

CS FOR HOUSE BILL NO. 174(CRA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FIRST LEGISLATURE - SECOND SESSION

BY THE HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Offered: 3/11/20

Referred: Judiciary

Sponsor(s): REPRESENTATIVES KNOPP, Fields

A BILL

FOR AN ACT ENTITLED

1 **"An Act raising the minimum age to purchase, sell, exchange, or possess tobacco, a**
2 **product containing nicotine, or an electronic smoking product; and providing for an**
3 **effective date."**

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

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

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

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

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

13 (3) maintains a vending machine that dispenses cigarettes, cigars,
14 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

1 containing nicotine to a person under 21 [19] years of age;

2 (2) is 21 [19] years of age or older and negligently exchanges or gives
3 an electronic smoking product or a product containing nicotine to a person under 21
4 [19] years of age;

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

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

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

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

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

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

19 (3) is

20 (A) prescribed by a health care professional;

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

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

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

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

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

29 (1) on premises licensed as a beverage dispensary under AS 04.11.090,
30 licensed as a club under AS 04.11.110, or licensed as a package store under
31 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 receiving the cigarettes for personal consumption and the tax imposed on the cigarettes under this chapter has been paid.

* **Sec. 10.** 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

1 person holding an endorsement issued under this section shall display the warning sign
 2 in a manner conspicuous to a person purchasing or consuming tobacco products,
 3 electronic smoking products, or products containing nicotine on the licensed premises.
 4 The department shall make available the warning signs required under this section to a
 5 person who holds an endorsement issued under this section or a person who requests
 6 the sign with the intention of displaying it.

7 * **Sec. 11.** AS 43.70.075(m) is amended to read:

8 (m) The department may initiate suspension of a business license endorsement
 9 or the right to obtain a business license endorsement under this section by sending the
 10 person subject to the suspension a notice by certified mail, return receipt requested, or
 11 by delivering the notice to the person. The notice must contain information that
 12 informs the person of the grounds for suspension, the length of any suspension sought,
 13 and the person's right to administrative review. A suspension begins 30 days after
 14 receipt of notice described in this subsection unless the person delivers a timely
 15 written request for a hearing to the department in the manner provided by regulations
 16 of the department. If a hearing is requested under this subsection, an administrative
 17 law judge of the office of administrative hearings (AS 44.64.010) shall determine the
 18 issues by using the preponderance of the evidence test and shall, to the extent they do
 19 not conflict with regulations adopted under AS 44.64.060, conduct the hearing in the
 20 manner provided by regulations of the department. A hearing under this subsection is
 21 limited to the following questions:

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

26 (2) if the department does not allege a conviction of AS 11.76.100,
 27 11.76.106, 11.76.107, or 11.76.109, did the person, or an agent or employee of the
 28 person while acting within the scope of the agency or employment of the person,
 29 violate a provision of (a) or (g) of this section;

30 (3) within the 24 months before the date of the department's notice
 31 under this subsection, was the person, or an agent or employee of the person while

1 acting within the scope of the agency or employment of the person, convicted of
 2 violating AS 11.76.100, 11.76.106, 11.76.107, or 11.76.109 or adjudicated for
 3 violating a provision of (a) or (g) of this section;

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

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

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

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

14 (B) previously violated AS 11.76.100, 11.76.106, 11.76.107, or
 15 11.76.109 at a location or outlet in a location for which the person holds a
 16 business license endorsement, or had an agent or employee previously violate
 17 AS 11.76.100, 11.76.106, 11.76.107, or 11.76.109; this subparagraph does not
 18 apply to a prior conviction that served to enhance a suspension period under
 19 (d)(2) - (4) of this section; or

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

24 * **Sec. 12.** AS 43.70.075(t) is amended to read:

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

29 (1) adopted and enforced a written policy against selling cigarettes,
 30 cigars, tobacco, products containing tobacco, electronic smoking products, or products
 31 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. 13.** 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. 14.** 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;

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

(5) [REPEALED]

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

- 1 * **Sec. 15.** AS 11.76.100(e) is repealed.
- 2 * **Sec. 16.** This Act takes effect January 1, 2021.