

CS FOR SENATE BILL NO. 89(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA
THIRTY-THIRD LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered: 5/13/23

Referred: Today's Calendar

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

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to tobacco, tobacco products, electronic smoking products, nicotine,**
2 **and products containing nicotine; raising the minimum age to purchase, exchange, or**
3 **possess tobacco, a product containing nicotine, or an electronic smoking product;**
4 **relating to the tobacco use education and cessation fund; relating to the taxation of**
5 **electronic smoking products and vapor products; and providing for an effective date."**

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

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

8 (a) A person commits the offense of selling or giving tobacco to a person
9 under 21 years of age [MINOR] if the person
10 (1) negligently sells a cigarette, a cigar, tobacco, or a product
11 containing tobacco to a person under 21 [19] years of age;
12 (2) is 21 [19] years of age or older and negligently exchanges or gives
13 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 19 years of age to sell a cigarette, a cigar, tobacco, or a product containing tobacco.

* **Sec. 2.** AS 11.76.100(b), as amended by sec. 153, ch. 8, SLA 2022, 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 04.09.200 or 04.09.350, licensed as a club under AS 04.09.220, or licensed as a package store under AS 04.09.230 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) Except as provided in (e) of this section, 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

1 smoking product or a product containing nicotine, it is an affirmative defense that the
 2 electronic smoking product or product containing nicotine possessed by the person
 3 under 21 [19] years of age was intended or expected to be consumed without being
 4 combusted, and the electronic smoking product or product containing nicotine

5 (1) has been approved by the United States Food and Drug
 6 Administration for sale as a tobacco use cessation [OR HARM REDUCTION] product
 7 or for other medical purposes;

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

9 (3) was

10 (A) prescribed by a health care professional;

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

12 (C) provided by a state-approved tobacco cessation program
 13 administered by the Department of Health; or

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

16 (c) Possession of tobacco, an electronic smoking product, or a product
 17 containing nicotine by a person under 21 years of age [MINOR] is a violation
punishable by a fine of not more than \$150. Notwithstanding AS 12.55.035(b), in
place of any fine imposed for the violation of this subsection, the court may refer
a defendant, at the request of the defendant, to a tobacco education program.

21 * Sec. 4. AS 11.76.105 is amended by adding new subsections to read:

22 (d) The supreme court shall establish by rule or order a schedule of bail
 23 amounts that may be forfeited without court appearance for a violation of this section.
 24 The supreme court, in establishing scheduled amounts of bail under this section, may
 25 not allow for disposition of an offense without court appearance for a person under 18
 26 years of age who is cited for a violation of this section.

27 (e) The provisions of (a) of this section do not apply to a person 19 or 20 years
 28 of age who is employed by a person with a business license endorsement under
 29 AS 43.70.075 and, as part of that employment, is selling a cigarette, a cigar, tobacco, a
 30 product containing tobacco, an electronic smoking product, or a product containing
 31 nicotine.

1 * **Sec. 5.** AS 11.76.106(b) is amended to read:

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

3 (1) is by vending machine as provided under AS 11.76.100(b) or
4 11.76.109(d);

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

8 (3) is by a retailer who sells primarily cigarettes, cigars, tobacco,
9 products containing tobacco, electronic smoking products, or products containing
10 nicotine and who restricts access to the premises to only those individuals who are 21
11 [19] years of age or older; or

12 (4) is of electronic smoking products over the Internet to a person 21
13 [19] years of age or older.

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

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

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

20 (2) is 21 [19] years of age or older and negligently exchanges or gives
21 an electronic smoking product or a product containing nicotine to a person under 21
22 [19] years of age;

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

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

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

29 (b) The provisions of (a) of this section do not apply to the sale, exchange, or
30 gift to a person under 21 [19] years of age of an electronic smoking product or a
31 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; or

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

* **Sec. 8.** AS 11.76.109(d), as amended by sec. 155, ch. 8, SLA 2022, 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 04.09.200 or 04.09.350, licensed as a club under AS 04.09.220, or licensed as a package store under AS 04.09.230, 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 11.76.105 [THIS SECTION].

* **Sec. 9.** 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

1 conviction, is punishable by a fine of not less than \$300.

2 * **Sec. 10.** AS 11.81.900(b) is amended by adding a new paragraph to read:

3 (69) "nicotine" includes a chemical or chemical compound intended,
4 when introduced into the human body, to mimic or simulate the effect of nicotine from
5 tobacco.

6 * **Sec. 11.** AS 37.05.580(a) is amended to read:

7 (a) The [THERE IS CREATED AS A SPECIAL ACCOUNT IN THE
8 GENERAL FUND THE] tobacco use education and cessation fund is established as a
9 separate fund in the state treasury. Each year, [INTO WHICH SHALL BE
10 DEPOSITED] 20 percent of annual [ANNUALLY OF THE] revenue derived from
11 the settlement of State of Alaska v. Philip Morris, Incorporated, et al, No. 1JU-97-915
12 CI (Alaska Super. 1997) shall be deposited into the fund. The purpose of the tobacco
13 use education and cessation fund is to provide a source to finance the comprehensive
14 smoking education, tobacco use prevention, and tobacco control program authorized
15 by AS 44.29.020(a)(12).

16 * **Sec. 12.** AS 43.50.070 is amended to read:

17 **Sec. 43.50.070. Suspension or revocation of or refusal to renew a license.**

18 (a) The department may suspend, revoke, or refuse to renew a license issued under this
19 chapter (1) for a negligent violation of AS 11.76.100, 11.76.106, 11.76.107,
20 11.76.109, or a violation of this chapter or a regulation of the department adopted
21 under this chapter; (2) if a licensee ceases to act in the capacity for which the license
22 was issued; or (3) if a licensee negligently sells tobacco or products containing
23 tobacco to a person who is required to, but does not, hold a license endorsement under
24 AS 43.70.075 or whose license endorsement under AS 43.70.075 has been suspended.
25 A person whose license is suspended or revoked may not sell cigarettes, [OR] tobacco
26 products, or electronic smoking products, or permit cigarettes, [OR] tobacco
27 products, or electronic smoking products to be sold, during the period of the
28 suspension or revocation on the premises occupied or controlled by that person. A
29 disciplinary proceeding or action is not barred or abated by the expiration, transfer,
30 surrender, renewal, or extension of a license issued under this chapter. The department
31 shall comply with the provisions of AS 44.62 (Administrative Procedure Act), except

1 that a hearing officer of the department, rather than a hearing officer assigned under
 2 AS 44.62.350, may conduct hearings.

3 (b) In this section, "licensee" means a person licensed under AS 43.50.010 -
 4 43.50.180, [OR] 43.50.300 - 43.50.390, or 43.50.850 - 43.50.900.

5 * **Sec. 13.** AS 43.50.105(b) is amended to read:

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

8 (1) is licensed under this chapter;

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

10 (3) is an operator of a customs bonded warehouse under 19 U.S.C.
 11 1311 or 19 U.S.C. 1555;

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

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

18 * **Sec. 14.** AS 43.50.105(c) is amended to read:

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

21 (1) shipping the cigarettes is licensed under this chapter and, before
 22 shipment, provides the common or contract carrier with a copy of the person's current
 23 license issued by the department and

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

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

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

1 * **Sec. 15.** AS 43.50.150(c) is amended to read:

2 (c) The department may enter into an agreement with a municipality that
 3 imposes a tax on cigarettes, [OR OTHER] tobacco products, **or electronic smoking**
 4 **products** for the purpose of jointly auditing a person liable for a tax under
 5 AS 43.50.010 - 43.50.390 **or 43.50.850 - 43.50.900** and the municipal tax on
 6 cigarettes, [OR OTHER] tobacco products, **or electronic smoking products**.

7 * **Sec. 16.** AS 43.50.190(d) is amended to read:

8 (d) A portion of the annual proceeds of the tax levied under (a) of this section
 9 equal to 8.9 percent of the total proceeds of the tax shall be deposited into the tobacco
 10 use education and cessation fund established in AS 37.05.580. [THIS DEPOSIT
 11 SHALL BE IN ADDITION TO ANY SUMS DEPOSITED INTO THE FUND
 12 UNDER AS 37.05.580(a).]

13 * **Sec. 17.** AS 43.50 is amended by adding a new section to read:

14 **Sec. 43.50.325. Restrictions on shipping or transporting tobacco products.**

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

18 (1) licensed under this chapter;

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

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

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

27 (1) is licensed under this chapter;

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

29 (3) is an operator of a customs bonded warehouse under 19 U.S.C.
 30 1311 or 19 U.S.C. 1555;

31 (4) is an instrumentality of the federal government or an Indian tribal

1 organization authorized by law to possess tobacco products not taxed under this
2 chapter; or

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

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

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

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

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

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

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

26 (e) A person, other than a common or contract carrier, may not knowingly
27 transport a tobacco product to a person in this state, unless the recipient of the tobacco
28 product is a person described under (b)(1) - (5) of this section.

29 (f) A person who ships or causes to be shipped a tobacco product to a person
30 in this state shall plainly and visibly mark the container or wrapping with the words
31 "tobacco product" if the tobacco product is shipped in a container or wrapping other

1 than the manufacturer's original container or wrapping of the tobacco product.

2 (g) A person who violates the provisions of this section is guilty of a class A
3 misdemeanor if the person unlawfully ships, causes to be shipped, or transports a
4 tobacco product.

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

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

12 * **Sec. 18.** AS 43.50 is amended by adding new sections to read:

13 **Article 8. Electronic Smoking Products Sales, Shipping, Licensing, and Tax.**

14 **Sec. 43.50.850. Tax levied; collection.** (a) A tax is levied on closed electronic
15 smoking products and vapor products in the state. The tax is 25 percent of the retail
16 sales price of a closed electronic smoking product or a vapor product.

17 (b) A licensee located in the state shall collect and remit the tax to the
18 department. A licensee located outside of the state shall collect and remit the tax to the
19 department if the licensee has more than 200 transactions in the state in the current or
20 preceding calendar year.

21 **Sec. 43.50.855. Exemptions.** (a) The tax does not apply to

22 (1) a closed electronic smoking product or vapor product

23 (A) sold in a facility operated by one of the uniformed services
24 of the United States;

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

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

31 (D) designed, marketed, and sold for the purpose of vaporizing

1 or aerosolizing marijuana, marijuana products, hemp, or hemp products if the
2 marijuana, marijuana products, hemp, or hemp products do not contain
3 nicotine and are intended for sale only in a retail marijuana store;

4 (2) marijuana or marijuana products subject to tax under AS 43.61 if
5 the marijuana or marijuana products do not contain nicotine; or

6 (3) hemp or hemp products if the hemp or hemp products do not
7 contain nicotine.

8 (b) In this section,

9 (1) "hemp" and "hemp products" mean hemp or a hemp product
10 produced by an individual registered under AS 03.05.076;

11 (2) "marijuana," "marijuana products," and "retail marijuana store"
12 have the meanings given in AS 17.38.900;

13 (3) "uniformed services" has the meaning given in 5 U.S.C. 2101.

14 **Sec. 43.50.860. Licensing.** (a) Except as provided in (g) of this section, a
15 person must be licensed by the department if the person engages in business as a
16 retailer of an electronic smoking product.

17 (b) The department, upon application and payment of a fee of \$50, shall issue
18 a license for one year to a person who applies for a license under (a) of this section.

19 (c) The department may refuse to issue a license under this section if

20 (1) there is reasonable cause to believe the information submitted in
21 the application is false or misleading and is not made in good faith;

22 (2) the applicant is not in good standing under AS 10.06 (Alaska
23 Corporations Code); or

24 (3) a tax levied under this chapter is due and unpaid by the applicant.

25 (d) A license issued under this section must include the name and address of
26 the licensee, the type of business to be conducted, and the year for which the license is
27 issued.

28 (e) The department may renew a license issued under this section for a fee of
29 \$50 if the applicant

30 (1) is in good standing under AS 10.06 (Alaska Corporations Code);

31 and

(2) does not have unpaid taxes under this chapter.

(f) The department may suspend, revoke, or refuse to renew a license issued under this section as provided in AS 43.50.070.

(g) A license required by this section is in addition to any other license required by law, except that a person who is licensed under AS 43.50.010 - 43.50.180 or 43.50.300 - 43.50.390 is exempt from the licensing requirements of this section.

(h) A license issued under this section is not assignable or transferable, except that in the case of death, bankruptcy, receivership, or incompetency of the licensee, or if the business of the licensee is transferred to another by operation of law, the department may extend the license for a limited time to the executor, administrator, trustee, receiver, or transferee.

(i) A person licensed under this section may not

(1) distribute an electronic smoking product designed or packaged so as not to be clearly recognizable as an electronic smoking product; or

(2) market an electronic smoking product, including a flavored electronic smoking product, in a manner likely to promote use of the electronic smoking product by a person under 21 years of age.

Sec. 43.50.865. Returns. On or before the last day of each calendar month, a licensee shall file a return with the department. The return must state the number or amount of closed electronic smoking products, vapor products, and other electronic smoking products sold by the licensee during the preceding calendar month, the selling price of the electronic smoking products, and the amount of tax imposed on the closed electronic smoking products and vapor products.

Sec. 43.50.870. Records. A licensee shall keep a complete and accurate record of all electronic smoking products of the licensee, including purchase prices, sales prices, the names and addresses of the sellers, the dates of delivery, the quantities of 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. 43.50.875. Disposition of proceeds. The annual proceeds of the tax levied under AS 43.50.850 shall be deposited into the tobacco use education and

cessation fund established in AS 37.05.580 and may be appropriated from the fund for the purposes listed in AS 44.29.020(a)(12) or for efforts to prevent or detect the use of tobacco or electronic smoking products in a school.

Sec. 43.50.880. Restrictions on shipping or transporting electronic smoking products. (a) A person who is not licensed under this chapter may not ship or cause to be shipped an electronic smoking product to a person in this state unless the person receiving the electronic smoking product is

- (1) licensed under this chapter;
- (2) an operator of a customs bonded warehouse under 19 U.S.C. 1311
555; or

(3) an instrumentality of the federal government or an Indian tribal organization authorized by law to possess 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 an electronic smoking product to a person in this state unless the person receiving the 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 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 electronic smoking product for personal consumption, and the tax imposed on the electronic smoking product under this chapter has been paid.

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

(1) shipping the 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 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 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 an 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 electronic smoking product was not a person described under (b)(1) - (5) of this section, unless the person shipping the 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 an electronic smoking product to a person in this state, unless the recipient of the electronic smoking product is a person described under (b)(1) - (5) of this section.

(f) A person who ships or causes to be shipped an electronic smoking product to a person in this state shall plainly and visibly mark the container or wrapping with the words "electronic smoking product" if the electronic smoking product is shipped in a container or wrapping other than the manufacturer's original container or wrapping of the electronic smoking product.

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

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

(i) A person who violates the provisions of this section is jointly and severally liable for the taxes imposed by AS 43.50.850. To the fullest extent permitted by the Constitution of the United States, a person who violates the provisions of this section

1 is required to collect the taxes and pay them to the department.

2 **Sec. 43.50.885. Restrictions on electronic smoking products.** A person may
 3 sell or distribute to consumers in this state, acquire, hold, own, possess, or transport
 4 for sale or distribution in this state, or import or cause to be imported into this state for
 5 sale or distribution in this state only electronic smoking products

6 (1) for which the component vapor product

7 (A) has a nicotine content of less than 50 milligrams of nicotine
 8 for each milliliter of vapor product;

9 (B) is protected from breakage and leakage;

10 (C) does not contain added vitamins or other additives
 11 marketed to create the impression of health benefits; in this subparagraph,
 12 "vitamins or other additives" includes caffeine, taurine, vitamin E acetate,
 13 stimulants, and colorants;

14 (2) that are packaged to be child- and tamper-proof; and

15 (3) that are labeled to inform consumers about all vapor product
 16 ingredients and nicotine content.

17 **Sec. 43.50.900. Definitions.** In AS 43.50.850 - 43.50.900, "sales price"

18 (1) means the total amount of consideration, including cash, credit,
 19 property, and services, for which an electronic smoking product is purchased or sold,
 20 valued in money, whether received in money or otherwise, without any deduction for

21 (A) the seller's cost of the electronic smoking product sold;

22 (B) the cost of materials used, labor or service cost, interest,
 23 losses, cost of transportation, taxes, or other expenses of the seller;

24 (C) charges by the seller for services necessary to complete the
 25 sale;

26 (D) delivery charges;

27 (2) does not include

28 (A) discounts, including cash or coupons that are not
 29 reimbursed by a third party, that are allowed by a seller and taken by a
 30 purchaser on a sale;

31 (B) interest, financing, and carrying charges from credit

extended on the sale of an electronic smoking product if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser; and

(C) taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser.

Article 9. General Provisions.

Sec. 43.50.990. Definitions. In this chapter,

(1) "closed electronic smoking product" means a single-use electronic smoking product that includes a pre-filled disposable cartridge of vapor product;

(2) "electronic smoking product"

(A) includes

- (i) a product that can be used to deliver aerosolized or vaporized nicotine to the person inhaling;

(ii) an e-cigarette, e-cigar, e-pipe, e-hookah, vape pen, or other similar device of any shape;

(iii) a component, part, accessory, or device related to an e-cigarette, e-cigar, e-pipe, e-hookah, vape pen, or other similar device of any shape;

(iv) a vapor product used in a device or product described in (i) or (ii) of this subparagraph;

(v) an e-cigarette, e-cigar, e-pipe, e-hookah, vape pen, or other similar device of any shape sold together with a solution, vapor product, or other similar product as a disposable nonrefillable unit;

(B) does not include a

(i) battery, battery charger, heating element, electronic coil, or mouthpiece intended for use in an electronic smoking product, when sold separately from the electronic smoking product;

(ii) cartridge, pod, tank, or similar container intended to transport a vapor product, if sold empty;

(3) "nicotine" has the meaning given in AS 11.81.900(b);

(4) "retailer" means a person in the state who is engaged in the business of selling electronic smoking products at retail;

(5) "vapor product" means a substance intended to be aerosolized or vaporized during the use of an electronic smoking product.

* **Sec. 19.** 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. 20.** 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. 21.** 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. 22. 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. 23.** AS 45.50.471(b) is amended by adding a new paragraph to read:

(58) marketing an electronic smoking product in a manner likely to promote use of electronic smoking products by a person under 21 years of age; in this paragraph, "electronic smoking product" has the meaning given in AS 43.50.990.

* **Sec. 24.** 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;

(7) AS 04.16.050, relating to consumption, possession, or control of alcohol by a person under 21 years of age.

* Sec. 25. AS 11.76.100(e) is repealed.

* **Sec. 26.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. The following sections apply to offenses committed on or after the effective date of those sections:

- (1) AS 11.76.100(a), as amended by sec. 1 of this Act;
- (2) AS 11.76.100(b), as amended by sec. 2 of this Act;
- (3) AS 11.76.105, as amended by sec. 3 of this Act;
- (4) AS 11.76.105(d) and (e), enacted by sec. 4 of this Act;
- (5) AS 11.76.106(b), as amended by sec. 5 of this Act;
- (6) AS 11.76.109(a), as amended by sec. 6 of this Act;
- (7) AS 11.76.109(b), as amended by sec. 7 of this Act;
- (8) AS 11.76.109(d), as amended by sec. 8 of this Act;
- (9) AS 11.76.109(g), as amended by sec. 9 of this Act;
- (10) AS 11.81.900(b)(69), enacted by sec. 10 of this Act;

- (11) AS 43.50.325, enacted by sec. 17 of this Act;
- (12) AS 43.50.880, enacted by sec. 18 of this Act; and
- (13) AS 47.12.030(b), as amended by sec. 24 of this Act.

4 * **Sec. 27.** This Act takes effect January 1, 2024.