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SENATE BILL 89

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

SECTIONAL ANALYSIS

(version R)

- Sec. 1: AS 11.76.100(a), relating to cigarette sales, makes it a violation to sell to persons under age 21; however the person making the sale at a licensed location may be age 19 or older.
- Sec. 2: AS 11.76.100(b), relating to supervision 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 (ESPs), 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;
(c) makes possession a violation punishable by a fine not to exceed \$150, or in lieu of paying a fine the court may direct a defendant to take an educational class on the harms of smoking.
- 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 payment without court appearance. However, a mandatory court appearance is maintained for minors under age 18, to appear in court with their parent or guardian; and
(e) provides an exemption for persons age 19-20, when selling tobacco, nicotine products, or ESPs, to be exempted from the prohibition of underage possession of those products.
- 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 ESP 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 (OTP), including chew, gum, patches, or E-cigarette products, makes it a violation to sell to persons under age 21; however the person making the sale at a licensed location may be age 19 or older.
- 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 person under the age of 21 as a violation punishable by a fine of not less than \$300.
- 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. This is intended to include the emergence of synthetic nicotine in the market as a means of evading tax and sales penalties.
- Sec. 11: AS 37.05.580(a) amends the Tobacco Use Education and Cessation Fund to be moved from the general fund into the state treasury.
- Sec. 12: AS 43.50.070(a), relating to licensing requirements for buying or selling tobacco or other products containing nicotine, adds legal authority for the Dept. of Revenue to suspend, revoke a license for ESP sales.
- Sec. 13: 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. 14: AS 43.50.105(c), relating to common carrier transportation of cigarettes, to verify the age (21) of the recipient before delivery.
- Sec. 15: 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. 16: AS 43.50.190(d), relating to the Tobacco Use Education and Cessation Fund, amends the structure of the fund reflecting three revenue sources going into the fund: (1) 20% of the annual payment under the Tobacco Master Settlement Agreement; (2) 8.9% of the general portion of the state cigarette tax; and (3) the proceeds from the new tax on electronic smoking products (ESPs) established in section 17 of the bill.

Sec. 17: AS 43.50.325 adds a restriction on the transportation of OTP 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 43.50.105, which applies only to cigarettes.

Sec. 18: AS 43.50 is amended by adding Article 8, relating to ESP Sales, Shipping, Licensing, and Taxation

AS 43.50.850(a) levies a 25% tax on the retail sales price of closed-system ESPs and vapor products in the state; and

(b) sets a threshold of 200 transactions annually, for online vendors of ESP, to be licensed with the state and begin remitting tax returns and payments.

AS 43.50.855 provides for exemptions from the tax to include closed ESPs or vapor sold on military bases, approved by the FDA as a tobacco cessation product, or sold as a marijuana or hemp product and do not contain nicotine.

AS 43.50.860 requires retailers to be licensed in the state to sell ESPs, details an annual application renewal process and fee, license transferability, suspension and revocation, product packaging and labelling requirements, and restrictions on marketing flavored products to youths.

AS 43.50.865 requires ESP licensees to file a monthly tax return to the Dept. of Revenue (DOR), including information on what was sold, sales prices, and tax imposed.

AS 43.50.870, requires record keeping for licensees selling ESPs, including information on purchase prices, product sources, and volume of purchase. This information is to be kept on file for 3 years and kept confidential by the DOR.

AS 43.50.875 directs taxes collected on ESPs to be deposited into the Tobacco Use Education and Cessation Fund, which may be appropriated by the legislature to provide for child welfare services or for efforts to prevent or detect the use of tobacco or ESPs in schools.

AS 43.50.880 is a conforming amendment, adding restrictions to shipping or transporting ESPs into the state without a license, consistent with same statutes relating to shipping or transporting tobacco or cigarettes.

AS 43.50.885 places restrictions on ESP vapor products to include:

1. a nicotine concentration of no more than 50mg/ml;
2. protection from breakage and leakage;
3. not containing other additives or stimulants such as caffeine, taurine, or vitamin E acetate;
4. child- and tamper-proof packaging
5. clear labeling to inform customers of all ingredients and nicotine content.

AS 43.50.900 provides a definition for “sales price” for tax purposes.

AS 43.50.990 provides definitions for “closed electronic smoking product,” “electronic smoking product,” “vapor product,” “nicotine,” and “retailer.” Hardware components such as batteries, battery chargers, heating elements and mouthpieces are excluded from the definition of an ESP for tax purposes, when sold separately or not part of a closed ESP.

- Sec. 19: 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. 20: 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. 21: 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. 22: 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. 23: 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.
- Sec. 24: 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. 25: AS 11.76.100(e), repeals an exemption for sales, and possession of cigarettes, OTP and ESPs for incarcerated persons under age 21.
- Sec. 26: Relates to applicability, conforming changes in the bill.
- Sec. 27: Applies an effective date of January 1, 2024.