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SENATE BILL

Increasing the Minimal Age for Tobacco and E-Cigarettes: "T-21"

SECTIONAL ANALYSIS

(version D)

- Sec. 1: AS 11.76.100(a), relating to selling or giving tobacco to a minor, raises the minimum age from 19 to 21.
- Sec. 2: 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 (from 19).
- Sec. 3: AS 11.76.105, (a) relating to possession of tobacco, electronic smoking products (ESP), or products containing nicotine, raises the minimum age to possess from 19 to 21 years of age; removes the exemption for incarcerated minors;
(b) makes allowable exemptions as an affirmative defense for possession under certain conditions; to include if the product is FDA-approved, is prescribed by a doctor, and given by a parent or legal guardian. and
(c) makes possession a violation punishable by a fine not to exceed \$300
- Sec. 4: AS 11.76.105 (d) Directs the court system to establish a bail schedule for the fine referenced in Section 3 above, for amounts that may be forfeited without court appearance.
- Sec. 5: AS 11.76.106(b), relating to the 'behind the counter' control provisions of selling tobacco products, allowing exemptions for wholesalers, tobacco shops or online sales, raising the minimum, age to sell from 19 to 21 years of age.
- Sec. 6: AS 11.76.109(a), relating to other products containing nicotine, including chew, gum, patches, or E-cigarette products, raises the minimum age to sell or give such products from 19 to 21.
- Sec. 7: 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, is prescribed by a doctor, and given by a parent or legal guardian.

- Sec. 8: AS 11.76.109(d), relating to the requirement for vendors to supervise the operation of ESP or nicotine product vending machines (EVM), amends the exemption for EVMs situated in a private break room, provided there is signage posted indicating the minimum age to possess tobacco products is age 21 (from 19).
- Sec. 9: AS 11.76.109(g), relating to the penalty for selling or gifting ESP or nicotine products to a minor as being a \$300 violation, raises the minimum age from 19 to 21 years of age.
- Sec. 10: AS 11.81.900(b) adds a definition of nicotine, to include a chemical or chemical compound intended to simulate the effect of the plant-based chemical derived from the tobacco plant.
- Sec. 11: AS 43.50.105(b), relating to wholesale cigarette sales and licensees, to restrict licensees from selling or transporting tobacco products to persons that are at least 21 (from 19) years of age, and to implement an age verification process when conducting transactions.
- Sec. 12: AS 43.50.105(c), relating to common carrier transportation of cigarettes, to verify the age of the recipient before delivery.
- Sec. 13: AS 43.50.150(c), relating to the state being in partnership with municipalities in taxing tobacco products, is amended to include those municipalities taxing ESPs, to share data and jointly audit licensees selling those products.
- Sec. 14: AS 43.50.300(a), relating to existing state excise tax of 75% on other tobacco products, is amended to include taxing ESPs, including closed ESP units, at the rate of 45% of their wholesale value.
- Sec. 15: AS 43.50.300(b), is a new subsection on the wholesale tax of ESPs, to provide a definition of a “closed-system” ESP.
- Sec. 16: AS 43.50.310(b) exempts the excise tax for ESPs that are a marijuana product already taxed under AS 43.61.010-030, or are FDA-approved. Batteries and chargers are also exempt from the tax.
- Sec. 17: AS 43.50.320(a), conforms with existing requirement to be licensed as a distributor of tobacco products, to also be licenses as a distributor of ESPs.
- Sec. 18: AS 43.50.320, is a new subsection prohibiting distributors from selling ESPs not clearly identifiable as a tobacco product, nor market ESPs, including the use of flavorings, in a manner likely to promote use of the products by minors under age 21.
- Sec. 19: AS 43.50.325 adds a new section in the tax code, restricting the transportation of tobacco and ESPs into the state, requiring licensing to do so, and makes clear provisions for age verification for delivery of and labelling for such products. This is a conforming amendment, replicating AS 43.50.015, which applies only to cigarettes.
- Sec. 20: AS 43.50.330(a), relating to annual reporting requirements for tax purposes, is a conforming amendment to existing tobacco sales reporting to include ESP reporting.

- Sec. 21: AS 43.50.335, relating to existing tobacco tax credits and refunds for faulty or destroyed products, to include credits for similarly faulty or destroyed ESPs.
- Sec. 22: AS 43.50.340, relating to existing record keeping requirements for licensed businesses selling tobacco products, to also be required to track sales and product information on ESPs being sold.
- Sec. 23: AS 43.50.350 adds an exception, described in Section 24 below, to depositing of tax collected into the general fund, which may be used by the legislature to make appropriations for health care, health research, health promotion, and health education.
- Sec. 24: AS 43.50.350(b) adds a new subsection directing taxes collected on ESPs to be accounted for separately and may be appropriated by the legislature to provide for education, programs, and advertising related to the hazards of ESPs.
- Sec. 25: AS 43.50.390(1), a conforming amendment relating to the definition of a distributor of tobacco products, to also include ESPs, for purposes of identifying business who bring ESPs in and out of state, manufactures ESPs in the state, or ships ESPs to retailers in the state.
- Sec. 26: AS 43.50.390(5), relating to the definition of “wholesale price” for purposes of taxing tobacco products, includes ESPs as part of wholesale pricing and taxing.
- Sec. 27: AS 43.50.390 provides a definition of “electronic smoking product” for taxing purposes, to clarify an ESP includes all its components, separately or integrated as a closed system, but excludes batteries and chargers when sold separately.
- Sec. 28: AS 43.70.075(f), relating to business license endorsements for selling tobacco products, amends the existing requirement for signage to be posted on vendor premises, stating it being illegal to sell tobacco or ESPs to minors under the age of 21 (from 19).
- Sec. 29: AS 43.70.075(m), relating to the process for suspending business licensees holding a tobacco endorsement, amends existing statute referring to tobacco or ESPs being sold to minors under the age of 21 (from 19).
- Sec. 30: AS 43.70.075(t), relating to penalties for licensees violating the T21 laws, amends existing statute for lessening the penalties if a license holder has a written tobacco or ESPs sales policy to include employees not selling tobacco or ESPs to minors under the age of 21 (from 19).
- Sec. 31: AS 43.70.075(w), relating to the appeal and administrative process of license suspension, conforms existing law regarding tobacco and ESP sales, to apply to sales to minors under the age of 21 (from 19).
- Sec. 32: AS 45.50.471(b), relating to consumer protection and unlawful business practices, adds a new subsection making it unlawful to market or advertise ESPs to persons under the age of 21 in the state. This is a conforming change consistent with unlawful marketing referenced in Section 18 above.

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- Sec. 33: AS 47.12.030(b), relating to the juvenile justice system, and minors accused of possessing tobacco, conforms existing law to apply to possession by minors under the age of 21 (from 19).
- Sec. 34: AS 11.76.100(e), relating to sales, gifting and possession exemptions for incarcerated persons is repealed.
- Sec. 35: Relates to applicability of conforming changes in the bill, and also for purposes of sales, provides a grandfather clause for persons age 19-20 who, on the effective date of the act, are employed on premises licensed to sell these products.
- Sec. 36: Applies an effective date of July 1, 2023.