

HOUSE CS FOR CS FOR SENATE BILL NO. 45(FIN) am H

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-SECOND LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Amended: 5/17/22

Offered: 5/15/22

Sponsor(s): SENATOR STEVENS

REPRESENTATIVES Hannan, Josephson

A BILL

FOR AN ACT ENTITLED

1 **"An Act raising the minimum age to purchase, sell, exchange, or possess tobacco, a**
2 **product containing nicotine, or an electronic smoking product; relating to selling a**
3 **tobacco product; relating to possession of tobacco, electronic smoking products, or**
4 **products containing nicotine by an underaged person; relating to the definition of**
5 **'nicotine'; relating to transporting tobacco, a product containing nicotine, or an**
6 **electronic smoking product; relating to the taxation of electronic smoking products;**
7 **relating to electronic smoking products; relating to the marketing of electronic smoking**
8 **products; relating to tobacco products; and providing for an effective date."**

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

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

11 (a) A person commits the offense of selling or giving tobacco to **an**
12 **underaged person** [A MINOR] if the person

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

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

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

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

* **Sec. 2.** AS 11.76.105 is amended to read:

Sec. 11.76.105. Possession of tobacco, electronic smoking products, or products containing nicotine by a person under 19 years of age [MINOR]. (a) A person under 19 years of age may not knowingly possess a cigarette, a cigar, tobacco, a product containing tobacco, an electronic smoking product, or a product containing nicotine in this state. [THIS SUBSECTION DOES NOT APPLY TO A PERSON WHO IS A PRISONER AT AN ADULT CORRECTIONAL FACILITY.]

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

(1) has been approved by the United States Food and Drug Administration for sale as a tobacco use cessation [OR HARM REDUCTION] product or for other medical purposes;

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

(3) was

(A) prescribed by a health care professional;

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

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

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

(c) Possession of tobacco, an electronic smoking product, or a product containing nicotine by a **person under 19 years of age** [MINOR] is a violation **punishable by a fine of not more than \$150.**

* **Sec. 3.** AS 11.76.105 is amended by adding a new subsection to read:

(d) The supreme court shall establish by rule or order a schedule of bail amounts that may be forfeited without court appearance for a violation of this section.

* **Sec. 4.** AS 11.76.106(b) is amended to read:

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

(1) is by vending machine as provided under AS 11.76.100(b) or 11.76.109(d);

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

(3) is by a retailer who sells primarily cigarettes, cigars, tobacco, products containing tobacco, electronic smoking products, or products containing nicotine and who restricts access to the premises to only those individuals who are **21** [19] years of age or older; or

(4) is of electronic smoking products over the Internet to a person **21** [19] years of age or older.

* **Sec. 5.** AS 11.76.109(a) is amended to read:

(a) A person commits the offense of selling or giving an electronic smoking product or a product containing nicotine to **an underaged person** [A MINOR] if the person

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

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

(3) maintains a vending machine that dispenses electronic smoking

1 products or products containing nicotine; or

2 (4) holds a business license endorsement under AS 43.70.075 and
3 allows a person under 21 [19] years of age to sell an electronic smoking product or a
4 product containing nicotine.

5 * **Sec. 6.** AS 11.76.109(b) is amended to read:

6 (b) The provisions of (a) of this section do not apply to the sale, exchange, or
7 gift [TO A PERSON UNDER 19 YEARS OF AGE] of an electronic smoking product
8 or a product containing nicotine that is intended or expected to be consumed without
9 being combusted if the electronic smoking product or product containing nicotine

10 (1) has been approved by the United States Food and Drug
11 Administration for sale as a tobacco use cessation [OR HARM REDUCTION] product
12 or for other medical purposes;

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

14 (3) is

15 (A) prescribed by a health care professional;

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

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

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

21 * **Sec. 7.** AS 11.76.109(d) is amended to read:

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

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

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

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

31 (2) in an employee break room or other controlled area of a private

work place that is not generally considered a public place and the room or area contains a posted warning sign at least 11 inches by 8.5 inches indicating that possession of electronic smoking products or products containing nicotine by a person under 19 years of age without a prescription is prohibited under **AS 11.76.105** [AS 11.76.109].

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

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

* **Sec. 9.** AS 11.81.900(b) is amended by adding a new paragraph to read:

(69) "nicotine" includes a chemical or chemical compound intended, when introduced into the human body, to mimic or simulate the effect of nicotine from tobacco.

* **Sec. 10.** 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. 11.** 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. 12.** 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. 13.** 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. The tax is

(1) [AT THE RATE OF] 75 percent of the wholesale price of [THE] tobacco products;

(2) 35 percent of the wholesale price of

(A) a closed-system electronic smoking product;

(B) a vapor product sold as part of an open-system electronic smoking product;

(C) a vapor product sold separately from a closed- or open-system electronic smoking product. [THE TAX IS LEVIED WHEN A PERSON

(1) BRINGS, OR CAUSES TO BE BROUGHT, A TOBACCO PRODUCT INTO THE STATE FROM OUTSIDE THE STATE FOR SALE;

(2) MAKES, MANUFACTURES, OR FABRICATES A TOBACCO

1 PRODUCT IN THE STATE FOR SALE IN THE STATE; OR

2 (3) SHIPS OR TRANSPORTS A TOBACCO PRODUCT TO A
3 RETAILER IN THE STATE FOR SALE BY THE RETAILER.]

4 * **Sec. 14.** AS 43.50.300 is amended by adding new subsections to read:

5 (b) The tax under (a) of this section is levied when a person

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

8 (2) makes, manufactures, or fabricates a tobacco product or electronic
9 smoking product in the state for sale in the state; or

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

12 (c) In this section,

13 (1) "closed-system electronic smoking product" means a nonrefillable
14 electronic smoking product;

15 (2) "open-system electronic smoking product" means a refillable
16 electronic smoking product.

17 * **Sec. 15.** AS 43.50.310(b) is amended to read:

18 (b) The tax does not apply to

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

21 (2) an electronic smoking product

22 (A) approved for sale by the United States Food and Drug
23 Administration as a drug, drug product, including a drug product used to
24 treat tobacco dependence, or combination product under 21 U.S.C. 301 -
25 392 (Federal Food, Drug, and Cosmetic Act);

26 (B) if the United States Constitution or other federal laws
27 prohibit the levying of the tax on the product by the state;

28 (C) designed, marketed, and sold for the purpose of
29 vaporizing or aerosolizing marijuana, marijuana products, hemp, or
30 hemp products; for purposes of meeting the requirements of this
31 subparagraph, the department shall accept a notarized affidavit from the

seller attesting to the intended use of the product; or

(3) marijuana, marijuana products, hemp, or hemp products if the marijuana, marijuana product, hemp, or hemp product does not contain nicotine.

* **Sec. 16.** AS 43.50.310 is amended by adding a new subsection to read:

(c) In this section,

(1) "hemp" and "hemp products" means hemp or a hemp product produced by an individual registered under AS 03.05.076;

(2) "marijuana" and "marijuana products" have the meanings given in AS 17.38.900.

* **Sec. 17.** 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. 18.** AS 43.50.320 is amended by adding a new subsection to read:

(i) A person licensed under this section may not

(1) distribute an electronic smoking product designed or packaged so as not to be clearly recognizable as a tobacco product; or

(2) market an electronic smoking product, including a flavored electronic smoking product, in a manner likely to promote use of the electronic smoking product by a person under 21 years of age.

* **Sec. 19.** 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

1 organization authorized by law to possess tobacco products or electronic smoking
2 products not taxed under this chapter.

3 (b) A person who is licensed under this chapter may not ship or cause to be
4 shipped a tobacco product or electronic smoking product to a person in this state
5 unless the person receiving the tobacco product or electronic smoking product

6 (1) is licensed under this chapter;

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

8 (3) is an operator of a customs bonded warehouse under 19 U.S.C.
9 1311 or 19 U.S.C. 1555;

10 (4) is an instrumentality of the federal government or an Indian tribal
11 organization authorized by law to possess tobacco products or electronic smoking
12 products not taxed under this chapter; or

13 (5) is an individual 21 years of age or older and the individual's age
14 was verified at the time of purchase through a third-party verification service, the
15 individual is receiving the tobacco product or electronic smoking product for personal
16 consumption, and the tax imposed on the tobacco product or electronic smoking
17 product under this chapter has been paid.

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

20 (1) shipping the tobacco product or electronic smoking product is
21 licensed under this chapter and, before shipment, provides the common or contract
22 carrier with a copy of the person's current license issued by the department and

23 (A) an affidavit from the intended recipient certifying that the
24 person receiving the tobacco product or electronic smoking product is a person
25 described under (b)(1) - (4) of this section; or

26 (B) the common or contract carrier verifies the age of the
27 recipient as 21 years of age or older before delivery; or

28 (2) receiving the tobacco product or electronic smoking product is a
29 person described under (a)(2) or (3) of this section or is licensed under this chapter
30 and, before receipt, provides the common or contract carrier with a copy of the
31 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 penalty 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. 20.** 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 **and electronic smoking products** sold by the licensee during the preceding calendar month, the selling price of the tobacco products **and electronic smoking**

products, and the amount of tax imposed on the tobacco products and electronic smoking products.

* **Sec. 21.** AS 43.50.330 is amended by adding a new subsection to read:

(c) A licensee is not required to file a return under this section if the licensee

(1) sells only products exempt under AS 43.50.310(b)(2)(C) or (b)(3) from the tax under this chapter; and

(2) provides a notarized affidavit attesting to the licensee's qualification under (1) of this subsection.

* **Sec. 22.** 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. 23.** 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. 24.** AS 43.50.350 is amended to read:

Sec. 43.50.350. Disposition of proceeds. Except as provided in (b) of this section, the [THE] tax collected by the department shall be deposited in the general fund. The annual estimated balance in the account maintained by the commissioner of administration under AS 37.05.142 may be used by the legislature to make appropriations for health care, health research, health promotion, and health education programs.

1 * **Sec. 25.** AS 43.50.350 is amended by adding a new subsection to read:

2 (b) The department shall separately account for tax collected on electronic
3 smoking products under AS 43.50.300. The annual estimated balance in the account
4 may be appropriated by the legislature to provide for education, programs, and
5 advertising related to the hazards of electronic smoking products.

6 * **Sec. 26.** AS 43.50.390(1) is amended to read:

7 (1) "distributor" means a person who

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

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

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

14 * **Sec. 27.** AS 43.50.390(5) is amended to read:

15 (5) "wholesale price" means

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

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

25 * **Sec. 28.** AS 43.50.390 is amended by adding new paragraphs to read:

26 (6) "electronic smoking product"

27 (A) includes a

28 (i) product that can be used to deliver aerosolized or
29 vaporized nicotine to the person inhaling; an e-cigarette, e-cigar, e-
30 pipe, e-hookah, or vape pen and any component, part, accessory, or
31 device related to an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen;

1 and

2 (ii) vapor product;

3 (B) does not include a

4 (i) battery, battery charger, or mouthpiece when sold
5 separately;

6 (ii) cartridge, pod, tank, or similar container when sold
7 empty;

8 (7) "nicotine" has the meaning given in AS 11.81.900(b);

9 (8) "vapor product" means a substance intended to be aerosolized or
10 vaporized during the use of an electronic smoking product.

11 * **Sec. 29.** AS 43.70.075(f) is amended to read:

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

23 * **Sec. 30.** AS 43.70.075(m) is amended to read:

24 (m) The department may initiate suspension of a business license endorsement
25 or the right to obtain a business license endorsement under this section by sending the
26 person subject to the suspension a notice by certified mail, return receipt requested, or
27 by delivering the notice to the person. The notice must contain information that
28 informs the person of the grounds for suspension, the length of any suspension sought,
29 and the person's right to administrative review. A suspension begins 30 days after
30 receipt of notice described in this subsection unless the person delivers a timely
31 written request for a hearing to the department in the manner provided by regulations

1 of the department. If a hearing is requested under this subsection, an administrative
 2 law judge of the office of administrative hearings (AS 44.64.010) shall determine the
 3 issues by using the preponderance of the evidence test and shall, to the extent they do
 4 not conflict with regulations adopted under AS 44.64.060, conduct the hearing in the
 5 manner provided by regulations of the department. A hearing under this subsection is
 6 limited to the following questions:

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

11 (2) if the department does not allege a conviction of AS 11.76.100,
 12 11.76.106, 11.76.107, or 11.76.109, did the person, or an agent or employee of the
 13 person while acting within the scope of the agency or employment of the person,
 14 violate a provision of (a) or (g) of this section;

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

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

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

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

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

30 (B) previously violated AS 11.76.100, 11.76.106, 11.76.107, or
 31 11.76.109 at a location or outlet in a location for which the person holds a

business license endorsement, or had an agent or employee previously violate AS 11.76.100, 11.76.106, 11.76.107, or 11.76.109; this subparagraph does not apply to a prior conviction that served to enhance a suspension period under (d)(2) - (4) of this section; or

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

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

(t) Based on evidence provided at the hearing under (m)(4) - (6) of this section, the department may reduce the license suspension period under (d) of this section if the person holding the business license endorsement establishes that, before the date of the violation, the person had

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

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

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

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

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

(6) established and enforced disciplinary sanctions for noncompliance

1 with the written policy or the requirements of AS 11.76.100, 11.76.106, 11.76.107,
2 and 11.76.109; and

3 (7) monitored the compliance of the agents and employees of the
4 person with the written policy and the requirements of AS 11.76.100, 11.76.106,
5 11.76.107, and 11.76.109.

6 * **Sec. 32.** AS 43.70.075(w) is amended to read:

7 (w) For purposes of (m)(5) of this section, a conviction for a violation of
8 AS 11.76.100, 11.76.106, 11.76.107, or 11.76.109 by the agent or employee of the
9 person who holds the business license endorsement is rebuttably presumed to
10 constitute proof of the fact that the agent or employee negligently sold a cigarette, a
11 cigar, or tobacco, a product containing tobacco, an electronic smoking product, or a
12 product containing nicotine to a person under 21 [19] years of age. The person who
13 holds the business license endorsement may overcome the presumption by
14 establishing by clear and convincing evidence that the agent or employee did not
15 negligently sell a cigarette, a cigar, or tobacco, a product containing tobacco, an
16 electronic smoking product, or a product containing nicotine to a person under 21 [19]
17 years of age in violation of AS 11.76.100, 11.76.106, 11.76.107, or 11.76.109 as
18 alleged in the citation issued to the agent or employee. The presentation of evidence
19 authorized by this subsection does not constitute a collateral attack on the conviction
20 described in this subsection.

21 * **Sec. 33.** AS 45.50.471(b) is amended by adding a new paragraph to read:

22 (58) marketing an electronic smoking product in a manner likely to
23 promote use of electronic smoking products by a person under 21 years of age; in this
24 paragraph, "electronic smoking product" has the meaning given in AS 43.50.390.

25 * **Sec. 34.** AS 11.76.100(e) is repealed.

26 * **Sec. 35.** The uncodified law of the State of Alaska is amended by adding a new section to
27 read:

28 APPLICABILITY. (a) The following sections apply to offenses committed on or after
29 the effective date of those sections:

30 (1) AS 11.76.100(a), as amended by sec. 1 of this Act;

31 (2) AS 11.76.105, as amended by sec. 2 of this Act;

- (3) AS 11.76.105(d), enacted by sec. 3 of this Act;
- (4) AS 11.76.106(b), as amended by sec. 4 of this Act;
- (5) AS 11.76.109(a), as amended by sec. 5 of this Act;
- (6) AS 11.76.109(b), as amended by sec. 6 of this Act;
- (7) AS 11.76.109(d), as amended by sec. 7 of this Act;
- (8) AS 11.76.109(g), as amended by sec. 8 of this Act;
- (9) AS 11.81.900(b)(69), enacted by sec. 9 of this Act; and
- (10) AS 43.50.325, enacted by sec. 19 of this Act.

(b) AS 11.76.100(a)(4), as amended by sec. 1 of this Act, and AS 11.76.109(a)(4), as amended by sec. 5 of this Act, do not apply to a person 19 years of age or older who is employed on the effective date of secs. 1 and 5 of this Act by a person with a business license endorsement under AS 43.70.075.

* **Sec. 36.** This Act takes effect January 1, 2023.