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ALASKA STATE LEGISLATURE

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House District 4
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Sectional Summary

HB 176

Age for Tobacco/Nicotine/E-Cig; Tax E-Cig

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 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 (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.

(c) makes possession a violation punishable by a fine not to exceed \$150 but also states that in place of a fine the court may refer a defendant—at the defendant's request—to a tobacco education program.

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(a) prohibits the direct sale of ESPs over the Internet to private consumers, with exceptions provided in the next section.

Sec. 6: 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. Note that 11.76.106(b)(4) is repealed in Section 24.

Sec. 7: 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. 8: 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. 9: 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. 10: 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. 11: 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. 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 violations in ESP sales.

Sec. 13: AS 43.50.105(b), relating to wholesale cigarette sales and licensees, to restrict licensees to 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 and the requirement for the common carrier 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 43.50.325 regards restrictions on the transportation of Other Tobacco Products into the state, requiring licensing to do so, and making 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. 17: AS 43.50 is amended by adding Article 8, relating to ESP Sales, Shipping, Licensing, and Taxation. **Within Article 8:**

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

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.

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 accounted for separately and that the tax revenue may be appropriated by the legislature to provide for educational programs in health care and research, advertising related to the hazards of ESPs, and efforts in schools to prevent use of ESPs among students, including the hiring of health advocates and purchase of ESP detection devices.

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 20mg/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. 18: 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. 19: 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. 20: 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) and the license holder has taken additional steps to ensure employees were aware of related laws and requirements.

Sec. 21: AS 43.70.075(w), relating to appealing a license suspension, conforms existing law regarding tobacco and ESP sales to apply to sales to minors under the age of 21 (from 19).

Sec. 22: Adds a new paragraph to **AS 45.50.471(b)**, which relates to unfair trade practices and consumer protection. The new subsection makes 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 16 above.

Sec. 23: 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. 24: AS 11.76.100(e), relating to sales, gifting and possession exemptions for incarcerated persons, and AS 11.76.106(b)(4), allowing internet sales of ESP products to unlicensed consumers, are both repealed.

Sec. 25: Relates to applicability of conforming changes in the bill, and also for purposes of sales, provides a grandfather clause for persons aged 19-20 who, on the effective date of the act, are employed on premises licensed to sell these products.

Sec. 26: Applies an effective date of July 1, 2024.