CS FOR HOUSE BILL NO. 94(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FIRST LEGISLATURE - SECOND SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered: 3/21/20
Referred: Finance

Sponsor(s): REPRESENTATIVE HANNAN

A BILL

FOR AN ACT ENTITLED

"An Act relating to the taxation of electronic smoking products; relating to transporting tobacco, a product containing nicotine, or an electronic smoking product; and providing for an effective date."

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

* **Section 1.** AS 43.50.105(b) is amended to read:

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

(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 cigarettes not taxed under this chapter; or

(5) is an individual **21** [19] years of age or older **and the individual's**

age was verified at the time of purchase by a third-party verification service, the individual is receiving the cigarettes for personal consumption**,** and the tax imposed on the cigarettes under this chapter has been paid.

* **Sec. 2.** AS 43.50.105(c) is amended to read:

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

(1) shipping the cigarettes 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 cigarettes is a person described under **(b)(1) - (4)** [(b)(1) - (5)] 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 cigarettes 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.

* **Sec. 3.** AS 43.50.150(c) is amended to read:

(c) The department may enter into an agreement with a municipality that imposes a tax on cigarettes**,** [OR OTHER] tobacco products**, or electronic smoking products** for the purpose of jointly auditing a person liable for a tax under AS 43.50.010 - 43.50.390 and the municipal tax on cigarettes**,** [OR OTHER] tobacco products**, or electronic smoking products. In this subsection, "electronic smoking product" has the meaning given in AS 43.50.390**.

* **Sec. 4.** AS 43.50.300 is amended to read:

Sec. 43.50.300. Excise tax levied. An excise tax is levied on tobacco products **and electronic smoking products** in the state at the rate of 75 percent of the wholesale price of the [TOBACCO] products. The tax is levied when a person

(1) brings, or causes to be brought, a tobacco product **or electronic smoking product** into the state from outside the state for sale;

(2) makes, manufactures, or fabricates a tobacco product **or electronic**

smoking product in the state for sale in the state; or

(3) ships or transports a tobacco product **or electronic smoking product** to a retailer in the state for sale by the retailer.

*** Sec. 5.** AS 43.50.310(b) is amended to read:

(b) The tax does not apply to a

(1) tobacco product if the United States Constitution or other federal laws prohibit the levying of the tax on the product by the state**; or**

(2) an electronic smoking product

(A) that is subject to taxation under AS 43.61.010 - 43.61.030 and that does not contain nicotine;

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

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

*** Sec. 6.** AS 43.50.320(a) is amended to read:

(a) Except as provided in (g) of this section, a person must be licensed by the department if the person engages in business as a distributor for a tobacco product **or electronic smoking product** that is subject to the tax.

*** Sec. 7.** AS 43.50 is amended by adding a new section to read:

Sec. 43.50.325. Restrictions on shipping or transporting tobacco products and electronic smoking products. (a) A person who is not licensed under this chapter may not ship or cause to be shipped a tobacco product or electronic smoking product to a person in this state unless the person receiving the tobacco product or electronic smoking product is

(1) licensed under this chapter;

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

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

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

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

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

(h) In addition to the criminal penalty under (g) of this section, the department may assess a civil fine 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 43.50.090 and 43.50.190. To the fullest extent permitted by the Constitution of the United States, a person who violates the provisions of this section is required to collect the taxes and pay them to the department.

*** Sec. 8.** AS 43.50.330(a) is amended to read:

(a) 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 tobacco products **<u>and electronic smoking products</u>** sold by the licensee during the preceding calendar month, the selling price of the tobacco products **<u>and electronic smoking products</u>**, and the amount of tax imposed on the tobacco products **<u>and electronic</u>**

smoking products.

* **Sec. 9.** AS 43.50.335 is amended to read:

Sec. 43.50.335. Tax credits and refunds. The department shall adopt procedures for a refund or credit to a licensee of the tax paid for tobacco products **or electronic smoking products** that have become unfit for sale, are destroyed, or are returned to the manufacturer for credit or replacement if the licensee provides proof acceptable to the department that the tobacco products **or electronic smoking products** have not been and will not be consumed in this state.

* **Sec. 10.** AS 43.50.340 is amended to read:

Sec. 43.50.340. Records. A licensee shall keep a complete and accurate record of all tobacco products **and electronic smoking products** of the licensee subject to the tax, including purchase prices, sales prices, the names and addresses of the sellers and the purchasers, the dates of delivery, the quantities of tobacco products **and 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. 11.** AS 43.50.390(1) is amended to read:

(1) "distributor" means a person who

(A) brings, or causes to be brought, a tobacco product **or electronic smoking product** into the state from outside the state for sale;

(B) makes, manufactures, or fabricates a tobacco product **or electronic smoking product** in the state for sale in the state; or

(C) ships or transports a tobacco product **or electronic smoking product** to a retailer in the state for sale by the retailer;

* **Sec. 12.** AS 43.50.390(5) is amended to read:

(5) "wholesale price" means

(A) the established price for which a manufacturer sells a tobacco product **or electronic smoking product** to a distributor after deduction of a discount or other reduction received by the distributor for quantity or cash if the manufacturer's established price is adequately supported by bona fide arm's length sales as determined by the department; or

(B) the price, as determined by the department, for which tobacco products **or electronic smoking products** of comparable retail price are sold to distributors in the ordinary course of trade if the manufacturer's established price does not meet the standards of (A) of this paragraph.

* **Sec. 13.** AS 43.50.390 is amended by adding a new paragraph to read:

(6) "electronic smoking product" means a

(A) component, solution, vapor product, or other related product that is manufactured and sold for use in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device for the purpose of delivering nicotine or other substances to the person inhaling;

(B) product under (A) of this paragraph that is sold as part of a disposable integrated unit containing a power source and delivery system or as a kit containing a refillable electronic smoking system and power source.

* **Sec. 14.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. (a) AS 43.50.300, as amended by sec. 4 of this Act, and AS 43.50.320(a), as amended by sec. 6 of this Act, apply to electronic smoking products sold on or after the effective date of secs. 4 and 6 of this Act.

(b) AS 43.50.330(a), as amended by sec. 8 of this Act, applies to the first monthly return submitted after the first full month after the effective date of sec. 8 of this Act.

* **Sec. 15.** This Act takes effect January 1, 2021.