

ALASKA STATE LEGISLATURE
SENATE LABOR AND COMMERCE STANDING COMMITTEE

February 21, 2017

1:31 p.m.

MEMBERS PRESENT

Senator Mia Costello, Chair
Senator Shelley Hughes, Vice Chair
Senator Kevin Meyer
Senator Gary Stevens
Senator Berta Gardner

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

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."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 15

SHORT TITLE: E-CIGS: SALE TO AND POSSESSION BY MINOR

SPONSOR(S): SENATOR(S) STEVENS

01/13/17	(S)	PREFILE RELEASED 1/13/17
01/18/17	(S)	READ THE FIRST TIME - REFERRALS
01/18/17	(S)	L&C, JUD
02/14/17	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)
02/14/17	(S)	Heard & Held
02/14/17	(S)	MINUTE(L&C)
02/21/17	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

TIM LAMKIN, Staff

Senator Gary Stevens

Alaska State Legislature

POSITION STATEMENT: Provided information related to SB 15 on behalf of the sponsor.

JOE DARNELL, Investigator

Division of Behavioral Health

Department of Health and Social Services (DHSS)

Anchorage, Alaska

POSITION STATEMENT: Provided information related to SB 15.

BETTY MACTAVISH, representing herself

Kodiak, Alaska

POSITION STATEMENT: Testified in support of SB 15.

RACHAEL TODD, representing herself

Soldotna, Alaska

POSITION STATEMENT: Testified in support of SB 15.

STEVEN MAPES

Smoke Free Alternative Trade Association

Kenai, Alaska

POSITION STATEMENT: Testified in opposition to SB 15.

ASHLEY PELTIER, representing herself

Meadow Lakes, Alaska

POSITION STATEMENT: Testified in support of SB 15.

AMANDA LENHARD, representing herself

Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 15.

PATTY GINSBERG, representing herself

Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 15.

ALICIA MULLER, representing herself

Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 15.

JOY CLARK, representing herself

Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 15.

ALISON HALPIN, representing herself
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to SB 15.

JAYCE ROBERTSON, representing himself
Kenai, Alaska

POSITION STATEMENT: Testified in opposition to SB 15.

MICHAEL PATTERSON, CDC/ATCA/CAC
Juneau, Alaska

POSITION STATEMENT: Testified in support of SB 15.

LAURA NIEMCZY
American Cancer Society-Cancer Action Network
Nikiski, Alaska

POSITION STATEMENT: Testified in support of SB 15.

JACKSON BLACKWELL, student advocate
American Cancer Society-Cancer Action Network
Soldotna, Alaska

POSITION STATEMENT: Testified in support of SB 15.

JOSEPH YOURKOSKI, student advocate
American Cancer Society-Cancer Action Network
Nikiski, Alaska

POSITION STATEMENT: Testified in support of SB 15.

ACTION NARRATIVE

[1:31:27 PM](#)

CHAIR MIA COSTELLO called the Senate Labor and Commerce Standing Committee meeting to order at 1:31 p.m. Present at the call to order were Senators Gardner, Meyer, Stevens, Hughes, and Chair Costello.

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

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CHAIR COSTELLO announced the consideration of SB 15. The bill was previously heard on February 14 and public testimony is closed. The intent is to take questions from members, continue public testimony and hold the bill for further consideration.

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SENATOR STEVENS, speaking as sponsor of SB 15, stated that the bill seeks to protect young people from e-cigarettes.

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TIM LAMKIN, Staff, Senator Gary Stevens, Alaska State Legislature, stated that SB 15 is about restricting youth access to e-cigarettes and tobacco products. He highlighted that the [FDA] has deemed e-cigarettes as a tobacco product and most people agree that restricting youth access is a good idea. The bill asks vendors to check the box when they renew or apply for a new business license indicating they want the endorsement to sell e-cigarettes.

He noted that the new documentation he shared with the committee appears to oppose the legislation. It includes studies from the United Kingdom that claim that e-cigarettes: may be a safer alternative than smoking, may be an effective tobacco cessation product, may be harmless, and don't encourage someone to take up smoking. Two other documents that appear to be from U.S. sources claim that nicotine doesn't cause cancer and is therefore okay, and that e-cigarettes save billions of dollars in Medicaid expenses.

SENATOR HUGHES asked which documents he is referencing.

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CHAIR COSTELLO reconvened the meeting.

MR. LAMKIN stated that none of the documents he described are relevant to the point of the bill, which is to restrict youth access to e-cigarettes. This bill seeks to require vendors selling these products in Alaska to prove that they are not selling to youths. Current data indicates that youths are able to purchase these products. SB 15 not only closes the loophole in statute that allows youth to possess e-cigarettes, but also requires vendors to prove they are not selling to youths.

He warned the committee it would hear that there is no need for the state to step in since the FDA has deemed e-cigarettes as a tobacco product. He emphasized that is not accurate. Rather, the federal government looks to state business license endorsements to identify who is selling these products.

SENATOR HUGHES asked if it is currently legal for minors to purchase e-cigarettes because she heard there is a federal law prohibiting minors from purchasing them. She also mentioned an

epidemiology bulletin that Dr. Butler talked about that she found a bit confusing.

MR. LAMKIN clarified that there isn't a federal law but through regulation the FDA restricts youths from purchasing e-cigarettes if they are under age 18. He noted that Alaska law specifies 19 years-of-age to purchase e-cigarettes.

CHAIR COSTELLO listed the individuals available to answer questions. She asked Senator Hughes if she would like to question any of those individuals.

SENATOR HUGHES said the document she referenced is the 2015 State of Alaska Epidemiology Bulletin that says that in Alaska a person must be at least 19 years old to purchase e-cigarettes.

MR. LAMKIN clarified there is a distinction between purchasing and possession. The current loophole is that youth can possess e-cigarettes. The bill makes it illegal for youth to purchase or possess e-cigarettes. He deferred to Mr. Darnell to speak to the relationship between federal and state enforcement.

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JOE DARNELL, Investigator, Division of Behavioral Health, Department of Health and Social Services (DHSS), Anchorage, Alaska, advised that Dr. Butler's comments from a year ago referenced the statute that deals with products that dispense nicotine. It was designed primarily for nicotine replacement therapy and because e-cigarettes would dispense nicotine they were included in the loop. SB 15 closes that loophole.

Addressing the issue of federal versus state enforcement, he explained that the FDA has a contract with a private company to do compliance checks in Alaska but to his knowledge there have been none. He advised that his office receives complaints from parents and police departments about youths buying e-products and if the federal government is the enforcement entity, those complaints will need to be filed with the FDA. It's also important that the federal government intends to expand the Synar regulation and require states to have a law such as SB 15. Compliance will be tied to block grants that come into the state.

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SENATOR GARDNER asked the name of the federal policy that will tie block grants to having a state law in place.

MR. DARNELL said it is the Synar regulation that requires each state and territory to have youth access laws for tobacco on the books and enforce them. To keep the block grants safe the division conducts sample surveys to ensure that underage sale rates for tobacco products are no higher than 20 percent. Penalties are assessed if the rate is above 20 percent, and the state loses part of the block grants. Between this year and next e-cigarettes will be added to that regulation. At that point the state will be required to have enacted a bill such as SB 15.

SENATOR GARDNER asked him to spell the name of the regulation.

MR. DARNELL provided a phonetic spelling for Synar.

SENATOR GARDNER asked if the state generally enforces just state laws, not federal laws.

MR. DARNELL replied the state doesn't always have the authority to enforce federal laws. That is the case with the Synar regulation; the state doesn't have jurisdiction.

SENATOR HUGHES asked if there is any federal effort to regulate packaging and marketing of e-cigarette products.

MR. DARNELL said he couldn't say for e-cigarettes, but tobacco ads cannot target youth.

SENATOR HUGHES observed that nothing in the bill addresses marketing and packaging of e-cigarettes

CHAIR COSTELLO relayed her understanding that if a student has an e-cigarette on their person while in school, teachers or administrators could take the product away until the end of the day when the student leaves the school grounds. She asked if he had information on the prevalence of e-cigarettes on school buses and how this bill would affect the bus driver's authority when he/she sees a student in possession.

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MR. LAMKIN said his information is anecdotal but reports are that students do take e-products to school. While the item may be confiscated, the school is obliged to return it when the student leaves the school grounds. If the bill were to pass, a student in possession of an e-product could be cited.

SENATOR HUGHES asked, if the bill were to pass, would the school confiscate the e-product or would law enforcement be called.

MR. LAMKIN said his expectation is the school would confiscate the item and contact the appropriate law enforcement or the parents.

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CHAIR COSTELLO opened public testimony on SB 15.

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BETTY MACTAVISH, representing herself, Kodiak, Alaska, testified in support of SB 15. She said she is a mother, a grandmother, and a teacher. She also works for a transitional housing program for youths and is a field representative for the American Cancer Society Cancer Action Network. She described a recent gathering of a wide spectrum of adults, all of whom supported protecting youth from the sale of e-cigarettes. When the issue is discussed, parents frequently asked why this wasn't addressed earlier. Many thought it was. She described e-cigarettes as a training tool lifelong tobacco use. She urged the committee to pass SB 15.

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RACHAEL TODD, representing herself, Soldotna, Alaska, testified in support of SB 15. She said she has been involved with tobacco awareness programs since she was 13 years old. Before she graduated from high school she saw e-cigarette activity inside the school and on social media from kids who ranged in age from 13 to 18. She doesn't know how youths access the product but there is peer pressure to use e-products and many youths believe they are not dangerous. She shared her belief that students should not be allowed to use e-products until they are 19 and aware of the impact they can have. She urged the committee to pass the bill so more teens can be safe for longer.

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STEVEN MAPES, Smoke Free Alternative Trade Association, Kenai, Alaska* testified in opposition to SB 15. He described the legislation as redundant and a waste of time because the federal regulations that pertain to nicotine and e-products address the age requirements for the sale and possession of nicotine delivery devices and nicotine products in all states. Vape shops in Alaska are adhering to those regulations. They are subject to random spot checks that do happen, they post age requirements on the entry doors, and they are required to ID customers who appear to be younger than 27 years of age. He emphasized that these shops are in the business of getting adults off of tobacco products and offering a healthier alternative to smoking. He

reiterated that there is no need for SB 15 because the federal government has already outlawed the sale and possession of e-products to minors.

SENATOR GARDNER asked if he heard the earlier testimony that the federal government is expected to tie block grants to the passage of this type of legislation.

MR. MAPES said he heard the testimony. He added that the FDA regulations deems e-products the same as tobacco products.

SENATOR GARDNER asked if this bill would harm his business.

MR. MAPES said no, but it will harm the state coffer.

CHAIR COSTELLO noted that the bill has several fiscal notes and the only one that is positive is from the Division of Corporations, Business, and Professional Licensing with the Department of Commerce, Community and Economic Development (DCCED).

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ASHLEY PELTIER, representing herself, Meadow Lakes, testified in support of SB 15. She emphasized the importance of doing everything possible to restrict youth access to vaping products. She related that she has seen her 5- and 7-year-old nephews emulate smoking traditional cigarettes and recently overheard them talking about vaping cloud contests. She advised that e-cigarettes have surpassed traditional cigarettes as the most commonly used form of tobacco products among youths. According to the 2015 youth risk behavioral survey, 26 percent of Mat-Su youth reported current use of e-cigarettes, compared to 13 percent of youth who reported use of traditional cigarettes. She highlighted that in 2016 the surgeon general called for action to be taken on e-cigarette use by youth. One of those actions was to restrict youth access to e-cigarettes and SB 15 would do that, she said.

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AMANDA LENHARD, representing herself, Anchorage, Alaska, testified in support of SB 15. She pointed out that there are age restrictions for tobacco and e-cigarette products. In Alaska those products are not legal for anyone under the age of 18 yet 36 percent of youth surveyed report having used e-cigarettes. She emphasized the need for regulations to make sure that youth are not able to access e-products. Tobacco stores, restaurants

and bars have consequences for selling to minors and e-cigarette shop owners should have the same responsibility, she said.

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PATTY GINSBERG, representing herself, Anchorage, Alaska, testified in support of SB 15. She is a lung cancer survivor and that experience has made her an advocate for anything that discourages the use of dangerous products. The evidence is fairly clear that e-products are dangerous to one's health and SB 15 is one tool to discourage the use of those products. She said she also believes it is important to hold businesses accountable, not just the salesclerk. SB 15 does that.

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ALICIA MULLER, representing herself, Anchorage, Alaska, testified in support of SB 15. She said she graduated from high school last year and is astonished at the number of people who use e-products. She finds it disgusting and would like to see some follow-up and enforcement.

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JOY CLARK, representing herself, Anchorage, Alaska, testified in support of SB 15. She said she is a mother of an 8-year-old son and she sits on a number of coalitions that have looked at the awareness that youth have about e-cigarettes and vape pens. These middle and high school students generally feel they aren't harmful either short-term or long-term. This is an uninformed view, but these products are very alluring to youth, her young son included.

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ALISON HALPIN, representing herself, Anchorage, Alaska, testified in opposition to SB 15. She said the legislation isn't necessary because the law is already in Alaska statute. It says that all stores that sell tobacco products are required to post the legal age for purchase in the store. She supports the existing law, but cannot support a bill that requires special licensing that does not pertain to businesses that sell products that are FDA regulated and do not fall within the parameters of the special licensing of a tobacco product retailer. She pointed out that the bill allows children to purchase e-products with parental consent and questioned whether it would open the door to allowing a child to purchase tobacco products if they had a note from their parent. She said the state needs enforcement of existing bills not new legislation.

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JAYCE ROBERTSON, representing himself, Kenai, Alaska, testified in opposition to SB 15. He said e-cigarettes have helped him to stop smoking traditional tobacco products. He agreed with earlier testimony that the bill is a waste of time, effort, and money because the federal government already regulates tobacco, nicotine, and e-cigarettes. The local vape shops he frequents already abide by the rules. He suggested the committee look at the research that the Royal College of Physicians has done on the benefits of vaping products in helping adults stop using traditional tobacco products.

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MICHAEL PATTERSON, CDC/ATCA/CAC, Juneau, Alaska, testified in support of SB 15. He advised that the particles in e-cigarette smoke are so fine that they can pass through paint, they carry carcinogens, and they are not safe. Children should be protected from gaining access and that protection should not have a dollar amount attached to it. He watches middle school kids get off the bus and immediately pull out e-cigarettes and start smoking. The parents don't even know their child is smoking unless they happen to see it because there is no odor. Kids are also smoking e-cigarettes in school when the teacher's back is turned. The problem is that there are kids in the school who have a respiratory illness or disease and the carcinogens can exacerbate the problem or put to student's life in danger. He said he calls these products silent killers. He shared that he is in the end stages of COPD and that it is life threatening when someone is vaping, and he is unaware of that fact. He thanked the committee for its work trying to make things better and safer for kids and adults.

CHAIR COSTELLO thanked Mr. Paterson for his testimony and the advocacy message he provides in schools, posters, and television.

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LAURA NIEMCZY, American Cancer Society-Cancer Action Network, Nikiski, Alaska, testified in support of SB 15. She said she is a middle school teacher and she sees far too many students vaping because they think it is cool and harmless. Youth have been well educated that tobacco products are not healthy, but that education is lacking for e-cigarettes and vaping devices. E-product marketing also targets youth. Should SB 15 pass, it would be possible to track the businesses that are selling these products and conduct compliance checks. Right now, that's not possible. She emphasized that anything that can be done to keep our youth healthy and safe should be done. The argument that e-

cigarettes are safer than smoking doesn't mean they are safe or healthy. She urged the committee to pass SB 15.

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JACKSON BLACKWELL, student advocate, American Cancer Society-Cancer Action Network, Soldotna, Alaska, testified in support of SB 15. He said he is a senior at Soldotna High School, the class president, the president of the national honor society, and has been a tobacco prevention advocate for the last four years. During that time the level of e-cigarette use has grown exponentially. When he returned after serving for six months as a page for U.S. Senator Lisa Murkowski, he found the rate of e-cigarette use alarming. SB 15 is a necessary tool to address this health concern.

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JOSEPH YOURKOSKI, American Cancer Society-Cancer Action Network, student advocate, Nikiski, Alaska, testified in support of SB 15. He said he is a freshman at Nikiski High School and he sees students smoking e-cigarettes and vaping devices standing in the school parking lot. Seventh graders have also started using e-cigarettes. They are well schooled in the dangers of tobacco but don't seem to realize that e-cigarettes and vaping devices are just as unhealthy. He urged the committee to help change that perception.

SENATOR HUGHES asked where students purchase these products.

MR. BLACKWELL replied his experience is they purchase them online and also in e-cigarette shops. He referenced the data from the youth risk behavioral survey and the number of e-cigarette shops that are out of compliance with the measures that are currently in place. It demonstrates that youth are getting these products from a variety of places.

MR. YOURKOSKI agreed that youth access e-cigarettes in any number of shops and online.

SENATOR HUGHES asked if the data referenced today came from vape shops or all types of vendors.

MR. BLACKWELL deferred the question to Mr. Darnell.

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SENATOR HUGHES asked what they would think if minors were not permitted in vape/smoking shops.

MR. BLACKWELL said he believes it would be a good idea.

MR. YOURKOSKI said he believes that reducing youth access would reduce usage.

SENATOR HUGHES related that a physician brought it to her attention that after school every day he watches as a steady flow of young people visit a smoke shop that is down the street from his clinic.

CHAIR COSTELLO asked Jackson and Joseph if they were planning to be involved in the educational outreach should the bill pass.

MR. BLACKWELL said he's already involved in educational outreach and will continue to do that.

MR. YOURKOSKI agreed with Jackson adding that they are implementing more e-cigarette and vaping devices in their classes.

CHAIR COSTELLO asked if they have a video that could be shared with students.

MR. BLACKWELL said they didn't have a video but there are lots of materials available from the various chapters of Teens Against Tobacco Use and the Alaska Tobacco Control Alliance, among others.

CHAIR COSTELLO said one of the highlights of serving is when young people come to advocate for their cause. She invited Jackson and Joseph to join her after the meeting in a short video for the committee Facebook page.

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CHAIR COSTELLO closed public testimony on SB 15 and held the bill in committee for further consideration.

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There being no further business to come before the committee, he adjourned the meeting at 2:30 p.m.