

CS FOR HOUSE BILL NO. 110(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-SECOND LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered: 4/12/21

Referred: Finance

Sponsor(s): REPRESENTATIVE HANNAN

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

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

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

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

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

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

14 (3) maintains a vending machine that dispenses cigarettes, cigars,

1 tobacco, or products containing tobacco; or

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

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

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

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

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

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

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

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

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

28 (b) In a prosecution under (a) of this section for possession of an electronic
29 smoking product or a product containing nicotine, it is an affirmative defense that the
30 electronic smoking product or product containing nicotine possessed by the person
31 under 21 [19] years of age was intended or expected to be consumed without being

1 combusted, and the electronic smoking product or product containing nicotine

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

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

6 (3) was

7 (A) prescribed by a health care professional;

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

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

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

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

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

16 (a) Except as provided under (b) of this section, a person may not sell
17 cigarettes, cigars, tobacco, products containing tobacco, electronic smoking products,
18 or products containing nicotine

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

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

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

25 (b) **Paragraph (a)(1) of this section** [SUBSECTION (a)] does not apply if
26 the sale

27 (1) is by vending machine as provided under AS 11.76.100(b) or
28 11.76.109(d);

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

1 (3) is by a retailer who sells primarily cigarettes, cigars, tobacco,
 2 products containing tobacco, electronic smoking products, or products containing
 3 nicotine and who restricts access to the premises to only those individuals who are 21
 4 [19] years of age or older; or

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

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

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

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

13 (2) is 21 [19] years of age or older and negligently exchanges or gives
 14 an electronic smoking product or a product containing nicotine to a person under 21
 15 [19] years of age;

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

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

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

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

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

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

30 (3) is

31 (A) prescribed by a health care professional;

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

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

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

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

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

9 (1) on premises licensed as a beverage dispensary under AS 04.11.090,
10 licensed as a club under AS 04.11.110, or licensed as a package store under
11 AS 04.11.150, and is located

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

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

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

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

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

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

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

28 (1) is licensed under this chapter;

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

30 (3) is an operator of a customs bonded warehouse under 19 U.S.C.
31 1311 or 19 U.S.C. 1555;

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

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

7 * **Sec. 11.** AS 43.50.105(c) is amended to read:

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

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

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

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

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

21 * **Sec. 12.** AS 43.50.150(c) is amended to read:

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

28 * **Sec. 13.** AS 43.50.300 is amended to read:

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

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

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

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

7 * **Sec. 14.** AS 43.50.310(b) is amended to read:

8 (b) The tax does not apply to a

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

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

12 **(A) that is subject to taxation under AS 43.61.010 -**
 13 **43.61.030 and that does not contain nicotine;**

14 **(B) approved for sale by the United States Food and Drug**
 15 **Administration as a drug, drug product, including a drug product used to**
 16 **treat tobacco dependence, or combination product under 21 U.S.C. 301 -**
 17 **392 (Federal Food, Drug, and Cosmetic Act);**

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

20 * **Sec. 15.** AS 43.50.320(a) is amended to read:

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

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

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

30 (1) licensed under this chapter;

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

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

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

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

8 (1) is licensed under this chapter;

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

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

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

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

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

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

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

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

30 (2) receiving the tobacco product or electronic smoking product is a
31 person described under (a)(2) or (3) of this section or is licensed under this chapter

1 and, before receipt, provides the common or contract carrier with a copy of the
2 person's current license issued by the department.

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

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

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

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

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

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

29 * **Sec. 17.** AS 43.50.330(a) is amended to read:

30 (a) On or before the last day of each calendar month, a licensee shall file a
31 return with the department. The return must state the number or amount of tobacco

1 products **and electronic smoking products** sold by the licensee during the preceding
 2 calendar month, the selling price of the tobacco products **and electronic smoking**
 3 **products**, and the amount of tax imposed on the tobacco products **and electronic**
 4 **smoking products**.

5 * **Sec. 18.** AS 43.50.335 is amended to read:

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

12 * **Sec. 19.** AS 43.50.340 is amended to read:

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

21 * **Sec. 20.** AS 43.50.390(1) is amended to read:

22 (1) "distributor" means a person who

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

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

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

29 * **Sec. 21.** AS 43.50.390(5) is amended to read:

30 (5) "wholesale price" means

31 (A) the established price for which a manufacturer sells a

1 tobacco product or electronic smoking product to a distributor after
 2 deduction of a discount or other reduction received by the distributor for
 3 quantity or cash if the manufacturer's established price is adequately supported
 4 by bona fide arm's length sales as determined by the department; or

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

9 * **Sec. 22.** AS 43.50.390 is amended by adding a new paragraph to read:

10 (6) "electronic smoking product"

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

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

18 * **Sec. 23.** AS 43.70.075(f) is amended to read:

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

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

31 (m) The department may initiate suspension of a business license endorsement

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

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

18 (2) if the department does not allege a conviction of AS 11.76.100,
19 11.76.106, 11.76.107, or 11.76.109, did the person, or an agent or employee of the
20 person while acting within the scope of the agency or employment of the person,
21 violate a provision of (a) or (g) of this section;

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

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

31 (5) did the person holding the business license endorsement overcome

1 the rebuttable presumption established in (w) of this section;

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

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

6 (B) previously violated AS 11.76.100, 11.76.106, 11.76.107, or
7 11.76.109 at a location or outlet in a location for which the person holds a
8 business license endorsement, or had an agent or employee previously violate
9 AS 11.76.100, 11.76.106, 11.76.107, or 11.76.109; this subparagraph does not
10 apply to a prior conviction that served to enhance a suspension period under
11 (d)(2) - (4) of this section; or

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

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

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

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

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

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

31 (4) determined that the agents and employees of the person had

1 sufficient experience and ability to comply with the written policy and requirements of
2 AS 11.76.100, 11.76.106, 11.76.107, and 11.76.109;

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

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

10 (7) monitored the compliance of the agents and employees of the
11 person with the written policy and the requirements of AS 11.76.100, 11.76.106,
12 11.76.107, and 11.76.109.

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

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

28 * **Sec. 27.** AS 47.12.030(b) is amended to read:

29 (b) When a minor is accused of violating a statute specified in this subsection,
30 other than a statute the violation of which is a felony, this chapter and the Alaska
31 Delinquency Rules do not apply and the minor accused of the offense shall be

1 charged, prosecuted, and sentenced in the district court in the same manner as an
 2 adult; if a minor is charged, prosecuted, and sentenced for an offense under this
 3 subsection, the minor's parent, guardian, or legal custodian shall be present at all
 4 proceedings; the provisions of this subsection apply when a minor is accused of
 5 violating

6 (1) a traffic statute or regulation, or a traffic ordinance or regulation of
 7 a municipality;

8 (2) AS 11.76.105, relating to the possession of tobacco by a person
 9 under 21 [19] years of age; **notwithstanding AS 12.55.035(b), in place of any fine**
 10 **imposed for the violation of AS 11.76.105, the court shall refer a defendant to a**
 11 **tobacco education program;**

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

13 (4) a parks and recreational facilities statute or regulation under
 14 AS 41.21;

15 (5) [REPEALED]

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

26 * **Sec. 28.** AS 11.76.100(e) and 11.76.106(b)(4) are repealed.

27 * **Sec. 29.** The uncodified law of the State of Alaska is amended by adding a new section to
 28 read:

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

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

- 1 (2) AS 11.76.100(b), as amended by sec. 2 of this Act;
- 2 (3) AS 11.76.105, as amended by sec. 3 of this Act;
- 3 (4) AS 11.76.106(a), as amended by sec. 4 of this Act;
- 4 (5) AS 11.76.106(b), as amended by sec. 5 of this Act;
- 5 (6) AS 11.76.109(a), as amended by sec. 6 of this Act;
- 6 (7) AS 11.76.109(b), as amended by sec. 7 of this Act;
- 7 (8) AS 11.76.109(d), as amended by sec. 8 of this Act;
- 8 (9) AS 11.76.109(g), as amended by sec. 9 of this Act;
- 9 (10) AS 43.50.325, enacted by sec. 16 of this Act; and
- 10 (11) AS 47.12.030(b), as amended by sec. 27 of this Act.

11 * **Sec. 30.** This Act takes effect January 1, 2022.