

SB

15

<TARGET><BILL>SB 15</BILL><SUBJECT>SB
15</SUBJECT><COMM>SJUD30</COMM></TARGET>

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SPONSOR STATEMENT

SENATE BILL 15

Prohibiting the Sale of Electronic Smoking Products to Minors

Senate Bill 15 would prohibit possession, sale, and exchange of electronic smoking devices, including their component liquid or vapor products, to individuals under 19 years of age, whether or not those products contain tobacco or nicotine.

Possession or sale of products containing tobacco or nicotine is already prohibited for individuals under 19. This bill would extend that prohibition to include electronic smoking devices and related products that may or may not include nicotine.

Within the past few years a quickly growing fad has emerged commonly known as "vaping," and typically includes an electronic smoking device used to aerosolize a chemical substance, which is then inhaled. The electronic devices themselves often resemble a traditional cigarette or stylish smoking pipe. The chemical substances aerosolized by the device are replacing traditional tobacco cigarettes and are expected to become the vice of the future. There has been an explosion of several hundreds of electronic smoking device components and chemical vapor products flooding the market to meet the demand of young consumers wanting to be "cool."

These products are often marketed as a means to reduce traditional tobacco consumption, or otherwise provide a safer alternative to the dangers of tobacco use. However, the market is so young and so quickly developing that research and evidence on long-term health impacts of vaping is as yet inconclusive. What we do know is these products usually, but not always, contain nicotine, and are offered in a wide range of concentrations and flavors. They are not regulated on many fronts, including manufacturing, marketing, and distribution. They are largely not tested for their contents, and thus the question stands as to whether these products are a health risk. It boils down to the notion that these inhalants, whatever they may be, cannot possibly be good for our bodies.

It is also intuitive that vaping, like cigarette smoking, is inherently habit-forming. By continuing to not take action against this new trend, we send the message to our youth that these products are safe and appropriate to use. There is research suggesting, and as should not be a surprise, that youth who smoke e-cigarettes eventually move on to conventional cigarettes, and/or more potent substances.

By passing SB 15, Alaska will join other states in an effort to protect our youth from forming bad habits by restricting easy access to these products in the first place.

30-LS0170\R
Martin
2/28/17

CS FOR SENATE BILL NO. 15(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - FIRST SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered:

Referred:

Sponsor(s): SENATOR STEVENS

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to possession of an electronic smoking product or a product containing**
 2 **nicotine by a minor and to selling or giving a product containing nicotine or an**
 3 **electronic smoking product to a minor; relating to business license endorsements to sell**
 4 **cigarettes, cigars, tobacco, products containing tobacco, electronic smoking products, or**
 5 **products containing nicotine; and relating to citations for certain offenses concerning**
 6 **tobacco, products containing nicotine, or electronic smoking products."**

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

8 *** Section 1. AS 11.76.105 is amended to read:**

9 **Sec. 11.76.105. Possession of tobacco, electronic smoking products, or**
 10 **products containing nicotine by a minor. (a) A person under 19 years of age may**
 11 **not knowingly possess a cigarette, a cigar, tobacco, [OR] a product containing**
 12 **tobacco, an electronic smoking product, or a product containing nicotine in this**
 13 **state. This subsection does not apply to a person who is a prisoner at an adult**

1 correctional facility.

2 (b) Possession of tobacco, an electronic smoking product, or a product
3 containing nicotine by a minor is a violation.

4 * **Sec. 2.** AS 11.76.105 is amended by adding a new subsection to read:

5 (c) In a prosecution under (a) of this section for possession of an electronic
6 smoking product or a product containing nicotine, it is an affirmative defense that the
7 electronic smoking product or product containing nicotine possessed by the person
8 under 19 years of age was intended or expected to be consumed without being
9 combusted, and 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 or for
12 other medical purposes;

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

14 (3) was

15 (A) prescribed by a health care professional;

16 (B) given to the person by the person's parent or 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. 3.** AS 11.76.106(a) is amended to read:

22 (a) Except as provided under (b) of this section, a person may not sell
23 cigarettes, cigars, tobacco, products [OR A PRODUCT] containing tobacco,
24 electronic smoking products, or products containing nicotine unless the sale
25 occurs in a manner that allows only the sales clerk to control access to the cigarettes,
26 cigars, tobacco, products [OR PRODUCT] containing tobacco, electronic smoking
27 products, or products containing nicotine.

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

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

30 (1) is by vending machine as provided under AS 11.76.100(b) or
31 11.76.109(f);

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

4 (3) is by a retailer who sells primarily cigarettes, cigars, tobacco,
5 **products** [OR A PRODUCT] containing tobacco, **electronic smoking products, or**
6 **products containing nicotine** and who restricts access to the premises to only those
7 individuals who are 19 years of age or older.

8 * **Sec. 5.** AS 11.76.107(a) is amended to read:

9 (a) A person commits the offense of failure to supervise a [CIGARETTE]
10 vending machine if the person owns premises licensed as a beverage dispensary under
11 AS 04.11.090 or licensed as a club under AS 04.11.110 or licensed as a package store
12 under AS 04.11.150 and with criminal negligence fails to have an employee supervise
13 a vending machine on those premises that dispenses cigarettes, cigars, tobacco, [OR]
14 products containing tobacco, **electronic smoking products, or products containing**
15 **nicotine** as required by AS 11.76.100(b)(1)(B) **and 11.76.109(f)(1)(B).**

16 * **Sec. 6.** AS 11.76.109(a) is amended to read:

17 (a) A person commits the offense of selling or giving **an electronic smoking**
18 **product or** a product containing nicotine to a minor if the person

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

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

24 **(3) maintains a vending machine that dispenses electronic smoking**
25 **products or products containing nicotine; or**

26 **(4) holds a business license endorsement under AS 43.70.075 and**
27 **allows a person under 19 years of age to sell an electronic smoking product or a**
28 **product containing nicotine.**

29 * **Sec. 7.** AS 11.76.109(b) is amended to read:

30 (b) The provisions of (a) of this section do not apply to the sale, exchange, or
31 gift to a person under 19 years of age of **an electronic smoking product or** a product

1 containing nicotine that is intended or expected to be consumed without being
2 combusted if the **electronic smoking product or product containing nicotine**

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

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

7 (3) is

8 (A) prescribed by a health care professional;

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

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

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

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

15 (e) Selling or giving **an electronic smoking product or** a product containing
16 nicotine to a minor is a violation and, upon conviction, is punishable by a fine of not
17 less than \$300.

18 * **Sec. 9.** AS 11.76.109 is amended by adding new subsections to read:

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

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

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

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

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

1 under 19 years of age without a prescription is prohibited under AS 11.76.109.

2 (g) The court shall forward a record of each person convicted under this
3 section who holds a business license endorsement under AS 43.70.075, or who is an
4 employee or agent of a person who holds a business license endorsement under
5 AS 43.70.075, to the Department of Commerce, Community, and Economic
6 Development.

7 * **Sec. 10.** AS 11.81.900(b) is amended by adding a new paragraph to read:

8 (67) "electronic smoking product" means

9 (A) an electronic cigarette, electronic cigar, electronic cigarillo,
10 electronic pipe, or other similar device that is used to aerosolize and deliver
11 nicotine, a synthetic of nicotine, or another substance that may cause an
12 adverse effect on the person inhaling from the device; and

13 (B) a component, solution, alternative tobacco product, e-
14 liquid, e-juice, vapor product, flavoring, or other related product of an
15 electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or
16 other similar device of any size or shape used for, or to assist with,
17 aerosolizing and inhaling chemical substances that may cause an adverse effect
18 on human health.

19 * **Sec. 11.** AS 43.50.070(a) is amended to read:

20 (a) The department may suspend, revoke, or refuse to renew a license issued
21 under this chapter (1) for a negligent violation of AS 11.76.100, 11.76.106, 11.76.107,
22 11.76.109, or a violation of this chapter or a regulation of the department adopted
23 under this chapter; (2) if a licensee ceases to act in the capacity for which the license
24 was issued; or (3) if a licensee negligently sells tobacco or products containing
25 tobacco to a person who is required to, but does not, hold a license endorsement under
26 AS 43.70.075 or whose license endorsement under AS 43.70.075 has been suspended.
27 A person whose license is suspended or revoked may not sell cigarettes or tobacco
28 products, or permit cigarettes or tobacco products to be sold, during the period of the
29 suspension or revocation on the premises occupied or controlled by that person. A
30 disciplinary proceeding or action is not barred or abated by the expiration, transfer,
31 surrender, renewal, or extension of a license issued under this chapter. The department

1 shall comply with the provisions of AS 44.62 (Administrative Procedure Act), except
2 that a hearing officer of the department, rather than a hearing officer assigned under
3 AS 44.62.350, may conduct hearings.

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

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

7 (1) is licensed under this chapter;

8 (2) holds a **business license** [TOBACCO] endorsement under
9 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 cigarettes not taxed under this chapter; or

14 (5) is an individual 19 years of age or older receiving the cigarettes for
15 personal consumption and the tax imposed on the cigarettes under this chapter has
16 been paid.

17 * **Sec. 13.** AS 43.70.075(a) is amended to read:

18 (a) Unless a person has a business license endorsement issued under this
19 section for each location or outlet in a location where the person offers tobacco
20 products, **electronic smoking products, or products containing nicotine** for sale, a
21 person may not sell or allow a vending machine to sell in its location or outlet
22 cigarettes, cigars, tobacco, [OR OTHER] products containing tobacco, **electronic**
23 **smoking products, or products containing nicotine** as a retailer at that location or
24 outlet. Each endorsement required under this section is in addition to any other license
25 or endorsement required by law. A person may not apply for an endorsement under
26 this section for a location or outlet if an endorsement issued for the same location or
27 outlet is currently suspended or revoked. An endorsement issued for a location or
28 outlet to a person in violation of this subsection is void.

29 * **Sec. 14.** AS 43.70.075(d) is amended to read:

30 (d) If a person who holds an endorsement issued under this section, or an
31 agent or an employee of a person who holds an endorsement issued under this section

1 acting within the scope of the agency or employment, has been convicted of violating
2 AS 11.76.100, 11.76.106, [OR] 11.76.107, or 11.76.109, the department shall impose
3 a civil penalty as set out in this subsection. However, following a hearing under (m) of
4 this section, and based on evidence admitted at that hearing concerning questions
5 specified in (m)(4) and (6) of this section, the department may reduce by not more
6 than 10 days a suspension under (1) of this subsection, or by not more than 20 days a
7 suspension under (2) of this subsection, or increase by not more than 10 days a
8 suspension under (1) of this subsection, or by not more than 20 days a suspension
9 under (2) of this subsection. If a hearing is not requested, or if a hearing is requested
10 and the department determines that the evidence admitted does not support increasing
11 or decreasing the suspension, the department shall suspend the endorsement [FOR A
12 PERIOD OF]

13 (1) for a period of 20 days and impose a civil penalty of \$1,000
14 [\$300] if the person has not been previously convicted of violating AS 11.76.100,
15 11.76.106, [OR] 11.76.107, or 11.76.109 and is not otherwise subject to the sanctions
16 described in (2) - (4) of this subsection;

17 (2) for a period of 45 days and impose a civil penalty of \$2,000
18 [\$500] if, within the 24 months before the date of the department's notice under (m) of
19 this section, the person, or an agent or employee of the person while acting within the
20 scope of the agency or employment of the person, was convicted once of violating
21 AS 11.76.100, 11.76.106, [OR] 11.76.107, or 11.76.109;

22 (3) for a period of 90 days and impose a civil penalty of \$4,000
23 [\$1,000] if, within the 24 months before the date of the department's notice under (m)
24 of this section, the person, or an agent or employee of the person while acting within
25 the scope of the agency or employment of the person, was convicted twice of violating
26 AS 11.76.100, 11.76.106, [OR] 11.76.107, or 11.76.109, or a provision of this section
27 or a regulation implementing this section adopted under AS 43.70.090; or

28 (4) indefinitely [ONE YEAR] and impose a civil penalty of \$10,000
29 [\$2,500] if, within the 24 months before the date of the department's notice under (m)
30 of this section, the person, or an agent or employee of the person while acting within
31 the scope of the agency or employment of the person, was convicted three or more

1 times [THAN TWICE] of violating AS 11.76.100, 11.76.106, [OR] 11.76.107, or
2 11.76.109.

3 * Sec. 15. AS 43.70.075(f) is amended to read:

4 (f) A person who holds a license endorsement issued under this section shall
5 post on the licensed premises a warning sign as described in this subsection. A
6 warning sign required by this subsection must be at least 8.5 [6] inches by 11 [18]
7 inches and must read [, IN LETTERING AT LEAST 1.25 INCHES HIGH]: "The sale
8 of electronic smoking products or products containing nicotine without a
9 prescription or tobacco products to persons under age 19 is illegal." A person holding
10 an endorsement issued under this section shall display the warning sign in a manner
11 conspicuous to a person purchasing or consuming tobacco products, electronic
12 smoking products, or products containing nicotine on the licensed premises. The
13 department shall make available the [, WITHOUT CHARGE, FURNISH] warning
14 signs required under this section to a person who holds an endorsement issued under
15 this section or a person who requests the sign with the intention of displaying it.

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

17 (i) The commissioner or the commissioner of revenue may seize cigarettes,
18 electronic smoking products, or products containing nicotine that do not comply
19 with this section. After notice and an opportunity for a hearing, the commissioner or
20 the commissioner of revenue shall destroy cigarettes, electronic smoking products,
21 or products containing nicotine seized under this subsection.

22 * Sec. 17. AS 43.70.075(l) is amended to read:

23 (l) Notwithstanding (a) of this section, a person owning vending machines that
24 offer tobacco products, electronic smoking products, or products containing
25 nicotine for sale need obtain only one business license endorsement under this section
26 even if the person has vending machines in more than one outlet or location in the
27 state. The person who owns a vending machine that offers tobacco products,
28 electronic smoking products, or products containing nicotine for sale and the
29 person who owns the premises where the vending machine is located are both required
30 to obtain a business license endorsement issued under this section. If the endorsement
31 of the person owning the vending machine is suspended or revoked, the person may

1 not sell cigarettes, cigars, [OR OTHER] products containing tobacco, **electronic**
2 **smoking products, or products containing nicotine** during the period of suspension
3 or revocation through the use of vending machines at the location or outlet where the
4 violation occurred. During the period of suspension or revocation, the person owning
5 that vending machine may not use that machine to sell tobacco products, **electronic**
6 **smoking products, or products containing nicotine** at another location or outlet.

7 * **Sec. 18.** AS 43.70.075(m) is amended to read:

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

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

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

30 (3) within the 24 months before the date of the department's notice
31 under this subsection, was the person, or an agent or employee of the person while

1 acting within the scope of the agency or employment of the person, convicted of
2 violating AS 11.76.100, 11.76.106, [OR] 11.76.107, or 11.76.109 or adjudicated for
3 violating a provision of (a) or (g) of this section;

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

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

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

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

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

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

24 * **Sec. 19.** AS 43.70.075(r) is amended to read:

25 (r) For purposes of this section, the sale of a product containing tobacco,
26 electronic smoking product, or product containing nicotine by an agent or
27 employee of a person who holds or is required to hold a business license endorsement
28 under this section at the location or outlet in a location for which the endorsement was
29 or was required to be issued is rebuttably presumed to have been a sale within the
30 person's scope of agency or employment.

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

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

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

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

12 (3) required each agent and employee of the person to sign a form
13 stating that the agent and employee has been informed of and understands the written
14 policy and the requirements of AS 11.76.100, 11.76.106, [AND] 11.76.107, and
15 11.76.109;

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

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

23 (6) established and enforced disciplinary sanctions for noncompliance
24 with the written policy or the requirements of AS 11.76.100, 11.76.106, [AND]
25 11.76.107, and 11.76.109; and

26 (7) monitored the compliance of the agents and employees of the
27 person with the written policy and the requirements of AS 11.76.100, 11.76.106,
28 [AND] 11.76.107, and 11.76.109.

29 * **Sec. 21.** AS 43.70.075(v) is amended to read:

30 (v) Notwithstanding (d) of this section, in place of a hearing under (m) of this
31 section, the department and the person holding the business license endorsement may

1 enter into a memorandum of agreement regarding the imposition of a suspension and
2 civil penalties based on a violation of AS 11.76.100, 11.76.106, [OR] 11.76.107, or
3 11.76.109. The memorandum of agreement must contain a provision that the person
4 holding the business license endorsement admits or does not contest that a violation of
5 AS 11.76.100, 11.76.106, [OR] 11.76.107, or 11.76.109 occurred and accepts the
6 imposition of suspension and civil penalty under this section. Based on the
7 memorandum of agreement, the department may reduce the period of suspension. For
8 violations involving AS 11.76.100, 11.76.106, [OR] 11.76.107, or 11.76.109, the
9 department may not reduce the period of suspension by more than 10 days under
10 (d)(1) of this section or by more than 20 days under (d)(2) of this section. The
11 department may not agree to a reduction in the period of suspension more than once in
12 a 12-month time period for a location or outlet in a location for which the person holds
13 a business license endorsement.

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

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

29 * **Sec. 23.** AS 43.70.075(x) is amended to read:

30 (x) Notwithstanding (d), (t), or (v) of this section, a period of suspension may
31 not be reduced for a violation of AS 11.76.100(a)(4) or 11.76.109(a)(3).

1 * **Sec. 24.** AS 43.70.105(b) is amended to read:

2 (b) Notwithstanding an exemption provided by (a) of this section, a person
3 who sells cigarettes, cigars, tobacco, [OR OTHER] products containing tobacco,
4 **electronic smoking products, or products containing nicotine** as a retailer must
5 have a business license under AS 43.70.020 and a business license endorsement
6 required under AS 43.70.075.

7 * **Sec. 25.** AS 43.70.110 is amended by adding new paragraphs to read:

8 (6) "electronic smoking product" has the meaning given in
9 AS 11.76.900;

10 (7) "product containing nicotine" does not include a cigarette, a cigar,
11 tobacco, or a product containing tobacco.

12 * **Sec. 26.** AS 44.29.092 is amended to read:

13 **Sec. 44.29.092. Citation for certain offenses concerning tobacco, products**
14 **containing nicotine, or electronic smoking products.** A peace officer or an agent or
15 employee of the Department of Health and Social Services who is authorized by the
16 commissioner of health and social services to enforce this section may issue a citation
17 for a violation of AS 11.76.100, 11.76.106, [OR] 11.76.107, **or 11.76.109** if there is
18 probable cause to believe a person has violated AS 11.76.100, 11.76.106, [OR]
19 11.76.107, **or 11.76.109.**

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

22 APPLICABILITY. AS 11.76.105, as amended by sec. 1 of this Act, AS 11.76.106(a),
23 as amended by sec. 3 of this Act, AS 11.76.106(b), as amended by sec. 4 of this Act,
24 AS 11.76.107(a), as amended by sec. 5 of this Act, AS 11.76.109(a), as amended by sec. 6 of
25 this Act, AS 11.76.109(b), as amended by sec. 7 of this Act, AS 11.76.109(e), as amended by
26 sec. 8 of this Act, and AS 11.76.109(f), added by sec. 9 of this Act, apply to offenses
27 committed on or after the effective date of this Act.

ALASKA STATE LEGISLATURE



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Senator Gary Stevens

CS for SENATE BILL 15 (L&C)

Restricting Youth Access to E-Cigarettes

SUMMARY OF CHANGES

FROM VERSION A TO VERSION R (L&C)

March 06, 2017

The Alaska Department of Commerce and Economic Development (DCED) requested the penalties associated with violations of the law relating to restricting youth access to tobacco and E-Cigarette products be increased to more effectively compel compliance, and for revenues to more sufficiently pay for the costs of enforcement.

Specifically, CS for SB 15 (L&C, version R), increases the criminal and civil penalties (fines) associated with violating the law by selling tobacco, products containing nicotine, or E-cigarette products to minors, as follows:

1. Under AS 43.70.075(d), the person holding the business license endorsement, following repeated convictions within a 2-year period, is fined the following:

1st offense: a civil penalty of \$1,000 (from \$300)

2nd offense: a civil penalty of \$2,000 (from \$500)

3rd offense: a civil penalty of \$4,000 (from \$1,000)

After 3 convictions: suspend license indefinitely (from 1-year) and a civil penalty of \$10,000 (from \$2,500)

The only other substantive change in Version R is regarding the required product 'warning' signage. The verbiage is consolidated to include reference to tobacco products, products containing nicotine, or "electronic smoking products," as being illegal to sell to persons under the age of 19. The dimensions of the signage were reduced to 8.5" x 11" to allow for more efficient means for DCED to e-mail signage to vendors, and for vendors to print and post signage on their own. This change will reduce the current fiscal note considerably.

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CS Senate Bill 15 (L&C)

Prohibiting the Sale of Electronic Smoking Products to Minors

Sectional – Version R
March 06, 2017

- Section 1:** AS 11.76.105(a) Adds to existing law that, as with prohibiting minors from possessing cigarettes or tobacco, to also prohibit possession of electronic cigarettes and any component thereof.
- Section 2:** AS 11.76.105(c) Extends an existing exception for possession by minor of a tobacco product, to include E-cigarettes possession, provided the minor is using an e-cigarette for an approved medical purpose, such as smoking cessation, and is provided by a parent or prescribed by a doctor.
- Section 3:** AS 11.76.106(a) Adds to existing law that, as with controlling access to and sale of tobacco products to minors (that is, “behind the counter”), that E-Cigarettes access also be controlled and restricted in a like manner.
- Section 4:** AS 11.76.106(b) Extends an existing exception to clerk-controlled access to tobacco or E-Cigarette products sold through a vending machine, which are covered in the next section.
- Section 5:** AS 11.76.107(a) Adds to existing law that, as with tobacco product vending machines, vending machines dispensing electronic cigarette or nicotine products must also be supervised.

Section 6: AS 11.76.109(a) Adds to existing law prohibiting the sale of nicotine products and electronic cigarettes, or any related component thereof, to a minor under 19 years old.

Section 7: AS 11.76.109(b) Extends an existing exception for minor possession of a nicotine product, to include E-cigarettes possession, provided the minor is using an e-cigarette for an approved medical purpose, such as smoking cessation, and is provided by a parent or prescribed by a doctor.

Section 8: AS 11.76.109(e) Extends the existing fine of at least \$300 for selling nicotine products to minors, to include selling E-cigarette products.

Section 9: AS 11.76.109(f) adds a new subsection that is consistent with existing law regarding placement of vending machines dispensing tobacco products; that the same requirements are applied to vending machines dispensing E-cigarette or nicotine products.

Section 10: AS 11.81.900(b) Establishes a definition for “electronic smoking product,” summarized as follows:

(67) (a) a device designed to aerosolize and inhale nicotine, a synthetic of nicotine, or another substance that “may have an adverse effect” on the person inhaling from the device; [basically, the hardware] and

(b) the accompanying compounds, oils, vapor fluids, chemicals, or agents intended to be aerosolized and inhaled in conjunction with the device.

Section 11: AS 43.50.070(a) Adds enforcement provision for the state to suspend, revoke, or refuse to renew a business for violating provisions relating to selling E-cigarette products to minors.

Section 12: AS 43.50.105(b) is amended for conformity and consolidation, changing “tobacco” endorsement to “business license” endorsement, for purposes of shipping or transport of cigarettes. It also sets up conformity for the following Section 8 of the bill, relating to a required business license endorsement for selling E-cigarette or nicotine products. The effect is that existing tobacco license endorsement holders may also sell E-Cigarette products, and eliminates a need for the state to establish a separate database for vendors only selling only E-Cigarette products (and not tobacco), thus reducing fiscal costs of implementation.

Section 13: AS 43.70.075(a) amends existing law requiring a special business license endorsement in order to lawfully sell tobacco products for each location the products are sold, by including the same license endorsement requirements for lawfully selling E-cigarette or nicotine products, an endorsement for each location.

Section 14: AS 43.70.075(d) amends existing law relating to selling tobacco to minors, by adding the same penalty provisions, including graduated fines, for selling E-cigarette or nicotine products to minors. Following repeated convictions within a 2-year period, civil fines are structured as follows:

1st offense: a civil penalty of \$1,000 (from \$300)

2nd offense: a civil penalty of \$2,000 (from \$500)

3rd offense: a civil penalty of \$4,000 (from \$1,000)

After 3 convictions: suspend license indefinitely (from 1-year) and a civil penalty of \$10,000 (from \$2,500)

Section 15: AS 43.70.075(f) amends existing law requiring signage when selling tobacco products, to also require signage for selling E-cigarette or nicotine products. The signage must read "The sale of electronic smoking products or products containing nicotine to a person under the age of 19 without a prescription is illegal." Signage must be 8.5-inches by 11-inches, which is a change to make sign design and printing more efficient for both the state and vendors.

Section 16: AS 43.70.075(i) amends existing enforcement provisions that, as with tobacco sales, to allow the State to seize and destroy a vendor's inventory of E-cigarette or nicotine products in the event violating the law prohibiting sales of those products to minors.

Section 17: AS 43.70.075(l) is amended for conformity that, as with tobacco sales, to allow one business license endorsement to serve as an umbrella if a vendor has multiple locations they are selling E-cigarette or nicotine products, and to shut down only the offending vending machine or outlet location in the event of a violation.

Sections 18-23: AS 43.70.075(m), (r), (t), (v), (w), and (x) are amended for conformity that, as with tobacco sales, to allow an evidentiary and administrative hearing, appeal process, and penalties in the event of violations of these statutes, involving the sale of E-cigarette or nicotine products to minors.

Section 24: AS 43.70.105(b) is amended for conformity that, as with tobacco products, a vendor must have the appropriate business license endorsement in order to lawfully sell E-cigarette or nicotine products.

Section 25: AS 43.70.110 is added for conformity, linking the definitions of “electronic smoking products,” and distinguishing between traditional cigarette (tobacco) products and other modern nicotine alternatives.

Section 26: AS 44.29.092 is amended for conformity that, as with tobacco sales, providing the Dept. of Health and Social Services the authority to issue citations for violating state law regarding minors buying, selling or possessing E-cigarette or nicotine products.

Section 27: Is the applicability and effective date, applying to offenses committed only after the effective date of the bill, which would be 90 days after the bill is enacted.

Fiscal Note

State of Alaska
2017 Legislative Session

Bill Version:	CSSB 15(L&C)
Fiscal Note Number:	1
(S) Publish Date:	3/6/2017

Identifier: SB015-DCCED-CBPL-02-10-17
Title: E-CIGS: SALE TO AND POSSESSION BY MINOR
Sponsor: STEVENS
Requester: (S) LAC

Department: Department of Commerce, Community and Economic Development
Appropriation: Corporations, Business and Professional Licensing
Allocation: Corporations, Business and Professional Licensing
OMB Component Number: 2360

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below.

(Thousands of Dollars)

	FY2018	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2018 Request	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
OPERATING EXPENDITURES	FY 2018	FY 2018					
Personal Services							
Travel							
Services	15.0						
Commodities	0.4						
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	15.4	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

1005 GF/Prgm (DGF)	15.4						
Total	15.4	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimated SUPPLEMENTAL (FY2017) cost: 0.0 (separate supplemental appropriation required)
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2018) cost: 0.0 (separate capital appropriation required)
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? Yes
If yes, by what date are the regulations to be adopted, amended or repealed? 07/01/19

Why this fiscal note differs from previous version:

Not applicable, initial version.

Prepared By: Janey Hovenden, Director
Division: Corporations, Business and Professional Licensing
Approved By: Catherine Reardon, Director
Agency: Division of Administrative Services, DCCED

Phone: (907)465-2538
Date: 02/10/2017 12:05 PM
Date: 02/10/17

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2017 LEGISLATIVE SESSION

Analysis

SB 15 would make the possession by a minor or selling to a minor of "electronic smoking products, or products containing nicotine" a criminal offense. This bill adds requirements for a business license endorsement to retailers of "electronic smoking products, or products containing nicotine"; current business license endorsements are only to sell tobacco products.

This legislation will add civil fines to violations of business licensing endorsement for "electronic smoking products, or products containing nicotine". This bill will add "electronic smoking products, or products containing nicotine" into existing language for a business license endorsement (AS 11.76.109). This will require the court to notify the department upon a conviction of an endorsement holder. This will increase the issuance of pertinent civil penalties, suspension of business licensing endorsements, responses to requests for hearings, and will also require CBPL to appropriately secure and store seized items until they are released or appropriately destroyed based on the type of product.

The bill requires the department to provide, at no charge, separate warning signs for the new endorsements. This requires a change to the CBPL database, warning signs, forms, online filing, websites and investigations. CBPL already provided these signs to existing tobacco endorsement holders, but will be required to send updated signs that include the revised language to all endorsement holders.

Retailers would require an endorsement to sell "electronic smoking products, or products containing nicotine", and would be required to post three appropriate warning sign(s). Retailers would also be required to restrict access to these products by minors, and to train staff regarding the sale of these products to minors.

If the bill passes the following expenses will be incurred in the first year:

Services: \$3.0 (legal costs to amend regulations, printing, and postage)
 \$7.5 (information technology services for system change)
 \$4.5 (printing and postage to mail new signage)

Commodities: \$0.4 (manila envelopes to mail new signage)

The potential number of businesses affected by this bill is unknown at this time. Future costs for hearing services expenses for these businesses are unknown.

Business licensing fees at CBPL are funded by General Fund Program Receipts fund source 1005 GF/Prgm (DGF). Business licensing fees are set per AS 43.70, revenue in excess of authorized budgeted expenses lapses to the State of Alaska general fund.

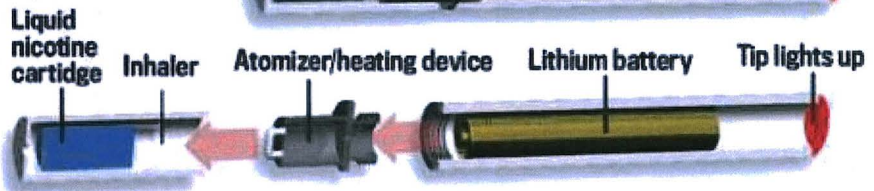
E-Cigarettes

Slideshow

Section 1: Common Components

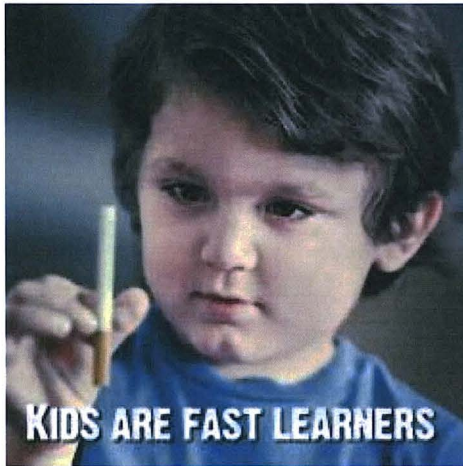
How an electronic cigarette works

The electronic cigarette contains a battery that activates a heating device, atomizing liquid nicotine inside a cartridge and producing a vapor that is inhaled.



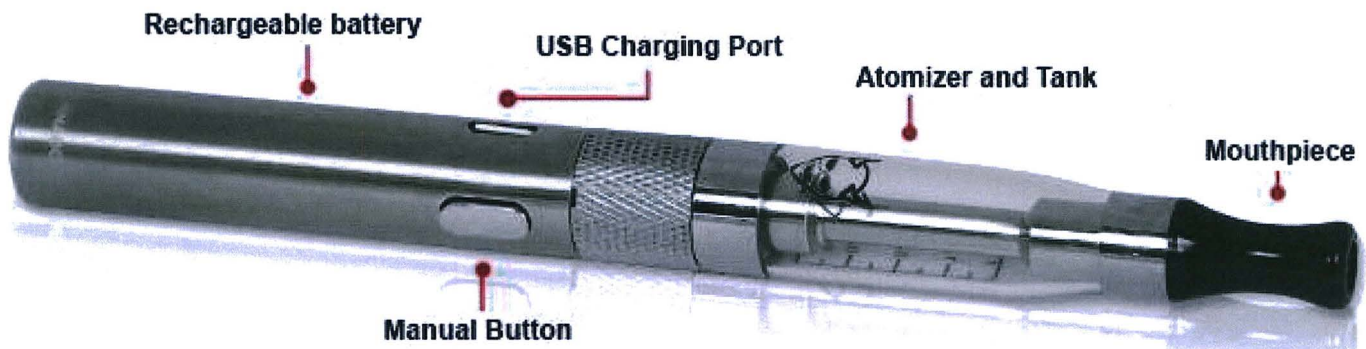
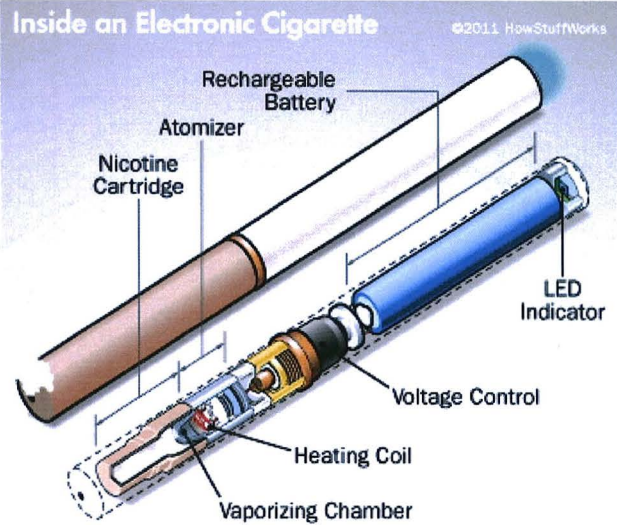
Source: allhookah.net

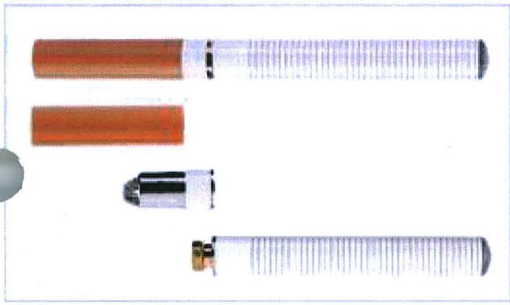
Tim Summers / The Detroit News



To smoke, user pushes a button to activate an electronic controller (in other models, such as disposable e-cigarettes, this is activated when user inhales).

User inhales vapor through the mouthpiece and exhales a cloud that appears smoky, thanks to glycerol or propylene glycol.

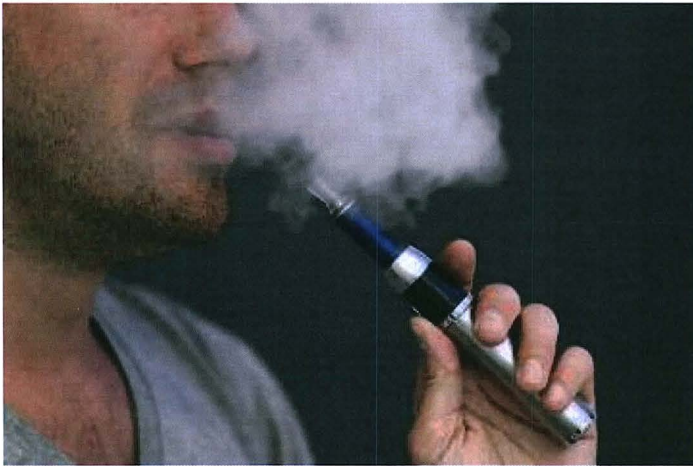




Section 2:
"smoke"



Some produce "smoke"
Others are smokeless & odorless



Section 3: Styles, Brands, & Accessories



Section 3: Styles, Brands, & Accessories (cont.)



Section 3: Styles, Brands, & Accessories (cont.)



Section 4: Product Variety & Flavored "Juice"



Section 4: Product Variety
& Flavored "Juice" (cont.)



"Anabolic Nation"



"Cuttwood"



"Krave"

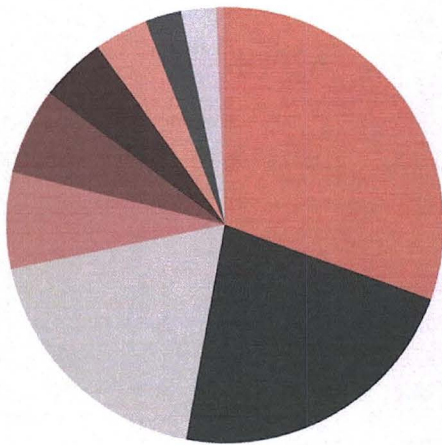
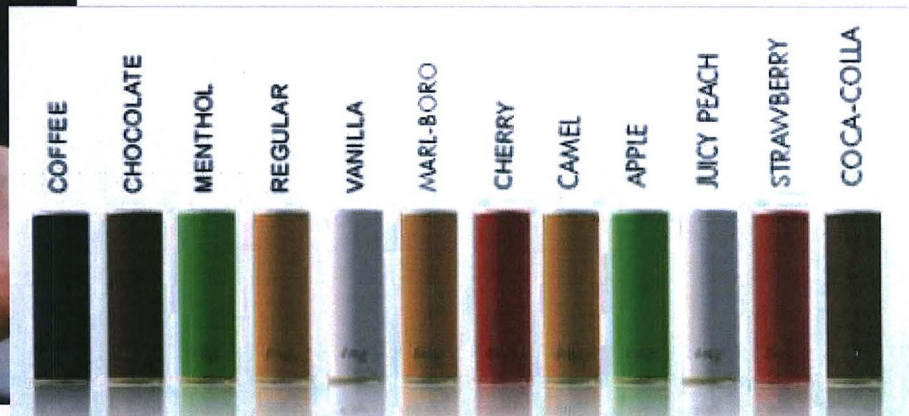
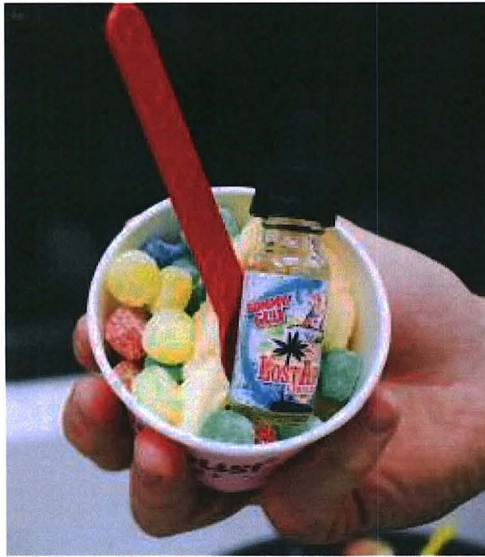


"Lost Art"



"Uncle Junk"

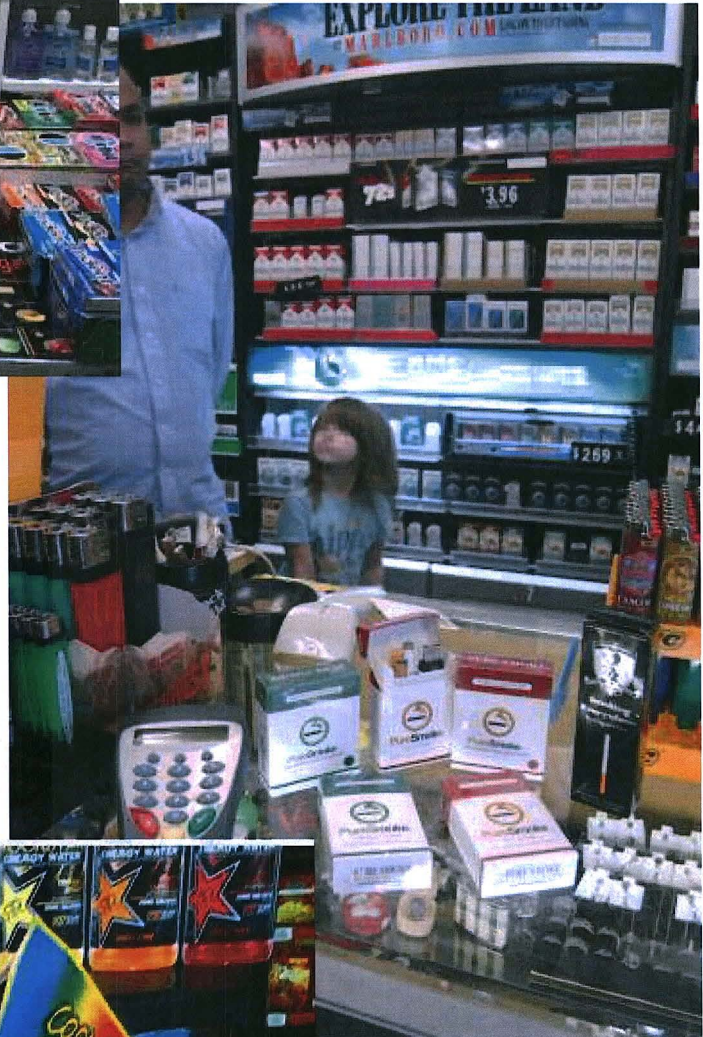
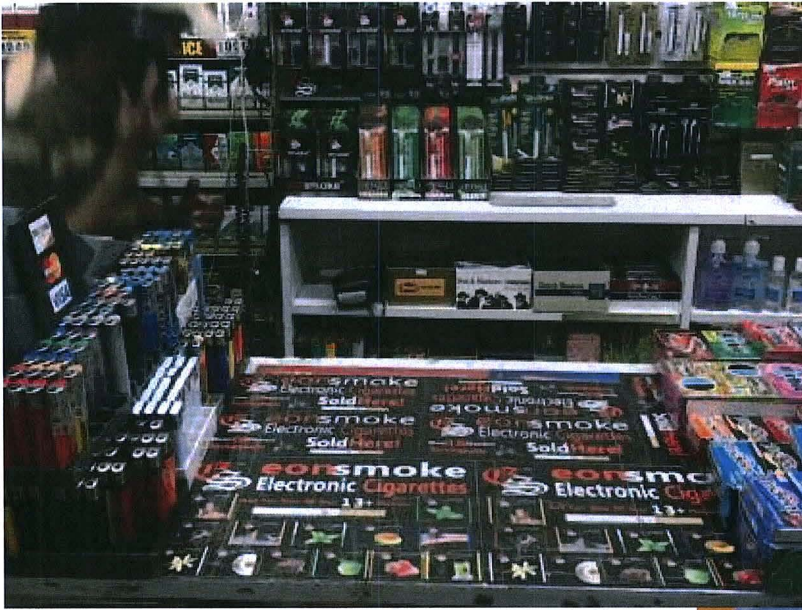
Section 4: Product Variety & Flavored "Juice" (cont.)



WHAT FLAVOR DO YOU USE MOST

- 30.55% Fruit
- 22.3% Tobacco
- 18.86% Bakery/Dessert
- 7.10% Other (inc. Flavorless & DIY)
- 6.50% Menthol (Menthol/Mint/Peppermint etc...)
- 4.91% Savoury/Spice
- 3.98% Candy
- 2.66% Menthol Tobacco
- 2.61% Beverage flavors
- 0.55% Whole Tobacco Alkaloid

Section 5: Retail Marketing & Display Advertising



Section 5: Retail Marketing & Display Advertising (cont.)



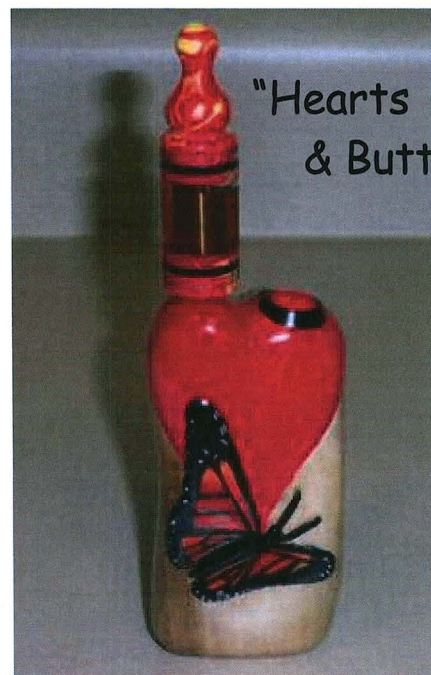
"Cessation"



"Sparkly, Bling Wand"

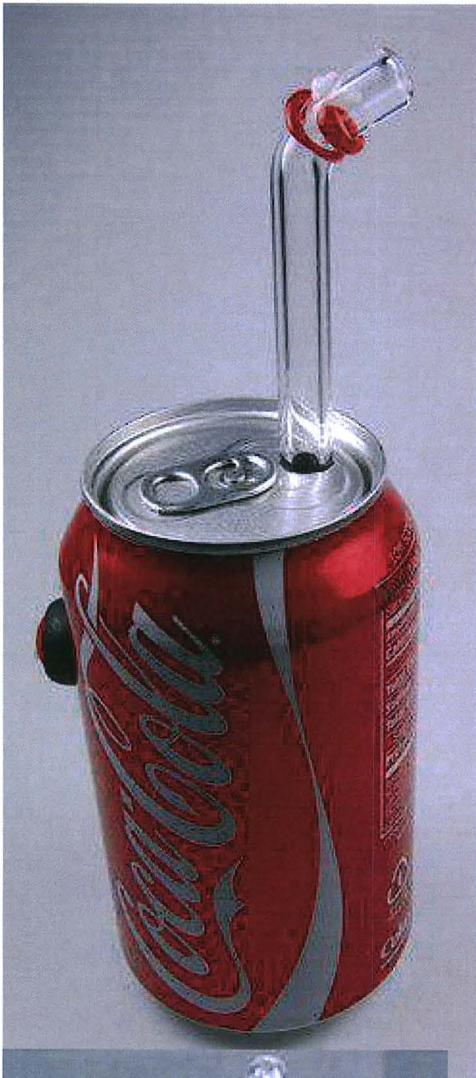


"Lava Lamp"



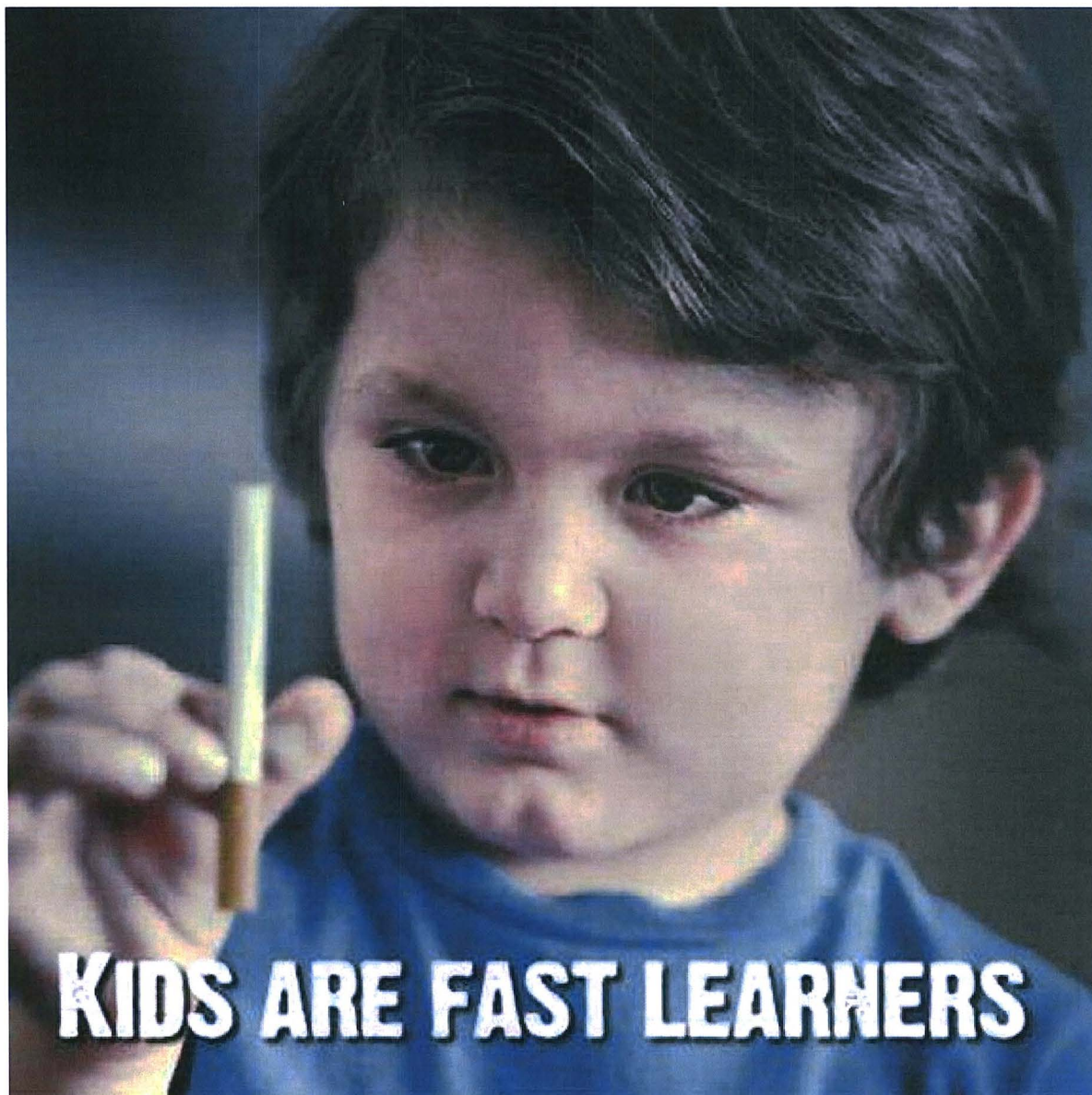
"Hearts & Butterflies"

Section 5: Retail Marketing & Display Advertising (cont.)



"Fun & Playful!"





E-cigarettes 'poison the airways and weaken the immune system'

Written by [Yvette Brazier](#)

Published: Sunday 31 January 2016

<http://www.medicalnewstoday.com>

Electronic cigarettes expose the lungs to toxicity, reduce the effectiveness of the immune system and encourage bacterial activity, potentially making superbugs more deadly, according to research published in the *Journal of Molecular Medicine*.



E-cigarettes are shown to promote bacterial virulence and inflammation in the latest study.

In the US, the use of [e-cigarettes](#) tripled from 4.5% in 2013 to 13.4% in 2014 among high school students, and from 1.1% in 2013 to 3.9% in 2014 among middle school students, surpassing rates of youth cigarette smoking. In the 25-44-year age group, 20% of Americans smoke e-cigarettes.

While teens smoke them because they are trendy, older smokers are turning to them in an attempt to give up smoking. Interestingly, many [teens who smoke e-cigarettes then move on to conventional cigarettes](#) just 1 year later, as reported recently by *Medical News Today*.

In using the device, smokers are risking their airways and immune systems. They are also enhancing the conditions for colonizing bacteria, including some deadly strains.

Researchers at the University of California-San Diego (UCSD) carried out mouse studies to examine the effects of e-liquids from seven different manufacturers.

Superbug MRSA more deadly after smoking e-cigarettes

The scientists exposed mice to e-cigarette vapors for 1 hour a day, 5 days a week over 4 weeks.

Results showed that inflammatory markers in the airways and blood of mice after inhaling e-vapors were 10% higher than those in unexposed mice. Bacteria that had been exposed to e-cigarette vapor were more virulent in mice infected with [pneumonia](#).

When mice were infected with normal methicillin-resistant *Staphylococcus aureus* (MRSA), an antibiotic-resistant "superbug," they survived; but 25% of mice that were infected with MRSA after being exposed to e-cigarette vapor died. In other words, *S. aureus* becomes more virulent when exposed to e-cigarette vapor.

The researchers observed that exposing bacterial pathogens to e-cigarette vapor caused them to thrive. The vapor helped *S. aureus* bacteria to form biofilms, to adhere to and invade airway cells and to resist the defenses of the human immune system.

Some of the changes observed in mice are common to those seen in the airways and blood of conventional cigarette smokers. Others are characteristic of human [cancers](#) or inflammatory lung disease.

The results were the same regardless of the brand of vapor used.

Dr. Laura E. Crotty Alexander, of the UCSD School of Medicine, says:

"This study shows that e-cigarette vapor is not benign; at high doses, it can directly kill lung cells, which is frightening. We already knew that inhaling heated chemicals, including the e-liquid ingredients nicotine and propylene glycol, couldn't possibly be good for you. This work confirms that inhalation of e-cigarette vapor daily leads to changes in the inflammatory milieu inside the airways."

Dr. Crotty Alexander says it is not yet clear which lung and systemic diseases will be caused by inhaling e-cigarette vapor, but data suggest that acute toxicities will result from the inflammatory changes involved.

The team recently reported that [MRSA](#) bacteria exposed to conventional cigarette smoke are less likely to be killed by the immune system than unexposed bacteria.

Meanwhile, a news outlet recently revealed that a 20-year-old German man's [teeth were blown out](#) when an e-cigarette that he was trying in a store exploded in his mouth. He suffered severe facial injuries.

Findings reported in *MNT* also associate [e-cigarettes with the development of cancer cells](#).

References:

Electronic cigarette inhalation alters innate immunity and airway cytokines while increasing the virulence of colonizing bacteria, John H. Hwang et al., *Journal of Molecular Medicine*, doi:10. 1007/ s00109-016-1378-3, published online 25 January 2016, [abstract](#).

UC San Diego [news release](#), accessed 29 January 2016 via EurekAlert.

Additional source: American Lung Association, [E-cigarettes and lung health](#), accessed 29 January 2016.

Additional source: *The Local*, [Cologne man's teeth blown out while smoking e-cigarette](#), accessed 29 January 2016.



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Bulletin No. 1 January 25, 2016

Adolescent Electronic-Cigarette Use in Alaska, 2015

Background

Electronic- or e-cigarettes are battery-powered devices that typically provide doses of nicotine to the user in an aerosolized form. In addition to nicotine, e-cigarette cartridges also contain an aerosolizing compound such as propylene glycol and often a flavoring agent.

In Alaska, a person must be at least 19 years old to purchase e-cigarettes. There are, however, no current laws against the advertising and marketing of these products, and only a handful of communities across the state include e-cigarettes in their smoke-free ordinances (e.g., Bethel, Juneau, Palmer and Petersburg).

Between 2010 and 2013, e-cigarette use increased from 1% to 4% among Alaska adults.¹ Nationally, 13% of high school students reported using e-cigarettes in the past 30 days.^{2,1} Statewide, representative estimates of e-cigarette use among Alaska adolescents have not been available previously. This *Bulletin* describes the estimated prevalence of e-cigarette use among Alaska adolescents.

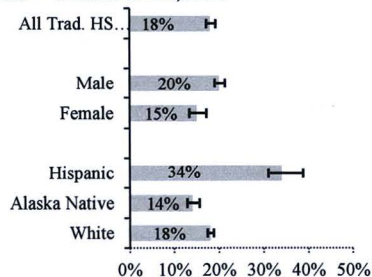
Methods

The Youth Risk Behavior Survey (YRBS) is a self-administered, biannual survey of randomly selected Alaska public school students in grades 9–12. The survey, created and updated by the Centers for Disease Control and Prevention (CDC), is administered between February and May in every odd-numbered year. The subject matter includes behaviors related to unintended injuries and violence, sexual activity, tobacco use, alcohol and drug use, diet, physical activity, and weight status. The 2015 sample included survey responses from 1,418 students in 41 Alaska traditional public schools; 95% confidence intervals were calculated to make comparisons within demographic groups.

Results

Data from the 2015 YRBS indicate that 31% of traditional high school students in Alaska reported using one or more of the following tobacco products in the past 30 days: e-cigarettes (18%), smokeless tobacco (12%), cigarettes (11%), or cigars (7%). In addition, 36% of high school students reported *ever* using e-cigarettes. Statistically significant differences in *current* (last 30 days) e-cigarette use were seen by sex (males were more likely to currently use compared to females, $p < .05$) and race (Hispanic students were more likely to currently use compared to either Alaska Native or White students, $p < .05$; Figure). No statistically significant differences were seen by age or grade.

Figure. Selected Characteristics of Traditional High School Students Who Currently (Last 30 Days) Use E-Cigarettes — Alaska YRBS, 2015



¹ Readers should refrain from making comparisons between national and Alaska data given the difference in survey year and question-wording.

Discussion

In 2015, almost one-third of traditional high school students surveyed reported currently using one or more tobacco products, and e-cigarettes were the most common type of tobacco product that students reported using.¹¹ Current e-cigarette use was highest among males and Hispanic students. Because 2015 was the first year that e-cigarette use was asked on the Alaska YRBS, no prior year comparison data are available.

E-cigarettes are relatively new, unregulated products that are perceived by adolescents to be “safer” than traditional cigarettes because they don’t require burning tobacco plant products.³ However, they have not been thoroughly studied to determine the full extent of their impacts on short- or long-term health. Moreover, many e-cigarette e-liquids are flavored like Bubble Gum, Gummy Bears, and Skittles, which increases their appeal to youth.⁴ Lastly, of particular concern, increasing e-cigarette use among youth might normalize e-cigarettes, promote introduction to cigarettes or other tobacco products, and by extension re-normalize tobacco use.⁵

The relationship between e-cigarette use and combustible tobacco use may be bidirectional, but recent research suggests e-cigarette use among adolescents increases their likelihood of using other combustible tobacco products.⁶ Research is needed to determine future tobacco use patterns among youth e-cigarette users, and the extent to which youth use e-cigarette devices for substances like marijuana or other drugs.

Recommendations

1. Health care providers should screen their adolescent patients for e-cigarette use.
2. Health care providers should emphasize that e-cigarette use has not been thoroughly researched to know the short- or long-term effects. Moreover, users are at risk for developing an addiction to nicotine, which may put them at increased risk for using other tobacco products, which in some cases are less expensive than e-cigarettes.
3. Health care providers should recommend cessation counseling to e-cigarette users. In Alaska, counseling is available for free. Informational resources are available at: alaskaquitline.com or 1-800-QUIT-NOW.

References

1. Section of Epidemiology. Adult Electronic-Cigarette Use in Alaska. *Bulletin* No. 17, August 20, 2015. Available at: http://www.epi.alaska.gov/bulletins/docs/b2015_17.pdf
2. CDC. Tobacco use among middle and high school students—United States, 2011–2014. *MMWR* 2015;64(14):381-5.
3. Ambrose BK, Rostron BL, Johnson SE, et al. Perceptions of the relative harm of cigarettes and e-cigarettes among U.S. youth. *Am J Prev Med* 2014;47(2S1):S53-S60.
4. Zhu SH et al. Four hundred and sixty brands of e-cigarettes and counting: Implications for product regulation. *Tobacco Control* 2014; 23(S3): ii3-ii9.
5. Bunnell RE, Agaku IT, Arzola RA, et al. Intentions to smoke cigarettes among never-smoking US middle and high school electronic cigarette users: National Youth Tobacco Survey, 2011-2013. *Nicotine Tob Res* 2015;17(2):228-35.
6. Leventhal AM et al. Association of electronic cigarette use with initiation of combustible tobacco product smoking in early adolescence. *JAMA* 2015; 314(7): 700-707.

¹¹ Data from the 2014 National Youth Tobacco Survey indicate e-cigarettes were the most commonly used tobacco product among high school students nationwide.

Department of Health and Social Services

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MEMORANDUM

DATE: December 15, 2016

TO: Stacy Toner, Deputy Director

FROM: Daniel Collison, Research Analyst III
Joe Darnell, Investigator IV

SUBJECT: Results of pilot *Electronic Nicotine Delivery Systems (ENDS)* investigations

Investigators with the DBH Tobacco Section conducted pilot Electronic Nicotine Delivery Systems (ENDS) investigations during June through September of this year. Investigations involved under-age youth who attempted to purchase ENDS products, i.e. e-cigarettes and vaping fluids. Adult investigators directed investigations and accompanied youth to investigation sites.

Vaping fluid investigations resulted in a **26.1%** sell rate to minors. The vaping fluid sell rate is nearly five times greater than a preliminary **5.4%** tobacco sell rate to minors. E-cigarette investigations resulted in a **9.1%** sell rate to minors, nearly double the tobacco sell rate to minors. (See attached table: *Calendar Year 2016 Sell Rates of Tobacco & Nicotine Products to Minors.*)

Pilot ENDS investigations were completed at 23 vape shops. The majority of the shops (12) are located in Anchorage; the balance are in Eagle River, Fairbanks, Ketchikan, Soldotna, Valdez and Wasilla. (Investigations were attempted at an additional 18 vape shops but were not completed because the vendor was out-of-business, temporarily closed or located in a private residence.) These vendors represent all known or suspected vape shops in Alaska. E-cigarette investigations were completed at 33 convenience stores/gas stations located in the same area as vape shops. Note that because the pilot ENDS investigation sample size was relatively small, it may be difficult to extrapolate investigation results for a larger population of ENDS vendors.

The pilot ENDS investigations were also conducted concurrently with federally required undercover Synar investigations of tobacco products.

These investigations establish baseline sell rates of vaping products and e-cigarettes to minors in anticipation of federal Synar regulation updates, which will likely mandate ENDS investigations.

Federal Regulatory Changes: Federal Synar regulations require states to restrict youth access to tobacco. States must also conduct undercover investigations of tobacco vendors, whereby minors attempt to purchase tobacco products.

On May 5, 2016, the US Food and Drug Administration (FDA) issued final rules that classify ENDS products as tobacco products for the purpose of regulatory oversight. Following the FDA's lead, the federal Synar program has indicated it will release proposed changes to its regulations before the end of FFY17 (August 31, 2017).

Alaska Statute & Regulatory Changes: Synar regulation updates will likely require changes to Alaska statute and regulations, including:

- restricting youth access to ENDS products, including e-cigarettes and vaping products, and
- conducting undercover youth investigations of e-cigarette vendors and vape shops, presumably by the DBH Tobacco Section **which currently does not have statutory enforcement authority for ENDS products.**

Attachment: *Calendar Year 2016 Sell Rates of Tobacco & Nicotine Products to Minors*

Calendar Year 2016 Sell Rates of Tobacco & Nicotine Products to Minors*

Investigation Disposition	PILOT Electronic Nicotine Delivery Systems (ENDS) Investigations				Federally Required Synar Investigations	
	Vaping Fluid		Electronic Cigarettes		Requested Product : Cigarettes, Chew, Small Cigars/Cigarillos	
	Requested Product: 6mg or 8mg apple or watermelon flavored vaping fluid		Requested Product : BLU disposable single e-cigarette pack			
	Vendor Count	% of Vendor TOTAL	Vendor Count	% of Vendor TOTAL	Vendor Count	% of Vendor TOTAL
NO Sale to Minor	17	73.9%	30	90.9%	401	94.6%
Sale to Minor	6	26.1%	3	9.1%	23	5.4%
Vendor TOTAL	23	100.0%	33	100.0%	424	100.0%

*Investigation period: June - September 2016.

Anchorage Only

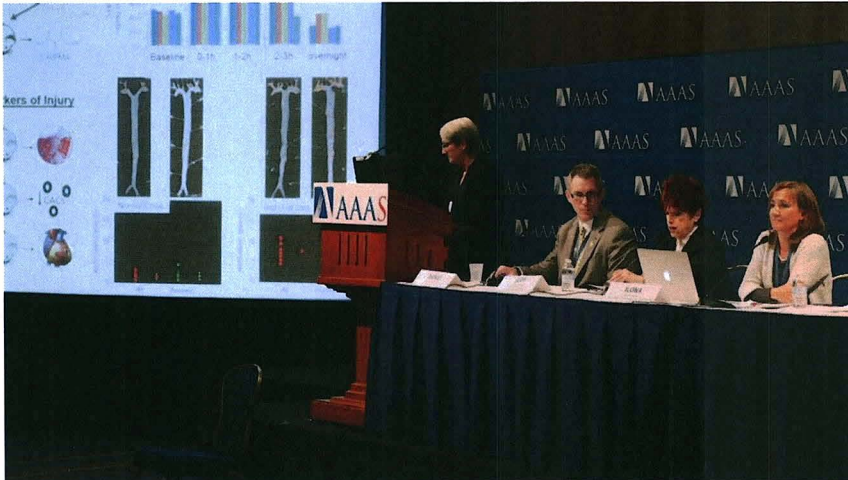
Calendar Year 2016 Sell Rates of Tobacco & Nicotine Products to Minors*

Investigation Disposition	PILOT Electronic Nicotine Delivery Systems (ENDS) Investigations				Federally Required Synar Investigations	
	Vaping Fluid		Electronic Cigarettes		Requested Product: Cigarettes, Chew, Small Cigars/Cigarillos	
	Requested Product: 6mg or 8mg apple or watermelon flavored vaping fluid		Requested Product: BLU disposable single e-cigarette pack			
	Vendor Count	% of Vendor TOTAL	Vendor Count	% of Vendor TOTAL	Vendor Count	% of Vendor TOTAL
NO Sale to Minor	6	50.0%	16	94.1%	128	97.7%
Sale to Minor	6	50.0%	1	5.9%	3	2.3%
Vendor TOTAL	12	100.0%	17	100.0%	131	100.0%

Alternative Tobacco Products May Be Just As Dangerous As Cigarettes

12 February 2016

Andrea Korte



Lynne Friedmann (left) moderates a panel of researchers, Daniel Conklin, Judith Zelikoff, and Ilona Jaspers, who revealed new data on the health effects of alternative tobacco products. | Ashley Gilleland/AAAS

E-cigarettes may not be safer than traditional tobacco cigarettes, according to new results presented by a trio of researchers at an 11 February press briefing at the 2016 AAAS Annual Meeting.

The researchers announced results from human and animal studies that found biomarkers of harmful cardiac, pulmonary, and reproductive effects from exposure to alternative tobacco products—a growing market of constantly evolving products including electronic cigarettes, hookah, and smokeless tobacco like snuff and gutkha.

Research has already shown that immune response provided by nasal mucous membranes is compromised in cigarette smokers, which causes them to be more susceptible to the outcomes of a viral infection, said Ilona Jaspers, deputy director of the Center for Environmental Medicine Asthma and Lung Biology at the University of North Carolina at Chapel Hill, but her new research revealed even more immune suppression effects in e-cigarette users than in smokers of traditional cigarettes.

Her analysis of nasal samples from cigarette smokers, e-cigarette users, and non-smokers for a panel of 600 different genes related to immune response found 53 genes suppressed in cigarette smokers. Those same genes were suppressed in e-cigarette users, along with 305 other suppressed genes, Jaspers said.

Animal studies also found that alternative tobacco products without nicotine produced similar or stronger effects than products that include nicotine.

Judith Zelikoff of NYU Langone Medical Center studied pre- and post-natal exposure to mice of commercially available e-cigarette vapors and aerosols with and without nicotine, finding changes to frontal cortex gene expression associated with mental health and activity issues, some of which are associated with schizophrenia, she said. While nicotine and non-nicotine products both produced changes, e-cigarette products without nicotine resulted in even more gene expression changes than products with nicotine, Zelikoff said.

The use of alternative tobacco products, regardless of nicotine content, may pose a risk to developing fetuses, Zelikoff said.

“Because of the concept that e-cigarettes are safer than commonly used cigarettes, you may have pregnant women—and the data show this—taking e-cigarettes during pregnancy so as not to smoke, because the risk factors and the dangers of smoking cigarettes while pregnant are well-known,” Zelikoff said.

“That’s a frightening possibility, given the findings that are emerging,” she added.

Zelikoff’s studies found mice exposed in utero to gutkha had a larger number of cardiovascular risk factors. Adult offspring exposed in utero had increased liver fibrosis and inflammation, with both male and female mice affected.

The third researcher, Daniel Conklin of the University of Louisville, tracked biomarkers of exposure to new and emerging tobacco products as well as biomarkers of cardiovascular harm and injury.

While cigarette smoke contains more than 8,000 chemicals, current and published research in humans and in animals suggests that the molecule acrolein likely contributes significantly to the cardiovascular toxicity of traditional tobacco cigarette smoke, Conklin said. E-cigarette aerosols contain many of the same toxic aldehydes—acid aldehyde, formaldehyde, and acrolein—that are present in tobacco smoke, he said.

“We conclude that toxic aldehydes present in electronic cigarette aerosols are potentially a cause for concern and could adverse impact the cardiovascular health of users,” Conklin said.

Conklin cited a range of supporting research, which has found that exposure to e-cigarette aerosols or tobacco smoke increases the levels of toxic aldehyde metabolites found in the urine in mice. Conklin also said that chronic exposures to smokeless tobacco extracts, mainstream cigarette smoke, acrolein, or e-cigarette aerosol enhanced atherosclerotic lesion formation in a mouse model of atherosclerosis.

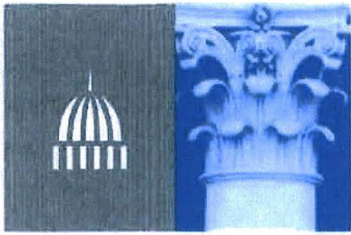
Additives to alternative tobacco products—like flavoring agents—also showed effects in studies.

Jaspers followed up her nasal sample analysis with lab studies of immune cells commonly present in nasal mucosa. The cells, which were exposed to different flavors of liquids added to e-cigarettes, repeatedly showed the most significant immune suppressive effects came from strongly cinnamon-flavored liquids.

Jaspers clarified that while U.S. Food and Drug Administration may classify flavoring agents as “generally recognized as safe” for oral consumption, the agents may not show the same results when the products are inhaled.

While research abounds on the negative health effects of traditional tobacco cigarettes, the researchers called for further toxicology research on the effects of popular alternative tobacco products, particularly considering the constant evolution of existing products and the emergence of new products.

“Of course more studies need to be done in this area, because research especially in toxicology of e-cigarettes and their potential toxicity, the science is lagging behind the product manufacture, and we need to catch up in that area,” Zelikoff said.



National Conference of State Legislatures

LEGISBRIEF

BRIEFING PAPERS ON THE IMPORTANT ISSUES OF THE DAY

JULY 2014

VOL. 22, No. 26

Electronic Cigarettes and Alternative Nicotine Products

By *Karmen Hanson*

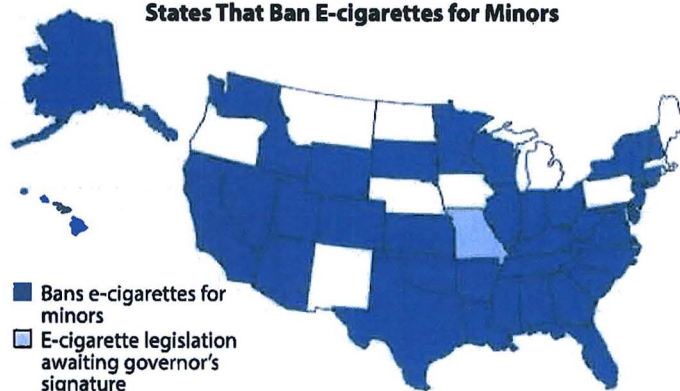
Electronic cigarettes are making headlines across the country, and e-cigarette sales are estimated to top \$2 billion in 2014. Also known as digital cigarettes or "e-cigs," electronic cigarettes are battery-operated devices used to inhale vaporized liquid, often called e-liquid or e-juice, from cartridges. Most cartridges contain nicotine, and some have flavorings and other ingredients, such as food-grade propylene glycol to act as a propellant. Although designs vary widely, e-cigarettes consist of a plastic or glass tube and often resemble a traditional combustible cigarette or a larger pipe-like device. They may be single-use or refillable, and many versions are on the market. The technology in each cigarette or pipe may be either relatively simple or complex to control the amount of liquid vaporized per puff or number of puffs per cartridge. The products generally are marketed as alternatives to combustible cigarettes or as an alternative nicotine delivery device that does not produce traditional secondhand smoke.

Did You Know?

- Electronic cigarettes currently are not regulated by the FDA.
- Ingredients and design of electronic cigarettes and vaporizers vary.
- States are taking action to regulate electronic cigarettes in various ways.

Analyses of e-liquid aerosol exhaust vary widely, based on the products tested. Ingredients used in e-liquids currently are not regulated, nor is the manufacturing process. Many of the products are manufactured overseas, which makes it more difficult to regulate their use in the United States.

States That Ban E-cigarettes for Minors



Source: NCSL, 2014.

Scientific studies currently are underway to determine the health effects of vaporizing or "vaping" for both users and the public. Analysis of study results comparing the health risks of combustible tobacco products to vapor or electronic products will take time to complete. Another area of concern for health officials is how much risk liquid nicotine poses for users and others when it is accidentally absorbed or ingested. Liquid nicotine is highly concentrated and intended to be vaporized, so unintentional absorption of the concentrate through the skin or orally may be hazardous to both adults and children.

National Conference
of State Legislatures

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Federal Action

The 2009 Family Smoking Prevention and Tobacco Control Act expanded authority of the U.S. Food and Drug Administration (FDA) to regulate and oversee tobacco products and ingredients. It also created the Center for Tobacco Products (CTP) to implement the Tobacco Control Act and tasked it with overseeing and regulating tobacco product marketing, advertising, sales practices and packaging. One of the act's most visible impacts is the requirement for larger warning labels on cigarette and smokeless tobacco products.

The CTP also is allowed to define and regulate "modified risk products," which manufacturers could claim have fewer negative health effects—such as reduced risk of cancer or respiratory diseases—for the overall population than combustible tobacco products. Although the FDA has not issued new regulations for such modified risk products, those likely to be considered include smokeless tobacco products such as traditional chew, snus, snuff, lozenges and vapor products.

On April 25, 2014, the FDA released proposed regulations for "Deeming Tobacco Products to Be Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act." These regulations would give the CTP oversight of new and existing tobacco products, including electronic cigarettes and other alternative tobacco and nicotine products. Among other enforcement controls available to the CTP, for example, would be for it to take action against products that are adulterated or misbranded, require submission of ingredient lists, and prohibit or regulate modified risk descriptions (for example, light, low, mild). The public comment period is open until July 9, 2014.

State Action

In the absence of current federal regulations and definitions of e-cigarettes or e-liquid products, several states have passed legislation pertaining to the sale and use of electronic cigarettes and related vapor products. Legislative efforts have increased in the last five years as the products have become more popular and more widely advertised.

At least 38 states prohibit the sale of e-cigarettes or similar items to minors. New Jersey, North Dakota and Utah have added use of a vaping device to their clean indoor air laws, which may ban use in public or government-owned buildings and properties or other smoke-free workspaces. A number of states have added vaping devices to their definition of "alternative nicotine," "tobacco product" or "tobacco substitute," which may subject devices or liquids to tax and sales regulations similar to those for traditional tobacco products. While Minnesota currently is the only state with a specific tax for electronic cigarette products, sales in other states may be subject to a general state or local sales tax as allowed by law. In 2014, Minnesota and Vermont passed legislation that requires liquid nicotine cartridges and containers to meet child-resistant effective packaging standards starting Jan. 1, 2015. E-cigarette legislation remains pending in a handful of states and territories as of July 1, 2014.

NCSL Contact and Resource

Karmen Hanson
NCSL—Denver
(303) 856-1423

NCSL web page: [Alternative Nicotine Products/
Electronic Cigarettes](#)

Additional Resources

U.S. Food and Drug Administration e-cig overview

U.S. Food and Drug Administration proposed rules



[Fire from e-cigarette causes emergency landing for Indy-bound Flight](#)

Dec 15, 2016 - A plane on its way to Indianapolis made an emergency landing in Little Rock Thursday after a passenger's *electronic cigarette* caught fire.

[Man badly injured after e-cig caught fire in pants pocket - NY Grand Central](#)

Nov 24, 2016 "A worker at a wine store in Grand Central Terminal suffered burns to his hand and leg after an *e-cigarette* caught fire in his pocket..."

[VIDEO: Man's pants catch fire after e-cigarette explodes ...](#) Feb 25, 2016

A man in Kentucky was seriously burned by an exploding e-cigarette in his pocket.

[Fire explosions linked to e-cigarettes raise safety concerns ...](#) Nov 23, 2015

In latest incident, Kentucky man suffers second-degree burns after his e-cigarette battery allegedly exploded in his pocket.

[Man in Coma After E-Cig Explodes In His Face](#) Oct 28, 2015

A 21-year-old man was fighting for his life after an e-cigarette he ... This is not the first time that an electronic cigarette has allegedly caused serious injury. ...that e-cigarettes in checked bags can catch fire during transport," ...

[Man Burned When E-Cigarette Battery Explodes in His Pocket](#) Sep 21, 2015

A North Texas man is worried people may be at risk after he was badly burned when his e-cigarette batteries exploded and caught fire in his pocket. ... the Tobacco Vapor Electronic Cigarette Association, an e-cigarette trade ...

[Man Injured, Bed Catches Fire After E-Cigarette Explodes](#)

Mar 9, 2015

SANTA ANA (CNS/FOX 11) - A Santa Ana man in his 20s sustained burns to his face and one hand when an e-cigarette exploded while he was smoking in bed early Monday, a fire captain said...

[E-cigarette explosion caused Tacoma house fire | KIRO-TV](#) Nov 12, 2014

A Tacoma Fire Department spokesperson confirmed Wednesday that a fire Tuesday night ... Wednesday that a fire Tuesday night was caused by an electronic cigarette. One person was taken to the hospital for smoke inhalation and burns. ... her small dog out the window for someone to catch before climbing onto the roof.



[Man killed as e-cigarette 'explodes', Merseyside fire service ...](#)

Aug 8, 2014

A man has died after a charging e-cigarette exploded and ignited oxygen ... caught fire and ignited the oxygen tube of an oxygen concentrator, ...

[Should You Be Worried About Your E-Cigarette Exploding ...](#)

Apr 17, 2014

A colleague's electronic cigarette exploded, setting the bartender's dress on fire. ... "I went to unscrew it and the battery started shooting fire toward me and then ... A man was charging his e-cigarette through his computer when his wifeor they learn how to make a safer product that won't catch fire.

[Boy, 3, burned after mom's e-cigarette explodes setting fire ...](#)

Sep 23, 2013

Mom Kinzie's e-cigarette exploded causing his car seat to catch fire in Mount Pleasant, Utah. ... According to the Tobacco Vapor Electronic Cigarette Association, ...

[E-cigarette explodes and sparks small fire | KFOR.com](#)

Aug 1, 2013

It hit that wall and caught fire down there," Chastka said. ... "Typically when you're charging an electronic cigarette, it'll come with a specified charger," he ... "Blood just pouring down," E-cig explodes in Oklahoma man's face.

[Tulsa Man's E-Cigarette Catches Fire While Charging ...](#)

Jun 7, 2013

A Tulsa man was recently forced to call the fire department after charging his e-cig. There are dozens of stories similar to Kyle Czeschin's.

[Electronic cigarette explodes in man's mouth... Feb 16, 2012](#)

Fire officials described situation as "trying to hold a bottle rocket in your mouth ... An electronic cigarette blew up in a Florida man's face, leaving him in a hospital ... In 2010, the FDA sent letters to some e-cigarette makers for ...



ALASKA STATE LEGISLATURE

SENATE JUDICIARY COMMITTEE

SEN. JOHN COGHILL
Chair
State Capitol, Room 119
Juneau, AK 99801
(907) 465-3719
sen.john.coghill@akleg.gov

Sen. Pete Kelly
Sen. Kevin Meyer
Sen. Mia Costello
Sen. Bill Wielechowski

SENATE BILL 15

SUMMARY OF CHANGES

Crime and Sentencing
Version R to Version N

Selling Tobacco Outside Controlled Access

Former Section 3 of version R

Removes amendments to AS 11.76.106(a) that prohibit electronic smoking products or products containing nicotine to be sold to individuals 19 years of age or older while not in the presence of a sales clerk.

Definition of "Electronic Smoking Product"

Page 5, line 3: Replaces part of the definition of "electronic smoking product" with language that comports to the definition of "e-cigarette" in another piece of legislation.

Page 5, line 8: Replaces "and" with "or" to ensure that either the smoking device or the nicotine liquid is considered an "electronic smoking product".

Page 5, line 15: Clarifies that the definition of "electronic smoking product" does not include marijuana.

30-LS0170\N
Martin
4/6/17

CS FOR SENATE BILL NO. 15(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
THIRTIETH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:

Referred:

Sponsor(s): SENATOR STEVENS

A BILL
FOR AN ACT ENTITLED

1 **"An Act relating to possession of an electronic smoking product or a product containing**
2 **nicotine by a minor and to selling or giving a product containing nicotine or an**
3 **electronic smoking product to a minor; relating to business license endorsements to sell**
4 **cigarettes, cigars, tobacco, products containing tobacco, electronic smoking products, or**
5 **products containing nicotine; and relating to citations for certain offenses concerning**
6 **tobacco, products containing nicotine, or electronic smoking products."**

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

8 *** Section 1. AS 11.76.105 is amended to read:**

9 **Sec. 11.76.105. Possession of tobacco, electronic smoking products, or**
10 **products containing nicotine by a minor. (a) A person under 19 years of age may**
11 **not knowingly possess a cigarette, a cigar, tobacco, [OR] a product containing**
12 **tobacco, an electronic smoking product, or a product containing nicotine in this**
13 **state. This subsection does not apply to a person who is a prisoner at an adult**

1 correctional facility.

2 (b) Possession of tobacco, an electronic smoking product, or a product
3 containing nicotine by a minor is a violation.

4 * **Sec. 2.** AS 11.76.105 is amended by adding a new subsection to read:

5 (c) In a prosecution under (a) of this section for possession of an electronic
6 smoking product or a product containing nicotine, it is an affirmative defense that the
7 electronic smoking product or product containing nicotine possessed by the person
8 under 19 years of age was intended or expected to be consumed without being
9 combusted, and 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 or for
12 other medical purposes;

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

14 (3) was

15 (A) prescribed by a health care professional;

16 (B) given to the person by the person's parent or 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. 3.** AS 11.76.106(b) is amended to read:

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

23 (1) is by vending machine as provided under AS 11.76.100(b) or
24 11.76.109(f);

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

28 (3) is by a retailer who sells primarily cigarettes, cigars, tobacco,
29 products [OR A PRODUCT] containing tobacco, electronic smoking products, or
30 products containing nicotine and who restricts access to the premises to only those
31 individuals who are 19 years of age or older.

1 * **Sec. 4.** AS 11.76.107(a) is amended to read:

2 (a) A person commits the offense of failure to supervise a [CIGARETTE]
3 vending machine if the person owns premises licensed as a beverage dispensary under
4 AS 04.11.090 or licensed as a club under AS 04.11.110 or licensed as a package store
5 under AS 04.11.150 and with criminal negligence fails to have an employee supervise
6 a vending machine on those premises that dispenses cigarettes, cigars, tobacco, [OR]
7 products containing tobacco, **electronic smoking products, or products containing**
8 **nicotine** as required by AS 11.76.100(b)(1)(B) **and 11.76.109(f)(1)(B)**.

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

10 (a) A person commits the offense of selling or giving **an electronic smoking**
11 **product or** a product containing nicotine to a minor if the person

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

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

17 (3) **maintains a vending machine that dispenses electronic smoking**
18 **products or products containing nicotine; or**

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

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

23 (b) The provisions of (a) of this section do not apply to the sale, exchange, or
24 gift to a person under 19 years of age of **an electronic smoking product or** a product
25 containing nicotine that is intended or expected to be consumed without being
26 combusted if the **electronic smoking product or product containing nicotine**

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

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

31 (3) is

- 1 (A) prescribed by a health care professional;
- 2 (B) given to a person by the person's parent or legal guardian;
- 3 (C) provided by a state-approved tobacco cessation program
- 4 administered by the Department of Health and Social Services; or
- 5 (D) provided by a pharmacist to a person 18 years of age or
- 6 older without a prescription.

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

8 (e) Selling or giving **an electronic smoking product or** a product containing
9 nicotine to a minor is a violation and, upon conviction, is punishable by a fine of not
10 less than \$300.

11 * **Sec. 8.** AS 11.76.109 is amended by adding new subsections to read:

12 (f) Notwithstanding (a)(3) of this section, a person who maintains a vending
13 machine is not in violation of (a)(3) of this section if the vending machine is located

14 (1) on premises licensed as a beverage dispensary under AS 04.11.090,
15 licensed as a club under AS 04.11.110, or licensed as a package store under
16 AS 04.11.150, and is located

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

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

21 (2) in an employee break room or other controlled area of a private
22 work place that is not generally considered a public place and the room or area
23 contains a posted warning sign at least 11 inches by 8.5 inches indicating that
24 possession of electronic smoking products or products containing nicotine by a person
25 under 19 years of age without a prescription is prohibited under AS 11.76.109.

26 (g) The court shall forward a record of each person convicted under this
27 section who holds a business license endorsement under AS 43.70.075, or who is an
28 employee or agent of a person who holds a business license endorsement under
29 AS 43.70.075, to the Department of Commerce, Community, and Economic
30 Development.

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

1 (67) "electronic smoking product"

2 (A) means

3 (i) any product containing or delivering nicotine or any
4 other substance intended for human consumption that can be used by a
5 person through inhalation of vapor or aerosol from the product, of any
6 size or shape, whether the product is manufactured, distributed,
7 marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, vape pen,
8 or any other product name or descriptor; or

9 (ii) a component, solution, alternative tobacco product,
10 e-liquid, e-juice, vapor product, flavoring, or other related product of an
11 electronic cigarette, electronic cigar, electronic cigarillo, electronic
12 pipe, or other similar device of any size or shape used for, or to assist
13 with, aerosolizing and inhaling chemical substances that may cause an
14 adverse effect on human health;

15 (B) does not include marijuana as defined in AS 11.71.900.

16 * **Sec. 10.** AS 43.50.070(a) is amended to read:

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

1 * **Sec. 11.** 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** [TOBACCO] endorsement under
6 AS 43.70.075;

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

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

11 (5) is an individual 19 years of age or older receiving the cigarettes for
12 personal consumption and the tax imposed on the cigarettes under this chapter has
13 been paid.

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

15 (a) Unless a person has a business license endorsement issued under this
16 section for each location or outlet in a location where the person offers tobacco
17 products, **electronic smoking products, or products containing nicotine** for sale, a
18 person may not sell or allow a vending machine to sell in its location or outlet
19 cigarettes, cigars, tobacco, [OR OTHER] products containing tobacco, **electronic**
20 **smoking products, or products containing nicotine** as a retailer at that location or
21 outlet. Each endorsement required under this section is in addition to any other license
22 or endorsement required by law. A person may not apply for an endorsement under
23 this section for a location or outlet if an endorsement issued for the same location or
24 outlet is currently suspended or revoked. An endorsement issued for a location or
25 outlet to a person in violation of this subsection is void.

26 * **Sec. 13.** AS 43.70.075(d) is amended to read:

27 (d) If a person who holds an endorsement issued under this section, or an
28 agent or an employee of a person who holds an endorsement issued under this section
29 acting within the scope of the agency or employment, has been convicted of violating
30 AS 11.76.100, 11.76.106, [OR] 11.76.107, **or 11.76.109**, the department shall impose
31 a civil penalty as set out in this subsection. However, following a hearing under (m) of

1 this section, and based on evidence admitted at that hearing concerning questions
2 specified in (m)(4) and (6) of this section, the department may reduce by not more
3 than 10 days a suspension under (1) of this subsection, or by not more than 20 days a
4 suspension under (2) of this subsection, or increase by not more than 10 days a
5 suspension under (1) of this subsection, or by not more than 20 days a suspension
6 under (2) of this subsection. If a hearing is not requested, or if a hearing is requested
7 and the department determines that the evidence admitted does not support increasing
8 or decreasing the suspension, the department shall suspend the endorsement [FOR A
9 PERIOD OF]

10 (1) **for a period of** 20 days and impose a civil penalty of **\$1,000**
11 [\$300] if the person has not been previously convicted of violating AS 11.76.100,
12 11.76.106, [OR] 11.76.107, **or 11.76.109** and is not otherwise subject to the sanctions
13 described in (2) - (4) of this subsection;

14 (2) **for a period of** 45 days and impose a civil penalty of **\$2,000**
15 [\$500] if, within the 24 months before the date of the department's notice under (m) of
16 this section, the person, or an agent or employee of the person while acting within the
17 scope of the agency or employment of the person, was convicted once of violating
18 AS 11.76.100, 11.76.106, [OR] 11.76.107, **or 11.76.109**;

19 (3) **for a period of** 90 days and impose a civil penalty of **\$4,000**
20 [\$1,000] if, within the 24 months before the date of the department's notice under (m)
21 of this section, the person, or an agent or employee of the person while acting within
22 the scope of the agency or employment of the person, was convicted twice of violating
23 AS 11.76.100, 11.76.106, [OR] 11.76.107, **or 11.76.109**, or a provision of this section
24 or a regulation implementing this section adopted under AS 43.70.090; or

25 (4) **indefinitely** [ONE YEAR] and impose a civil penalty of **\$10,000**
26 [\$2,500] if, within the 24 months before the date of the department's notice under (m)
27 of this section, the person, or an agent or employee of the person while acting within
28 the scope of the agency or employment of the person, was convicted **three or more**
29 **times** [THAN TWICE] of violating AS 11.76.100, 11.76.106, [OR] 11.76.107, **or**
30 **11.76.109**.

31 * **Sec. 14.** 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 [6] inches by 11 [18]
4 inches and must read [, IN LETTERING AT LEAST 1.25 INCHES HIGH]: "The sale
5 of electronic smoking products or products containing nicotine without a
6 prescription or tobacco products to persons under age 19 is illegal." A person holding
7 an endorsement issued under this section shall display the warning sign in a manner
8 conspicuous to a person purchasing or consuming tobacco products, electronic
9 smoking products, or products containing nicotine on the licensed premises. The
10 department shall make available the [, WITHOUT CHARGE, FURNISH] warning
11 signs required under this section to a person who holds an endorsement issued under
12 this section or a person who requests the sign with the intention of displaying it.

13 * Sec. 15. AS 43.70.075(i) is amended to read:

14 (i) The commissioner or the commissioner of revenue may seize cigarettes,
15 electronic smoking products, or products containing nicotine that do not comply
16 with this section. After notice and an opportunity for a hearing, the commissioner or
17 the commissioner of revenue shall destroy cigarettes, electronic smoking products,
18 or products containing nicotine seized under this subsection.

19 * Sec. 16. AS 43.70.075(l) is amended to read:

20 (l) Notwithstanding (a) of this section, a person owning vending machines that
21 offer tobacco products, electronic smoking products, or products containing
22 nicotine for sale need obtain only one business license endorsement under this section
23 even if the person has vending machines in more than one outlet or location in the
24 state. The person who owns a vending machine that offers tobacco products,
25 electronic smoking products, or products containing nicotine for sale and the
26 person who owns the premises where the vending machine is located are both required
27 to obtain a business license endorsement issued under this section. If the endorsement
28 of the person owning the vending machine is suspended or revoked, the person may
29 not sell cigarettes, cigars, [OR OTHER] products containing tobacco, electronic
30 smoking products, or products containing nicotine during the period of suspension
31 or revocation through the use of vending machines at the location or outlet where the

1 violation occurred. During the period of suspension or revocation, the person owning
2 that vending machine may not use that machine to sell tobacco products, **electronic**
3 **smoking products, or products containing nicotine** at another location or outlet.

4 * **Sec. 17.** AS 43.70.075(m) is amended to read:

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

19 (1) was the person holding the business license endorsement, or an
20 agent or employee of the person while acting within the scope of the agency or
21 employment of the person, convicted by plea or judicial finding of violating
22 AS 11.76.100, 11.76.106, [OR] 11.76.107, **or 11.76.109**;

23 (2) if the department does not allege a conviction of AS 11.76.100,
24 11.76.106, [OR] 11.76.107, **or 11.76.109**, did the person, or an agent or employee of
25 the person while acting within the scope of the agency or employment of the person,
26 violate a provision of (a) or (g) of this section;

27 (3) within the 24 months before the date of the department's notice
28 under this subsection, was the person, or an agent or employee of the person while
29 acting within the scope of the agency or employment of the person, convicted of
30 violating AS 11.76.100, 11.76.106, [OR] 11.76.107, **or 11.76.109** or adjudicated for
31 violating a provision of (a) or (g) of this section;

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

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

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

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

11 (B) previously violated AS 11.76.100, 11.76.106, [OR]
12 11.76.107, or 11.76.109 at a location or outlet in a location for which the
13 person holds a business license endorsement, or had an agent or employee
14 previously violate AS 11.76.100, 11.76.106, [OR] 11.76.107, or 11.76.109;
15 this subparagraph does not apply to a prior conviction that served to enhance a
16 suspension period under (d)(2) - (4) of this section; or

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

21 * **Sec. 18.** AS 43.70.075(r) is amended to read:

22 (r) For purposes of this section, the sale of a product containing tobacco,
23 electronic smoking product, or product containing nicotine by an agent or
24 employee of a person who holds or is required to hold a business license endorsement
25 under this section at the location or outlet in a location for which the endorsement was
26 or was required to be issued is rebuttably presumed to have been a sale within the
27 person's scope of agency or employment.

28 * **Sec. 19.** AS 43.70.075(t) is amended to read:

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

1 the date of the violation, the person had

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

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

9 (3) required each agent and employee of the person to sign a form
10 stating that the agent and employee has been informed of and understands the written
11 policy and the requirements of AS 11.76.100, 11.76.106, [AND] 11.76.107, **and**
12 **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, [AND] 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, [OR] 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, [AND]
22 11.76.107, **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 [AND] 11.76.107, **and 11.76.109**.

26 * **Sec. 20.** AS 43.70.075(v) is amended to read:

27 (v) Notwithstanding (d) of this section, in place of a hearing under (m) of this
28 section, the department and the person holding the business license endorsement may
29 enter into a memorandum of agreement regarding the imposition of a suspension and
30 civil penalties based on a violation of AS 11.76.100, 11.76.106, [OR] 11.76.107, **or**
31 **11.76.109**. The memorandum of agreement must contain a provision that the person

1 holding the business license endorsement admits or does not contest that a violation of
2 AS 11.76.100, 11.76.106, [OR] 11.76.107, or 11.76.109 occurred and accepts the
3 imposition of suspension and civil penalty under this section. Based on the
4 memorandum of agreement, the department may reduce the period of suspension. For
5 violations involving AS 11.76.100, 11.76.106, [OR] 11.76.107, or 11.76.109, the
6 department may not reduce the period of suspension by more than 10 days under
7 (d)(1) of this section or by more than 20 days under (d)(2) of this section. The
8 department may not agree to a reduction in the period of suspension more than once in
9 a 12-month time period for a location or outlet in a location for which the person holds
10 a business license endorsement.

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

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

26 * **Sec. 22.** AS 43.70.075(x) is amended to read:

27 (x) Notwithstanding (d), (t), or (v) of this section, a period of suspension may
28 not be reduced for a violation of AS 11.76.100(a)(4) or 11.76.109(a)(3).

29 * **Sec. 23.** AS 43.70.105(b) is amended to read:

30 (b) Notwithstanding an exemption provided by (a) of this section, a person
31 who sells cigarettes, cigars, tobacco, [OR OTHER] products containing tobacco,

1 **electronic smoking products, or products containing nicotine** as a retailer must
2 have a business license under AS 43.70.020 and a business license endorsement
3 required under AS 43.70.075.

4 * **Sec. 24.** AS 43.70.110 is amended by adding new paragraphs to read:

5 (6) "electronic smoking product" has the meaning given in
6 AS 11.76.900;

7 (7) "product containing nicotine" does not include a cigarette, a cigar,
8 tobacco, or a product containing tobacco.

9 * **Sec. 25.** AS 44.29.092 is amended to read:

10 **Sec. 44.29.092. Citation for certain offenses concerning tobacco, products**
11 **containing nicotine, or electronic smoking products.** A peace officer or an agent or
12 employee of the Department of Health and Social Services who is authorized by the
13 commissioner of health and social services to enforce this section may issue a citation
14 for a violation of AS 11.76.100, 11.76.106, [OR] 11.76.107, **or 11.76.109** if there is
15 probable cause to believe a person has violated AS 11.76.100, 11.76.106, [OR]
16 11.76.107, **or 11.76.109.**

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

19 APPLICABILITY. AS 11.76.105, as amended by sec. 1 of this Act, AS 11.76.106(b),
20 as amended by sec. 3 of this Act, AS 11.76.107(a), as amended by sec. 4 of this Act,
21 AS 11.76.109(a), as amended by sec. 5 of this Act, AS 11.76.109(b), as amended by sec. 6 of
22 this Act, AS 11.76.109(e), as amended by sec. 7 of this Act, and AS 11.76.109(f), added by
23 sec. 8 of this Act, apply to offenses committed on or after the effective date of this Act.