

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

February 22, 2016

3:19 p.m.

MEMBERS PRESENT

Representative Kurt Olson, Chair
Representative Shelley Hughes, Vice Chair
Representative Jim Colver
Representative Gabrielle LeDoux
Representative Cathy Tilton
Representative Andy Josephson
Representative Sam Kito

MEMBERS ABSENT

Representative Mike Chenault (alternate)

COMMITTEE CALENDAR

HOUSE BILL NO. 304

"An Act requiring the electronic submission of a tax return or report with the Department of Revenue; relating to the taxes on cigarettes and tobacco products; taxing electronic smoking products; adding a definition of 'electronic smoking product'; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 304

SHORT TITLE: ELECTRONIC TAX RETURNS; TOBACCO & E-CIGS TAX

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

02/08/16	(H)	READ THE FIRST TIME - REFERRALS
02/08/16	(H)	L&C, FIN
02/19/16	(H)	L&C AT 3:15 PM BARNES 124
02/19/16	(H)	Heard & Held
02/19/16	(H)	MINUTE(L&C)
02/22/16	(H)	L&C AT 3:15 PM BARNES 124

WITNESS REGISTER

MARGE STONEKING, Executive Director
American Lung Association in Alaska

Anchorage, Alaska

POSITION STATEMENT: Testified in favor of HB 304.

ALEX MCDONALD, Owner

Ice Fog Vapor, Inc.; Member

Smoke-Free Alternatives Trade Association

Fairbanks, Alaska

POSITION STATEMENT: Testified in opposition to HB 304.

GREG CONLEY, President

American Vaping Association

Hoboken, New Jersey

POSITION STATEMENT: Testified in opposition to HB 304.

ACTION NARRATIVE

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CHAIR KURT OLSON called the House Labor and Commerce Standing Committee meeting to order at 3:19 p.m. Representatives Olson, Kito, Josephson, Hughes, LeDoux, and Tilton were present at the call to order. Representative Colver arrived as the meeting was in progress.

HB 304-ELECTRNC TAX RETURNS;TOBACCO & E-CIGS TAX

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CHAIR OLSON announced that the only order of business would be HOUSE BILL NO. 304, "An Act requiring the electronic submission of a tax return or report with the Department of Revenue; relating to the taxes on cigarettes and tobacco products; taxing electronic smoking products; adding a definition of 'electronic smoking product'; and providing for an effective date."

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MARGE STONEKING, Executive Director, American Lung Association in Alaska, provided information from a public health perspective on the public health impact of increased taxes. Ms. Stoneking said an increase of the tobacco tax by government is justified by the offset of cost incurred by tobacco to society. According to the Alaska Tobacco Prevention and Control Program, Division of Public Health, Department of Health and Social Services, \$20 in smoking direct medical costs are incurred by each pack of cigarettes, which is currently taxed at \$2 per pack. In addition, in terms of public health, higher taxes reduce tobacco

use in the most price-sensitive segment of the population. For every 10 percent increase in the price of tobacco products, use by youth is reduced in the amount of 6 percent or 7 percent. Furthermore, low-income users are price-sensitive.

REPRESENTATIVE LEDOUX asked whether he was saying that one of the benefits of this is that it's so regressive, and it targets low-income people.

MS. STONEKING said no. She explained that price-sensitive means that a tobacco tax affects a certain population "in a good way in terms of tobacco consumption, so they are more likely to cut down their tobacco use and more likely, eventually, to quit." She continued to say that the impact of reduced tobacco use is highest on youth, and next highest on low-income.

CHAIR OLSON questioned whether Ms. Stoneking's statement contradicts previous testimony heard by the committee.

REPRESENTATIVE LEDOUX said the foregoing also contradicts statements by the bill sponsor which indicated that there would not be a measurable effect on the number of people who smoke.

MS. STONEKING recalled that there have been two tobacco tax laws implemented in Alaska. In 1997, Alaska tobacco taxes were the highest in the nation, and in 2004, tobacco consumption fell below the national average following each of the price increases. As a direct effect of raising tobacco taxes in general, adults cut down tobacco use and kids typically don't begin smoking. Ms. Stoneking stated there is a formula to estimate Medicaid savings associated with a decline in tobacco use, and she offered to provide further information in this regard.

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REPRESENTATIVE HUGHES asked for clarification on the direct medical costs associated with tobacco use.

MS. STONEKING explained that the direct medical cost of tobacco use in Alaska is \$370 million per year, which equates to \$20 per pack sold. She turned to e-cigarettes, stating that electronic nicotine delivery systems are new and lack long-term data on how tax increases affect consumption. However, it appears that their use "will follow suit with tobacco reductions as well." In Alaska, 4 percent of adults use e-cigarettes, and 85 percent of their use is in addition to traditional cigarettes. The

first year of data on e-cigarettes indicates that in Alaska, 18 percent of youth are using e-cigarettes, and nationally there has been a nine-fold increase.

REPRESENTATIVE HUGHES asked of the 85 percent using e-cigarettes, how many are in the process of trying to quit smoking.

MS. STONEKING responded that a report indicated 72 percent of dual users were using e-cigarettes either as a way to reduce use, or to use when smoking is not allowed [report not provided].

MS. STONEKING continued, noting that nationally, e-cigarette use among youth increased nine-fold between 2011 and 2014. She characterized this as an epidemic of youth using a completely unregulated product. There are claims by e-cigarette purveyors that e-cigarettes are used for cessation purposes, although they are not approved as cessation devices by the U.S. Food and Drug Administration (FDA). Ms. Stoneking noted that no independent e-cigarette company has filed with FDA to be considered as a cessation product. In addition to widespread use by youth, youth transition to traditional cigarettes, as do adults who have never smoked, or who have quit traditional cigarettes. She concluded that e-cigarettes should be taxed as other tobacco products.

REPRESENTATIVE HUGHES asked how the cost of e-cigarettes compares with the cost of traditional cigarettes, including tax.

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REPRESENTATIVE JOSEPHSON has heard that a 25-cigarette pack costs about \$11, and the tax is an additional \$1.20.

REPRESENTATIVE HUGHES questioned whether the tax on e-cigarettes was higher.

REPRESENTATIVE JOSEPHSON asked whether there is definitive proof that e-cigarettes are dangerous, and if so, for the source of said proof.

MS. STONEKING acknowledged that long-term health consequences will be unknown for decades; however, it is known that e-cigarettes are a tobacco-derived product, marketed and used in a similar manner to tobacco products, and thus should be taxed in the same way.

REPRESENTATIVE LEDOUX commented that some taxes are regressive, such as a general sales tax, although it does affect everyone. However, she expressed her concern about testimony in support of a tax that "actually targets poorer people because they're the people who are going to be the most price-sensitive on some things."

MS. STONEKING responded that the low-income population carries a cost to the Medicaid program and smokes at a higher rate; she pointed out that the state is "looking for cost savings in that area."

CHAIR OLSON recalled that the director of the tax division said the tax is regressive geographically and as pertains to income.

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MS. STONEKING stated that the difference between the tobacco tax and other taxes is that the tobacco tax provides a public health and economic benefit to the state and to society.

REPRESENTATIVE TILTON inquired as to the percentage of kids who smoke traditional cigarettes.

MS. STONEKING said 11 percent in Alaska, which is a reduction from over 30 percent, and she attributed the reduction to the tobacco tax increase in 1997.

REPRESENTATIVE HUGHES surmised that minors are not restricted from using e-cigarettes in Alaska.

MS. STONEKING stated that prior legislation decreed that any product containing nicotine is legal only for those 19 years of age and above; however, retailers who sell e-cigarettes and [e-liquids] are not required to hold a tobacco license endorsement, which is the basis for the underage sales enforcement program, and therefore are not obligated to check ages.

REPRESENTATIVE HUGHES asked whether the use of e-cigarettes by minors would decline if there is legislation to prohibit minors from using include e-cigarettes.

MS. STONEKING advised that a combination of several strategies is needed to reduce tobacco use, including underage sales enforcement, taxes, a comprehensive program, and smoke-free places. In further response to Representative Hughes, she said

she will research the question of how much prohibiting minors from legal use would affect total use by minors.

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ALEX MCDONALD, Owner, Ice Fog Vapor, Inc., and a member of the Smoke-Free Alternatives Trade Association, informed the committee that he has been vaping for three years and opened his shop in July, 2014. Finding an alternative to combustible tobacco allowed him to quit after nineteen years of traditional tobacco use. The proposed tax on e-liquid and devices differs from a tax on tobacco in that all of the items are available online. Previous testimony has indicated that tobacco smuggling is becoming a problem in states with high tax rates on tobacco products. Mr. McDonald warned that consumers will shop online, skirting taxes and [age] checks. He stated that every shop that is a member of the Smoke-Free Alternatives Trade Association agrees that consumers must be over 19 years of age. Shops will not be able to compete with online pricing and will close, punishing those who have found an alternative to combustible tobacco products. He cited a report from England that stop-smoking services should support smokers who switch to vapor products [report not provided]. Mr. McDonald stated that the bill would harm small businesses and force Alaskans to return to combustible tobacco products, or shop out of state.

REPRESENTATIVE TILTON asked how many shops are open in Alaska.

MR. MCDONALD said approximately 25, and there are also juice manufacturers that make e-liquid, which is a substance of vegetable glycerin, propylene glycol, nicotine, and flavoring. In further response to Representative Tilton, he estimated 100 persons are employed in e-cigarette retail sales.

MR. MCDONALD continued, noting shops check identification and instruct consumers on the safe use of devices. The shops also provide a sense of community for those switching from traditional tobacco use to vaping. He again referenced a report from England that said most vaporizer use is by former or current tobacco users, which is his experience also. Mr. McDonald pointed out that unlike online stores, e-cigarette shops seek to ensure that minors do not have access to devices, and he expressed his support of proposed legislation that will limit access by minors. In response to Chair Olson, he said the online market is supported by military members, and with the tax, the local shops could not compete.

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GREGORY CONLEY, President, American Vaping Association (AVA), said he has been a leading voice for vapor products since August 2010, after he quit traditional smoking with e-cigarettes, and later formed ACA to advocate for fair and sensible policies toward vapor products. He stated his opposition to HB 304 and asked for the committee's consideration of the following: the debate about vapor products is not about good or evil, as was the previous debate of "big tobacco" versus public health; there are experts on both sides of this public health question, for example, a report from Public Health England said vapors help people quit and vapors are at least 95 percent less hazardous than smoking; nicotine does not kill, but smoke, carbon monoxide, and tar do kill. Mr. Conley encouraged skepticism and urged for legislators to look at the evidence; in fact, big tobacco and cigarette companies did not create the vapor industry and 65 percent of the U.S. market is controlled by small- and medium-sized businesses, which will be impacted by the proposed tax. Regarding adult usage, he said the Centers for Disease Control and Prevention (CDC) released a survey that found 22 percent of smokers who quit in the past year were using e-cigarettes, and smokers who quit potentially save billions of dollars in Medicaid expenses [survey not provided]. He urged the committee to closely review data on vapor use by youth, because as youth experimentation with vaping rose, there was a dramatic decline in teen smoking, which belies evidence that vaping is a gateway to traditional tobacco use. Furthermore, nationwide, only 2 percent of American youth reported using e-cigarettes over twenty days per month. He concluded that a 100 percent tax is not justified, and agreed that the tax will negatively affect low-income users because vaping will be more expensive. Also, Mr. Conley cautioned that the tax will negatively affect future marijuana retail sales.

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REPRESENTATIVE KITO asked Mr. Conley whether he quit smoking and vaping.

MR. CONLEY said he vapes. He expressed his belief that there are benefits from nicotine use.

REPRESENTATIVE KITO inquired as to the source of nicotine used in vaping products.

MR. CONLEY said products that contain nicotine are derived from tobacco or made synthetically in a lab.

REPRESENTATIVE KITO observed that tobacco companies will benefit from vaping if they are supplying nicotine, and asked whether tobacco companies are also producing synthetic nicotine.

MR. CONLEY said big tobacco is not publicly running operations that take nicotine from tobacco plants, but farmers in Sweden, Switzerland, and perhaps India are benefitting from the vapor industry right now, and are also the sources for nicotine used in nicotine patches and gum.

REPRESENTATIVE HUGHES asked whether the tax would cause e-cigarette consumers to return to traditional cigarettes because of the cost.

MR. CONLEY opined that smokers who have already switched from traditional cigarettes would buy products online, use the black market, or make their own; however, others would not strive to quit and will return to traditional cigarettes. The biggest threat is to a smoker who would not pay a high price to begin the process of quitting.

REPRESENTATIVE HUGHES asked for the price of one e-cigarette compared to the price of one traditional cigarette if the bill passes.

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MR. CONLEY advised that convenience stores sell e-cigarettes with a refill cartridge for \$7 to \$8, which would be equivalent to three-quarters of a pack of traditional cigarettes. Therefore, if the tax doubles the cost, e-cigarettes would be more expensive. In further response to Representative Hughes, he said any change in smoking rates would affect the cost of Medicaid over time.

REPRESENTATIVE HUGHES surmised that if the bill passes, Medicaid costs would go up because low-income smokers will return to traditional cigarettes.

MR. CONLEY opined that Alaska would pay higher Medicaid costs than a state that allows adults to "switch unimpeded."

REPRESENTATIVE HUGHES asked what percentage of e-liquids do not contain nicotine.

MR. CONLEY referred to a survey that found in the United Kingdom (U.K.) 15 percent of adult vapor product users were using zero-nicotine, and he estimated from his own experience that the percentage in the U.S. is in a similar range [survey not provided]. He stated his strong opposition to taxing products that do not contain nicotine.

REPRESENTATIVE JOSEPHSON asked for information on regulation and the excise tax rate on e-cigarettes in other states.

MR. CONLEY said the first state to tax vapor products was Minnesota in 2010. Minnesota redefined tobacco products to include anything that contains nicotine, but the tax does not include devices. In-state manufacturers pay a 95 percent tax when the nicotine comes into the state, and the manufacturers supply nearly the entire vapor market. North Carolina and Louisiana assess a tax of \$0.05 per milliliter of nicotine-containing liquid, and Kansas has delayed its proposed tax of \$0.20. In further response to Representative Josephson, he explained that four states impact the industry; in addition, Washington, DC passed a tax of approximately 68 percent of wholesale on all vapor products, including devices, which resulted in the closure of two out of five vape shops.

CHAIR OLSON recalled testimony from the tax division that if a vaping device is packaged without a product, it would not be taxed, however, if the device and product are packaged together the tax would apply.

MR. CONLEY pointed out that the bill is vague in that batteries are not to be taxed, thus a device without a battery would garner a 100 percent tax.

CHAIR OLSON will get clarification from tax division.

[HB 304 was held over.]

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ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 4:04 p.m.