

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672

10335 HOUSE LABOR & COMMERCE

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TITLE 61 DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS

CHAPTER 61G17-6 MINIMUM TECHNICAL STANDARDS

61G17-6.007, F.A.C.

61G17-6.007 Horizontal and Vertical Controls for Public and Private
Construction Layout.

(1) Section 472.003(3), Florida Statutes, provides an exemption from licensing for certain classes of individuals performing construction layout from boundary, horizontal and vertical controls that have been established by a licensed professional surveyor and mapper. This rule is designed to set out what constitutes horizontal and vertical controls.

(2)(a) Horizontal control monumentation for the purpose of this rule includes:

1. Points of Curve, Points of Tangency, Points of Tangent Intersections, Points on Line and Points on Curve.

2. Points of Intersection of other streets or roads.

3. Angle points or changes in direction.

(b) Horizontal control monumentation for road centerline, right-of-way lines, reference lines or base lines shall be at least a minimum of two (2) points placed so that no point on the line being monumented is more than 700 feet from a control monument.

(c) Horizontal control monumentation for main utility lines (such as water, sewer, storm drainage, electric, telephone, television, gas, etc.) when not constructed within or along a road right-of-way control in accordance with subsection (2)(b) shall be at least a minimum of two (2) points placed so that no point on the line being monumented is more than 700 feet from a control monument.

(d) Horizontal control monumentation for building and/or primary constructions shall be at least:

1. Boundaries, or

2. Control or base lines (minimum of 2 points), or

3. A minimum of a four-corner envelope for nonresidential construction improvement layout.

(e) Horizontal control monumentation required by plans as a control for horizontal location not included in subsections (2)(b), (c) or (d) shall meet the requirements of (2)(a).

(3) All construction requiring benchmarks shall have a minimum of two (2) existent or established benchmarks for vertical control.

(4) Vertical control for linear type construction sites such as roads and sewer lines shall have a maximum of 1,100 feet between existent or established benchmarks.

(5) Vertical control for acreage construction sites shall have two (2) existent or established benchmarks on the first ten (10) acres plus an additional benchmark for each additional ten (10) acres.

AUTHORITY

Specific Authority 472.008, 472.027 Fla. Stat. Law Implemented 472.003(3), 472.027 Fla. Stat.

HISTORY

New 5-20-92, Formerly 21HH-6.007, Amended 12-25-95.

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FROM : Cottini Land Surveying

FAX NO. : 907 745 1188

Apr. 25 2001 12:49PM P1

COTTINI LAND SURVEYING

April 25, 2001

Mat-Su Legislative Information Office
Fax #376-6180

RE: HOUSE BILL #227; Land Survey Standards

Dear Sirs:

I have read the proposed HOUSE BILL #227, Minimum Standards for Land Surveys by Rep. Harris, and I have also read the sponsor statement for HB 227.

The following are some questions and concerns I have pertaining to this HB 227:

1. What types of survey will be affected by this set of standards; i.e., Lot Surveys, Boundary Surveys, Residential As-Built Surveys, Topography Surveys, Site Civil Design Surveys, Construction Surveying, Subdivision Plat Surveys, etc.?
2. Currently subdivision plat surveys have regulation, standards and plat requirements by the borough and/or municipality, which they are within, or if not in an organized borough the DNR is the platting authority.
3. Commercial As-Built Surveys are ALTA/ACSM Surveys and they have specific standards already.
4. Residential As-Built Surveys should not have ALTA/ACSM standards applied to them because the ALTA/ACSM standards are too stringent for a simple residential As-Built Survey.
5. The Alaska Society of Professional Land Surveyors (ASPLS) should have some input and determination as to any standards that are being proposed by the Board of Architects, Engineers & Land Surveyors.
6. Copying laws or standards from other states such as Florida may or may not work and may need to be modified to better fit our states' needs and conditions.

Please fax me at 745-1188 any and all information that you might have pertaining to HB 227 and any new rewrites of this House Bill as it works its way through the State Legislature.

Thank you. If you have any questions pertaining to my concerns please call me at 745-1188.

Sincerely,

Pio V. Cottini, R.L.S.



TO:

REP. JOHN
HARRIS

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 227
 () Publish Date: _____

Revision Date/Time (Note if correction): _____
 Title: An Act instructing the State Board of Registration
for AELS to adopt...standards relating to...surveying.
 Sponsor: Representative Harris
 Requester: House Labor and Commerce

Dept. Affected: Community & Econ Dev.
 BRU: Occupational Licensing
 Component: Occupational Licensing
 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						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1156 Receipt Supported Services						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2001) cost: 0.0

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The State Board of Registration for Architects, Engineers, and Land Surveyors already has authority to adopt regulations. New funds are not required to implement the regulations in this bill.

Prepared by: Jennifer Strickler, Administrative Manager
 Division: Occupational Licensing
 Approved by: Commissioner Deborah B. Sedwick
 Agency: Dept. of Community and Economic Development

Phone: (907) 465-2144
 Date/Time: 4/23/2001 4:15 p.m.
 Date: 4/23/2001

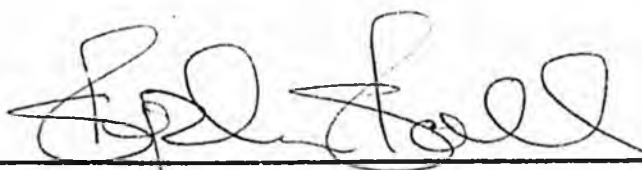
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Alaska State Legislature

Please enter into the record my testimony to the HOUSE
LABOR & COMMERCE
 committee name
 committee on HB 227, dated 04/25/01
 bill/subject

AT TODAY'S MEETING, THE VALLEY CHAPTER OF
 THE ALASKA SOCIETY OF PROFESSIONAL
 SURVEYORS ADOPTED A RESOLUTION STATING &
 " THE VALLEY CHAPTER SUPPORTS THE STATUTE
 REVISION WITH THE PROVISION THAT THE
 ASPLS IS THE SOURCE OF THE STANDARDS, WITH
 BOARD APPROVAL "

Signed:  STEPHEN
 Testifier STOLL
VALLEY CHAP. / ALASKA SOC PROF LAND SURV.
 Representing (Optional)
PO BOX 870767 WASILLA 99687
 Address
 Phone No.



Alaska State Legislature

Please enter into the record my testimony to the House LABOR & Commerce
 committee name
 committee on HB 227, dated 04/25/01
 bill/subject

THIS BILL IS UNNECESSARY. A STANDARDS OF PRACTICE, PREPARED AND DISTRIBUTED BY THE ALASKA SOCIETY OF PROFESSIONAL LAND SURVEYORS IS A COMPREHENSIVE GUIDE FOR PROFESSIONAL STANDARDS. BECAUSE OF THE VARIED NEEDS OF CLIENTS AND WIDE VARIANCE OF TYPES OF SURVEYS, LEGISLATION WILL BE CUMBERSOME AND IMPOSSIBLE TO IMPLEMENT & ENFORCE. AS IN ANY INDUSTRY, THERE ARE GOOD SURVEYORS & NOT-SO-GOOD SURVEYORS. IT IS THE OBLIGATION OF THE USER TO RESEARCH AND CONTRACT CAREFULLY. MORE REGULATIONS WILL SIMPLY MEAN MORE COSTS BUT NOT NECESSARILY BETTER SERVICE.

Signed: Stephen W Stoll, PLS
 Testifier
AZ Tech Surveys
 Representing (Optional)
Box 870767 WASILLA 99687
 Address
907-373-3447
 Phone No.

I WOULD HAVE LIKED TO TESTIFY TELEPHONICALLY, BUT THE HEARINGS LASTED TOO LONG.



Alaska State Legislature

Please enter into the record my testimony to the

House
Labor & Commerce
committee name

committee on HB 227
bill/subject

dated Apr. 25, 2001

This bill is rather pointless unless there is enforcement of those standards; who is going to inform all the surveyors of these standards? who is to enforce these standards; if they are not enforced they will mostly be ignored. How do you propose to pay for all the above? while we are at it, why not be fair about the whole thing and come up with standards for Engineers, Architects & Photogrammetrists.

Signed:

Edward J. Palmer
Testifier

Edward J. Palmer & Assoc.
Representing (Optional)

P.O. Box 746 Talkeetna
Address

Address

733-1697
Phone No.

Phone No.

HB

228



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

Sectional Summary
HB 228 – Tobacco Sales Enforcement

Section 1 – Amends AS 11.76.100(d) to levy penalties on the holder of a business license tobacco endorsement whose business violates state law by selling tobacco products to a minor. These amounts are \$1,000 for a first offense; \$2,000 for a second within 2 years; and \$5,000 for a third within 2 years.

Section 2 – Amends AS 37.05.146(b)(4): Would add endorsement fees to the list of “designated program receipts”.

Section 3 – New Section (40.25.105): Would 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 4 – 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 5 – 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 6 – Amends AS 43.70.075(b) to raise the fee for a tobacco endorsement from \$25 to \$100. (Good for 2 years).

Section 7 – 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.

Sec. 7 (cont.) Provides that the department shall suspend the endorsement for a period of 20 days for a first offense, 45 days for the second, 90 days for a third, and one year for a fourth offense. In current statute, the suspension is discretionary.

Section 8 – Amends 43.70.075(e) to clarify that the endorsement suspension is only for the location in which the violation occurs.

Section 9 – 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 10 – 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 11 – 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 12 – Adds new uncodified law that includes establishment of regulations.

Section 13 – Allows existing endorsement holders to continue to use that endorsement for the balance of that endorsements timeframe.

Section 14 – Establishes immediate effective dates for sections 3-5, 12 and 13.

Section 15 – Establishes an effective date of July 1, 2001 for sections 2 and 6.

Section 16 – Establishes an effective date of January 1, 2002 for remaining sections.

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

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

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						
TOTAL OPERATING	139.1	135.1	135.1	135.1	135.1	135.1

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (1156 RSS)	100.0	100.0	100.0	100.0	100.0	100.0
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FUND SOURCE (Thousands of Dollars)

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

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	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

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: _____
 Bill Version: HB 228
 () Publish Date: _____

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						
TOTAL OPERATING	77.4	70.9	70.9	70.9	70.9	70.9

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

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

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

For distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

BILL NO. HB 228

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: _____
 Bill Version: HB 228
 () Publish Date: _____

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

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

Estimate of any current year (FY2001) cost: 0.0

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached

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

For distribution information, call the Governor's Legislative Office

Department of Revenue Bill Analysis
HB 228 – Tobacco Enforcement - April 13, 2001

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

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

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

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

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

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

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

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

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

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

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						
TOTAL OPERATING	487.9	484.4	489.4	494.4	499.4	505.2

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

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

FUND SOURCE (Thousands of Dollars)

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
TOTAL	487.9	484.4	489.4	494.4	499.4	505.2

Estimate of any current year (FY2001) cost: 230.0

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

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

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

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

Prepared by: Karen Pearson, M.S. Phone (907) 465-3090
Division: Public Health Date/Time: _____
Approved by: Elmer A. Lindstrom, Special Assistant Date 4/10/01 11:53 AM
Agency: Department of Health & Social Services

For distribution information, call the Governor's Legislative Office

ANALYSIS: (continued)

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

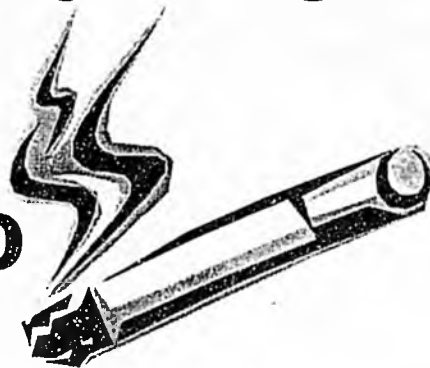
\$60,860 for travel costs include: (1) 18 coordination trips for project and program coordinators to meet with community-based partners and the Alaska Tobacco Control Alliance (ATCA); (2) transporting enforcement staff and youth to communities where investigations will occur; and (3) project coordinator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

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

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

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

The Human Toll From Tobacco Use



1

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.

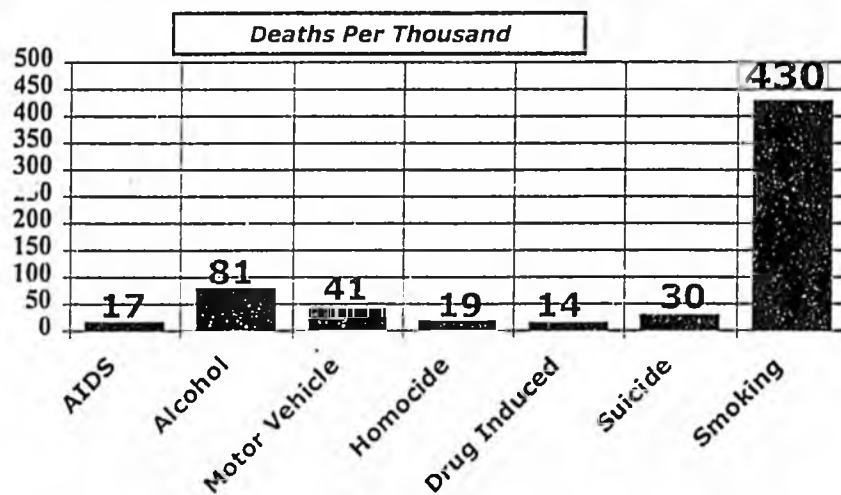
2

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

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

3

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

5

-
- **\$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
-

Sources: *Investing in Tobacco Control: A Guide for State Decision makers* 6

What Does Tobacco Cost Alaska



7

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

\$154 MILLION

8

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

\$23 MILLION

9

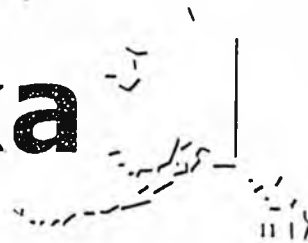
Additional expenditures in Alaska for
health and developmental problems of
infants caused by their mothers'
smoking or being exposed to
secondhand smoke during
pregnancy.....

\$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

-
- 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.
-

13

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

14

Each day, **6,000**
people younger than
18 try their first
cigarette with **3,000**
of them becoming
daily smokers.

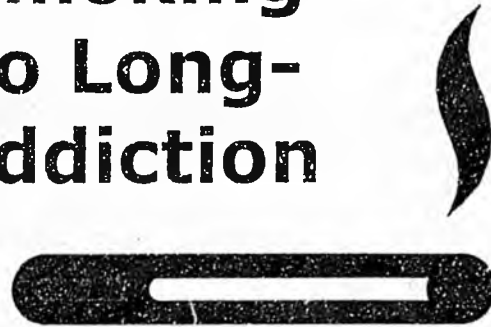
15

Over one-third of U.S.
and Alaskan high school
students have smoked in
the past 30 days.

*Sources: Investing in Tobacco Control: A Guide for State
Decision makers / Youth Risk Behavior Survey*

16

Early Smoking leads to Long- Term Addiction



**Addiction occurs from smoking
1 or 2 cigarettes a day for
3 weeks.**

17

Tobacco is considered
a gateway drug for
teens. Teens who
smoke are far more
likely to use other
drugs.

18

Almost 14,000 Alaskans
under the age of 18 today
will eventually die from
tobacco-caused illness
unless current trends are
reversed.

Source: CDC

19

BEST PRACTICES

Established by the CDC
&
The Office of Smoking and Health

20

The CDC – Office of Smoking and Health has identified the necessary components for a successful tobacco control program based on research of successful states who have reduced smoking related deaths.

21

-
- Community tobacco prevention programs
 - Chronic Disease programs
 - School prevention programs

22

- Enforcement of tobacco control policies
- Counter-marketing
- Statewide programs

23

- Smoking cessation programs
- A surveillance and evaluation system
- A strong administrative and managerial system

24

What is SYNAR



25

Provisions of the Federal Synar Amendment require :

- Enforcement of State-level minors' access laws to decrease sales to persons under the age of 18 to less than 20%.
-

26

-
- Conduct annual statewide inspection surveys that accurately measure the effectiveness of their enforcement efforts.
-

27

-
- Report annually to the U.S. Secretary of Health and Human Services.
-

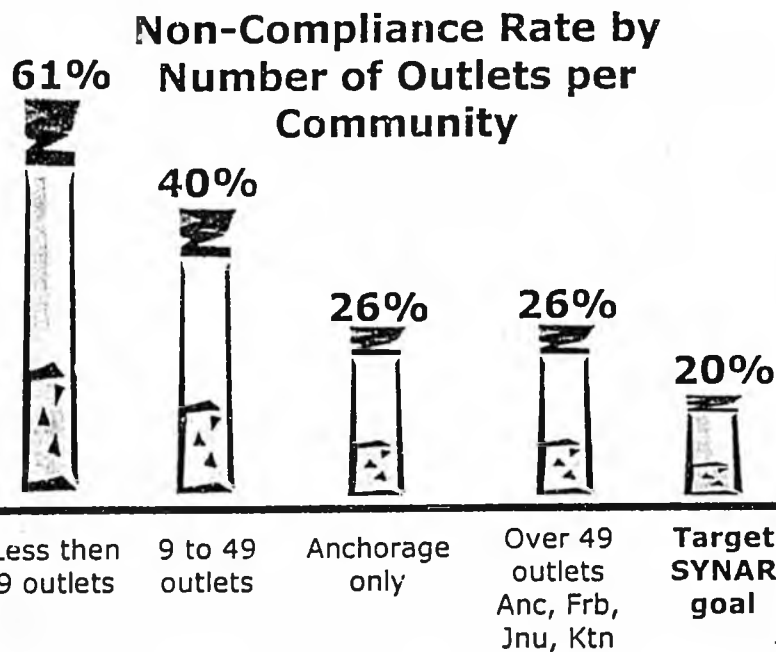
28

Alaska Tobacco Survey Results

Non-Compliance rates for Surveys Collected

August & September, 2000

29



Failure of Alaska to achieve performance targets will result in a significant loss of Federal block grant dollars.



31

The penalty for non-compliance is the loss of up to \$1.5 MILLION in substance abuse prevention and treatment funds from Alaska's Federal Substance Abuse Prevention and Treatment Block Grant



32

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

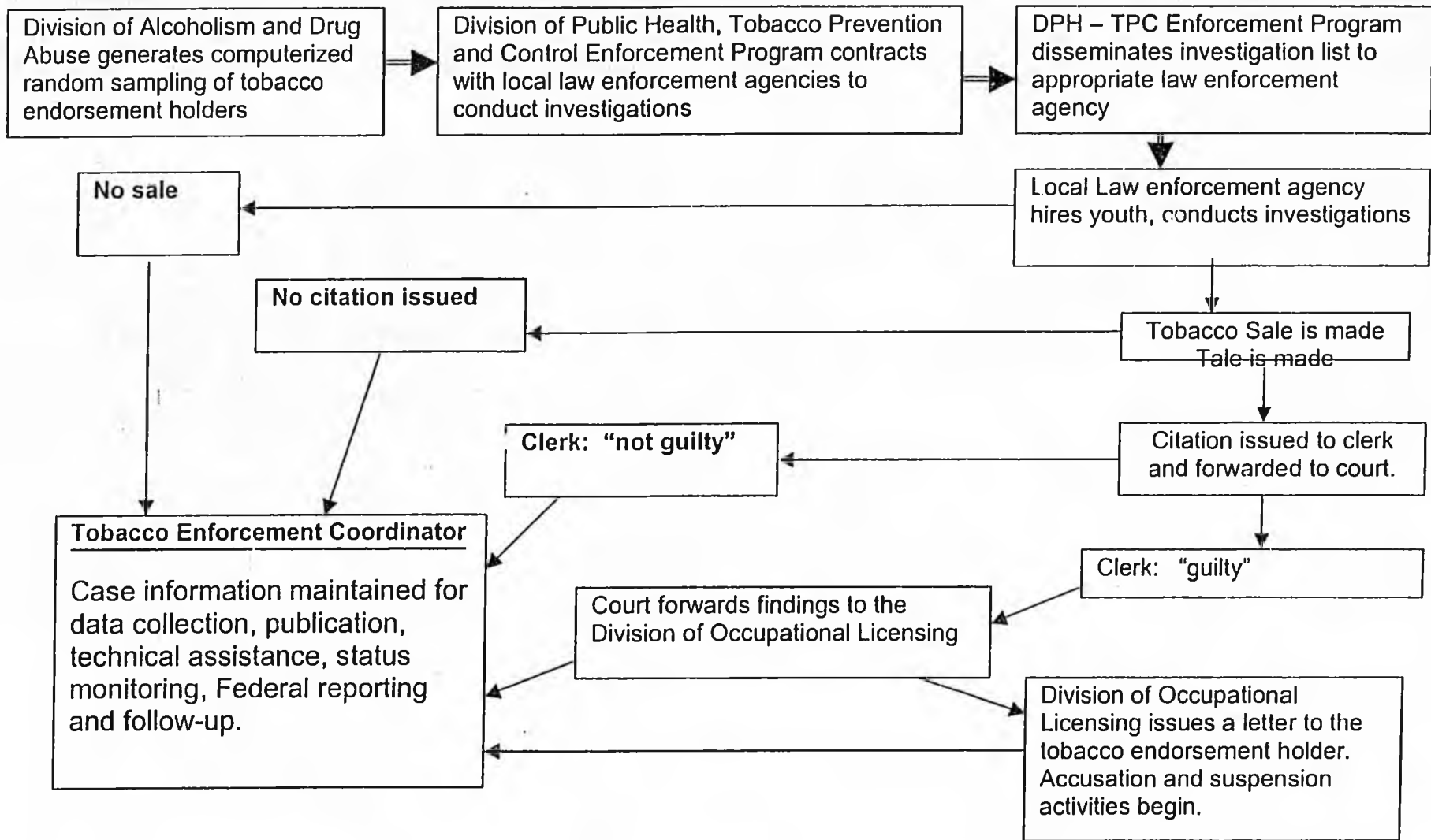
Enforcement is only one aspect of a comprehensive tobacco control strategy.

Without it, part of the message is missing.

WHY ENFORCEMENT?

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

34



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

Tobacco Enforcement Includes:

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

36

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

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

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

37

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

MAKING THE CASE:

State Tobacco Control Policy Briefing Papers

By

ADVOCACY INSTITUTE

Washington, DC

January 2000

POLICIES TO REDUCE YOUTH ACCESS TO TOBACCO

By
Advocacy Institute
Washington, DC
January 2000

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

POLICIES TO REDUCE YOUTH ACCESS TO TOBACCO

EXECUTIVE SUMMARY

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

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

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

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

POLICIES TO REDUCE YOUTH ACCESS TO TOBACCO

INTRODUCTION

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

SOURCES OF TOBACCO FOR YOUTHS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

POSSESSION LAWS

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

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

OBSTACLES TO ENFORCEMENT OF TOBACCO SALES LAWS

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

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

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

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

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

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

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

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

CURRENT FEDERAL POLICIES TO REDUCE TOBACCO SALES TO YOUTHS

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

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

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

Recommendations for state regulations include the following:

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

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

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

COMPONENTS OF EFFECTIVE ENFORCEMENT

Given the many obstacles to enforcing tobacco sales laws, it may seem unrealistic to get 95 percent of merchants to obey the law. However, communities like Woodridge, Illinois, have found that with a serious enforcement effort, it is possible to approach 100 percent merchant compliance in a short period of time.⁶ A model for the effective and efficient enforcement of youth access laws based on the experience of cities in Massachusetts has been developed.¹⁶ According to this model, public health authorities license tobacco merchants, educate them about tobacco sales laws, and warn them that their compliance with the law will be tested. Then, compliance with the law is routinely tested by employing minors to attempt to purchase tobacco. The minors are closely supervised by adults during these activities. If an illegal sale is made, the vendor receives a citation. Penalties include fines and possible suspension of the license to sell tobacco for repeated violations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NOTES

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1 DiFranza, JR, Godshall, WT. (1996).

HB

229

Alaska State Legislature

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Representative Gary Stevens

Sponsor Statement – House Bill 229

~Updated April 27, 2001~

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

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

The accompanied fiscal note from the Tax Division of the Department of Revenue states that it will take \$822,500 in general fund money the first year of implementation to operate the new tax program. On the other side of the ledger, they have projected that in the FY2003, over \$38 million will be raised yearly in new revenue as a result of this legislation.

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

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



Advocates for Alaska's Youth

Position Paper
SB 165 Education Tax on Employment

April 2001

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

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

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

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

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

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

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

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

THE
FOLLOWING
DOCUMENT(S)
ARE
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Introduced by: Manager Jensen
Requested by: Assembly
Drafted by: Borough Clerk
Introduced: 04/05/2001
Adopted: 04/05/2001

**KODIAK ISLAND BOROUGH
RESOLUTION NO. 2001-23**

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

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

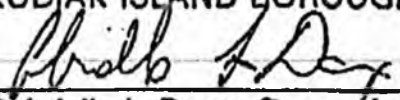
WHEREAS, the collected revenue would be deposited into the state's general fund and accounted for separately. In turn, the legislature may then appropriate the collected revenue, as set forth in this section, to education funding; and

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

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


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

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

KODIAK ISLAND BOROUGH


Gabrielle LeDoux, Borough Mayor

ATTEST:



Judith A. Nielsen, CMC, Borough Clerk

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



April 2, 2001

Senator Alan Austerman
State Capitol
Juneau, AK 99801-1182


Dear Senator Austerman:

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

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

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

Sincerely,


John Holst
Superintendent

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

Subject: Re: information

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

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

Organization: Department of Revenue

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

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

Suzanne,

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

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

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

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

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

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

Let me know if you have any questions.

Larry

FISCAL NOTE

**STATE OF ALASKA
2001 LEGISLATIVE SESSION**

Fiscal Note Number: _____
 Bill Version: HB 229
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue
 Title: Education Tax on Employment BRU: Revenue Operations
 Component: Tax Division
 Sponsor: Representative Stevens
 Requester: House Labor and Commerce 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	432.5	535.3	535.3	535.3	535.3	535.3
Travel	21.0	21.0	21.0	21.0	21.0	21.0
Contractual	282.7	122.7	122.7	122.7	122.7	122.7
Supplies		10.0	10.0	10.0	10.0	10.0
Equipment	86.3	7.5				
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	822.5	696.5	689.0	689.0	689.0	689.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (Increase)	0.0	38,216.1	38,216.1	38,216.1	38,216.1	38,216.1
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	822.5	696.5	689.0	689.0	689.0	689.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	822.5	696.5	689.0	689.0	689.0	689.0

Estimate of any current year (FY2001) cost: 0.0

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

POSITIONS

Full-time	7	8	8	8	8	8
Part-time						
Temporary	8	8	8	8	8	8

ANALYSIS: (Attach a separate page if necessary)

Revenue projection assumes taxpayers will not pay until Feb 1, 2003. See attached bill analysis for more information.

The department projects it will need eight full-time permanent workers to operate the new tax program, and eight temporary clerks during the tax season. The personnel would range from clerks at Range 8 to a section chief, a Revenue Auditor V, at Range 22.

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

Phone 465-3682
 Date/Time April 23, 2001, 1 p.m.
 Date 04/23/2001

For distribution information, call the Governor's Legislative Office

Department of Revenue Fiscal Note
Education Tax on Employment - HB 229

Prepared April 23, 2001

Discussion

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

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

AS 43.45.021 provides that every employer is to deduct \$50 from each employee's wages in each of the first two regular payrolls of the tax year, or the first two payrolls following employment. The employer must then remit the tax deducted to the department. A taxpayer remits the tax before February 1 of the year following the year for which the tax is imposed. No deduction may be made if the employee can prove to the employer that the \$100 tax has previously been paid. The department is to provide a return form for the employer to remit the tax.

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

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

Section 2 provides that the tax takes effect on January 1, 2002.

Analysis

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

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

Generally, taxpayers will have use of the tax for a period of one year from the time the tax liability is incurred before it is required to be remitted to the department. This could place uncollected tax at risk if a taxpayer becomes insolvent or leaves the state.

The bill requires an employer to deduct the tax and send it to the department on a return form provided by the department. There is no express due date in the bill for the remittance of the tax withheld, other than February 1, 2003.

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

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

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

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

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

Revenue Projection

The Alaska Department of Labor estimates that in 1999 the number of resident and nonresident workers with unique Social Security numbers was 358,729. This differs from the 1999 Alaska Department of Labor annual average monthly employment

estimate of 274,570 because it is a measurement of the number of unique workers not jobs. For example, in any given year a business might employ more than one worker for the same job. However, this does not include the estimated 16,829 federal government workers or 32,298 self-employed workers.

The data on self-employed workers is from the Internal Revenue Service and is adjusted for individuals who might have more than one job or not have any earnings in a particular year. The number of federal workers comes from the Department of Labor. The total number of workers is then reduced by 25,695 to account for workers under the age of 19.

prepared by Carl Meyer and Michael Williams

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 229
 () Publish Date: _____

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

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services	351.5	456.6	456.6	456.6	456.6	456.6
Travel	9.0	9.0	9.0	9.0	9.0	9.0
Contractual	123.0	155.0	155.0	155.0	155.0	155.0
Supplies	7.5	10.0	10.0	10.0	10.0	10.0
Equipment	120.0					
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	611.0	630.6	630.6	630.6	630.6	630.6

CAPITAL EXPENDITURES	175.0					
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CHANGE IN REVENUES (Increase)	0.0	38,732.7	38,732.7	38,732.7	38,732.7	38,732.7
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	786.0	630.6	630.6	630.6	630.6	630.6
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	786.0	630.6	630.6	630.6	630.6	630.6

Estimate of any current year (FY2002) cost: 0.0

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

POSITIONS

Full-time	8	8	8	8	8	8
Part-time						
Temporary	7	7	7	7	7	7

ANALYSIS: (Attach a separate page if necessary)

Revenue's projections for this fiscal note assume that the state would not collect tax money under this legislation until Feb 1, 2004 (the tax would be due by February 1 of the calendar year following the year for which the tax was imposed). This fiscal note is based on the assumption that the effective date of this legislation -- January 1, 2002 -- would be changed to January 1, 2003, as January 1, 2002 already has passed. See attached bill analysis for more information.

The department projects it will need eight full-time permanent workers to operate the new tax program and seven temporary clerks during the tax season. The personnel would range from clerks at Range 8 to a program manager at Range 18.

Prepared by: Carl Meyer & Michael Williams, Revenue Auditors Phone 465-3682
 Division: Tax Division Date/Time 02/11/2002 3 p.m.
 Approved by: Larry Persily, Deputy Commissioner Date 2/11/02
 Agency: Department of Revenue

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Discussion

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

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

AS 43.45.021 provides that an employer is to deduct \$50 from each employee's wages in each of the first two regular payrolls of the tax year, or the first two payrolls following employment. The employer must then remit the tax deducted to the department. A taxpayer remits the tax before February 1 of the year following the year for which the tax is imposed. No deduction may be made if the employee can prove to the employer that the \$100 tax has previously been paid. The department is to provide a return form for the employer to remit the tax.

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

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

Section 2 provides that the tax takes effect on January 1, 2002. However, for the revenue and cost projections, the Department of Revenue assumes that the effective date will be changed to January 1, 2003.

Analysis

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

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

Generally, taxpayers will have use of the tax for a period of one year from the time the tax liability is incurred before it is required to be remitted to the department. This could place collected tax at risk when a taxpayer becomes insolvent or leaves the state.

The bill requires an employer to deduct the tax and send it to the department on a return form provided by the department. There is no express due date in the bill for the remittance of the tax withheld, other than February 1, 2004 [February 1, 2003].

Prepared by Carl Meyer and Michael Williams

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

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

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

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

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

Revenue

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

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

Prepared by Carl Meyer and Michael Williams

HB 281 Civil Liability for Providing Alcohol

Title and Description of Effected Statutes

AS 04.11.010 License or permit required to manufacture, sell, and possess for sale alcohol.

AS 04.11.080 Types of licenses or permits required to manufacture, sell, and possess for sale alcohol

AS 04.11.090-04.11.220 Description of each license and permit required to manufacture, sell and possess for sale alcohol

AS 04.16.030 Prohibited conduct relating to drunken persons

AS 04.21.050 Proof of age required

AS 04.16.051 Furnishing or delivery of alcoholic beverages to persons under 21

*AS 04.21.020 Civil liability of persons providing alcohol to persons under 21

(a) A person who provides alcoholic beverages to another person may not be held civilly liable for injuries resulting from the intoxication of that person unless the person who provides the alcoholic beverages holds a license authorized under AS 04.11.080-04.11.220, or is an agent or employee of such a license and

(1) the alcoholic beverages are provided to a person under the age of 21 years in violation of AS 04.16.051, unless the licensee, agent, or employee secures in good faith from the person a signed statement, liquor identification card, or driver's license meeting the requirements of AS 04.21.050(a) and (b), that indicates that the person is 21 years of age or older; or

(2) the alcoholic beverages are provided to a drunken person in violation of AS 04.16.030.

(b) Notwithstanding (a) of this section, a person who sells or barters an alcoholic beverage to another person in violation of AS 04.11.010 is strictly liable (1) to the recipient or another person for civil damages if, under the influence of the alcoholic beverage, the person receiving the alcoholic beverage engages in conduct that results in civil damages and the recipient's being under the influence of the alcoholic beverage substantially contributes to the civil damages; and (2) for the cost to the state or a political subdivision of the state to criminally prosecute a person who receives an alcoholic beverage from a person who violates AS 04.11.010 if the prosecution results from the violation of AS 04.11.010 described in this subsection. In this subsection, "civil damages" includes damages for personal injury, death, or injury to property of a person, including the state or a political subdivision of the state.

(c) In the action under (b) of this section, it is not a defense that the person receiving the alcoholic beverage voluntarily consumed the alcoholic beverage or that the person receiving the alcoholic beverage was voluntarily under the influence of the alcoholic beverage.