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Nauman
3/9/20

CS FOR SENATE BILL NO. 182()

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FIRST LEGISLATURE - SECOND SESSION

BY

**Offered:
Referred:**

Sponsor(s): SENATORS STEVENS, Begich, Gray-Jackson, Giessel

A BILL

FOR AN ACT ENTITLED

"An Act raising the minimum age to purchase, sell, exchange, or possess tobacco, a product containing nicotine, or an electronic smoking product; relating to transporting tobacco, a product containing nicotine, or an electronic smoking product; relating to the taxation of electronic smoking products; and providing for an effective date."

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

* **Section 1.** AS 11.76.100(a) is amended to read:

(a) A person commits the offense of selling or giving tobacco to a **person under 21 years of age** [MINOR] if the person

(1) negligently sells a cigarette, a cigar, tobacco, or a product containing tobacco to a person under **21** [19] years of age;

(2) is **21** [19] years of age or older and negligently exchanges or gives a cigarette, a cigar, tobacco, or a product containing tobacco to a person under **21** [19] years of age;

(3) maintains a vending machine that dispenses cigarettes, cigars,

tobacco, or products containing tobacco; or

(4) holds a business license endorsement under AS 43.70.075 and allows a person under 21 [19] years of age to sell a cigarette, a cigar, tobacco, or a product containing tobacco.

* **Sec. 2.** AS 11.76.100(b) is amended to read:

(b) Notwithstanding the provisions of (a) of this section, a person who maintains a vending machine is not in violation of (a)(3) of this section if the vending machine is located

(1) on premises licensed as a beverage dispensary under AS 04.11.090, licensed as a club under AS 04.11.110, or licensed as a package store under AS 04.11.150; and

(A) as far as practicable from the primary entrance; and

(B) in a place that is directly and continually supervised by a person employed on the licensed premises during the hours the vending machine is accessible to the public; or

(2) in an employee break room or other controlled area of a private work place that is not generally considered a public place and the room or area contains a posted warning sign at least 11 inches by 14 inches indicating that possession of tobacco by a person under 21 [19] years of age is prohibited under AS 11.76.105.

* **Sec. 3.** AS 11.76.105 is amended to read:

Sec. 11.76.105. Possession of tobacco, electronic smoking products, or products containing nicotine by a person under 21 years of age [MINOR]. (a) A person under 21 [19] years of age may not knowingly possess a cigarette, a cigar, tobacco, a product containing tobacco, an electronic smoking product, or a product containing nicotine in this state. [THIS SUBSECTION DOES NOT APPLY TO A PERSON WHO IS A PRISONER AT AN ADULT CORRECTIONAL FACILITY.]

(b) In a prosecution under (a) of this section for possession of an electronic smoking product or a product containing nicotine, it is an affirmative defense that the electronic smoking product or product containing nicotine possessed by the person under 21 [19] years of age was intended or expected to be consumed without being

combusted, and the electronic smoking product or product containing nicotine

(1) has been approved by the United States Food and Drug Administration for sale as a tobacco use cessation or harm reduction product or for other medical purposes;

(2) was being marketed and sold for the approved purposes; and

(3) was

(A) prescribed by a health care professional;

(B) given to the person by the person's parent or guardian;

(C) provided by a state-approved tobacco cessation program administered by the Department of Health and Social Services; or

(D) provided by a pharmacist to a person 18 years of age or older without a prescription.

(c) Possession of tobacco, an electronic smoking product, or a product containing nicotine by a **person under 21 years of age** [MINOR] is a violation.

* **Sec. 4.** AS 11.76.106(b) is amended to read:

(b) Subsection (a) does not apply if the sale

(1) is by vending machine as provided under AS 11.76.100(b) or 11.76.109(f);

(2) is a wholesale transaction, the person is licensed as a manufacturer or distributor under AS 43.50.010, and the sale occurs on premises where no retail transactions occur;

(3) is by a retailer who sells primarily cigarettes, cigars, tobacco, products containing tobacco, electronic smoking products, or products containing nicotine and who restricts access to the premises to only those individuals who are **21** [19] years of age or older; or

(4) is of electronic smoking products over the Internet to a person **21** [19] years of age or older.

* **Sec. 5.** AS 11.76.109(a) is amended to read:

(a) A person commits the offense of selling or giving an electronic smoking product or a product containing nicotine to a **person under 21 years of age** [MINOR] if the person

(1) negligently sells an electronic smoking product or a product containing nicotine to a person under 21 [19] years of age;

(2) is 21 [19] years of age or older and negligently exchanges or gives an electronic smoking product or a product containing nicotine to a person under 21 [19] years of age;

(3) maintains a vending machine that dispenses electronic smoking products or products containing nicotine; or

(4) holds a business license endorsement under AS 43.70.075 and allows a person under 21 [19] years of age to sell an electronic smoking product or a product containing nicotine.

* **Sec. 6.** AS 11.76.109(b) is amended to read:

(b) The provisions of (a) of this section do not apply to the sale, exchange, or gift to a person under 21 [19] years of age of an electronic smoking product or a product containing nicotine that is intended or expected to be consumed without being combusted if the electronic smoking product or product containing nicotine

(1) has been approved by the United States Food and Drug Administration for sale as a tobacco use cessation or harm reduction product or for other medical purposes;

(2) is being marketed and sold solely for the approved purposes; and

(3) is

(A) prescribed by a health care professional;

(B) given to a person by the person's parent or legal guardian;

(C) provided by a state-approved tobacco cessation program administered by the Department of Health and Social Services; or

(D) provided by a pharmacist to a person 18 years of age or older without a prescription.

* **Sec. 7.** AS 11.76.109(d) is amended to read:

(d) Notwithstanding (a)(3) of this section, a person who maintains a vending machine is not in violation of (a)(3) of this section if the vending machine is located

(1) on premises licensed as a beverage dispensary under AS 04.11.090, licensed as a club under AS 04.11.110, or licensed as a package store under

AS 04.11.150, and is located

(A) as far as practicable from the primary entrance; and

(B) in a place that is directly and continually supervised by a person employed on the licensed premises during the hours the vending machine is accessible to the public; or

(2) in an employee break room or other controlled area of a private work place that is not generally considered a public place and the room or area contains a posted warning sign at least 11 inches by 8.5 inches indicating that possession of electronic smoking products or products containing nicotine by a person under 21 [19] years of age without a prescription is prohibited under AS 11.76.109.

* **Sec. 8.** AS 11.76.109(g) is amended to read:

(g) Selling or giving an electronic smoking product or a product containing nicotine to a **person under 21 years of age** [MINOR] is a violation and, upon conviction, is punishable by a fine of not less than \$300.

* **Sec. 9.** AS 43.50.105(b) is amended to read:

(b) A person who is licensed under this chapter may not ship or cause to be shipped cigarettes to a person in this state unless the person receiving the cigarettes

(1) is licensed under this chapter;

(2) holds a business license endorsement under AS 43.70.075;

(3) is an operator of a customs bonded warehouse under 19 U.S.C. 1311 or 19 U.S.C. 1555;

(4) is an instrumentality of the federal government or an Indian tribal organization authorized by law to possess cigarettes not taxed under this chapter; or

(5) is an individual 21 [19] years of age or older **and the individual's age was verified at the time of purchase by a third-party verification service, the individual is** receiving the cigarettes for personal consumption, and the tax imposed on the cigarettes under this chapter has been paid.

* **Sec. 10.** AS 43.50.105(c) is amended to read:

(c) A common or contract carrier may not knowingly transport cigarettes to a person in this state unless the person

(1) shipping the cigarettes is licensed under this chapter and, before

shipment, provides the common or contract carrier with a copy of the person's current license issued by the department and

(A) an affidavit from the intended recipient certifying that the person receiving the cigarettes is a person described under **(b)(1) - (4)** [(b)(1) - (5)] of this section; or

(B) the common or contract carrier verifies the age of the recipient as 21 years of age or older before delivery; or

(2) receiving the cigarettes is a person described under (a)(2) or (3) of this section or is licensed under this chapter and, before receipt, provides the common or contract carrier with a copy of the person's current license issued by the department.

* **Sec. 11.** AS 43.50.150(c) is amended to read:

(c) The department may enter into an agreement with a municipality that imposes a tax on cigarettes, [OR OTHER] tobacco products, **or electronic smoking products** for the purpose of jointly auditing a person liable for a tax under AS 43.50.010 - 43.50.390 and the municipal tax on cigarettes, [OR OTHER] tobacco products, **or electronic smoking products. In this subsection, "electronic smoking product" has the meaning given in AS 43.50.390.**

* **Sec. 12.** AS 43.50.300 is amended to read:

Sec. 43.50.300. Excise tax levied. An excise tax is levied on tobacco products **and electronic smoking products** in the state at the rate of 75 percent of the wholesale price of the [TOBACCO] products. The tax is levied when a person

(1) brings, or causes to be brought, a tobacco product **or electronic smoking product** into the state from outside the state for sale;

(2) makes, manufactures, or fabricates a tobacco product **or electronic smoking product** in the state for sale in the state; or

(3) ships or transports a tobacco product **or electronic smoking product** to a retailer in the state for sale by the retailer.

* **Sec. 13.** AS 43.50.310(b) is amended to read:

(b) The tax does not apply to a

(1) tobacco product if the United States Constitution or other federal laws prohibit the levying of the tax on the product by the state; **or**

(2) an electronic smoking product

(A) that is subject to taxation under AS 43.61.010 - 43.61.030 and that does not contain nicotine;

(B) approved for sale by the United States Food and Drug Administration as a drug, drug product, including a drug product used to treat tobacco dependence, or combination product under 21 U.S.C. 301 - 392 (Federal Food, Drug, and Cosmetic Act);

(C) if the United States Constitution or other federal laws prohibit the levying of the tax on the product by the state.

* **Sec. 14.** AS 43.50.320(a) is amended to read:

(a) Except as provided in (g) of this section, a person must be licensed by the department if the person engages in business as a distributor for a tobacco product **or electronic smoking product** that is subject to the tax.

* **Sec. 15.** AS 43.50 is amended by adding a new section to read:

Sec. 43.50.325. Restrictions on shipping or transporting tobacco products and electronic smoking products. (a) A person who is not licensed under this chapter may not ship or cause to be shipped a tobacco product or electronic smoking product to a person in this state unless the person receiving the tobacco product or electronic smoking product is

(1) licensed under this chapter;

(2) an operator of a customs bonded warehouse under 19 U.S.C. 1311 or 19 U.S.C. 1555; or

(3) an instrumentality of the federal government or an Indian tribal organization authorized by law to possess tobacco products or electronic smoking products not taxed under this chapter.

(b) A person who is licensed under this chapter may not ship or cause to be shipped a tobacco product or electronic smoking product to a person in this state unless the person receiving the tobacco product or electronic smoking product

(1) is licensed under this chapter;

(2) holds a business license endorsement under AS 43.70.075;

(3) is an operator of a customs bonded warehouse under 19 U.S.C.

1311 or 19 U.S.C. 1555;

(4) is an instrumentality of the federal government or an Indian tribal organization authorized by law to possess tobacco products or electronic smoking products not taxed under this chapter; or

(5) is an individual 21 years of age or older and the individual's age was verified at the time of purchase through a third-party verification service, the individual is receiving the tobacco product or electronic smoking product for personal consumption, and the tax imposed on the tobacco product or electronic smoking product under this chapter has been paid.

(c) A common or contract carrier may not knowingly transport a tobacco product or electronic smoking product to a person in this state unless the person

(1) shipping the tobacco product or electronic smoking product is licensed under this chapter and, before shipment, provides the common or contract carrier with a copy of the person's current license issued by the department and

(A) an affidavit from the intended recipient certifying that the person receiving the tobacco product or electronic smoking product is a person described under (b)(1) - (4) of this section; or

(B) the common or contract carrier verifies the age of the recipient as 21 years of age or older before delivery; or

(2) receiving the tobacco product or electronic smoking product is a person described under (a)(2) or (3) of this section or is licensed under this chapter and, before receipt, provides the common or contract carrier with a copy of the person's current license issued by the department.

(d) If a tobacco product or electronic smoking product is transported by a common or contract carrier to a home or residence, it is rebuttably presumed that the common or contract carrier knew that the recipient of the tobacco product or electronic smoking product was not a person described under (b)(1) - (5) of this section, unless the person shipping the tobacco product or electronic smoking product has satisfied the requirements in (c)(1) of this section.

(e) A person, other than a common or contract carrier, may not knowingly transport a tobacco product or electronic smoking product to a person in this state,

1 unless the recipient of the tobacco product or electronic smoking product is a person
2 described under (b)(1) - (5) of this section.

3 (f) A person who ships or causes to be shipped a tobacco product or electronic
4 smoking product to a person in this state shall plainly and visibly mark the container
5 or wrapping with the words "tobacco product" or "electronic smoking product" or
6 both, as applicable, if the tobacco product or electronic smoking product is shipped in
7 a container or wrapping other than the manufacturer's original container or wrapping
8 of the tobacco product or electronic smoking product.

9 (g) A person who violates the provisions of this section is guilty of a class A
10 misdemeanor if the person unlawfully ships, causes to be shipped, or transports a
11 tobacco product or electronic smoking product.

12 (h) In addition to the criminal penalty under (g) of this section, the department
13 may assess a civil fine of not more than \$5,000 for each violation of this section.

14 (i) A person who violates the provisions of this section is jointly and severally
15 liable for the taxes imposed by AS 43.50.090 and 43.50.190. To the fullest extent
16 permitted by the Constitution of the United States, a person who violates the
17 provisions of this section is required to collect the taxes and pay them to the
18 department.

19 * **Sec. 16.** AS 43.50.330(a) is amended to read:

20 (a) On or before the last day of each calendar month, a licensee shall file a
21 return with the department. The return must state the number or amount of tobacco
22 products and electronic smoking products sold by the licensee during the preceding
23 calendar month, the selling price of the tobacco products and electronic smoking
24 products, and the amount of tax imposed on the tobacco products and electronic
25 smoking products.

26 * **Sec. 17.** AS 43.50.335 is amended to read:

27 **Sec. 43.50.335. Tax credits and refunds.** The department shall adopt
28 procedures for a refund or credit to a licensee of the tax paid for tobacco products or
29 electronic smoking products that have become unfit for sale, are destroyed, or are
30 returned to the manufacturer for credit or replacement if the licensee provides proof
31 acceptable to the department that the tobacco products or electronic smoking

products have not been and will not be consumed in this state.

* **Sec. 18.** AS 43.50.340 is amended to read:

Sec. 43.50.340. Records. A licensee shall keep a complete and accurate record of all tobacco products **and electronic smoking products** of the licensee subject to the tax, including purchase prices, sales prices, the names and addresses of the sellers and the purchasers, the dates of delivery, the quantities of tobacco products **and electronic smoking products**, and the trade names and brands. Statements and records required by this section must be in the form prescribed by the department, preserved for three years, and available for inspection upon demand by the department.

* **Sec. 19.** AS 43.50.390(1) is amended to read:

(1) "distributor" means a person who

(A) brings, or causes to be brought, a tobacco product **or electronic smoking product** into the state from outside the state for sale;

(B) makes, manufactures, or fabricates a tobacco product **or electronic smoking product** in the state for sale in the state; or

(C) ships or transports a tobacco product **or electronic smoking product** to a retailer in the state for sale by the retailer;

* **Sec. 20.** AS 43.50.390(5) is amended to read:

(5) "wholesale price" means

(A) the established price for which a manufacturer sells a tobacco product **or electronic smoking product** to a distributor after deduction of a discount or other reduction received by the distributor for quantity or cash if the manufacturer's established price is adequately supported by bona fide arm's length sales as determined by the department; or

(B) the price, as determined by the department, for which tobacco products **or electronic smoking products** of comparable retail price are sold to distributors in the ordinary course of trade if the manufacturer's established price does not meet the standards of (A) of this paragraph.

* **Sec. 21.** AS 43.50.390 is amended by adding a new paragraph to read:

(6) "electronic smoking product" means a

(A) component, solution, vapor product, or other related product that is manufactured and sold for use in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device for the purpose of delivering nicotine or other substances to the person inhaling;

(B) product under (A) of this paragraph that is sold as part of a disposable integrated unit containing a power source and delivery system or as a kit containing a refillable electronic smoking system and power source.

* **Sec. 22.** AS 43.70.075(f) is amended to read:

(f) A person who holds a license endorsement issued under this section shall post on the licensed premises a warning sign as described in this subsection. A warning sign required by this subsection must be at least 8.5 inches by 11 inches and must read: "The sale of electronic smoking products or products containing nicotine without a prescription or tobacco products to persons under age 21 [19] is illegal." A person holding an endorsement issued under this section shall display the warning sign in a manner conspicuous to a person purchasing or consuming tobacco products, electronic smoking products, or products containing nicotine on the licensed premises. The department shall make available the warning signs required under this section to a person who holds an endorsement issued under this section or a person who requests the sign with the intention of displaying it.

* **Sec. 23.** AS 43.70.075(m) is amended to read:

(m) The department may initiate suspension of a business license endorsement or the right to obtain a business license endorsement under this section by sending the person subject to the suspension a notice by certified mail, return receipt requested, or by delivering the notice to the person. The notice must contain information that informs the person of the grounds for suspension, the length of any suspension sought, and the person's right to administrative review. A suspension begins 30 days after receipt of notice described in this subsection unless the person delivers a timely written request for a hearing to the department in the manner provided by regulations of the department. If a hearing is requested under this subsection, an administrative law judge of the office of administrative hearings (AS 44.64.010) shall determine the issues by using the preponderance of the evidence test and shall, to the extent they do

not conflict with regulations adopted under AS 44.64.060, conduct the hearing in the manner provided by regulations of the department. A hearing under this subsection is limited to the following questions:

(1) was the person holding the business license endorsement, or an agent or employee of the person while acting within the scope of the agency or employment of the person, convicted by plea or judicial finding of violating AS 11.76.100, 11.76.106, 11.76.107, or 11.76.109;

(2) if the department does not allege a conviction of AS 11.76.100, 11.76.106, 11.76.107, or 11.76.109, did the person, or an agent or employee of the person while acting within the scope of the agency or employment of the person, violate a provision of (a) or (g) of this section;

(3) within the 24 months before the date of the department's notice under this subsection, was the person, or an agent or employee of the person while acting within the scope of the agency or employment of the person, convicted of violating AS 11.76.100, 11.76.106, 11.76.107, or 11.76.109 or adjudicated for violating a provision of (a) or (g) of this section;

(4) did the person holding the business license endorsement establish that the person holding the business license endorsement had adopted and enforced an education, a compliance, and a disciplinary program for agents and employees of the person as provided in (t) of this section;

(5) did the person holding the business license endorsement overcome the rebuttable presumption established in (w) of this section;

(6) within five years before the date of the violation that is the subject of the hearing, did the department establish that the person holding the business license endorsement

(A) previously violated (a) or (g) of this section;

(B) previously violated AS 11.76.100, 11.76.106, 11.76.107, or 11.76.109 at a location or outlet in a location for which the person holds a business license endorsement, or had an agent or employee previously violate AS 11.76.100, 11.76.106, 11.76.107, or 11.76.109; this subparagraph does not apply to a prior conviction that served to enhance a suspension period under

(d)(2) - (4) of this section; or

(C) engaged at a location owned by the person in other conduct that was or is likely to result in the sale of tobacco, electronic smoking products, or products containing nicotine to a person under 21 [19] years of age in violation of AS 11.76.100, 11.76.106, 11.76.107, or 11.76.109.

* **Sec. 24.** AS 43.70.075(t) is amended to read:

(t) Based on evidence provided at the hearing under (m)(4) - (6) of this section, the department may reduce the license suspension period under (d) of this section if the person holding the business license endorsement establishes that, before the date of the violation, the person had

(1) adopted and enforced a written policy against selling cigarettes, cigars, tobacco, products containing tobacco, electronic smoking products, or products containing nicotine to a person under 21 [19] years of age in violation of AS 11.76.100, 11.76.106, 11.76.107, or 11.76.109;

(2) informed the person's agents and employees of the applicable laws and their requirements and conducted training on complying with the laws and requirements;

(3) required each agent and employee of the person to sign a form stating that the agent and employee has been informed of and understands the written policy and the requirements of AS 11.76.100, 11.76.106, 11.76.107, and 11.76.109;

(4) determined that the agents and employees of the person had sufficient experience and ability to comply with the written policy and requirements of AS 11.76.100, 11.76.106, 11.76.107, and 11.76.109;

(5) required the agents and employees of the person to verify the age of purchasers of cigarettes, cigars, tobacco, other products containing tobacco, electronic smoking products, or products containing nicotine by means of a valid government issued photographic identification;

(6) established and enforced disciplinary sanctions for noncompliance with the written policy or the requirements of AS 11.76.100, 11.76.106, 11.76.107, and 11.76.109; and

(7) monitored the compliance of the agents and employees of the

person with the written policy and the requirements of AS 11.76.100, 11.76.106, 11.76.107, and 11.76.109.

* **Sec. 25.** AS 43.70.075(w) is amended to read:

(w) For purposes of (m)(5) of this section, a conviction for a violation of AS 11.76.100, 11.76.106, 11.76.107, or 11.76.109 by the agent or employee of the person who holds the business license endorsement is rebuttably presumed to constitute proof of the fact that the agent or employee negligently sold a cigarette, a cigar, or tobacco, a product containing tobacco, an electronic smoking product, or a product containing nicotine to a person under 21 [19] years of age. The person who holds the business license endorsement may overcome the presumption by establishing by clear and convincing evidence that the agent or employee did not negligently sell a cigarette, a cigar, or tobacco, a product containing tobacco, an electronic smoking product, or a product containing nicotine to a person under 21 [19] years of age in violation of AS 11.76.100, 11.76.106, 11.76.107, or 11.76.109 as alleged in the citation issued to the agent or employee. The presentation of evidence authorized by this subsection does not constitute a collateral attack on the conviction described in this subsection.

* **Sec. 26.** AS 47.12.030(b) is amended to read:

(b) When a minor is accused of violating a statute specified in this subsection, other than a statute the violation of which is a felony, this chapter and the Alaska Delinquency Rules do not apply and the minor accused of the offense shall be charged, prosecuted, and sentenced in the district court in the same manner as an adult; if a minor is charged, prosecuted, and sentenced for an offense under this subsection, the minor's parent, guardian, or legal custodian shall be present at all proceedings; the provisions of this subsection apply when a minor is accused of violating

(1) a traffic statute or regulation, or a traffic ordinance or regulation of a municipality;

(2) AS 11.76.105, relating to the possession of tobacco by a person under 21 [19] years of age;

(3) a fish and game statute or regulation under AS 16;

1 (4) a parks and recreational facilities statute or regulation under
2 AS 41.21;

3 (5) [REPEALED]

4 (6) a municipal curfew ordinance, whether adopted under
5 AS 29.35.085 or otherwise, unless the municipality provides for enforcement of its
6 ordinance under AS 29.25.070(b) by the municipality; in place of any fine imposed for
7 the violation of a municipal curfew ordinance, the court shall allow a defendant the
8 option of performing community work; the value of the community work, which may
9 not be lower than the amount of the fine, shall be determined under AS 12.55.055(c);
10 in this paragraph, "community work" includes the work described in AS 12.55.055(b)
11 or work that, on the recommendation of the municipal or borough assembly, city
12 council, or traditional village council of the defendant's place of residence, would
13 benefit persons within the municipality or village who are elderly or disabled.

14 * **Sec. 27.** AS 11.76.100(e) is repealed.

15 * **Sec. 28.** This Act takes effect January 1, 2021.