

HOUSE BILL NO. 174

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FIRST LEGISLATURE - SECOND SESSION

BY REPRESENTATIVES KNOPP, Fields, Hannan, Josephson, Zulkosky, Hopkins, Pruitt, Story

Introduced: 5/15/19

Referred: Community & Regional Affairs, Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act raising the minimum age to purchase, sell, exchange, or possess a product
2 containing nicotine or an electronic smoking product; and providing for an effective
3 date."

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

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

6 (a) A person commits the offense of selling or giving tobacco to a **person**
7 **under 21 years of age** [MINOR] if the person

8 (1) negligently sells a cigarette, a cigar, tobacco, or a product
9 containing tobacco to a person under **21** [19] years of age;

10 (2) is **21** [19] years of age or older and negligently exchanges or gives
11 a cigarette, a cigar, tobacco, or a product containing tobacco to a person under **21** [19]
12 years of age;

13 (3) maintains a vending machine that dispenses cigarettes, cigars,
14 tobacco, or products containing tobacco; or

1 (4) holds a business license endorsement under AS 43.70.075 and
2 allows a person under 21 [19] years of age to sell a cigarette, a cigar, tobacco, or a
3 product containing tobacco.

4 * **Sec. 2.** AS 11.76.100(b) is amended to read:

5 (b) Notwithstanding the provisions of (a) of this section, a person who
6 maintains a vending machine is not in violation of (a)(3) of this section if the vending
7 machine is located

8 (1) on premises licensed as a beverage dispensary under AS 04.11.090,
9 licensed as a club under AS 04.11.110, or licensed as a package store under
10 AS 04.11.150; and

11 (A) as far as practicable from the primary entrance; and

12 (B) in a place that is directly and continually supervised by a
13 person employed on the licensed premises during the hours the vending
14 machine is accessible to the public; or

15 (2) in an employee break room or other controlled area of a private
16 work place that is not generally considered a public place and the room or area
17 contains a posted warning sign at least 11 inches by 14 inches indicating that
18 possession of tobacco by a person under 21 [19] years of age is prohibited under
19 AS 11.76.105.

20 * **Sec. 3.** AS 11.76.100(e) is amended to read:

21 (e) The provisions of (a) of this section do not apply to a person who sells or
22 gives tobacco to a person under 21 years of age [MINOR,] if the person under 21
23 years of age [MINOR] is a prisoner at an adult correctional facility.

24 * **Sec. 4.** AS 11.76.100 is amended by adding a new subsection to read:

25 (g) The provisions of (a) of this section do not apply to a person who sells or
26 gives tobacco to a person under 21 years of age if the person receiving or possessing
27 the tobacco is 18 years of age or older and an active member of the armed forces of
28 the United States who possesses a valid active duty military or armed forces
29 identification card issued by the United States Department of Defense or the United
30 States Department of Homeland Security.

31 * **Sec. 5.** AS 11.76.105 is amended to read:

1 **Sec. 11.76.105. Possession of tobacco, electronic smoking products, or**
 2 **products containing nicotine by a person under 21 years of age [MINOR].** (a) A
 3 person under **21** [19] years of age may not knowingly possess a cigarette, a cigar,
 4 tobacco, a product containing tobacco, an electronic smoking product, or a product
 5 containing nicotine in this state. This subsection does not apply to a person who is a
 6 prisoner at an adult correctional facility **or a person who is 18 years of age or older**
 7 **and an active member of the armed forces of the United States who possesses a**
 8 **valid active duty military or armed forces identification card issued by the United**
 9 **States Department of Defense or the United States Department of Homeland**
 10 **Security.**

11 (b) In a prosecution under (a) of this section for possession of an electronic
 12 smoking product or a product containing nicotine, it is an affirmative defense that the
 13 electronic smoking product or product containing nicotine possessed by the person
 14 under **21** [19] years of age was intended or expected to be consumed without being
 15 combusted, and the electronic smoking product or product containing nicotine

16 (1) has been approved by the United States Food and Drug
 17 Administration for sale as a tobacco use cessation or harm reduction product or for
 18 other medical purposes;

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

20 (3) was

21 (A) prescribed by a health care professional;

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

23 (C) provided by a state-approved tobacco cessation program
 24 administered by the Department of Health and Social Services; or

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

27 (c) Possession of tobacco, an electronic smoking product, or a product
 28 containing nicotine by a **person under 21 years of age** [MINOR] is a violation.

29 * **Sec. 6.** AS 11.76.106(b) is amended to read:

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

31 (1) is by vending machine as provided under AS 11.76.100(b) or

1 11.76.109(f);

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

5 (3) is by a retailer who sells primarily cigarettes, cigars, tobacco,
6 products containing tobacco, electronic smoking products, or products containing
7 nicotine and who restricts access to the premises to only those individuals who are

8 (A) 21 [19] years of age or older; or

9 (B) 18 years of age or older and active members of the
10 armed forces of the United States who possess a valid active duty military
11 or armed forces identification card issued by the United States
12 Department of Defense or the United States Department of Homeland
13 Security; or

14 (4) is of electronic smoking products over the Internet to a person

15 (A) 21 [19] years of age or older; or

16 (B) 18 years of age or older and an active member of the
17 armed forces of the United States who possesses a valid armed forces
18 identification card issued by the United States Department of Defense or
19 an Alaska National Guard identification card.

20 * Sec. 7. AS 11.76.109(a) is amended to read:

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

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

26 (2) is 21 [19] years of age or older and negligently exchanges or gives
27 an electronic smoking product or a product containing nicotine to a person under 21
28 [19] years of age;

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

31 (4) holds a business license endorsement under AS 43.70.075 and

1 allows a person under 21 [19] years of age to sell an electronic smoking product or a
2 product containing nicotine.

3 * **Sec. 8.** AS 11.76.109(b) is amended to read:

4 (b) The provisions of (a) of this section do not apply to the sale, exchange, or
5 gift to a person under 21 [19] years of age of an electronic smoking product or a
6 product containing nicotine that is intended or expected to be consumed without being
7 combusted if the electronic smoking product or product containing nicotine

8 (1) has been approved by the United States Food and Drug
9 Administration for sale as a tobacco use cessation or harm reduction product or for
10 other medical purposes;

11 (2) is being marketed and sold solely for the approved purposes; and

12 (3) is

13 (A) prescribed by a health care professional;

14 (B) given to a person by the person's parent or legal guardian;

15 (C) provided by a state-approved tobacco cessation program
16 administered by the Department of Health and Social Services; or

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

19 * **Sec. 9.** AS 11.76.109(d) is amended to read:

20 (d) Notwithstanding (a)(3) of this section, a person who maintains a vending
21 machine is not in violation of (a)(3) of this section if the vending machine is located

22 (1) on premises licensed as a beverage dispensary under AS 04.11.090,
23 licensed as a club under AS 04.11.110, or licensed as a package store under
24 AS 04.11.150, and is located

25 (A) as far as practicable from the primary entrance; and

26 (B) in a place that is directly and continually supervised by a
27 person employed on the licensed premises during the hours the vending
28 machine is accessible to the public; or

29 (2) in an employee break room or other controlled area of a private
30 work place that is not generally considered a public place and the room or area
31 contains a posted warning sign at least 11 inches by 8.5 inches indicating that

1 possession of electronic smoking products or products containing nicotine by a person
2 under 21 [19] years of age without a prescription is prohibited under AS 11.76.109.

3 * **Sec. 10.** AS 11.76.109(g) is amended to read:

4 (g) Selling or giving an electronic smoking product or a product containing
5 nicotine to a **person under 21 years of age** [MINOR] is a violation and, upon
6 conviction, is punishable by a fine of not less than \$300.

7 * **Sec. 11.** AS 11.76.109 is amended by adding a new subsection to read:

8 (h) The provisions of (a) of this section do not apply to a person who sells or
9 gives an electronic smoking product or a product containing nicotine to a person under
10 21 years of age if the person receiving the electronic smoking product or product
11 containing nicotine is 18 years of age or older and an active member of the armed
12 forces of the United States who possesses a valid active duty military or armed forces
13 identification card issued by the United States Department of Defense or the United
14 States Department of Homeland Security.

15 * **Sec. 12.** AS 43.50.105(b) is amended to read:

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

18 (1) is licensed under this chapter;

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

20 (3) is an operator of a customs bonded warehouse under 19 U.S.C.
21 1311 or 19 U.S.C. 1555;

22 (4) is an instrumentality of the federal government or an Indian tribal
23 organization authorized by law to possess cigarettes not taxed under this chapter; [OR]

24 (5) is an individual 21 [19] years of age or older receiving the
25 cigarettes for personal consumption and the tax imposed on the cigarettes under this
26 chapter has been paid; or

27 **(6) is an individual who is 18 years of age or older and an active**
28 **member of the armed forces of the United States who possesses a valid active**
29 **duty military or armed forces identification card issued by the United States**
30 **Department of Defense or the United States Department of Homeland Security.**

31 * **Sec. 13.** AS 43.70.075(f) is amended to read:

1 (f) A person who holds a license endorsement issued under this section shall
2 post on the licensed premises a warning sign as described in this subsection. A
3 warning sign required by this subsection must be at least 8.5 inches by 11 inches and
4 must read: "The sale of electronic smoking products or products containing nicotine
5 without a prescription or tobacco products to persons under age 21 [19] is illegal." A
6 person holding an endorsement issued under this section shall display the warning sign
7 in a manner conspicuous to a person purchasing or consuming tobacco products,
8 electronic smoking products, or products containing nicotine on the licensed premises.
9 The department shall make available the warning signs required under this section to a
10 person who holds an endorsement issued under this section or a person who requests
11 the sign with the intention of displaying it.

12 * **Sec. 14.** AS 43.70.075(m) is amended to read:

13 (m) The department may initiate suspension of a business license endorsement
14 or the right to obtain a business license endorsement under this section by sending the
15 person subject to the suspension a notice by certified mail, return receipt requested, or
16 by delivering the notice to the person. The notice must contain information that
17 informs the person of the grounds for suspension, the length of any suspension sought,
18 and the person's right to administrative review. A suspension begins 30 days after
19 receipt of notice described in this subsection unless the person delivers a timely
20 written request for a hearing to the department in the manner provided by regulations
21 of the department. If a hearing is requested under this subsection, an administrative
22 law judge of the office of administrative hearings (AS 44.64.010) shall determine the
23 issues by using the preponderance of the evidence test and shall, to the extent they do
24 not conflict with regulations adopted under AS 44.64.060, conduct the hearing in the
25 manner provided by regulations of the department. A hearing under this subsection is
26 limited to the following questions:

27 (1) was the person holding the business license endorsement, or an
28 agent or employee of the person while acting within the scope of the agency or
29 employment of the person, convicted by plea or judicial finding of violating
30 AS 11.76.100, 11.76.106, 11.76.107, or 11.76.109;

31 (2) if the department does not allege a conviction of AS 11.76.100,

1 11.76.106, 11.76.107, or 11.76.109, did the person, or an agent or employee of the
 2 person while acting within the scope of the agency or employment of the person,
 3 violate a provision of (a) or (g) of this section;

4 (3) within the 24 months before the date of the department's notice
 5 under this subsection, was the person, or an agent or employee of the person while
 6 acting within the scope of the agency or employment of the person, convicted of
 7 violating AS 11.76.100, 11.76.106, 11.76.107, or 11.76.109 or adjudicated for
 8 violating a provision of (a) or (g) of this section;

9 (4) did the person holding the business license endorsement establish
 10 that the person holding the business license endorsement had adopted and enforced an
 11 education, a compliance, and a disciplinary program for agents and employees of the
 12 person as provided in (t) of this section;

13 (5) did the person holding the business license endorsement overcome
 14 the rebuttable presumption established in (w) of this section;

15 (6) within five years before the date of the violation that is the subject
 16 of the hearing, did the department establish that the person holding the business
 17 license endorsement

18 (A) previously violated (a) or (g) of this section;

19 (B) previously violated AS 11.76.100, 11.76.106, 11.76.107, or
 20 11.76.109 at a location or outlet in a location for which the person holds a
 21 business license endorsement, or had an agent or employee previously violate
 22 AS 11.76.100, 11.76.106, 11.76.107, or 11.76.109; this subparagraph does not
 23 apply to a prior conviction that served to enhance a suspension period under
 24 (d)(2) - (4) of this section; or

25 (C) engaged at a location owned by the person in other conduct
 26 that was or is likely to result in the sale of tobacco, electronic smoking
 27 products, or products containing nicotine to a person under 21 [19] years of
 28 age in violation of AS 11.76.100, 11.76.106, 11.76.107, or 11.76.109.

29 * **Sec. 15.** AS 43.70.075(t) is amended to read:

30 (t) Based on evidence provided at the hearing under (m)(4) - (6) of this
 31 section, the department may reduce the license suspension period under (d) of this

1 section if the person holding the business license endorsement establishes that, before
2 the date of the violation, the person had

3 (1) adopted and enforced a written policy against selling cigarettes,
4 cigars, tobacco, products containing tobacco, electronic smoking products, or products
5 containing nicotine to a person under 21 [19] years of age in violation of
6 AS 11.76.100, 11.76.106, 11.76.107, or 11.76.109;

7 (2) informed the person's agents and employees of the applicable laws
8 and their requirements and conducted training on complying with the laws and
9 requirements;

10 (3) required each agent and employee of the person to sign a form
11 stating that the agent and employee has been informed of and understands the written
12 policy and the requirements of AS 11.76.100, 11.76.106, 11.76.107, and 11.76.109;

13 (4) determined that the agents and employees of the person had
14 sufficient experience and ability to comply with the written policy and requirements of
15 AS 11.76.100, 11.76.106, 11.76.107, and 11.76.109;

16 (5) required the agents and employees of the person to verify the age
17 of purchasers of cigarettes, cigars, tobacco, other products containing tobacco,
18 electronic smoking products, or products containing nicotine by means of a valid
19 government issued photographic identification;

20 (6) established and enforced disciplinary sanctions for noncompliance
21 with the written policy or the requirements of AS 11.76.100, 11.76.106, 11.76.107,
22 and 11.76.109; and

23 (7) monitored the compliance of the agents and employees of the
24 person with the written policy and the requirements of AS 11.76.100, 11.76.106,
25 11.76.107, and 11.76.109.

26 * **Sec. 16.** AS 43.70.075(w) is amended to read:

27 (w) For purposes of (m)(5) of this section, a conviction for a violation of
28 AS 11.76.100, 11.76.106, 11.76.107, or 11.76.109 by the agent or employee of the
29 person who holds the business license endorsement is rebuttably presumed to
30 constitute proof of the fact that the agent or employee negligently sold a cigarette, a
31 cigar, or tobacco, a product containing tobacco, an electronic smoking product, or a

1 product containing nicotine to a person under 21 [19] years of age. The person who
 2 holds the business license endorsement may overcome the presumption by
 3 establishing by clear and convincing evidence that the agent or employee did not
 4 negligently sell a cigarette, a cigar, or tobacco, a product containing tobacco, an
 5 electronic smoking product, or a product containing nicotine to a person under 21 [19]
 6 years of age in violation of AS 11.76.100, 11.76.106, 11.76.107, or 11.76.109 as
 7 alleged in the citation issued to the agent or employee. The presentation of evidence
 8 authorized by this subsection does not constitute a collateral attack on the conviction
 9 described in this subsection.

10 * **Sec. 17.** AS 47.12.030(b) is amended to read:

11 (b) When a minor is accused of violating a statute specified in this subsection,
 12 other than a statute the violation of which is a felony, this chapter and the Alaska
 13 Delinquency Rules do not apply and the minor accused of the offense shall be
 14 charged, prosecuted, and sentenced in the district court in the same manner as an
 15 adult; if a minor is charged, prosecuted, and sentenced for an offense under this
 16 subsection, the minor's parent, guardian, or legal custodian shall be present at all
 17 proceedings; the provisions of this subsection apply when a minor is accused of
 18 violating

19 (1) a traffic statute or regulation, or a traffic ordinance or regulation of
 20 a municipality;

21 (2) AS 11.76.105, relating to the possession of tobacco by a person
 22 under 21 [19] years of age;

23 (3) a fish and game statute or regulation under AS 16;

24 (4) a parks and recreational facilities statute or regulation under
 25 AS 41.21;

26 (5) [REPEALED]

27 (6) a municipal curfew ordinance, whether adopted under
 28 AS 29.35.085 or otherwise, unless the municipality provides for enforcement of its
 29 ordinance under AS 29.25.070(b) by the municipality; in place of any fine imposed for
 30 the violation of a municipal curfew ordinance, the court shall allow a defendant the
 31 option of performing community work; the value of the community work, which may

1 not be lower than the amount of the fine, shall be determined under AS 12.55.055(c);
2 in this paragraph, "community work" includes the work described in AS 12.55.055(b)
3 or work that, on the recommendation of the municipal or borough assembly, city
4 council, or traditional village council of the defendant's place of residence, would
5 benefit persons within the municipality or village who are elderly or disabled.

6 * **Sec. 18.** This Act takes effect January 1, 2020.