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Sectional Summary

CS House Bill 110 (L&C)

Electronic Smoking Products Excise Tax

House Bill 110 would raise the minimum age to purchase, possess, or sell tobacco products to conform with federal law. It also would prohibit the sale of tobacco products over the internet to individuals for personal use, and it would enact an excise tax on electronic smoking products comparable to the existing wholesale tax on cigarettes and other tobacco products.

Section 1 amends AS 11.76.100(a), relating to selling or giving tobacco to a minor, to raise the minimum age from 19 to 21.

Section 2 amends AS 11.76.100(b), relating to the requirement for vendors to supervise the operation of tobacco product vending machines (TVM), amends the exemption for TVMs situated in a private break room, provided there is signage posted indicating the minimum age to possess tobacco products is age 21 (raised from 19).

Section 3 amends AS 11.76.105, raising the minimum age to possess tobacco, electronic smoking products (ESP), or products containing nicotine from 19 to 21 years of age.

Section 4 amends AS 11.76.106(a), which related to selling tobacco products and ESPs outside of controlled access. It prohibits sales unless only the sales clerk has access to the products. It also prohibits sales over the internet to individuals for their personal consumption.

Section 5 amends AS 11.76.106(b), which establishes exceptions to section (a), above. It states that the prohibition does not apply if the sale is by vending machine or if the sale is by a vendor who restricts access to the premises to only those individuals who are 21 years of age or older. (In current statute it is 19 years of age.)

Note that the third exception in this section—that which allows the sale over the internet of electronic smoking products to a person who is 19 years of age or older—is repealed in its entirety in Section 28 of the bill.

Section 6 amends AS 11.76.109(a), which relates to other products containing nicotine, including chew, gum, patches, or Ecigarette products, and raises the minimum age to sell or give such products from 19 to 21.

Section 7 amends AS 11.76.109(b), relating to exemptions to selling products containing nicotine to persons under the age of 21, if the product is FDA-approved as a tobacco use cessation or harm reduction product, is prescribed by a doctor, or is given by a parent or legal guardian. This is here to address situations in which a doctor or parent wants to provide a minor addicted to nicotine approved products that may help the minor quit their addiction.

Section 8 amends AS 11.76.109(d) for another age change from 19 to 21. This section relates to the requirement for vendors to supervise the operation of ESP or nicotine product vending machines (EVM). The amendment to the age comes in the exemption for EVMs situated in a private break room, provided there is signage posted indicating the minimum age to possess tobacco products.

Section 9 amends AS 11.76.109(g) by raising the minimum age from 19 to 21 years of age in relation to the penalty for selling or giving ESP or nicotine products to someone not of age.

Section 10 amends AS 43.50.105(b) to ensure that a person licensed under this chapter may not ship cigarettes to a person in the state for personal consumption unless that person is 21 years of age or older “and the individual’s age was verified at the time of purchase by a third-party verification service.” This section additionally stipulates that the taxes on the cigarettes sold in this manner also must be paid.

Section 11 amends AS 43.50.105(c) to ensure that a common carrier (FedEx, UPS, USPS, etc.) shipping cigarettes into the state verifies the age of the recipient as 21 years of age or older before completing delivery.

Section 12 amends AS 43.50.150(c) so that the state can enter into agreements with municipalities that also tax electronic smoking products (ESPs). Such agreements would be to jointly audit a person (a business) responsible for paying the excise tax the bill addresses.

Essentially, this is an enforcement tool both the state and local governments can use to their benefit.

Section 13 amends AS 43.50.300 to include “electronic smoking products” among the other tobacco products already taxed by the state at 75 percent of the wholesale price. This section also describes what types of transactions make a business liable for the tax.

Section 14 amends AS 43.50.310(b) to describe exemptions from the excise tax for electronic smoking products. These exemptions include

- electronic smoking products that are subject to taxation under AS 43.61.010 - 43.61.030 and do not contain nicotine (meaning marijuana-related products);
- or an ESP approved for sale by the U.S. Food and Drug Administration as a drug or product used to treat tobacco dependence;
- or if the U.S. Constitution or other federal laws prohibit the state from taxing the product.

Section 15 amends AS 43.50.320(a) to require a person who engages in business as a distributor of ESPs subject to the tax to be licensed by the state.

Section 16 amends AS 43.50 by adding a new section (AS 43.50.325) to establish restrictions on shipping or transporting tobacco products and electronic smoking products. Essentially, these new provisions make the restrictions on shipping of tobacco products and electronic smoking products into the state similar to the restrictions on shipping cigarettes.

These restrictions include

- licensing requirements for persons receiving the products
- that a receiving individual’s age must be verified as 21 years or older through a third party at the time of purchase
- that the tax imposed under this chapter must have been paid
- that a common carrier shipping the tobacco products or electronic smoking products to an individual in the state verifies the age of the recipient as 21 years or older before completing delivery
- that the tobacco products or electronic smoking products must be clearly labeled as such for shipping.

Section 17 amends existing licensed distributor reporting requirements (AS 43.50.330(a)) to include sales reporting of electronic smoking products.

Section 18 adds ESPs to provisions in 43.50.335, which addresses procedures for receiving refunds or credits for taxes paid on products that have become unfit for sale, are destroyed, or are returned to the manufacturer.

Section 19 amends AS 43.50.340 record keeping requirements for licensed businesses selling tobacco products to include businesses selling ESPs. Such records include tracking sales and product information on ESPs being sold.

Sections 20 and 21 perform “housekeeping” in AS 43.50.390(1) and AS 43.50.390(5), in that they update the definitions of “distributor” and “wholesale price” under this chapter to include ESPs as among products related to them.

Section 22 adds a new paragraph (paragraph (6)) to AS 43.50.390 to provide a definition of “electronic smoking product” consistent with use of the phrase elsewhere in statute. It specifies that an ESP 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.”

Section 23 amends AS 43.70.075(f), relating to business license endorsements for selling tobacco products, modifying the existing requirement for signage to be posted on vendor premises, stating it is illegal to sell tobacco or ESPs to minors under the age of 21 (formerly 19).

Section 24 amends AS 43.70.075(m), relating to the process for suspending business licensees holding a tobacco endorsement, modifying existing statute referring to tobacco or ESPs being sold to minors under the age of 21 (formerly 19).

Section 25 amends AS 43.70.075(t), which relates to penalties for licensees violating the prohibition on selling tobacco to anyone under the age of 21, by changing the existing statute for lessening the penalties if a license holder has a written tobacco or ESPs sales

policy that among other things includes making it clear to employees that they cannot sell tobacco or ESPs to people under the age of 21 (formerly 19).

Section 26 amends AS 43.70.075(w), relating to the appeal and administrative process of license suspension, to apply to sales to minors under the age of 21 (formerly 19).

Section 27 amends AS 47.12.030(b), relating to the juvenile justice system, and minors accused of possessing tobacco, modifying existing law to apply to possession by people under the age of 21 (formerly 19). This section adds new language which eliminates the fines imposed for this violation and directs courts to refer defendants to a tobacco education program.

Section 28—Repeals AS 11.76.100(e)—which allows tobacco to be given to a minor if the minor is a prisoner at an adult correctional facility—and AS 11.76.106(b)(4)—which allows the sale of electronic smoking products over the internet to persons 19 years of age or older.

Section 29 is uncodified law specifying the date of applicability of various sections of the bill to offenses committee according to those sections. This is just to preempt any confusion about when these measures become effective.

Section 30 provides an effective date of January 1st, 2022 for the act.