

SENATE FINANCE COMMITTEE  
February 16, 2018  
9:04 a.m.

9:04:07 AM

CALL TO ORDER

Co-Chair MacKinnon called the Senate Finance Committee meeting to order at 9:04 a.m.

MEMBERS PRESENT

Senator Anna MacKinnon, Co-Chair  
Senator Click Bishop, Vice-Chair  
Senator Peter Micciche  
Senator Donny Olson  
Senator Gary Stevens  
Senator Natasha von Imhof

MEMBERS ABSENT

Senator Lyman Hoffman, Co-Chair

ALSO PRESENT

Senator Pete Kelly, Sponsor; Tim Lamkin, Staff, Senator Gary Stevens; Alison Kulas, Executive Director, Advisory Board on Alcoholism & Drug Abuse, Juneau; Kristin Cox, Tobacco Prevention and Control Program, National Council on Alcoholism and Drug Dependence, Juneau.

PRESENT VIA TELECONFERENCE

Jay Butler, Chief Medical Officer, Department of Health and Social Services; Pamela Howard, Self, Soldotna; Zachary Stockton, Self, Kenai; Jennifer Brandt, Self, Wasilla; Ethan Brandt, Self, Wasilla; Noel Crowley Bell, Self, Palmer; Terrence Robbins, Self, Ketchikan; Robin Minard, Director of Public Affairs, Matsu Health Foundation, Wasilla; Jennifer Summers, Self, Anchorage; Joseph Yourkoski, Self, Nikiski; Joe Darnell, Chief Investigator, Youth Tobacco Enforcement Program, Division of Behavioral Health, Department of Health and Social Services, Anchorage.

SUMMARY

SB 15 E-CIGS: SALE TO AND POSSESSION BY MINOR

SB 15 was HEARD and HELD in committee for further consideration.

SB 125 EXTEND BOND AUTH FOR INTERIOR ENERGY PROJ

CSSB 125(CRA) was REPORTED out of committee with a "no recommendation" recommendation and with one zero fiscal note: FN1(CED).

#sb125

SENATE BILL NO. 125

"An Act relating to the financing and issuance of bonds for a liquefied natural gas production system and natural gas distribution system; and providing for an effective date."

[9:04:32 AM](#)

Co-Chair MacKinnon informed that SB 125 was heard and held on Monday, February 12, 2018. The public hearing was opened and closed. The committee had discussed the fiscal notes and there were no proposed amendments.

SENATOR PETE KELLY, SPONSOR, stated that he appreciated the committee hearing the bill.

Vice-Chair Bishop stated that FN1 was a zero fiscal note from the Department of Commerce, Community and Economic Development.

Vice-Chair Bishop MOVED to report CSSB 125(CRA) out of Committee with individual recommendations and the accompanying fiscal note. There being NO OBJECTION, it was so ordered.

CSSB 125(CRA) was REPORTED out of committee with a "no recommendation" recommendation and with one zero fiscal note: FN1(CED).

[9:06:22 AM](#)

AT EASE

[9:08:48 AM](#)

RECONVENED

#sb15

SENATE BILL NO. 15

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

[9:08:48 AM](#)

Co-Chair MacKinnon read the title of the bill.

Senator Stevens, Sponsor, spoke to the bill. He stated that the purpose of the bill was to protect children from becoming addicted to nicotine. The bill clearly restricted the possession and sale of electronic smoking products containing nicotine. Additionally, the bill gave agencies the means to enforce the restriction.

TIM LAMKIN, STAFF, SENATOR GARY STEVENS, showed a brief slideshow that depicted the components of e-cigarettes (copy on file). He cited information from the United States Center for Disease Control (CDC) that indicated there were approximately 4 million middle school and high school students using the products nationwide. In Alaska, approximately 15 to 25 percent of middle school and high school students had been exposed to e-cigarette products.

Mr. Lamkin alleged that there was a statutory loophole that made it illegal to buy or sell tobacco products to minors while it remained legal for minors to possess the products. There was no provision for law enforcement or investigators to enforce or issue violations for minors in possession of nicotine. There was no provision for citing vendors for selling e-cigarette products to minors. He referenced an informal survey that showed about 78 percent of Alaskan educators had concern about youth use of e-cigarette products.

[9:11:49 AM](#)

Mr. Lamkin continued to discuss SB 15. He discussed the lack of available information on the safety of e-cigarette products. He thought that there would be information that suggested the chemicals used in e-cigarettes were safer than tobacco but contended that it was not true. He details that although the United States Food and Drug Administration (FDA) had approved certain chemicals for consumption, the chemicals were not necessarily safe for absorption through the lungs. He thought the long-term effects of e-cigarettes were only beginning to be studied.

Mr. Lamkin proposed that the prudent way to deal with e-cigarette usage was to use the same policy and treatment as with tobacco usage. The bill addressed commercial activity and required a special endorsement for sales (as with tobacco sales). He discussed local businesses that were selling e-cigarette products and noted that there was no current way to identify such businesses.

Mr. Lamkin addressed potential opposition to the bill. He thought that opponents would suggest that there were adequate federal laws in place. He mentioned the Alcohol, Drug Abuse, and Mental Health Administration Reorganization Act of 1992, which required states to enact and enforce laws restricting youth access to substances.

[9:15:22 AM](#)

Mr. Lamkin discussed the FDA's limited enforcement resources. He contended that the federal penalties for vendors were not enough. He thought the bill was needed for any meaningful monitoring and enforcement of youth e-cigarette use. He discussed the tobacco endorsement proposed by the bill, which he opined was not onerous nor damaging to businesses.

Mr. Lamkin discussed the use of e-cigarettes as a smoking cessation tool, which he thought precluded use of the products by youth. He reiterated that the purpose of the bill was to prevent youth from using tobacco products.

Mr. Lamkin relayed that in August 2017, the FDA had ruled that for regulatory purposes, e-cigarettes would be treated as tobacco products. There were currently no requirements to verify or regulate marketing of the chemicals that went into the devices. He referenced a study from the University

of North Dakota that indicated 51 percent of samples tested contained higher amounts of nicotine than indicated on the label.

Mr. Lamkin showed a sample of an e-cigarette. He read fine print from the e-cigarette label that stated, "may contain trace amounts of nicotine." He thought some vendors were not making an effort to restrict the access of e-cigarettes to minors. He summarized that the bill was about closing a loophole and providing tools for state agencies to monitor and enforce the restrictions.

[9:19:14 AM](#)

Mr. Lamkin detailed that an important component of the bill was the differentiation between different types of tobacco products. Changes to statute would address both relevant statutes related to tobacco products and alternative tobacco products. He addressed the Sectional Analysis for the Committee Substitute (CS) for SB 15(JUD):

Section 1: AS 11.76.IOS(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.IOS(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(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 4: 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 5: 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 6: 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 7: 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 8: 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.

[9:23:18 AM](#)

Mr. Lamkin detailed that the sponsor had worked with the previous committee of referral as well as Senator Micciche (who had sponsored legislation related to smoking) to align definitions for e-cigarettes.

Mr. Lamkin continued to address the Sectional Analysis:

Section 9: AS 11.81.900(b) Establishes a definition for "electronic smoking product," summarized as follows:

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

(ii) a component, solution, alternative tobacco product, e-liquid, e-juice, vapor product, flavoring, or other related product of an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device of any size or shape

used for, or to assist with, aerosolizing and inhaling chemical substances that may cause an adverse effect on human health;

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

Section 10: 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 11: AS 43.50.100(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 12: 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 13: 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)

[9:27:17 AM](#)

Senator Micciche asked about the significance of the penalty for "after 3 convictions" in Section 13 of the Sectional Analysis.

Mr. Lamkin stated that the new statute would revoke a license indefinitely after 3 convictions to deter businesses from selling e-cigarette products to youth.

Mr. Lamkin continued to address the Sectional Analysis:

Section 14: 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 15: 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 16: 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 17-22: 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.

Mr. Lamkin relayed that Sections 17 - 22 were conforming and were related to the appeal and hearing process when vendors had been cited for violation.

Mr. Lamkin continued to address the Sectional Analysis:

Section 23: 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 24: 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.

Mr. Lamkin pointed out that there had been a drafting error on page 6, Line 13 of the bill. The number of the statute referenced was incorrect.

Co-Chair MacKinnon stated that the committee would include the corrected reference in a committee substitute.

[9:31:31 AM](#)

Mr. Lamkin explained that language in Section 24 was in aid of making a distinction in tobacco statutes versus statutes concerning other newer tobacco products. He continued to address the Sectional Analysis:

Section 25: 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 26: 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.

[9:32:31 AM](#)

AT EASE

[9:33:32 AM](#)

RECONVENED

JAY BUTLER, CHIEF MEDICAL OFFICER, DEPARTMENT OF HEALTH AND SOCIAL SERVICES (via teleconference), testified in support of the bill. He thought Mr. Lamkin had provided a good background on e-cigarettes. He knew there was public opinion that suggested e-cigarettes were safer than conventional cigarettes. He considered three factors: the effects of e-cigarette use for smoking cessation, intrinsic health effects of e-cigarettes, and the effect on youth initiation of combustible products. He thought the focus of SB 15 was the initiation of youth into using smoking combustible products.

Dr. Butler addressed the public health perspective on e-cigarettes as it related to youth. He referenced a study by the National Academy on Science, Engineering and Medicine that gave an extensive review of the health effects of e-cigarettes. There had been substantial evidence that use of e-cigarettes increased risk of combustible tobacco cigarettes among youth and young adults. He pointed out that it was important to recognize that refillable e-cigarette devices could also be drug delivery devices. He mentioned the Anchorage outbreak of a drug called "spice," where public health officials became aware that the drug was being used with liquids packaged as car air freshener and vaped using refillable e-cigarettes. He echoed Mr. Lamkin's comments regarding the lack of knowledge as to where the devices could be purchased.

Dr. Butler continued his testimony. He discussed the role of the federal government and recalled a 2016 FDA ruling to extend regulatory authority to all tobacco products, including e-cigarettes. It allowed the FDA to regulate manufacturing, distribution and marketing of the products including e-cigarettes; as well as automatic provisions to address youth access. More recently the FDA had announced that it would delay a ruling on regulation of e-cigarettes until August of 2022. He thought it was important to have leadership to have regulation of e-cigarettes that was as beneficial to health as possible.

[9:37:39 AM](#)

Senator Stevens understood that if a minor was addicted to nicotine it was possible to get medical approval for use of nicotine products for smoking cessation.

Dr. Butler understood the same, although noted that the devices in question were not recognized as tobacco cessation tools by the FDA. There were other tools for nicotine replacement therapy.

[9:38:35 AM](#)

PAMELA HOWARD, SELF, SOLDOTNA (via teleconference), spoke in support of the bill. She relayed that she had been a school nurse for over 30 years and had been involved in teen peer health education. She referenced statistics that showed increased e-cigarette use by middle school and high school students. She considered that e-cigarettes were a gateway to use of tobacco products. She referenced a Youth Risk Behavior Survey and thought that although students were not intending to use nicotine, it had been found that flavored juices in e-cigarettes contained nicotine. She thought even though it was not legal for minors to purchase the devices, it was possible to obtain them. Peer educators that she worked with had expressed great concern on the number of students that were concealing use of e-cigarettes.

Ms. Howard relayed anecdotal stories about the frequency she had seen minors using vape devices. She discussed the popularity and increased use of the device. She quoted the United States Surgeon General's comments about e-cigarettes use by youth being a significant public health concern and the importance of action taken by parents, educators and policy-makers.

[9:43:03 AM](#)

ZACHARY STOCKTON, SELF, KENAI (via teleconference), testified in support of the bill. He relayed that he was a junior at Kenai Central High School. He had seen increased use of vape devices. He observed many students that had obtained the devices in various ways including through the internet. He had seen students using e-cigarettes in bathrooms and classrooms. He thought youth usage was increasing.

[9:44:39 AM](#)

ALISON KULAS, EXECUTIVE DIRECTOR, ADVISORY BOARD ON ALCOHOLISM & DRUG ABUSE, JUNEAU, testified in support of the bill. She relayed that she had served as a tobacco regulatory science fellow with the National Academy of Medicine, placed at the FDA Center for Tobacco Products. She believed the bill was an important step in protecting youth. She stated that nicotine was a highly addictive substance that harmed the developing brains of teens. She cited research that indicated that nicotine use re-wired the brains of teenagers and made them more susceptible to other addictive substances. She discussed the common use of e-cigarettes. She emphasized that the use of products containing nicotine in any form were unsafe for youth.

Ms. Kulas continued her testimony. She thought the bill was needed to align the e-cigarette products (now deemed tobacco products by the federal government) with the protections already in place for other tobacco products. She discussed the importance of tobacco retailers preventing sales to minors. She thought youth would be further protected by extending the tobacco endorsement license requirement to all tobacco products.

[9:47:28 AM](#)

KRISTIN COX, TOBACCO PREVENTION AND CONTROL PROGRAM, NATIONAL COUNCIL ON ALCOHOLISM AND DRUG DEPENDENCE, JUNEAU, spoke in support of the bill. She discussed the choice of fruit flavors as tools for marketing to children and asserted that the use of flavors initiated youth into nicotine use and addiction. She referenced a 2017 study by the Yale School of Medicine that indicated that non-smoking teens that used e-cigarettes were seven times more likely to start smoking than non-vaping peers. Additionally, the study found that vaping increased the risk of smoking, but the inverse was not true. She discussed the increased rate of youth vaping.

[9:49:37 AM](#)

Co-Chair MacKinnon OPENED public testimony.

JENNIFER BRANDT, SELF, WASILLA (via teleconference), testified in support of the bill. She had two children in middle school. She had been surprised at hearing of her children's peer's usage of e-cigarettes. She discussed the

addictive nature of nicotine. She referenced a report by the Department of Health and Social Services. She mentioned the effects of nicotine on brain development.

[9:51:25 AM](#)

ETHAN BRANDT, SELF, WASILLA (via teleconference), spoke in support of the bill. He discussed the danger of addiction and nicotine. He thought people were being misinformed about the effects of e-cigarettes.

Senator Micciche asked about the grade of the testifier.

Mr. Brandt indicated he was in the eighth grade.

[9:52:28 AM](#)

NOEL CROWLEY BELL, SELF, PALMER (via teleconference), testified in support of the bill. She thanked the sponsor of the bill for the comprehensive nature of the legislation. She thought shops that sold tobacco products needed more oversight. She asserted that nicotine was a danger to adolescent brains. She referenced research that indicated that if an individual had not used nicotine before the age of 21, they would most likely not become addicted. She urged the committee to pass the bill.

[9:54:07 AM](#)

TERRENCE ROBBINS, SELF, KETCHIKAN (via teleconference), testified in support of the bill. He recalled trying Kodiak brand chewing tobacco at the age of 13. He thought flavored tobacco products were enticing to youth and would lead to addiction. He agreed with the provisions of the bill.

[9:55:13 AM](#)

ROBIN MINARD, DIRECTOR OF PUBLIC AFFAIRS, MATSU HEALTH FOUNDATION, WASILLA (via teleconference), spoke in support of the bill. She referenced a 2016 investigation by DHSS that found there was a 26 percent sell rate of vaping fluid to minors in the vape shops investigated. Additionally, there was a 9 percent rates of sales of e-cigarettes to minors. She thought the bill was about protecting the youth of Alaska. She considered that e-cigarettes were a grooming tool for accepting and becoming dependent upon smoking and

nicotine. She referenced a 2015 report that showed a correlation between e-cigarette and tobacco use.

[9:57:01 AM](#)

JENNIFER SUMMERS, SELF, ANCHORAGE (via teleconference), testified in support of the bill. She discussed the proportion of youth that became smokers. She thought that e-cigarettes were the most commonly used tobacco products amongst youth. She discussed marketing designed to entice young people to use e-cigarettes. She was the coach of a youth sports team. She had learned that e-cigarettes were extremely popular among junior high and high school students. She discussed the easily concealed nature of e-cigarettes. She thought that there was wide-spread belief that e-cigarettes were safe, despite evidence to the contrary. She thought the bill would reduce access to e-cigarettes by youth.

[9:59:22 AM](#)

JOSEPH YOURKOWSKI, SELF, NIKISKI (via teleconference), testified in support of the bill. He was a sophomore at Nikiski Middle High School. He relayed that his schoolmates had no problem obtaining e-cigarette devices. He thought his peers believed that e-cigarettes were safe to use. He was a cancer survivor.

[10:00:21 AM](#)

JOE DARNELL, CHIEF INVESTIGATOR, YOUTH TOBACCO ENFORCEMENT PROGRAM, DIVISION OF BEHAVIORAL HEALTH, DEPARTMENT OF HEALTH AND SOCIAL SERVICES, ANCHORAGE (via teleconference), spoke in support of the bill. He relayed that he was the chief investigator for underage tobacco enforcement for the state. He discussed surveys on the retail violation rate of selling vaping products to youth. He indicated that there was a 26 percent sell rate of e-juice to minors compared to a 5.4 percent sell rate of tobacco to minors. He thought it was important that the bill had an endorsement added to tobacco retailers.

Senator Stevens asked Mr. Darnell how the bill would affect his office and job.

Mr. Darnell shared that the bill would not impact his job to a great degree. He discussed doing compliance checks

with tobacco retailers and noted that he would be adding vape shops to his purview.

Co-Chair MacKinnon CLOSED public testimony.

Senator Micciche asked when the bill was noticed.

Co-Chair MacKinnon indicated that the bill had been noticed the previous Thursday.

Senator Micciche noted that there was no testimony from vape shops. He thought there was an indication that the shops realized it was important that the sale to minors not occur.

Co-Chair MacKinnon had expected to hear from the various shops that might be affected by the proposed legislation. She advised the committee that the fiscal notes would be reviewed the next time the bill was considered. She informed that proposed amendments were due the following Monday.

Co-Chair MacKinnon discussed the schedule for the following week.

#

ADJOURNMENT

10:05:20 AM

The meeting was adjourned at 10:05 a.m.