

CS FOR HOUSE BILL NO. 94(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FIRST LEGISLATURE - SECOND SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered: 3/21/20

Referred: Finance

Sponsor(s): REPRESENTATIVE HANNAN

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the taxation of electronic smoking products; relating to transporting**
2 **tobacco, a product containing nicotine, or an electronic smoking product; and providing**
3 **for an effective date."**

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

5 * **Section 1.** AS 43.50.105(b) is amended to read:

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

8 (1) is licensed under this chapter;

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

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

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

14 (5) is an individual 21 [19] years of age or older **and the individual's**

1 age was verified at the time of purchase by a third-party verification service, the
 2 individual is receiving the cigarettes for personal consumption, and the tax imposed
 3 on the cigarettes under this chapter has been paid.

4 * **Sec. 2.** AS 43.50.105(c) is amended to read:

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

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

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

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

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

18 * **Sec. 3.** AS 43.50.150(c) is amended to read:

19 (c) The department may enter into an agreement with a municipality that
 20 imposes a tax on cigarettes, [OR OTHER] tobacco products, or electronic smoking
 21 products for the purpose of jointly auditing a person liable for a tax under
 22 AS 43.50.010 - 43.50.390 and the municipal tax on cigarettes, [OR OTHER] tobacco
 23 products, or electronic smoking products. In this subsection, "electronic smoking
 24 product" has the meaning given in AS 43.50.390.

25 * **Sec. 4.** AS 43.50.300 is amended to read:

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

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

31 (2) makes, manufactures, or fabricates a tobacco product or electronic

1 **smoking product** in the state for sale in the state; or

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

4 * **Sec. 5.** AS 43.50.310(b) is amended to read:

5 (b) The tax does not apply to a

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

8 **(2) an electronic smoking product**

9 **(A) that is subject to taxation under AS 43.61.010 -**
10 **43.61.030 and that does not contain nicotine;**

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

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

17 * **Sec. 6.** AS 43.50.320(a) is amended to read:

18 (a) Except as provided in (g) of this section, a person must be licensed by the
19 department if the person engages in business as a distributor for a tobacco product **or**
20 **electronic smoking product** that is subject to the tax.

21 * **Sec. 7.** AS 43.50 is amended by adding a new section to read:

22 **Sec. 43.50.325. Restrictions on shipping or transporting tobacco products**
23 **and electronic smoking products.** (a) A person who is not licensed under this chapter
24 may not ship or cause to be shipped a tobacco product or electronic smoking product
25 to a person in this state unless the person receiving the tobacco product or electronic
26 smoking product is

27 (1) licensed under this chapter;

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

30 (3) an instrumentality of the federal government or an Indian tribal
31 organization authorized by law to possess tobacco products or electronic smoking

1 products not taxed under this chapter.

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

5 (1) is licensed under this chapter;

6 (2) holds a business license endorsement under 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 tobacco products or electronic smoking
11 products not taxed under this chapter; or

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

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

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

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

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

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

31 (d) If a tobacco product or electronic smoking product is transported by a

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

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

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

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

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

21 (i) A person who violates the provisions of this section is jointly and severally
22 liable for the taxes imposed by AS 43.50.090 and 43.50.190. To the fullest extent
23 permitted by the Constitution of the United States, a person who violates the
24 provisions of this section is required to collect the taxes and pay them to the
25 department.

26 * **Sec. 8.** AS 43.50.330(a) is amended to read:

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

1 **smoking products.**

2 * **Sec. 9.** AS 43.50.335 is amended to read:

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

9 * **Sec. 10.** AS 43.50.340 is amended to read:

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

18 * **Sec. 11.** AS 43.50.390(1) is amended to read:

19 (1) "distributor" means a person who

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

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

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

26 * **Sec. 12.** AS 43.50.390(5) is amended to read:

27 (5) "wholesale price" means

28 (A) the established price for which a manufacturer sells a
29 tobacco product **or electronic smoking product** to a distributor after
30 deduction of a discount or other reduction received by the distributor for
31 quantity or cash if the manufacturer's established price is adequately supported

1 by bona fide arm's length sales as determined by the department; or

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

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

7 (6) "electronic smoking product" means a

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

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

15 * **Sec. 14.** The uncodified law of the State of Alaska is amended by adding a new section to
 16 read:

17 APPLICABILITY. (a) AS 43.50.300, as amended by sec. 4 of this Act, and
 18 AS 43.50.320(a), as amended by sec. 6 of this Act, apply to electronic smoking products sold
 19 on or after the effective date of secs. 4 and 6 of this Act.

20 (b) AS 43.50.330(a), as amended by sec. 8 of this Act, applies to the first monthly
 21 return submitted after the first full month after the effective date of sec. 8 of this Act.

22 * **Sec. 15.** This Act takes effect January 1, 2021.