AS 12.10.020, as that  
12           section read the day before the effective date of this Act, and any period when the limitations  
13           period did not run under AS 12.10.040.



# REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 19

## SPONSOR STATEMENT

### CSHB 210( )

**“An Act relating to sexual assault and sexual abuse of a minor.”**

House Bill 210 amends existing law by removing the statute of limitations on felony sexual assault.

Currently, there are two crimes that do not have a statute of limitations, murder and sexual abuse of a minor. HB 210 adds sexual assault to this list of extreme crimes against a person. The prosecution of sexual assault should not be limited by time. Sexual assault has life long impacts on victims, their families and friends, and our society.

New technology in DNA testing and evidence collection is allowing greater efficiency and certainty in proving crimes. New scientific procedures used in evidence collection and testing better preserve the purity of evidence. If sexual assault can be proven even 20 years from the time it occurs, our state laws should protect a victim's right to justice.

HB 210 provides the opportunity to prosecute a felony sexual assault crime no matter how much time has passed.

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# REPRESENTATIVE KEVIN MEYER

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HOUSE DISTRICT 19

## SPONSOR STATEMENT

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# FISCAL NOTE

STATE OF ALASKA  
2001 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: HB 210  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Administration  
Title: "An Act relating to sexual assault and sexual abuse of a minor." BRU: Legal & Advocacy Svc.  
Component: Public Defender Agency  
Sponsor: Representative Meyer  
Requester: (H) Judiciary Component Number: 1631

**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						
<b>TOTAL OPERATING</b>	*	*	*	*	*	*

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	*	*	*	*	*	*

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)

This bill would eliminate the statute of limitations on prosecutions for any degree of sexual assault.

There would be some fiscal impact on the Public Defender Agency if this bill becomes law. Generally speaking, older cases present unique difficulties. They can be much harder to investigate. And often there are issues (such as "recovered memory") in which psychological testimony is required.

Therefore, even if there were relatively few cases, the cases that are prosecuted will most likely be expensive to defend. But, it is not possible to predict the number of cases that would be brought. Therefore, we are submitting an indeterminate fiscal note.

Prepared by: Barbara Brink, Director Phone (907) 334-4414  
Division: Public Defender Agency Date/Time April 9, 2001  
Approved by: Jim Duncan, Commissioner Date 4/9/01  
Agency: Department of Administration

For distribution information, call the Governor's Legislative Office

# FISCAL NOTE

**STATE OF ALASKA**  
**2001 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 210  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correctio \_\_\_\_\_ Dept. Affected: Law  
 Title "An Act relating to sexual assault and sexual BRU Criminal Division  
abuse of a minor." Component 1st-4th Judicial District  
 Sponsor Representative Meyer  
 Requester House Judiciary Committee Component No. 2198-99;2201;61;79

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

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE (Thousands of Dollars)**

FUND SOURCE	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2001) cost: 0.0  
 Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget pro

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** *(Attach a separate page if necessary)*  
 HB 210 removes the statute of limitations on when the crime of sexual assault against an adult may be prosecuted. Under current law, the crime may not be brought for prosecution after ten years have passed. (There is no statute of limitations on sexual assault or sexual abuse of a minor.)  
  
 The Department of Law expects only a handful of cases to result from passage of this legislation. As a practical matter, it is much more difficult to prosecute a case the older it gets. The department anticipates it can handle any increase in caseload with existing resources.

Prepared by: Joan M. Kasson Phone 465-5370  
 Division Attorney General's Office Date/Time 4/6/01 4:36 PM  
 Approved by: Bob Meiners for Bruce M. Botelho, Attorney General Date 4/6/01  
 Agency Department of Law

For distribution information, call the Governor's Legislative Office

# FISCAL NOTE

STATE OF ALASKA  
2001 LEGISLATIVE SESSION

BILL NO. HB 210

Revision Date/Time (Note if correction) \_\_\_\_\_ Dept. Affected \_\_\_\_\_  
 Title Statute of Limitation for Sex Crimes BRU Alaska Court System  
 Component Trial Courts  
 Sponsor Representative Meyer  
 Requester House Judiciary Component No. 768

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

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2001) cost: 0.0

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

The court system does not anticipate any fiscal impact from the passage of HB 210.

Prepared by: Douglas Wooliver Phone 463-4750  
 Division Alaska Court System Date/Time 4/06/01 2:30 p.m.  
 Approved by: Stephanie Cole Date \_\_\_\_\_  
 Agency Alaska Court System

For distribution information, call the Governor's Legislative Office

## DNA LEGISLATION & NEWS

**Smith  
Alling  
Lane**

*A Professional Services Corporation  
Governmental Affairs  
Attorneys At Law*

1025 Connecticut Ave. # 1012  
Washington, D. C. 20036  
202-258-2301

1102 Broadway Plaza # 403  
Tacoma, WA 98402  
253-627-1091

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Tim Schellberg [tim@smithallinglane.com](mailto:tim@smithallinglane.com) and Lisa Hurst [lhurst@smithallinglane.com](mailto:lhurst@smithallinglane.com) of Smith Alling Lane, P.S. provide nationwide governmental affair services to Applied Biosystems. As part of the firm's representation weekly reports are generated which identify recent state and federal legislation and news articles. Applied Biosystems has authorized Smith Alling Lane to make these reports available to anyone that requests them through this web site.

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*The information presented in these reports does not necessarily reflect the viewpoints of Applied Biosystems or Smith Alling Lane, P.S.*

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11. "Legislators push for crime lab changes." The Associated Press State & Local Wire, February 18, 2001.  
Arkansas legislators considering how to ease the load of state crime lab employees who are often torn between the lab and the witness stand – teleconferencing is a possible solution. Also, the new crime lab under construction at the University of Arkansas Community College at Hope needs another \$200,000 to \$300,000 to equip the lab and finish construction.
12. "Sloan Man Admits Robberies, Burglaries." The Buffalo News, February 18, 2001.  
A New York man has plead guilty to several robberies and burglaries after cooperation between two New York local police departments led to the discovery of DNA-linked evidence that linked the man to several crimes.
13. "DNA 'Cold Hit' Validated Attack For Victim." The Richmond Times Dispatch, February 18, 2001.  
Details the story of a "cold hit" that was made through Virginia's DNA database. The inmate was currently in prison for another violent crime, when new DNA tests linked him to the unsolved rape from 1981. The inmate admitted to the crime when confronted. 135,000 of Virginia's 200,000 offender DNA samples have been tested.
14. "DNA Ruling Appealed." The Calgary Sun, February 17, 2001.  
A Nova Scotia (Canada) prosecutor is challenging a judge's refusal to force a convict to submit a DNA sample to the country's offender DNA database. The man had plead guilty to assaulting a woman with a knife, a baseball bat and a radio cord, threatening the woman and breaching a court order to keep the peace. This is the first of two such cases the Crown will be appealing.
15. "Gilmore's Budget Ideas Fail To Move Legislators." The Richmond Times Dispatch, February 17, 2001.  
In order to pay for a phase-out of the state car-tax, the Virginia Governor's proposed budget includes a reduction in DNA testing at the forensic laboratory by \$300,000.
16. "Legislative Roundup." The Santa Fe New Mexican, February 17, 2001.  
The New Mexico Senate has unanimously approved a measure to allow inmates greater access to post conviction DNA testing. Requests for testing must be made by July 1, 2002.
17. "Police may test DNA without suspect's consent in hunt for terrorists." AP Worldstream, February 16, 2001.  
Key government advisers in Greece have ruled that police do not need a suspect's consent to test DNA in cases of serious crime. But the government's Data Protection Authority said such testing should be allowed only if new legislation is enacted to prevent the abuses and to specify which crimes are considered "serious."
18. "Senate passes bill to take DNA samples from violent felons." The Associated Press State & Local Wire, February 16, 2001.  
A bill to take DNA samples from violent felonies has passed the Kentucky Senate unanimously. The Corrections Department estimates the cost at about \$48,000 per year. The bill was originally drafted to require DNA samples from all felons, but was narrowed to violent felons to minimize the expense. Senators also delayed the start of sampling until July 2002 unless federal funds are obtained earlier.

[Fwd: DNA Database Links Salinas Man to 1981 Murder]

**Subject:** [Fwd: DNA Database Links Salinas Man to 1981 Murder]  
**Date:** Fri, 26 Jan 2001 06:56:00 -0900  
**From:** Delbert Smith <delbert\_smith@dps.state.ak.us>  
**Organization:** Department of Public Safety  
**To:** Royce Weller <royce\_weller@dps.state.ak.us>

Royce,  
For DNA file and use during session.

--

Del Smith  
Deputy Commissioner  
Department of Public Safety  
907-465-4322  
907-465-4362 (fax)  
delbert\_smith@dps.state.ak.us  
E-page i611@pager.state.ak.us

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**Subject:** DNA Database Links Salinas Man to 1981 Murder  
**Date:** Thu, 25 Jan 2001 11:12:06 -0900  
**From:** Chris Stockard <christopher\_stockard@dps.state.ak.us>  
**Reply-To:** christopher\_stockard@pssun02x.dps.state.ak.us  
**Organization:** Department of Public Safety  
**To:** George M Taft JR <george\_taft@dps.state.ak.us>,  
Delbert W Smith <delbert\_smith@dps.state.ak.us>,  
Kenneth E Bischoff <kenneth\_bischoff@dps.state.ak.us>

"DNA Database Links Salinas Man to 1981 Murder"  
KPIX Online (01/23/01)

The 20-year-old kidnapping/rape/murder case of Sylvia Edgren in Monterey, Calif., has been solved thanks to a state DNA database. The state Department of Justice made a direct match of DNA at the scene with DNA of Salinas resident Michael Adams, which is stored in the California Convicted Felon Database. His DNA was included in records because of an assault crime he committed 14 years ago. In California, authorities have taken DNA samples from all convicted violent offenders for years, though the database has only been up and running since 1994. Funding for the project took time, and currently only a portion of the samples are entered into the database. A direct match or "cold hit" can significantly help authorities build a case against an offender.

---

Del Smith <delbert\_smith@dps.state.ak.us>

NPR  
Morning Edition

March 8, 2001

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BOB EDWARDS, host:

This is MORNING EDITION from NPR News. I'm Bob Edwards.

DNA is best known for proving the innocence of people who have been wrongly convicted and getting them out of prison. A quieter, more profound revolution is happening at the crime scene, where investigators are gathering evidence in developing their suspects. Virginia leads the nation with 140,000 criminal profiles in its DNA data bank. NPR's Barbara Bradley reports.

BARBARA BRADLEY reporting:

It was her first night back in Charlottesville. The senior at the University of Virginia, who asked not to be identified, fell asleep, but was awakened by someone moving around in her room. She reached out and felt the barrel of a gun. 'Where is your wallet?' the man said.

Unidentified Woman #1: I was so flustered at that point, I had no idea where I'd put my wallet. I was like, 'It's either on the floor of my bedroom or in my car.' And he said, 'Well, how much do you have in it?' and I said, 'I only have \$5.' And he said, 'Well, that's not enough. You're going to pay.'

BRADLEY: That was when he raped her. He made her take a shower and walked her down to the kitchen, where he drank a beer. All the time, she was blindfolded.

Unidentified Woman #1: I saw an outline of him. Like I could tell that he was about 5'10", fat, African-American, male, you know, mid-20s. That's about all I could tell. And so I could have never picked him out of a lineup, ever.

BRADLEY: Charlottesville police developed a list of about 40 suspects, but quickly ruled them out. A few weeks later, Lieutenant Chip Harding, who is the chief of investigations, got a phone call from the Virginia Department of Forensic Science. They were testing semen from the girl's sheets and saliva from the beer can. The DNA profile matched one in the state data bank.

Lieutenant CHIP HARDING (Charlottesville Police Department): And I can remember getting the call from forensic scientists in Richmond and--it's emotional now, even talking about. But dropping the phone and just jumping up and down and going, 'Oh, my God, I can't believe this. We know who did this to her.'

BRADLEY: It turned out that the man had a criminal record, not for sexual assault, but for gang-related violence. But since Virginia takes DNA samples from every convicted felon, his name and Social Security number popped up. The man was convicted. This kind of result has radically changed the way police work in Charlottesville, Virginia. Sergeant Ralph Barfield(ph), who heads up forensic investigations, is almost breathless with examples. The rapist who blew out a candle before attacking his victim. The candle had his saliva. The burglar who wore a pair of socks on his hands, left no fingerprints, but the discarded socks contained his skin cells. They found a bank robber who dropped his ski mask, and identified a murderer from the sweat in his baseball cap. Barfield says it's nothing like the old days.

Sergeant RALPH BARFIELD: You know, you had to have a half-dollar size amount of blood just to get a blood type. Now--oh, it's so nice now. Now I don't have to have blood at all. You know, you drink from your coffee cup. I know how to handle your coffee cup, I got your DNA. You and I shake hands, I know how to handle it. I've got your DNA. As long as I know how to do my part, collecting and the packaging and storing and transporting to prevent the cross-contamination, I got you. I got you.

BRADLEY: Barfield says another beauty of DNA is that it never grows old. In that sense, he says, it's a better witness than people, whose memories fade over time.

(Soundbite of alarm sounding; door opening)

Sgt. BARFIELD: This one is referred to as the archive room, and the only thing that goes into this room are cases on appeal, unsolved cases.

BRADLEY: The room is the size of a garage and stacked to the ceiling with evidence kits from unsolved murders and rapes, five, 10, 15 years old. Barfield points to a rape kit.

Sgt. BARFIELD: Sooner or later with the data bank. his blood's going to show up in that data bank, and we'll come back for him.

BRADLEY: Virginia has, by far, the largest data bank of all the states, and now it's paying off not just in solving crimes, but in preventing them. The reason is the link between property crimes and rape.

Unidentified Woman #2: Negative 131. I need you to start towards 810 Harris Street, southern State, for a phone-in alarm showing general burglar. I'll get you another unit as soon as one clears.

BRADLEY: It's only breaking and entering, but Barfield sends a forensic detective to the crime scene anyway.

(Soundbite of briefcase being opened)

BRADLEY: The trailer home door has been kicked in. The D/D is missing. There's no broken glass, no blood, no fingerprints, no DNA. But Barfield says they always send a forensic detective, because if the burglar had left his DNA, he could easily show up as a rapist.

Sgt. BARFIELD: Another thing we've learned is that guys that start out doing burglary, they're just a thief, they're just breaking into your house to steal your stereo, but lo and behold, your wife, your daughter, your girlfriend happens to be there and they stumble into them and it becomes a crime of opportunity and they go, 'Oh, well.' What we've found is so many of the burglars are going from burglary, they move up to rape.

BRADLEY: Paul Ferrara says that's borne out by statistics. Ferrara is the director of Virginia's Department of Forensic Science and the man credited with putting Virginia on a scientific fast track. Ferrara says more than half the rapists they have caught were already in the data bank, not for sexual assault, but for burglary. He says that's why Virginia takes the DNA of all felons. If you don't, he says, you give someone a free rape. But Ferrara says there's a problem. Most states are just beginning to create their own data bank, so all a felon has to do to elude detection is leave Virginia.

Mr. PAUL FERRARA (Director, Virginia Department of Forensic Science): Somebody who finds themselves in our DNA data bank may be well inclined to take his criminal activities to some other state, thinking that, 'Well, I've got to get out of Virginia because, you know, I'm forever in that data bank, and I move or do anything and I'm going to get nailed. So I'll go to a neighboring state or I'll go out on the West Coast.'

BRADLEY: Several states have no data bank at all; many are just getting going. Christopher Asplin, who heads a national commission on the future of DNA, says there are more than a million violent offenders who should be in a DNA data bank, but aren't because of cost.

Mr. CHRISTOPHER ASPLIN: One example is we know that we have in excess of 180,000 rape kits across the country which should be DNA tested, and those profiles should be put in the database but have not. Essentially what you have is a very powerful technology, a very powerful database that just doesn't have enough data in it.

BRADLEY: Congress passed a bill to gives states \$170 million, but that money wasn't included in the budget, so Virginia is forging ahead on its own.

Ms. LISA SHERMYER (Virginia Department of Forensic Science): What you're seeing right now is you're seeing laboratory tables where the examiners are working. They're looking at evidence from criminal cases, looking for things like blood.

BRADLEY: Lisa Shermeyer(ph), at the Virginia Department of Forensic Science, shows off a roomy, new laboratory. She says just getting a useable sample can take a month. It's then mathematically translated into what looks like a bar code and entered into the data bank.

Ms. SHERMYER: When you find that needle in a haystack, it's a good day. It's an even better day when that needle hits on a convicted felon in the data bank. You're suddenly the one providing investigative information to the police, and that's a really good feeling.

BRADLEY: The computer searches two sets of data banks. One has the DNA of all convicted felons in Virginia. The other includes DNA from all unsolved crimes. Just before 4 PM, Shelly Smith(ph) positions herself in front of the computer.

Ms. SHELLY SMITH: When I received the case, the information that I received was that the victim had been drugged by an unknown individual and then raped.

BRADLEY: There's no suspect in the case, since the woman never saw the perpetrator, and so the data bank is, for now, their only hope.

(Soundbite of typing)

Ms. SMITH: What is going on?

BRADLEY: Smith enters the information. We wait for several long seconds. I ask how long this generally takes.

Ms. SMITH: It's going to take a while.

Unidentified Woman #3: Generally...

Ms. SMITH: Oh, my. I got a hit.

BRADLEY: The DNA matches the profile of a convicted felon. It will be double-checked before Smith calls up the detective who submitted the DNA. This is really only the beginning of the case. Police have to track down the man and build a case against him. But all in all, a one-in-a-billion match is a pretty good place to start. Barbara Bradley, NPR News, Charlottesville, Virginia.

EDWARDS: The time is 19 minutes past the hour.

In the next half-hour of MORNING EDITION, Ossie Davis and Ruby Dee on their partnership on and off stage.

Mr. OSSIE DAVIS: We were one of the lucky ones where the thing that brought us together kept us together--the profession, being actors.

BOB EDWARDS, host:

In Hawaii, cross-examination is under way in a Navy court of inquiry into last month's deadly submarine crash. Lawyers for the officers involved are trying to poke holes in the Navy's investigation. That investigation, which was completed in only a few days, led to the court of inquiry now under way in Pearl Harbor. The accident happened when the USS Greenville struck a Japanese fishing boat while surfacing, killing nine people. NPR's Andy Bowers reports the sub's commander and his second in command are questioning the evidence against them.

## THE FBI and DNA

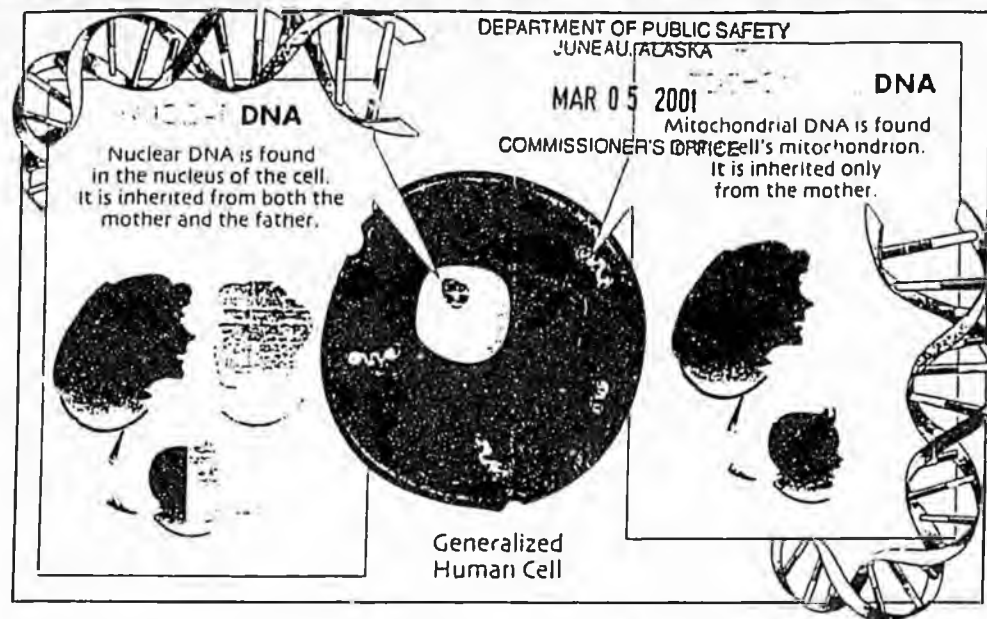
The FBI Laboratory is one of the largest and most comprehensive forensic laboratories in the world, and is the only full-service Federal forensic laboratory. The FBI Laboratory examines evidence free-of-charge for Federal, state, and local law enforcement agencies and provides expert witness testimony regarding the results of forensic examinations. Several sections, organized into specialized units, provide assistance with the collection, preservation, and analysis of evidence from crime scene investigations. In support of the overall mission of the Laboratory, the DNA Analysis Unit I, DNA Analysis Unit II, and the Forensic Science Systems Unit have a DNA and Databasing Initiative.

The DNA Analysis Unit I provides serological and nuclear DNA testing services to all Federal agencies, United States Attorneys, military tribunals, duly constituted state, county, and municipal law enforcement agencies in the United States, or Territories of the United States, in conjunction with criminal investigative matters and provides expert witness testimony in criminal judicial proceedings on both a national and international level. The DNA Analysis Unit II is responsible for three major programs: mitochondrial DNA casework, missing persons, and the Federal Convicted Offender Program. The Combined DNA Index System (CODIS) blends forensic science and computer technology into an effective tool for solving violent crimes. CODIS enables Federal, state, and local crime laboratories to exchange and compare DNA profiles electronically, thereby linking crimes to each other and to convicted offenders.

## NUCLEAR DNA

The DNA Analysis Unit I (DNAUI) examines evidence from crime scenes to determine if biological material, such as blood and semen, is present. If present the material is subjected to DNA testing. In addition to these common stains, DNA profiles can be obtained from a variety of other samples as well. For example, cigarette butts, postage stamps, hat bands, shirt collars, and other items that have been in close contact with an individual can often yield a genetic profile.

Traditionally, DNA was analyzed using RFLP (restriction fragment length polymorphism) technology. This form of DNA typing used large fragments of DNA that were separated by size. Although highly informative, many forensic samples were too small or degraded to be analyzed.



The advent of PCR (polymerase chain reaction) allowed for the analysis of small or degraded samples by making copies of the original sample. Currently, the DNAUI and most of the forensic community use the PCR process to analyze regions of DNA called STRs (short tandem repeats). This typing procedure has the ability to analyze small degraded samples and provide a high level of information. Often, the source of an evidence sample can be determined.

### DNAUI AND CODIS

The DNAUI's CODIS program captures relevant profiles from current cases and gathers probative data from old cases to be uploaded into the national database for comparisons with other participating CODIS laboratories. Additionally, the DNAUI is maintaining RFLP capabilities for samples that need to be compared to old cases that were analyzed with the RFLP method. This comprehensive approach to CODIS entries provides the database with quality information that can be used to assist many criminal investigations.

### SUCCESS STORY

July 1999: The FBI Laboratory's DNA Analysis Unit I through its Unknown Subject Sexual Assault

Program with the Washington, D.C. Police Department received ten sexual assault cases that the National DNA Index System matched to three sexual assaults in Jacksonville, FL. The Jacksonville cases occurred in March, April and September of 1998. CODIS had previously linked the Jacksonville cases to one another in May 1999. DNA evidence was crucial in these three cases because none of the victims were able to describe the offender and no other physical evidence was left at the crime scenes. Five of the ten Washington, D.C. cases had already been linked together using CODIS before the national hit with Florida. The other D.C. cases were identified at later dates. In early July 1999, Leon Dundas, who is now deceased, was identified through DNA analysis as the perpetrator of the thirteen assaults.

## MITOCHONDRIAL DNA

The DNA Analysis Unit II examines biological items of evidence from crime scenes to determine the mitochondrial DNA sequence from hair, bone, teeth, blood, or other tissues. Typically, these items contain low concentrations of degraded DNA, making them unsuitable for nuclear DNA examinations. The high sensitivity

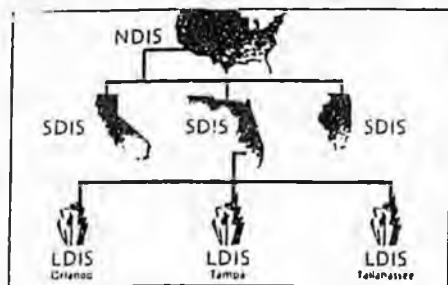
of the mitochondrial DNA analysis allows the FBI Laboratory to obtain information from old items of evidence associated with cold cases and small pieces of evidence containing little biological material. Additionally, the maternal inheritance of mitochondrial DNA allows scientists to compare the mitochondrial DNA profile of a set of remains to that of reference samples from individuals such as the mother, brother(s), sister(s), or any other maternally related individuals of a missing person. These samples should have the same mitochondrial DNA profiles because all maternal relatives inherit the same mitochondrial DNA. Because mitochondrial DNA is maternally inherited and multiple individuals can have the same mitochondrial DNA type, positive identifications are not possible using mitochondrial DNA analysis. However, mitochondrial DNA is an excellent technique to use for obtaining valuable information in cases where nuclear DNA analysis is not feasible.

### NATIONAL MISSING PERSONS DNA DATABASE PROGRAM

The National Missing Persons DNA Database Program was initially outlined in 1996 and was funded by Congress in 1999. This program will facilitate the collection and mitochondrial DNA typing of reference samples from maternal relatives of missing persons which will be placed in a database managed by CODIS. Additionally, this program will determine the mitochondrial DNA types of skeletal remains in an attempt to associate those remains to missing persons. Research is currently underway to validate state of the art procedures for managing and typing the large number of samples expected for this program. Case acceptance should begin in early 2001.

### FEDERAL CONVICTED OFFENDER PROGRAM

The Federal Convicted Offender (FCO) Program will use nuclear DNA profiling techniques to type known samples from convicted felons in the Federal system and enter these profiles into the CODIS system, much like the state and local offender sample data already being entered by other CODIS laboratories. These profiles will be available for searches against any forensic database sample in the CODIS system. Funding for this program is expected by the beginning of the year 2001.



The FBI provides CODIS software, together with installation, training, and user support, free of charge to any state and local law enforcement labs performing DNA analysis. Today, CODIS is installed in more than 100 laboratories. NDIS already contains more than 370,000 profiles from 30 states, the US Army and the FBI. In addition, the complete coverage of State DNA database laws occurred in 1998 with all 50 states having enacted legislation. This legislation requires persons convicted of felony sex offenses (and other crimes, depending on each state's statute) to provide biological samples for DNA analysis. These samples are analyzed and entered into the CODIS database. The FBI hopes that eventually, all 50 states will include all felony offenses.

### INDEXES

CODIS generates investigative leads in crimes where biological evidence is recovered from the crime scene using two indexes: the Forensic and Offender Indexes.



The Forensic Index contains DNA profiles from crime scene evidence.

The Offender Index contains DNA profiles of individuals convicted of sex offenses (and other violent crimes) with many states now expanding legislation to include other felonies.

Matches made among profiles in the Forensic Index can link crime scenes together, possibly identifying serial offenders. Based on a match, police in multiple jurisdictions can coordinate their respective investigations, and share the

made between the Forensic and Offender Indexes provide investigators with the identity of the perpetrator(s). After CODIS identifies a potential match, qualified DNA analysts in the laboratories responsible for the matching profiles contact each other to validate or refute the match.

### FUTURE

There has been a sharp increase in the demand for CODIS services due to two factors—(1) advances in the technologies supporting human genome research and (2) increased awareness of the crime reduction potential of forensic DNA by executive and legislative bodies at the State, Local, and National levels, as well as by the general public. In fact, many law enforcement officials consider forensic DNA analysis the most significant advance in forensic science since fingerprints. As a result, states are rapidly expanding the scope and size of their CODIS databases.

Over the past five years about one-half of the states have expanded the scope of their original DNA database legislation (e.g., six states are including all felons in their database, in the past year about five states have expanded the scope of their legislation, and one state now covers all arrested persons). There is currently a backlog of over 500,000 convicted offender samples to be analyzed simply because a majority of states' analyses efforts are unable to keep pace with the collection of these samples. Plus, many labs are doing retests using the new STR technology. The FBI Laboratory is committed to building an infrastructure throughout the U.S. to support the CODIS program and will continue to work with state and local forensic laboratories to achieve the full potential of this investigative tool.

### TRAINING

In addition to assisting forensic investigations, the DNA Analysis Unit I, DNA Analysis Unit II and CODIS program, along with the FBI Laboratory's Research and Training Units, provide specialized training in DNA testing methods to forensic scientists from state, municipal, and international crime laboratories. The staff of the FBI Laboratory often provides instruction to the legal and law enforcement communities (attorneys, judges, police officers, and crime lab personnel) on the fundamentals, improvements, and current research in the field of DNA and databasing. Further, the FBI sponsors and participates in national and international symposia and seminars devoted to topics surrounding DNA testing and databasing.



### SUCCESS

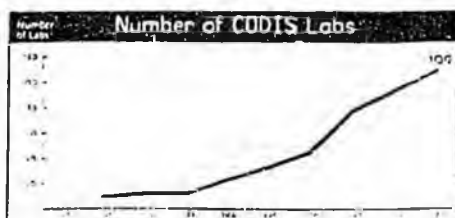
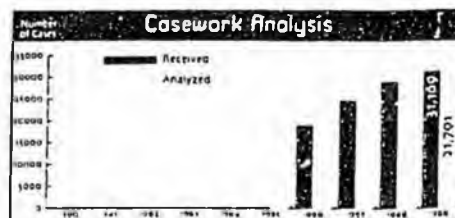
#### NEVADA:

May 2000: The Reno, Nevada Police Department made an arrest on a 23 year-old kidnaping/murder of a 6 year-old girl on Wednesday, May 31, 2000, based upon the first database hit in the Nevada State DNA database. The arrest was the culmination of extensive cooperation between local law enforcement and the FBI. On September 3, 1977, 6 year-old Lisa Marie Bonham was reported missing from Idlewild Park, Reno, where she was visiting with family members. The next day her clothing was discovered in a brown paper bag in a dumpster in Verdi, Nevada, a few miles from Reno. The clothing was submitted to the FBI Laboratory for examination and semen stains with Type A Secretor status were identified on portions of the clothing. On November 13, 1977, part of the victim's remains were recovered in Toyabe National Forest, three miles from the Nevada border in Sierra County, California. On May 25, 2000, the Washoe County Sheriff's Crime Laboratory, the location of the Nevada State DNA Database (which utilizes CODIS software), matched the identified DNA from the victim's clothing with the known DNA of the subject Stephen Robert Smith.

#### FLORIDA & IOWA:

February 2000: In 1995, an unidentified woman's body was found on an off-ramp along an interstate in Des Moines, IA. After identifying the victim, police began looking at truck drivers as suspects, due to the location of the body. The Iowa Department of Public Safety sent biological evidence left at the crime scene to the FBI Laboratory for DNA analysis. The FBI Lab analyzed the evidence, and developed a DNA profile of the perpetrator. The profile was uploaded to CODIS, where NDIS matched it to the Florida offender. At the time of the hit, the offender was incarcerated in a Florida prison for a sexual assault conviction in early 1990. After identifying the offender, police discovered that he possessed a commercial trucking license.

## DNA STATISTICS



For more information, please contact the Federal Bureau of Investigation, Laboratory Division, DNA Analysis Unit 1310 and DNA Analysis Unit 11200, Research and Training Systems Unit, CODIS, FBI Laboratory, Washington, DC 20535.

**HB**

**214**





# REPRESENTATIVE KEVIN MEYER

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## HOUSE DISTRICT 19

### Sponsor Statement

#### HB 214

**“An Act relating to a civil action against a person under 21 years of age who enters premises where alcohol is sold or consumed.”**

HB 214 allows bar and liquor store owners, or any alcohol licensee, to bring a civil suit against a minor if they are caught on their licensed premises, or attempting to enter in violation of the law. This is in addition to the *criminal* penalty state law allows for minors on licensed premises. Currently, the criminal penalty is a Class A misdemeanor, which carries a maximum fine up to \$5,000 and up to one year in jail.

This legislation mirrors an ordinance passed in 1998 by the Municipality of Anchorage. The ordinance was well-supported by the alcohol industry. Local establishments have been successful in using the ordinance to deter underage drinking.

HB 214 provides an incentive for owners and employees who sell alcoholic beverages to check IDs carefully. If a minor is found to be on the premises or attempting to gain access, the licensed owner can bring a civil suit against the minor. If a judgement is entered in favor of the licensee, payment of civil fines can be taken from the minor's Permanent Fund Dividends (PFD).

In addition, HB 214 requires a licensee to post a new kind of warning sign at each entrance of the licensed premises. The sign must warn that a person under 21 years of age, who enters the licensed premises, is in violation of the law, and could be liable for damages in the amount of \$1,000.

With the increasing measures of civil liability, additional warnings, and possible garnishment of a minor's PFD, we are sending a powerful message to young people under age 21 that we are not going to tolerate using fake IDs and other creative ways to get around the law. It also gives licensees and their employees more incentive to stop minors from gaining access to alcoholic beverages.

# FISCAL NOTE

**STATE OF ALASKA**  
**2001 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
Bill Version: HB 214  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Revenue  
Title: Civil Action Against Minors in Bars BRU: ABC Board  
Component: ABC Board  
Sponsor: Representative Meyer  
Requester: House Labor and Commerce Component Number: 100

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

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

FUND SOURCE	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2001) cost: 0.0

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

**POSITIONS**

POSITIONS	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Full-time						
Part-time						
Temporary						

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

This legislation would allow alcoholic beverage licensees to bring civil actions against persons under 21 years of age who enter their premises in violation of AS 04.16.049. The legislation specifies a penalty of \$1,000, plus reasonable attorney costs.

This legislation would have no fiscal impact on the Alcoholic Beverage Control Board.

Prepared by: Doug Griffin, Executive Director Phone 269-0350  
Division: Alcoholic Beverage Control Board Date/Time April 9, 2001, 1 p.m.  
Approved by: Larry Persily, Deputy Commissioner Date 04/09/2001  
Agency: Department of Revenue

For distribution information, call the Governor's Legislative Office

**Sec. 04.16.049. Access of persons under the age of 21 to licensed premises.**

(a) A person under the age of 21 years may not knowingly enter or remain in premises licensed under this title unless

(1) accompanied by a parent, guardian, or spouse who has attained the age of 21 years;

(2) the person is at least 16 years of age, the premises are designated by the board as a restaurant for the purposes of this section, and the person enters and remains only for dining; or

(3) the person is under the age of 16 years, is accompanied by a person over the age of 21 years, the parent or guardian of the underaged person consents, the premises are designated by the board as a restaurant for the purposes of this section, and the person enters and remains only for dining.

(b) Notwithstanding (a) of this section, a licensee or an agent or employee of the licensee may refuse entry to a person under the age of 21 years to that part of licensed premises in which alcoholic beverages are sold, served, or consumed, may refuse service to a person under the age of 21 years, or may require a person under the age of 21 years to leave the portion of the licensed premises in which alcoholic beverages are sold, served, or consumed.

(c) Notwithstanding any other provision in this section, a person between 16 and 19 years of age may enter and remain within the licensed premises of a hotel, restaurant, or eating place in the course of employment if (1) the employment does not involve the serving, mixing, delivering, or dispensing of alcoholic beverages; (2) the person has the written consent of a parent or guardian; and (3) an exemption from the prohibition of AS 23.10.355 is granted by the Department of Labor and Workforce Development. The board, with the approval of the governing body having jurisdiction and at the licensee's request, shall designate which premises are hotels, restaurants, or eating places for the purposes of this subsection.

(d) Notwithstanding any other provision in this section, a person 19 or 20 years of age may be employed within the licensed premises of a hotel, restaurant, or eating place, may enter and remain within those premises for the purpose of employment, but may not in the course of employment, sell, serve, deliver, or dispense alcoholic beverages.

(§ 3 ch 131 SLA 1980; am § 16 ch 28 SLA 1981; am §§ 4 - 7 ch 109 SLA 1983)

**Revisor's notes.** In 1999, "Department of Labor" was changed to "Department of Labor and Workforce Development" in subsection (c) in accordance with § 90, ch. 58, SLA 1999.

**NOTES TO DECISIONS**

**Cited in** *Wike v. State*, 623 P.2d 356 (Alaska Ct. App. 1981); *M.O.W. v. State*, 645 P.2d 1229 (Alaska Ct. App. 1982).

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FAX NO. (907) 562-3008  
PHONE: (907) 563-3815

Number Of Pages:  
(Including Cover Sheet)

1

Facsimile

Date:

4-3-01

March 28, 2001

**Brown Jug, Inc.**

ALASKA'S RETAILER OF FINE WINES, SPIRITS, AND BEER

4140 Old Seward Hwy.  
P. O. Box 190027  
Anchorage, Alaska 99519-0027  
(907) 563-3815 Ext. 225  
Fax (907) 562-3008  
Home (907) 258-4483  
Cellular 240-1818

Representative Kevin Meyer  
Alaska State Capitol, Room 110  
Juneau, Alaska 99801-1182

Ed O'Neill  
Vice-Chairman

Office/eoneill@brownjug.alaska.net  
Home/edoncil@gci.net

Dear Representative Meyer:

I am writing in support of HB 214 which allow stores like Brown Jug to bring civil action against minors who come on to our property and attempt to buy alcoholic beverages in violation of the law.

Anchorage passed a similar ordinance in 1998 that seems to be working very well. I know our store has seen a reduction in the number of minors who come in to our stores and attempt to use fake IDs in order to buy alcohol. Because we split any judgements won 50/50 with our employees, they have an added incentive to catch minors trying to buy alcohol.

When a minor risks paying \$1,000.00 to the very store they are trying to fool - often a judgement against their permanent fund dividend - it *does* seem to deter some of them from making that attempt.

I appreciate the opportunity to comment on this legislation and laud your attempts to keep youth under the age of 21 from drinking.

Sincerely,

Mr. Lowell Shinn  
Ed O'NEILL  
Brown Jug Warehouse Store  
4140 Old Seward Highway  
Anchorage, Alaska 99503-6053  
907-563-3815 Fax 907-562-3008

I WELCOME ANY  
QUESTIONS ON THIS  
VERY EFFECTIVE  
CIVIL ACTION AT 563-3817 X 225



Alaska Restaurant & Beverage Association

330 E. 4th Avenue, Suite 201 • Anchorage, Alaska 99501 • Phone (907) 929-4242 • Fax (907) 222-2995

April 6, 2001

Representative Kevin Meyer  
House District 19  
716 W. 4<sup>th</sup> Avenue  
Anchorage, AK 99501-2133

Dear Representative Meyer,

This is to convey our supports of HB 214 which mirrors an Anchorage Municipal ordinance that allows any licensed beverage operation to bring a civil suit against a minor if they are caught on, or are attempting to enter, their licensed premises in violation of the law. Members of the Alaska Restaurant & Beverage Association, such as Mike Gordon of Chilkoot Charlies, have indicated to us that this ordinance serves as a great deterrence for minors considering entering bars and liquor stores. Anchorage establishments that are bringing civil suites against minors who violate the law, have seen a dramatic decrease in the number of these incidents.

The word gets out quickly that there are cash consequences if minors are caught using fake ID's or other creative ways to enter a licensed beverage operation in violation of the law, and they elect to stay away altogether. The \$1,000 penalty also provides additional incentive to employees of licensed beverage operations to check ID's and to identify fake ID's used by minors.

HB 214 will allow the success of the Anchorage ordinance to work across the state. Thanks for your great work in making this possible.

Sincerely,

A handwritten signature in cursive script that reads "Karen R. Rogina". The signature is written in black ink and is positioned above the printed name and title.

Karen R. Rogina  
Executive Vice President

**HB**

**228**

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101


State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

April 24, 2001

**SUBJECT:** Tobacco vending machines  
(CSHB 228(JUD))

**TO:** Rep. Norman Rokeberg, Chair  
House Judiciary Committee  
Attn: Heather

**FROM:** Michael F. Ford   
Legislative Counsel

The CS for HB 228 you requested is attached. You asked a question regarding the penalty scheme for vending machine operators. Specifically, does the amendment the committee adopted that limits a suspension to the location at which the violation occurs, change the existing penalty provisions? By deleting a provision that requires that all vending locations are affected by a violation at one location, the committee has not changed the applicable penalty levels. This does mean, however, that only the location at which the violation occurs is affected by the existing penalties. For example, under AS 43.70.075(d), a license endorsement must be suspended if the vendor fails to properly supervise the vending machine as required under AS 11.76.107. Under AS 43.70.075(k), the department has the power to suspend a license endorsement for illegal vending machine sales. None of the penalties are reduced or changed by the amendment adopted by the committee.

Please contact me if you have further questions.

MFF:jhb  
01-083.jhb

Enclosure



Adopted

AMENDMENT # 1

OFFERED IN THE HOUSE

BY

TO: CSHB 228(L&C)

1 Page 7, line 4:

2 Delete "The"

3 Insert "A peace officer, or an agent or employee of the"

4

5 Following "Department of Health and Social Services":

6 Insert "who is authorized by the commissioner of health and social services to  
7 enforce this section,"

8

9 Page 7, lines 6 - 7:

10 Delete "Each day a violation continues after a citation for the violation has been issued  
11 constitutes a separate violation."

12

13 Page 7, line 14:

14 Delete "the issuance of"

15 Insert "issuing to its agents or employees"

16

17 Page 7, line 18:

18 Delete "department shall deposit the"

19

20 Following "citation":

21 Insert "shall be deposited"

22

23 Page 7, line 21:

24 ~~W/~~ Delete "The department may not dispose of a"

- 1           Insert "A"
- 2
- 3   Page 7, line 22, following "issuance":
- 4           Insert "may not be disposed of"
- 5
- 6   Page 7, line 24, following "by":
- 7           Insert "an agent or employee of"
- 8
- 9   Page 7, line 25, following "copies of":
- 10          Insert "such"
- 11
- 12   Page 7, line 27, following "citation":
- 13          Insert "issued by its agent or employee"

Adopted

Conceptual Amendment #2

Sec. 8 subsection (e) pg 4, line 21

This applies to vending machine operators.

Vending machine companies endorsement cannot be suspended etc... from a violation at one location.

Machine @ the violating location shall be suspended. - They lose that location.

Want to save overall endorsement except as to violating premises.

---

Memo -

vending mach.

fined

loses Endorsement

## Conceptual Amendment #2

This was made to amend Section 8, subsection (1), on Page 4, Line 21

The committee does not want a vending machine operator/company's entire endorsement to be suspended/revoked from one violation at one location. They want that location to be suspended/revoked, but not the entire endorsement of all the vending machines at all the other locations. They want to save the overall endorsement except at the violating location.

Memorandum requested regarding HB 228 and Conceptual Amendment #2 from Judiciary:

Rep. Rokeberg would like a memo to go with this amendment that discusses how vending machine operators are fined for violations, and also how they can lose their endorsement. He would also like to know how a premises is fined for a violation from a vending machine located on that premises, and an other ramifications from that violation. He wants to make sure that by adopting conceptual amendment #2, we aren't effecting the fine and penalty schemes already in place.



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 bill proposes fining a business that sells tobacco to minors from \$1,000 on a first offense to \$5,000 on a third 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 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 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.



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

MEMORANDUM

April 19, 2001

To: Representative Norman Rokeberg, Chair  
House Judiciary Committee

From: Representative John Harris *JH*

Subject: Changes in HB 228 – Tobacco sales to minors

The House Labor and Commerce committee made the following changes to HB 228, the bill to beef up enforcement of state laws prohibiting the sale of tobacco products to minors:

Section 1 was deleted and the fines proposed to be levied on a business that sells tobacco to minors are made civil fines, rather than criminal (see changes to sec. 7).

Section <sup>5</sup>~~4~~ was amended to add language requiring the Division of Occupational Licensing to include vendor education materials when it mails out or delivers a business license with a tobacco sales endorsement. This material would describe state laws and penalties that prohibit the sale of tobacco to minors.

Section 7 – now includes the civil fines, which have been reduced from the original bill by half. That is, a \$300 fine and 20 day suspension are assessed for a first conviction; \$500 and 45 days for a second, \$1,000 and 90 days for a third, and \$2,500 and one year for a fourth conviction within a 24 month period.



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

Sectional Summary  
CSHB 228 (L&C) – 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. It ensures that if the owner of the vending machine violates this section, the resulting suspension applies to all the owners' vending machines.

(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.

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.

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# FISCAL NOTE

STATE OF ALASKA  
2001 LEGISLATIVE SESSION

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

Revision Date/Time (Note if correction): 04/11/2001 11:37a.m. Dept. Affected: DCED  
Title: An Act relating to the offense of selling or giving BRU: Occupational Licensing  
tobacco to a minor..... Component: Occupational Licensing  
Sponsor: Representative Harris  
Requester: House Labor and Commerce 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	100.5	100.5	100.5	100.5
Travel	10.0	10.0	10.0	10.0	10.0	10.0
Contractual	19.6	19.6	19.6	19.6	19.6	19.6
Supplies	5.0	5.0	5.0	5.0	5.0	5.0
Equipment	4.0					
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>139.1</b>	<b>135.1</b>	<b>135.1</b>	<b>135.1</b>	<b>135.1</b>	<b>135.1</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES (1156 RSS)</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other - 1007 Inter-Agency Receipts	139.1	135.1	135.1	135.1	135.1	135.1
<b>TOTAL</b>	<b>139.1</b>	<b>135.1</b>	<b>135.1</b>	<b>135.1</b>	<b>135.1</b>	<b>135.1</b>

Estimate of any current year (FY2001) cost:

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

**POSITIONS**

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

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

Provisions of the bill that affect AS 43.70 require a tobacco endorsement for each location or outlet in a location where a business offers tobacco products for sale; authorize tobacco enforcement to act upon adjudication of violating the law; and simplify suspension action of business license tobacco endorsements. A detailed explanation of the expenditures and revenue shown above is attached.

Prepared by: Jennifer Strickler, Administrative Manager Phone (907) 465-2144  
Division: Occupational Licensing Date/Time 04/11/2001 11:37a.m.  
Approved by: Commissioner Deborah B. Sedwick Date 4/11/2001  
Agency: Department of Community and Economic Development

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ANALYSIS: (continued)

HB 228: 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 -

1 - Administrative Clerk II, Range 10, GGU, 12 months to process tobacco endorsement applications from each location and outlets in a location, to disseminate information regarding the tobacco endorsement requirement, and to promote the proactive enforcement program by administratively doing compliance checks of businesses required to hold tobacco endorsements; \$38.8

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; \$61.7

PERSONAL SERVICES: \$100.5

TRAVEL for the Investigator and/or Hearing Officer should it become necessary. \$10.0

Contract Hearing Officer time based on approximately 3 days per case at \$975/case, and assuming at least 15 cases will go to hearing in the fiscal year; \$14.6

Printing forms, endorsements, and communications costs; \$5.0

CONTRACTUAL SERVICES: \$19.6

SUPPLIES for daily operations relating to tobacco endorsements; \$5.0

EQUIPMENT (one-time costs) for support staff; \$4.0

TOTAL Fiscal Note Request: \$139.1

#### REVENUE

Assumes the endorsement fee changes to \$100 and endorsements are purchased by 1,000 locations and outlets.  $1,000 \times \$100 \text{ fee} = \$100.0$

# FISCAL NOTE

**STATE OF ALASKA**  
**2001 LEGISLATIVE SESSION**

Fiscal Note Number: 3  
 Bill Version: CSHB 228(L&C)  
 (H ) Publish Date: 4/20/01

Revision Date/Time (Note if correction): \_\_\_\_\_ 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: House (L&C) 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	87.1	92.1	97.9
Travel	60.9	60.9	60.9	60.9	60.9	60.9
Contractual	344.4	344.4	344.4	344.4	344.4	344.4
Supplies	2.0	2.0	2.0	2.0	2.0	2.0
Equipment	8.5					
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>487.9</b>	<b>484.4</b>	<b>489.4</b>	<b>494.4</b>	<b>499.4</b>	<b>505.2</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE (Thousands of Dollars)**

FUND SOURCE	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
1002 Federal Receipts						
1003 GF Match						
1004 GF	487.9	384.4	389.4	394.4	399.4	405.2
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Statutorily Designated Rcpts.)		100.0	100.0	100.0	100.0	100.0
<b>TOTAL</b>	<b>487.9</b>	<b>484.4</b>	<b>489.4</b>	<b>494.4</b>	<b>499.4</b>	<b>505.2</b>

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**

POSITIONS	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
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 4/10/01 11:53 AM  
 Agency: Department of Health & Social Services

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**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.

# FISCAL NOTE

**STATE OF ALASKA**  
**2001 LEGISLATIVE SESSION**

Fiscal Note Number: 2  
 Bill Version: CSHB 228(L&C)  
 (H) Publish Date: 4/20/01

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Law  
 Title "An Act relating to the offense of selling or BRU Civil Division  
giving tobacco to a minor, ..." Component Fair Business Practices  
 Sponsor Representative Harris  
 Requester House Labor and Commerce Committ 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	60.6	60.6	60.6
Travel	0.2	0.2	0.2	0.2	0.2	0.2
Contractual	9.4	9.4	9.4	9.4	9.4	9.4
Supplies	0.8	0.8	0.8	0.8	0.8	0.8
Equipment	6.5					
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>77.4</b>	<b>70.9</b>	<b>70.9</b>	<b>70.9</b>	<b>70.9</b>	<b>70.9</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

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

Estimate of any current year (FY2001) cost: 0.0

**POSITIONS**

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

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

HB 228 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 law 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 4/12/01 2:57 PM  
 Approved by: Kathryn Daughhete for Bruce M. Botelho, Attorney General Date 4/12/01  
 Agency: Department of Law

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FISCAL NOTE

STATE OF ALASKA  
2001 LEGISLATIVE SESSION

BILL NO. HB 228 - FN#2

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 1,500 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.

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

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (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

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## **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.

HB 228 - FN#1

**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.

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# **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.<sup>1</sup> These efforts must focus on children, because 88 percent of smokers start by the age of 18.<sup>2</sup> 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.<sup>3</sup> As a result, adolescent smoking rates have risen, increasing by 32 percent between 1991 and 1997.<sup>4</sup> Over the past decade, the public health community has developed a new approach to preventing youth smoking: reducing the *supply* of tobacco to youth.<sup>5</sup> Policies with this goal are widely advocated, have strong public support,<sup>6</sup> and are a focus of federal, state, and local tobacco control efforts.<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup>

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.<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup>

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.<sup>14</sup> 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.<sup>15</sup>

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.<sup>16</sup> 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.<sup>17</sup> Five years later, when the youths were 18 years old, smoking rates were reduced by 50 percent over rates in surrounding communities.<sup>18</sup> 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.<sup>19</sup>

However, a controlled study in Massachusetts failed to demonstrate the effectiveness of enforcing tobacco sales laws.<sup>20</sup> 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.<sup>21</sup> 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.<sup>22</sup> 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,<sup>23</sup> 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. (HR 2034, S.1530) The shifting of blame from the retailers and manufacturers to the children has been a common theme of industry-sponsored legislation.<sup>24</sup> Indeed, many bills provide for more severe penalties for the youngsters than for the corporations.<sup>25</sup> 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,<sup>26</sup> 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.<sup>27</sup> 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.<sup>28</sup> 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.<sup>29</sup> 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.<sup>30</sup> 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.<sup>31</sup> 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.<sup>32</sup> Implementation of this law was delayed for over three years awaiting regulations issued by the Department of Health and Human Services.<sup>33</sup> These regulations only require states to achieve an 80 percent merchant compliance level.<sup>34</sup> 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.<sup>35</sup> 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.<sup>35</sup> 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.<sup>6</sup> A model for the effective and efficient enforcement of youth access laws based on the experience of cities in Massachusetts has been developed.<sup>36</sup> 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.<sup>37</sup> 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.<sup>38</sup> 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.<sup>39</sup> 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.<sup>40</sup> 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.<sup>41</sup> 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.<sup>42</sup>

**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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**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 &amp; 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**

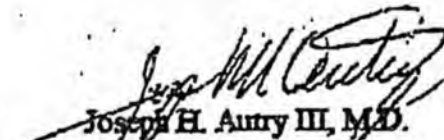
Consistent with section 214, once the State certifies that it will commit additional funds for compliance activities in accordance with that section, the hearing process will be discontinued. In addition, if the State desires, we will agree to suspend any deadlines related to the hearing process while 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. Aury 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 (e) 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 1928 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.

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Date

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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.



# Alaska Women's Resource Center

111 W. 9th Avenue • Anchorage, Alaska 99501 • (907) 276-0528 • Fax: (907) 278-8944

APR 19 2001

4/19/01

TO: Rep. Rokeberg – 907 465 2040

We encourage the House Judiciary Committee to support HB228.

Mary Ideran   
Executive Director, AWRC

April 22, 2001

APR 23 2001

Representative Norm Rokeberg  
Chair  
House Judiciary Committee  
Room 120  
State Capitol  
Juneau, Alaska

Dear Representative Rokeberg;

I am the owner of a small vending machine company and it has come to my attention that HB 228 is before the House Judiciary Committee. There is a proposed provision in that bill that is particularly onerous to vending companies and I hope that you will consider amending it in your committee. Section 8(l) mandates revocation of sales for all locations in which cigarette vendors are placed if there is a violation in one of the locations. This provision is unfair to the outlets in which no violation occurs. If a minor under 19 years old buys a pack of cigarettes in one bar, all the bars in that community are banned from selling cigarettes from vending machines owned by the same vending machine company. Why is this provision in the bill? If a bartender or bar owner fails to supervise the sale of cigarettes why is the vending machine Company punished? The company placed the machine in a location allowed by law. They have placed the machine in a location that is within sight of the person who is to provide supervision of the machine. The signs required by law are posted. What more can the company do to prevent the illegal sale? Moreover, what have other outlets done that would mandate their restraint of sales for the next twenty days?

My company has taken great care to place machines in locations where there is good supervision of sales. We have elected not to place machines in employee break rooms for this reason. We have built-in signs that warn youth not to use the machines. We make our customers aware the state laws governing illegal sales. We comply with all other state laws governing the purchase and sales of tobacco products.

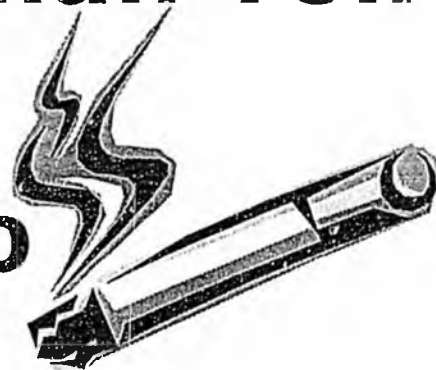
Please consider this request to limit the sanctions to the outlet where the cigarettes are sold rather than to all outlets where proper supervision occurs.

Sincerely,



Costa Alton  
C.J. Enterprises

# **The Human Toll From Tobacco Use**



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Cigarette smoking is the single most preventable cause of premature death in the United States.

More than 430,000 Americans die each year from smoking related illness.

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2

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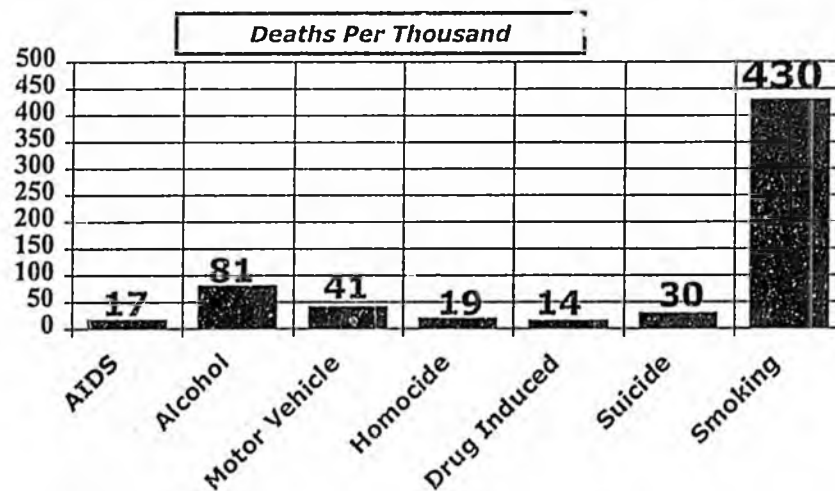
One in every five U.S. deaths is smoking related.

Exposure to secondhand smoke causes 3,000 deaths from lung cancer each year.

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### Comparative Causes of Annual Deaths in the United States



Source: CDC, Actual Causes of Death, United States, 1999-4

## **U.S. Economic Impact of Tobacco Use**

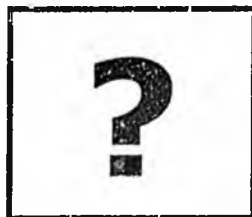
Tobacco use costs the U.S.  
approximately \$50 to \$73  
billion in medical  
expenses each year

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- **\$26.9 billion** in hospital stays
  - **\$15.5 billion** for physician expenditures
  - **\$4.9 billion** for nursing home expenditures
  - **\$1.8 billion** for prescription drugs
  - **\$900 million** for home health care
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Sources: *Investing In Tobacco Control: A Guide for State Decision makers* 6

# What Does Tobacco Cost Alaska



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Total annual health care expenditures in  
Alaska directly related to  
smoking.....

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**\$154 MILLION**

8

Total annual state Medical payments  
directly related to smoking.....

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**\$23 MILLION**

9

Additional expenditures in Alaska for  
health and developmental problems of  
infants caused by their mothers'  
smoking or being exposed to  
secondhand smoke during  
pregnancy.....

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**\$8 MILLION**

*Source: State of Alaska*

10

# Adult Smoking in Alaska



- 40% of Natives smoke as compared to 24% non-Native

- 28% of men smoke compared to 24% female; but female smoking is on the rise

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- Nationally the average adult smoker began smoking at 14.5 years old.
  - In Alaska, 84% of adult smokers report having started between the ages of 10 and 20.
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13

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Between 1988 and 1996,  
the percentage of  
teenagers taking up the  
habit jumped **73%**.

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