

SENATE BILL NO. 182

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FIRST LEGISLATURE - SECOND SESSION

BY SENATOR STEVENS

Introduced: 2/10/20

Referred: Labor and Commerce, Finance

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

* **Sec. 4.** AS 11.76.105 is amended to read:

Sec. 11.76.105. Possession of tobacco, electronic smoking products, or products containing nicotine by a person under 21 years of age [MINOR]. (a) A person under 21 [19] years of age may not knowingly possess a cigarette, a cigar, tobacco, a product containing tobacco, an electronic smoking product, or a product containing nicotine in this state. This subsection does not apply to a person who is a prisoner at an adult correctional facility.

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

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

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

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

9 (3) was

10 (A) prescribed by a health care professional;

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

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

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

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

18 * **Sec. 5.** AS 11.76.106(b) is amended to read:

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

20 (1) is by vending machine as provided under AS 11.76.100(b) or
 21 11.76.109(f);

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

25 (3) is by a retailer who sells primarily cigarettes, cigars, tobacco,
 26 products containing tobacco, electronic smoking products, or products containing
 27 nicotine and who restricts access to the premises to only those individuals who are 21
 28 [19] years of age or older; or

29 (4) is of electronic smoking products over the Internet to a person 21
 30 [19] years of age or older.

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

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

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

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

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

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

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

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

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

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

(3) is

(A) prescribed by a health care professional;

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

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

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

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

(d) Notwithstanding (a)(3) of this section, a person who maintains a vending

1 machine is not in violation of (a)(3) of this section if the vending machine is located

2 (1) on premises licensed as a beverage dispensary under AS 04.11.090,
3 licensed as a club under AS 04.11.110, or licensed as a package store under
4 AS 04.11.150, and is located

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

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

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

14 * **Sec. 9.** AS 11.76.109(g) is amended to read:

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

18 * **Sec. 10.** AS 43.50.105(b) is amended to read:

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

21 (1) is licensed under this chapter;

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

23 (3) is an operator of a customs bonded warehouse under 19 U.S.C.
24 1311 or 19 U.S.C. 1555;

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

27 (5) is an individual 21 [19] years of age or older receiving the
28 cigarettes for personal consumption and the tax imposed on the cigarettes under this
29 chapter has been paid.

30 * **Sec. 11.** AS 43.50.150(c) is amended to read:

31 (c) The department may enter into an agreement with a municipality that

imposes a tax on cigarettes, [OR OTHER] tobacco products, or electronic smoking products for the purpose of jointly auditing a person liable for a tax under AS 43.50.010 - 43.50.390 and the municipal tax on cigarettes, [OR OTHER] tobacco products, or electronic smoking products. In this subsection, "electronic smoking product" has the meaning given in AS 43.50.390.

* Sec. 12. AS 43.50.300 is amended to read:

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

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

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

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

* Sec. 13. AS 43.50.310(b) is amended to read:

(b) The tax does not apply to a

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

(2) an electronic smoking product

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

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

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

* Sec. 14. AS 43.50.320(a) is amended to read:

(a) Except as provided in (g) of this section, a person must be licensed by the department if the person engages in business as a distributor for a tobacco product or

electronic smoking product that is subject to the tax.

* **Sec. 15.** AS 43.50.330(a) is amended to read:

(a) On or before the last day of each calendar month, a licensee shall file a return with the department. The return must state the number or amount of tobacco products and electronic smoking products sold by the licensee during the preceding calendar month, the selling price of the tobacco products and electronic smoking products, and the amount of tax imposed on the tobacco products and electronic smoking products.

* **Sec. 16.** AS 43.50.335 is amended to read:

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

* **Sec. 17.** AS 43.50.340 is amended to read:

Sec. 43.50.340. Records. A licensee shall keep a complete and accurate record of all tobacco products and electronic smoking products of the licensee subject to the tax, including purchase prices, sales prices, the names and addresses of the sellers and the purchasers, the dates of delivery, the quantities of tobacco products and electronic smoking products, and the trade names and brands. Statements and records required by this section must be in the form prescribed by the department, preserved for three years, and available for inspection upon demand by the department.

* **Sec. 18.** AS 43.50.390(1) is amended to read:

(1) "distributor" means a person who

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

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

(C) ships or transports a tobacco product or electronic

1 **smoking product** to a retailer in the state for sale by the retailer;

2 * **Sec. 19.** AS 43.50.390(5) is amended to read:

3 (5) "wholesale price" means

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

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

13 * **Sec. 20.** AS 43.50.390 is amended by adding a new paragraph to read:

14 (6) "electronic smoking product" means a

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

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

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

23 (f) A person who holds a license endorsement issued under this section shall
24 post on the licensed premises a warning sign as described in this subsection. A
25 warning sign required by this subsection must be at least 8.5 inches by 11 inches and
26 must read: "The sale of electronic smoking products or products containing nicotine
27 without a prescription or tobacco products to persons under age **21** [19] is illegal." A
28 person holding an endorsement issued under this section shall display the warning sign
29 in a manner conspicuous to a person purchasing or consuming tobacco products,
30 electronic smoking products, or products containing nicotine on the licensed premises.
31 The department shall make available the warning signs required under this section to a

1 person who holds an endorsement issued under this section or a person who requests
2 the sign with the intention of displaying it.

3 * **Sec. 22.** AS 43.70.075(m) is amended to read:

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

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

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

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

31 (4) did the person holding the business license endorsement establish

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

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

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

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

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

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

20 * **Sec. 23.** AS 43.70.075(t) is amended to read:

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

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

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

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

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

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

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

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

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

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

1 * **Sec. 25.** AS 47.12.030(b) is amended to read:

2 (b) When a minor is accused of violating a statute specified in this subsection,
3 other than a statute the violation of which is a felony, this chapter and the Alaska
4 Delinquency Rules do not apply and the minor accused of the offense shall be
5 charged, prosecuted, and sentenced in the district court in the same manner as an
6 adult; if a minor is charged, prosecuted, and sentenced for an offense under this
7 subsection, the minor's parent, guardian, or legal custodian shall be present at all
8 proceedings; the provisions of this subsection apply when a minor is accused of
9 violating

10 (1) a traffic statute or regulation, or a traffic ordinance or regulation of
11 a municipality;

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

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

15 (4) a parks and recreational facilities statute or regulation under
16 AS 41.21;

17 (5) [REPEALED]

18 (6) a municipal curfew ordinance, whether adopted under
19 AS 29.35.085 or otherwise, unless the municipality provides for enforcement of its
20 ordinance under AS 29.25.070(b) by the municipality; in place of any fine imposed for
21 the violation of a municipal curfew ordinance, the court shall allow a defendant the
22 option of performing community work; the value of the community work, which may
23 not be lower than the amount of the fine, shall be determined under AS 12.55.055(c);
24 in this paragraph, "community work" includes the work described in AS 12.55.055(b)
25 or work that, on the recommendation of the municipal or borough assembly, city
26 council, or traditional village council of the defendant's place of residence, would
27 benefit persons within the municipality or village who are elderly or disabled.

28 * **Sec. 26.** This Act takes effect January 1, 2021.