

CS FOR SENATE BILL NO. 89(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-THIRD LEGISLATURE - FIRST SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered: 4/24/23

Referred: Finance

Sponsor(s): SENATORS STEVENS, Giessel, Gray-Jackson, Kiehl, Tobin

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to tobacco, tobacco products, electronic smoking products, nicotine,
2 and products containing nicotine; raising the minimum age to purchase, exchange, or
3 possess tobacco, a product containing nicotine, or an electronic smoking product;
4 relating to the taxation of electronic smoking products and vapor products; and
5 providing for an effective date."

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

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

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

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

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

1 years of age;

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

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

7 * **Sec. 2.** AS 11.76.100(b), as amended by sec. 153, ch. 8, SLA 2022, is amended to read:

8 (b) Notwithstanding the provisions of (a) of this section, a person who
9 maintains a vending machine is not in violation of (a)(3) of this section if the vending
10 machine is located

11 (1) on premises licensed as a beverage dispensary under AS 04.09.200
12 or 04.09.350, licensed as a club under AS 04.09.220, or licensed as a package store
13 under AS 04.09.230 and

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

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

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

23 * **Sec. 3.** AS 11.76.105 is amended to read:

24 **Sec. 11.76.105. Possession of tobacco, electronic smoking products, or**
25 **products containing nicotine by a person under 21 years of age [MINOR]. (a)**
26 **Except as provided in (e) of this section, a [A] person under 21 [19] years of age**
27 **may not knowingly possess a cigarette, a cigar, tobacco, a product containing tobacco,**
28 **an electronic smoking product, or a product containing nicotine in this state. [THIS**
29 **SUBSECTION DOES NOT APPLY TO A PERSON WHO IS A PRISONER AT AN**
30 **ADULT CORRECTIONAL FACILITY.]**

31 (b) In a prosecution under (a) of this section for possession of an electronic

1 smoking product or a product containing nicotine, it is an affirmative defense that the
 2 electronic smoking product or product containing nicotine possessed by the person
 3 under 21 [19] years of age was intended or expected to be consumed without being
 4 combusted, and the electronic smoking product or product containing nicotine

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

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

9 (3) was

10 (A) prescribed by a health care professional;

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

12 (C) provided by a state-approved tobacco cessation program
 13 administered by the Department of Health; or

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

16 (c) Possession of tobacco, an electronic smoking product, or a product
 17 containing nicotine by a **person under 21 years of age** [MINOR] is a violation
 18 **punishable by a fine of not more than \$150. Notwithstanding AS 12.55.035(b), in**
 19 **place of any fine imposed for the violation of this subsection, the court may refer**
 20 **a defendant, at the request of the defendant, to a tobacco education program.**

21 * **Sec. 4.** AS 11.76.105 is amended by adding new subsections to read:

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

24 (e) The provisions of (a) of this section do not apply to a person 19 or 20 years
 25 of age who is employed by a person with a business license endorsement under
 26 AS 43.70.075 and, as part of that employment, is selling a cigarette, a cigar, tobacco, a
 27 product containing tobacco, an electronic smoking product, or a product containing
 28 nicotine.

29 * **Sec. 5.** AS 11.76.106(a) is amended to read:

30 (a) Except as provided under (b) of this section, a person may not sell
 31 cigarettes, cigars, tobacco, products containing tobacco, electronic smoking products,

1 or products containing nicotine

2 **(1)** unless the sale occurs in a manner that allows only the sales clerk
3 to control access to the cigarettes, cigars, tobacco, products containing tobacco,
4 electronic smoking products, or products containing nicotine;

5 **(2) over the Internet to an individual for the individual's personal**
6 **consumption.**

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

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

9 (1) is by vending machine as provided under AS 11.76.100(b) or
10 11.76.109(d);

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

14 (3) is by a retailer who sells primarily cigarettes, cigars, tobacco,
15 products containing tobacco, electronic smoking products, or products containing
16 nicotine and who restricts access to the premises to only those individuals who are **21**
17 [19] years of age or older; or

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

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 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
10 or for 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; 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), as amended by sec. 155, ch. 8, SLA 2022, 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 04.09.200
23 or 04.09.350, licensed as a club under AS 04.09.220, or licensed as a package store
24 under AS 04.09.230, 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 11.76.105**
 3 [THIS SECTION].

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

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

8 * **Sec. 11.** AS 11.81.900(b) is amended by adding a new paragraph to read:

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

12 * **Sec. 12.** AS 43.50.070 is amended to read:

13 **Sec. 43.50.070. Suspension or revocation of or refusal to renew a license.**

14 (a) The department may suspend, revoke, or refuse to renew a license issued under this
 15 chapter (1) for a negligent violation of AS 11.76.100, 11.76.106, 11.76.107,
 16 11.76.109, or a violation of this chapter or a regulation of the department adopted
 17 under this chapter; (2) if a licensee ceases to act in the capacity for which the license
 18 was issued; or (3) if a licensee negligently sells tobacco or products containing
 19 tobacco to a person who is required to, but does not, hold a license endorsement under
 20 AS 43.70.075 or whose license endorsement under AS 43.70.075 has been suspended.
 21 A person whose license is suspended or revoked may not sell cigarettes, [OR] tobacco
 22 products, **or electronic smoking products,** or permit cigarettes, [OR] tobacco
 23 products, **or electronic smoking products** to be sold, during the period of the
 24 suspension or revocation on the premises occupied or controlled by that person. A
 25 disciplinary proceeding or action is not barred or abated by the expiration, transfer,
 26 surrender, renewal, or extension of a license issued under this chapter. The department
 27 shall comply with the provisions of AS 44.62 (Administrative Procedure Act), except
 28 that a hearing officer of the department, rather than a hearing officer assigned under
 29 AS 44.62.350, may conduct hearings.

30 (b) In this section, "licensee" means a person licensed under AS 43.50.010 -
 31 43.50.180, [OR] 43.50.300 - 43.50.390, **or 43.50.850 - 43.50.900.**

1 * **Sec. 13.** AS 43.50.105(b) is amended to read:

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

4 (1) is licensed under this chapter;

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

6 (3) is an operator of a customs bonded warehouse under 19 U.S.C.
7 1311 or 19 U.S.C. 1555;

8 (4) is an instrumentality of the federal government or an Indian tribal
9 organization authorized by law to possess cigarettes not taxed under this chapter; or

10 (5) is an individual 21 [19] years of age or older **and the individual's**
11 **age was verified at the time of purchase by a third-party verification service, the**
12 **individual is** receiving the cigarettes for personal consumption, and the tax imposed
13 on the cigarettes under this chapter has been paid.

14 * **Sec. 14.** AS 43.50.105(c) is amended to read:

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

17 (1) shipping the cigarettes is licensed under this chapter and, before
18 shipment, provides the common or contract carrier with a copy of the person's current
19 license issued by the department and

20 **(A)** an affidavit from the intended recipient certifying that the
21 person receiving the cigarettes is a person described under **(b)(1) - (4)** [(b)(1) -
22 (5)] of this section; or

23 **(B) the common or contract carrier verifies the age of the**
24 **recipient as 21 years of age or older before delivery; or**

25 (2) receiving the cigarettes is a person described under (a)(2) or (3) of
26 this section or is licensed under this chapter and, before receipt, provides the common
27 or contract carrier with a copy of the person's current license issued by the department.

28 * **Sec. 15.** AS 43.50.150(c) is amended to read:

29 (c) The department may enter into an agreement with a municipality that
30 imposes a tax on cigarettes, [OR OTHER] tobacco products, **or electronic smoking**
31 **products** for the purpose of jointly auditing a person liable for a tax under

1 AS 43.50.010 - 43.50.390 or 43.50.850 - 43.50.900 and the municipal tax on
 2 cigarettes, [OR OTHER] tobacco products, or electronic smoking products.

3 * **Sec. 16.** AS 43.50 is amended by adding a new section to read:

4 **Sec. 43.50.325. Restrictions on shipping or transporting tobacco products.**

5 (a) A person who is not licensed under this chapter may not ship or cause to be
 6 shipped a tobacco product to a person in this state unless the person receiving the
 7 tobacco product is

8 (1) licensed under this chapter;

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

11 (3) an instrumentality of the federal government or an Indian tribal
 12 organization authorized by law to possess tobacco products not taxed under this
 13 chapter.

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

17 (1) is licensed under this chapter;

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

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

21 (4) is an instrumentality of the federal government or an Indian tribal
 22 organization authorized by law to possess tobacco products not taxed under this
 23 chapter; or

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

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

30 (1) shipping the tobacco product is licensed under this chapter and,
 31 before shipment, provides the common or contract carrier with a copy of the person's

1 current license issued by the department and

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

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

7 (2) receiving the tobacco product is a person described under (a)(2) or
8 (3) of this section or is licensed under this chapter and, before receipt, provides the
9 common or contract carrier with a copy of the person's current license issued by the
10 department.

11 (d) If a tobacco product is transported by a common or contract carrier to a
12 home or residence, it is rebuttably presumed that the common or contract carrier knew
13 that the recipient of the tobacco product was not a person described under (b)(1) - (5)
14 of this section, unless the person shipping the tobacco product has satisfied the
15 requirements in (c)(1) of this section.

16 (e) A person, other than a common or contract carrier, may not knowingly
17 transport a tobacco product to a person in this state, unless the recipient of the tobacco
18 product is a person described under (b)(1) - (5) of this section.

19 (f) A person who ships or causes to be shipped a tobacco product to a person
20 in this state shall plainly and visibly mark the container or wrapping with the words
21 "tobacco product" if the tobacco product is shipped in a container or wrapping other
22 than the manufacturer's original container or wrapping of the tobacco product.

23 (g) A person who violates the provisions of this section is guilty of a class A
24 misdemeanor if the person unlawfully ships, causes to be shipped, or transports a
25 tobacco product.

26 (h) In addition to the criminal penalty under (g) of this section, the department
27 may assess a civil penalty of not more than \$5,000 for each violation of this section.

28 (i) A person who violates the provisions of this section is jointly and severally
29 liable for the taxes imposed by AS 43.50.090 and 43.50.190. To the fullest extent
30 permitted by the Constitution of the United States, a person who violates the
31 provisions of this section is required to collect the taxes and pay them to the

1 department.

2 * **Sec. 17.** AS 43.50 is amended by adding new sections to read:

3 **Article 8. Electronic Smoking Products Sales, Shipping, Licensing, and Tax.**

4 **Sec. 43.50.850. Tax levied.** A tax is levied on closed electronic smoking
5 products and vapor products in the state. The tax is 25 percent of the retail sales price
6 of a closed electronic smoking product or a vapor product.

7 **Sec. 43.50.855. Exemptions.** (a) The tax does not apply to

8 (1) a closed electronic smoking product or vapor product

9 (A) sold in a facility operated by one of the uniformed services
10 of the United States;

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

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

17 (D) designed, marketed, and sold for the purpose of vaporizing
18 or aerosolizing marijuana, marijuana products, hemp, or hemp products and
19 intended for sale only in a retail marijuana store;

20 (2) marijuana or marijuana products subject to tax under AS 43.61 if
21 the marijuana or marijuana products do not contain nicotine; or

22 (3) hemp or hemp products if the hemp or hemp products do not
23 contain nicotine.

24 (b) In this section,

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

27 (2) "marijuana," "marijuana products," and "retail marijuana store"
28 have the meanings given in AS 17.38.900;

29 (3) "uniformed services" has the meaning given in 5 U.S.C. 2101.

30 **Sec. 43.50.860. Licensing.** (a) Except as provided in (g) of this section, a
31 person must be licensed by the department if the person engages in business as a

1 retailer of an electronic smoking product.

2 (b) The department, upon application and payment of a fee of \$50, shall issue
3 a license for one year to a person who applies for a license under (a) of this section.

4 (c) The department may refuse to issue a license under this section if

5 (1) there is reasonable cause to believe the information submitted in
6 the application is false or misleading and is not made in good faith;

7 (2) the applicant is not in good standing under AS 10.06 (Alaska
8 Corporations Code); or

9 (3) a tax levied under this chapter is due and unpaid by the applicant.

10 (d) A license issued under this section must include the name and address of
11 the licensee, the type of business to be conducted, and the year for which the license is
12 issued.

13 (e) The department may renew a license issued under this section for a fee of
14 \$50 if the applicant

15 (1) is in good standing under AS 10.06 (Alaska Corporations Code);
16 and

17 (2) does not have unpaid taxes under this chapter.

18 (f) The department may suspend, revoke, or refuse to renew a license issued
19 under this section as provided in AS 43.50.070.

20 (g) A license required by this section is in addition to any other license
21 required by law, except that a person who is licensed under AS 43.50.010 - 43.50.180
22 or 43.50.300 - 43.50.390 is exempt from the licensing requirements of this section.

23 (h) A license issued under this section is not assignable or transferable, except
24 that in the case of death, bankruptcy, receivership, or incompetency of the licensee, or
25 if the business of the licensee is transferred to another by operation of law, the
26 department may extend the license for a limited time to the executor, administrator,
27 trustee, receiver, or transferee.

28 (i) A person licensed under this section may not

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

31 (2) market an electronic smoking product, including a flavored

1 electronic smoking product, in a manner likely to promote use of the electronic
2 smoking product by a person under 21 years of age.

3 **Sec. 43.50.865. Returns.** On or before the last day of each calendar month, a
4 licensee shall file a return with the department. The return must state the number or
5 amount of closed electronic smoking products, vapor products, and other electronic
6 smoking products sold by the licensee during the preceding calendar month, the
7 selling price of the electronic smoking products, and the amount of tax imposed on the
8 closed electronic smoking products and vapor products.

9 **Sec. 43.50.870. Records.** A licensee shall keep a complete and accurate record
10 of all electronic smoking products of the licensee, including purchase prices, sales
11 prices, the names and addresses of the sellers, the dates of delivery, the quantities of
12 electronic smoking products, and the trade names and brands. Statements and records
13 required by this section must be in the form prescribed by the department, preserved
14 for three years, and available for inspection upon demand by the department.

15 **Sec. 43.50.875. Disposition of proceeds.** The department shall separately
16 account for tax collected on closed electronic smoking products and vapor products
17 under AS 43.50.850. The annual estimated balance in the account may be appropriated
18 by the legislature to provide for

19 (1) health care, health research, health promotion, and health
20 education;

21 (2) health programs, education, or advertising related to the hazards of
22 electronic smoking products; or

23 (3) efforts to prevent or detect the use of tobacco or electronic smoking
24 products in a school, including the hiring of health advocates or for electronic smoking
25 product detection devices.

26 **Sec. 43.50.880. Restrictions on shipping or transporting electronic**
27 **smoking products.** (a) A person who is not licensed under this chapter may not ship
28 or cause to be shipped an electronic smoking product to a person in this state unless
29 the person receiving the electronic smoking product is

30 (1) licensed under this chapter;

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

1 or 19 U.S.C. 1555; or

2 (3) an instrumentality of the federal government or an Indian tribal
3 organization authorized by law to possess electronic smoking products not taxed under
4 this chapter.

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

8 (1) is licensed under this chapter;

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

10 (3) is an operator of a customs bonded warehouse under 19 U.S.C.
11 1311 or 19 U.S.C. 1555;

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

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

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

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

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

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

29 (2) receiving the electronic smoking product is a person described
30 under (a)(2) or (3) of this section or is licensed under this chapter and, before receipt,
31 provides the common or contract carrier with a copy of the person's current license

1 issued by the department.

2 (d) If an electronic smoking product is transported by a common or contract
3 carrier to a home or residence, it is rebuttably presumed that the common or contract
4 carrier knew that the recipient of the electronic smoking product was not a person
5 described under (b)(1) - (5) of this section, unless the person shipping the electronic
6 smoking product has satisfied the requirements in (c)(1) of this section.

7 (e) A person, other than a common or contract carrier, may not knowingly
8 transport an electronic smoking product to a person in this state, unless the recipient of
9 the electronic smoking product is a person described under (b)(1) - (5) of this section.

10 (f) A person who ships or causes to be shipped an electronic smoking product
11 to a person in this state shall plainly and visibly mark the container or wrapping with
12 the words "electronic smoking product" if the electronic smoking product is shipped in
13 a container or wrapping other than the manufacturer's original container or wrapping
14 of the electronic smoking product.

15 (g) A person who violates the provisions of this section is guilty of a class A
16 misdemeanor if the person unlawfully ships, causes to be shipped, or transports an
17 electronic smoking product.

18 (h) In addition to the criminal penalty under (g) of this section, the department
19 may assess a civil penalty of not more than \$5,000 for each violation of this section.

20 (i) A person who violates the provisions of this section is jointly and severally
21 liable for the taxes imposed by AS 43.50.850. To the fullest extent permitted by the
22 Constitution of the United States, a person who violates the provisions of this section
23 is required to collect the taxes and pay them to the department.

24 **Sec. 43.50.885. Restrictions on electronic smoking products.** A person may
25 sell or distribute to consumers in this state, acquire, hold, own, possess, or transport
26 for sale or distribution in this state, or import or cause to be imported into this state for
27 sale or distribution in this state only electronic smoking products

28 (1) for which the component vapor product

29 (A) has a nicotine content of less than 60 milligrams of nicotine
30 for each milliliter of vapor product;

31 (B) is protected from breakage and leakage;

1 (C) does not contain added vitamins or other additives
 2 marketed to create the impression of health benefits; in this subparagraph,
 3 "vitamins or other additives" includes caffeine, taurine, vitamin E acetate,
 4 stimulants, and colorants;

5 (2) that are packaged to be child- and tamper-proof; and

6 (3) that are labeled to inform consumers about all vapor product
 7 ingredients and nicotine content.

8 **Sec. 43.50.900. Definitions.** In AS 43.50.850 - 43.50.900, "sales price"

9 (1) means the total amount of consideration, including cash, credit,
 10 property, and services, for which an electronic smoking product is purchased or sold,
 11 valued in money, whether received in money or otherwise, without any deduction for

12 (A) the seller's cost of the electronic smoking product sold;

13 (B) the cost of materials used, labor or service cost, interest,
 14 losses, cost of transportation, taxes, or other expenses of the seller;

15 (C) charges by the seller for services necessary to complete the
 16 sale;

17 (D) delivery charges;

18 (2) does not include

19 (A) discounts, including cash or coupons that are not
 20 reimbursed by a third party, that are allowed by a seller and taken by a
 21 purchaser on a sale;

22 (B) interest, financing, and carrying charges from credit
 23 extended on the sale of an electronic smoking product if the amount is
 24 separately stated on the invoice, bill of sale, or similar document given to the
 25 purchaser; and

26 (C) taxes legally imposed directly on the consumer that are
 27 separately stated on the invoice, bill of sale, or similar document given to the
 28 purchaser.

29 **Article 9. General Provisions.**

30 **Sec. 43.50.990. Definitions.** In this chapter,

31 (1) "closed electronic smoking product" means a single-use electronic

1 smoking product that includes a pre-filled disposable cartridge of vapor product;

2 (2) "electronic smoking product"

3 (A) includes

4 (i) a product that can be used to deliver aerosolized or
5 vaporized nicotine to the person inhaling;

6 (ii) an e-cigarette, e-cigar, e-pipe, e-hookah, vape pen,
7 or other similar device of any shape;

8 (iii) a component, part, accessory, or device related to
9 an e-cigarette, e-cigar, e-pipe, e-hookah, vape pen, or other similar
10 device of any shape;

11 (iv) a vapor product used in a device or product
12 described in (i) or (ii) of this subparagraph;

13 (v) an e-cigarette, e-cigar, e-pipe, e-hookah, vape pen,
14 or other similar device of any shape sold together with a solution, vapor
15 product, or other similar product as a disposable nonrefillable unit;

16 (B) does not include a

17 (i) battery, battery charger, heating element, electronic
18 coil, or mouthpiece intended for use in an electronic smoking product,
19 when sold separately from the electronic smoking product;

20 (ii) cartridge, pod, tank, or similar container intended to
21 transport a vapor product, if sold empty;

22 (3) "nicotine" has the meaning given in AS 11.81.900(b);

23 (4) "retailer" means a person in the state who is engaged in the
24 business of selling electronic smoking products at retail;

25 (5) "vapor product" means a substance intended to be aerosolized or
26 vaporized during the use of an electronic smoking product.

27 * **Sec. 18.** AS 43.70.075(f) is amended to read:

28 (f) A person who holds a license endorsement issued under this section shall
29 post on the licensed premises a warning sign as described in this subsection. A
30 warning sign required by this subsection must be at least 8.5 inches by 11 inches and
31 must read: "The sale of electronic smoking products or products containing nicotine

1 without a prescription or tobacco products to persons under age 21 [19] is illegal." A
2 person holding an endorsement issued under this section shall display the warning sign
3 in a manner conspicuous to a person purchasing or consuming tobacco products,
4 electronic smoking products, or products containing nicotine on the licensed premises.
5 The department shall make available the warning signs required under this section to a
6 person who holds an endorsement issued under this section or a person who requests
7 the sign with the intention of displaying it.

8 * **Sec. 19.** AS 43.70.075(m) is amended to read:

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

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

27 (2) if the department does not allege a conviction of AS 11.76.100,
28 11.76.106, 11.76.107, or 11.76.109, did the person, or an agent or employee of the
29 person while acting within the scope of the agency or employment of the person,
30 violate a provision of (a) or (g) of this section;

31 (3) within the 24 months before the date of the department's notice

1 under this subsection, was the person, or an agent or employee of the person while
 2 acting within the scope of the agency or employment of the person, convicted of
 3 violating AS 11.76.100, 11.76.106, 11.76.107, or 11.76.109 or adjudicated for
 4 violating a provision of (a) or (g) of this section;

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

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

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

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

15 (B) previously violated AS 11.76.100, 11.76.106, 11.76.107, or
 16 11.76.109 at a location or outlet in a location for which the person holds a
 17 business license endorsement, or had an agent or employee previously violate
 18 AS 11.76.100, 11.76.106, 11.76.107, or 11.76.109; this subparagraph does not
 19 apply to a prior conviction that served to enhance a suspension period under
 20 (d)(2) - (4) of this section; or

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

25 * **Sec. 20.** AS 43.70.075(t) is amended to read:

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

30 (1) adopted and enforced a written policy against selling cigarettes,
 31 cigars, tobacco, products containing tobacco, electronic smoking products, or products

1 containing nicotine to a person under 21 [19] years of age in violation of
2 AS 11.76.100, 11.76.106, 11.76.107, or 11.76.109;

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

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

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

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

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

19 (7) monitored the compliance of the agents and employees of the
20 person with the written policy and the requirements of AS 11.76.100, 11.76.106,
21 11.76.107, and 11.76.109.

22 * **Sec. 21.** AS 43.70.075(w) is amended to read:

23 (w) For purposes of (m)(5) of this section, a conviction for a violation of
24 AS 11.76.100, 11.76.106, 11.76.107, or 11.76.109 by the agent or employee of the
25 person who holds the business license endorsement is rebuttably presumed to
26 constitute proof of the fact that the agent or employee negligently sold a cigarette, a
27 cigar, or tobacco, a product containing tobacco, an electronic smoking product, or a
28 product containing nicotine to a person under 21 [19] years of age. The person who
29 holds the business license endorsement may overcome the presumption by
30 establishing by clear and convincing evidence that the agent or employee did not
31 negligently sell a cigarette, a cigar, or tobacco, a product containing tobacco, an

1 electronic smoking product, or a product containing nicotine to a person under 21 [19]
 2 years of age in violation of AS 11.76.100, 11.76.106, 11.76.107, or 11.76.109 as
 3 alleged in the citation issued to the agent or employee. The presentation of evidence
 4 authorized by this subsection does not constitute a collateral attack on the conviction
 5 described in this subsection.

6 * **Sec. 22.** AS 45.50.471(b) is amended by adding a new paragraph to read:

7 (58) marketing an electronic smoking product in a manner likely to
 8 promote use of electronic smoking products by a person under 21 years of age; in this
 9 paragraph, "electronic smoking product" has the meaning given in AS 43.50.990.

10 * **Sec. 23.** 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 (7) AS 04.16.050, relating to consumption, possession, or control of
 7 alcohol by a person under 21 years of age.

8 * **Sec. 24.** AS 11.76.100(e) and 11.76.106(b)(4) are repealed.

9 * **Sec. 25.** The uncodified law of the State of Alaska is amended by adding a new section to
 10 read:

11 **APPLICABILITY.** The following sections apply to offenses committed on or after the
 12 effective date of those sections:

- 13 (1) AS 11.76.100(a), as amended by sec. 1 of this Act;
- 14 (2) AS 11.76.100(b), as amended by sec. 2 of this Act;
- 15 (3) AS 11.76.105, as amended by sec. 3 of this Act;
- 16 (4) AS 11.76.105(d) and (e), enacted by sec. 4 of this Act;
- 17 (5) AS 11.76.106(a), as amended by sec. 5 of this Act;
- 18 (6) AS 11.76.106(b), as amended by sec. 6 of this Act;
- 19 (7) AS 11.76.109(a), as amended by sec. 7 of this Act;
- 20 (8) AS 11.76.109(b), as amended by sec. 8 of this Act;
- 21 (9) AS 11.76.109(d), as amended by sec. 9 of this Act;
- 22 (10) AS 11.76.109(g), as amended by sec. 10 of this Act;
- 23 (11) AS 11.81.900(b)(69), enacted by sec. 11 of this Act;
- 24 (12) AS 43.50.325, enacted by sec. 16 of this Act;
- 25 (13) AS 43.50.880, enacted by sec. 17 of this Act; and
- 26 (14) AS 47.12.030(b), as amended by sec. 23 of this Act.

27 * **Sec. 26.** This Act takes effect January 1, 2024.