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SENATE BILL 89

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

SECTIONAL ANALYSIS

(version B)

- 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 11.76.100(b), also relates to tobacco product vending machines situated in a bar or restaurant. The statutory reference of such establishments was amended from AS 4.11 to AS 4.09, effective January 1, 2024, per Chapter 8, SLA 2022 (the "alcohol bill" -SB 9), passed in May 2022. Because the effective date of this section in the alcohol bill falls after the effective date of SB 89, a subsequent conforming amendment is necessary. This section is therefore technical in nature and otherwise has no effect on the substance of SB 89.
- Sec. 4: 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. 5: 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. 6: AS 11.76.106(a) prohibits the direct sale of ESPs over the Internet to private consumers, with exceptions provided in the next section.

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- Sec. 7: 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. 8: 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. 9: 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. 10: 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. 11: AS 11.76.109(d), also relates to EVMs situated in a bar or restaurant. The statutory reference of such establishments was amended from AS 4.11 to AS 4.09, effective January 1, 2024, per Chapter 8, SLA 2022 (the “alcohol bill” -SB 9), passed in May 2022. Because the effective date of this section in the alcohol bill falls after the effective date of SB 89, a subsequent conforming amendment is necessary. This section is therefore technical in nature and otherwise has no effect on the substance of SB 89.
- Sec. 12: 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. 13: 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. 14: 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. 15: 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. 16: AS 43.50.105(c), relating to common carrier transportation of cigarettes, to verify the age (21) of the recipient before delivery.
- Sec. 17: 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. 18: AS 43.50.325 adds a restriction on 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. 19: AS 43.50 is amended by adding Article 8, relating to ESP Sales, Shipping, Licensing, and Taxation

AS 43.50.850 levies a 25% tax on the 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, provides for tax credits and refunds for faulty, damaged or destroyed ESP products that will not be sold.

AS 43.50.875 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 43.50.880 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, and advertising related to the hazards of ESPs.

AS 43.50.885 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 43.50.890 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. 20: 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. 21: 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. 22: 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. 23: 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. 24: 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.
- Sec. 25: 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. 26: 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. 27: 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. 28: Applies an effective date for Sections 3 and Section 11, relating to vending machines in bars and restaurants, as specified in Ch 8 SLA 2022 (the “alcohol bill”) of January 1, 2024.
- Sec. 29: Applies an effective date of July 1, 2023.