

HOUSE FINANCE COMMITTEE  
May 5, 2022  
9:05 a.m.

9:05:24 AM

CALL TO ORDER

Co-Chair Merrick called the House Finance Committee meeting to order at 9:05 a.m.

MEMBERS PRESENT

Representative Neal Foster, Co-Chair  
Representative Kelly Merrick, Co-Chair  
Representative Dan Ortiz, Vice-Chair  
Representative Ben Carpenter  
Representative Bryce Edgmon  
Representative DeLena Johnson  
Representative Andy Josephson  
Representative Bart LeBon  
Representative Sara Rasmussen  
Representative Steve Thompson  
Representative Adam Wool

MEMBERS ABSENT

None

ALSO PRESENT

Senator Gary Stevens, Sponsor; Tim Lamkin, Staff, Senator Gary Stevens; Crystal Koeneman, Staff, Representative Sarah Rasmussen.

PRESENT VIA TELECONFERENCE

Nicole Reynolds, Deputy Director, Tax Division, Department of Revenue

SUMMARY

CSSB 45 (FIN)

AGE FOR NICOTINE/E-CIG; TAX E-CIG.

CSSB 45 (FIN) was HEARD and HELD in committee for further consideration.

Co-Chair Merrick reviewed the meeting agenda.

#sb45

CS FOR SENATE BILL NO. 45 (FIN)

"An Act raising the minimum age to purchase, sell, exchange, or possess tobacco, a product containing nicotine, or an electronic smoking product; relating to selling a tobacco product; relating to possession of tobacco, electronic smoking products, or products containing nicotine by a person under 21 years of age; relating to the definition of 'nicotine'; relating to transporting tobacco, a product containing nicotine, or an electronic smoking product; relating to the taxation of electronic smoking products; relating to electronic smoking products; relating to the marketing of electronic smoking products; relating to tobacco products; and providing for an effective date."

[9:05:52 AM](#)

Co-Chair Merrick relayed that the committee would consider amendments to the bill. She indicated that the bill was previously heard on April 29, 2022. She asked if the bill sponsor had any opening comments.

SENATOR GARY STEVENS, SPONSOR, thanked the committee for hearing the bill. The bill addressed the danger of nicotine addiction for children in Alaska.

[9:06:44 AM](#)

Representative Josephson MOVED to ADOPT Amendment 6.

Page 7, lines 6 - 7:

Delete "an electronic smoking product, including a closed-system electronic smoking product"

Insert "(A) a closed-system electronic smoking product;

(B) a vapor product sold as part of an open-system electronic smoking product;

(C) a vapor product sold separately from a closed- or open-system electronic smoking product"

Page 7, lines 23 - 26:

Delete all material and insert:

"( c) In this section,

(1) "closed-system electronic smoking product" means a nonrefillable electronic smoking product;  
(2)"open-system electronic smoking product" means a refillable electronic smoking product."

Page 8, line 9:  
Delete "solely"

Page 8, line 11:  
Delete "only"  
Page 12, line 24, following "a":  
Insert "(i)"

Page 12, lines 27 - 28:  
Delete "a substance intended to be aerosolized or vaporized during use of the device"  
Insert "(ii) vapor product"

Page 12, line 29:  
Delete "battery or battery charger"  
Insert "(i) battery, battery charger, or mouthpiece"

Page 12, following line 30:  
Insert a new sub-subparagraph to read:  
\_(ii) cartridge, pod, tank, or similar container when sold empty;"

Page 12, line 31, following "AS 1 1.81.900(b)":  
Insert";  
(8) "vapor product" means a substance intended to be aerosolized or vaporized during the use of an electronic smoking product"

22 Page 18, line 3:  
23 Delete "July 1"  
24 Insert "January 1"

Representative LeBon OBJECTED for discussion.

Representative Josephson explained the amendment. He delineated that the amendment defined closed and open vape systems and taxed the closed system entirely as a unit targeting disposable pens and "puff bars." The proposal taxed only the liquid inside of a vape product and not the hardware associated with the item. Specific to open systems the provision excluded batteries, chargers, empty tanks,

Pods, and cartridges. The amendment attempted to carve out marijuana products more clearly and made the effective date the following year to comply with federal law.

Co-Chair Merrick indicated that Representative Rasmussen had joined the meeting.

[9:08:19 AM](#)

TIM LAMKIN, STAFF, SENATOR GARY STEVENS, summarized the amendment. He provided the definitions. He explained that the most common device resembled a pen, and its components could not be accessed. It was the most commonly bought, the most popular product, and was designed to be puffed on and disposed of. The bill considered the system as a closed system, and the entire unit would be taxed. He noted that to do otherwise would require someone to apportion the value of the vape liquid. It was common in other states to include the definition of closed systems as such a unit. There were also open systems where accessories and hardware could be swapped out including batteries, cartridges, and pods and tanks that held the vape fluid. He wanted to hold the hardware harmless without a tax. The juice put in the tank was targeted for the tax.

[9:10:38 AM](#)

Representative Wool asked if a person bought a starter kit with all of the components in one box would the entire box be taxed. Mr. Lamkin answered that the purpose was to target the liquid with the tax. He clarified that the item he was holding was an actual vape pen he purchased for \$1. Representative Wool asked if the proposal was to tax at the wholesale level. Mr. Lamkin replied in the affirmative. Representative Wool clarified that if there were three components in the kit the value of the nicotine component could be extracted and taxed accordingly. Mr. Lamkin responded in the affirmative. Representative Wool asked if the percentage of nicotine had no bearing on the tax. Therefore, a zero nicotine vape would be taxed. Mr. Lamkin answered in the affirmative. He elaborated that even if the products specified it contained no nicotine typically, it did contain trace amounts of nicotine as the very fine print on the product informed the consumer. He added that when tested it was typical to detect nicotine in non-nicotine vape liquid.

[9:14:02 AM](#)

Representative Rasmussen stated it appeared there were products specifically for cessation with no nicotine or marijuana products added to the liquid. She asked whether those products would also be taxed at 45 percent. Mr. Lamkin answered that as the bill was currently written it did not matter what was in the device it would be taxed. The bill was targeted for children and the goal was to prevent youth from developing a smoking habit. Representative Rasmussen asked if there was a benefit for a parent to have access to a cessation vaping device. She thought that cessation devices should be available for parents that vape if the goal was to deter children from vaping. She asked if her reasoning was accurate. Mr. Lamkin was not sure he tracked the question. He stated that what people did in their own homes was their own business and what parents did with their children was their business. The bill merely put a policy in place that acknowledged the harm from smoking and attempted to deter the habit.

[9:16:29 AM](#)

Representative Josephson asked for the cost of a typical closed system unit. Mr. Lamkin replied that the cost was a "moving target" and difficult to determine due to the variety of products. He observed that a closed system could range from \$10 to \$22 retail.

Co-Chair Merrick noted Representative Edgmon had joined the meeting.

Representative Josephson asked what the cost of an open system was. Mr. Lamkin answered that broadly speaking the devices cost in the range of \$40 to \$150. The costlier units could be modified for other products and were known as mods.

Representative Josephson discussed carving out the tax for the devices. He asked whether the motivation for the carve out was to not affect the cost associated with marijuana. Mr. Lamkin answered that the statement was not inaccurate. He elaborated that it had been negotiated with the industry to hold harmless the products not directly related to the liquid that was consumed. The liquid entering the lungs was the target for the tax.

[9:19:09 AM](#)

Representative Josephson deduced that the carve out was a policy call. Mr. Lamkin agreed. He offered that many other states taxed everything.

Vice-Chair Ortiz understood that the closed system was for one-time use and was discarded. He asked for confirmation. Mr. Lamkin responded in the affirmative. Vice-Chair Ortiz asked if the sponsor agreed with Amendment 6. Mr. Lamkin responded in the affirmative.

Representative LeBon withdrew his OBJECTION.

There being NO further OBJECTION, Amendment 6 was ADOPTED.

[9:20:33 AM](#)

Representative Wool MOVED to ADOPT Amendment 1

Page 1, line 4:

Delete "a person under 21 years of age"

Insert "an underaged person"

Page 1, lines 11 - 12:

Delete "a person under 21 years of age ["

Insert "an underaged person [A"

Page 2, line 4:

Delete "21"

Insert "18"

Page 2, line 25:

Delete "21"

Insert "18"

Page 2, line 29:

Delete "21"

Insert "18"

Page 2, line 30:

Delete "21"

Insert "18" Page 3, line 6:

Delete "21"

Insert "18"

Page 3, line 20:

Delete "21"

Insert "18"  
Page 3, line 21:  
Delete "\$300"  
Insert "\$50"

Page 4, line 9:  
Delete "a person under 21 years of age["  
Insert "an underaged person [A"

Page 4, line 14:  
Delete "21"  
Insert "18"

Page 4, line 23:  
Delete "to a person under 21 [19] years of age"  
Insert "[TO A PERSON UNDER 19 YEARS OF AGE]"

Page 5, line 20:  
Delete "21"  
Insert "18"  
Delete "AS 11.76.109"  
Insert "AS 11.76.105 [AS 11.76.109]"

Page 5, line 23:  
Delete "a person under 21 years of age["  
Insert "an underaged person [A"

Page 16, line 27:  
Delete "21"  
Insert "18"

Representative Josephson OBJECTED for discussion.

Representative Wool explained the amendment. He related that the amendment bifurcated different ages. The ages of 18 to 21 was adulthood and the bill was targeting children. The amendment prohibited individuals between the ages of 18 to 21 from purchasing tobacco products and vendors from selling to those 18 to 21 years of age. However, the amendment allowed individuals in that age bracket to possess the products. He indicated that Amendment 1 "originated with federal law." He ascertained that the federal law only applied to sale and purchase, but not possession. He referred to a federal law that was part of an appropriation bill called "T 21" that only dealt with sale and purchase and not possession. He emphasized that it would be illegal to purchase or sell to those 18 to 21

years of age, but possession would be legal. He strongly believed that at the age of 18 years one could join the military, marry, purchase a gun, etc. He contended that there was hypocrisy in the law regarding adulthood. He believed that individuals under the age of 18 should not possess tobacco products. The amendment also reduced the fine to \$50 for possession of tobacco under the age of 18. He deemed that the amount was more reasonable for kids versus the current \$300 fine. He reasoned that smoking was prohibited almost everywhere and was not tolerated in schools at all. He guessed that children caught smoking were rarely fined. He relayed that the military was not enforcing possession of tobacco for members aged 18 or older.

[9:25:33 AM](#)

Representative Josephson asked for the sponsor's position on the amendment.

Mr. Lamkin indicated that Amendment 1 did not reference a fine or penalty and only appeared to pertain to age.

Co-Chair Merrick pointed to the amendments reference of the fine on page 2, lines 11 and 12.

Mr. Lamkin answered that in regard to age there were purchase, use, and possession (PUP) laws in 36 states that restricted tobacco use to 21 years old. He elaborated that the federal government via former President Trump signed into law the prohibition on purchase and sales but was silent on possession. The military acknowledged that troops were not healthy and were failing physical training. The policy on bases was that healthy troops was a healthy force to defend the country. He noted that municipalities, schools, and parents were prohibiting possession and use. He believed that by adopting the amendment the state was turning its back on all who objected by endorsing tobacco use. He delineated that regarding the penalty, currently in statute the penalty was \$500 with a mandatory court appearance. The bill proposed to reduce the fine to \$300 for underage sale and possession. In addition, SB 45 created a new bail schedule and made the court appearance voluntary. He noted that the legislation made it like a traffic ticket, where a person could appear in court and explain the situation with the expectation of a reduced fine. He recalled that some of the vaping devices exceeded

\$100 in value. He opined that a penalty of \$300 seemed reasonable to make it meaningful to the offender.

[9:29:45 AM](#)

Representative Josephson stated the amendment would allow 18 year old individuals to possess tobacco products. He thought many aged 18 were seniors in high school. He asked if that was a concern. Mr. Lamkin pointed out that standing school policy prohibited tobacco products at schools. He shared from personal experience that his daughter at the age of 19 had seen the products in school and his 14 year old son had seen the products in sixth grade on the school bus in the past and others had relayed stories of tobacco products associated with third grade students. He deemed that since 18 year old students were still in school the amendment opened the door to negative consequences. He did not support the amendment.

[9:31:11 AM](#)

Representative Josephson MOVED to AMEND Amendment 1 to increase the fine from \$50 to \$150.

Co-Chair Merrick restated the conceptual amendment as follows: Conceptual Amendment 1 amended Amendment 1 on page 2, line 12, to delete \$300 and insert \$150. Representative Josephson concurred with her account of Conceptual Amendment 1.

Representative Wool OBJECTED.

Representative Wool contended that studies had shown that a fine did not make a difference and impacted low income families more. He referred to Mr. Lamkin's statements regarding finding vape products in third grade. He questioned if the \$500 fine was currently working. He asserted that what worked was educating the public. He believed that more fines would be issued at \$50. He wanted to discourage smoking and vaping and make the fine reasonable. He contended that fines were not issued at schools. The tobacco product or vape device was confiscated, and the student could be expelled. He thought that was a more serious penalty and schools had a big hammer when dealing with the issue. He favored the schools' measures. He averred that fines were ineffective and vaping devices were still in schools regardless of the \$500 fine.

He stressed that schools had more effective tools to deal with tobacco use. He believed curtailing use was paramount but maintained that fines were ineffective at achieving the outcome.

Vice-Chair Ortiz cited the discussion pertaining to the case that 18 year olds were seniors in high school. He asked the amendment sponsor if he would consider amending the age to 19 from 18.

Co-Chair Merrick clarified that Conceptual Amendment 1 only changed the fine. She wanted to confine the conceptual amendment to the fine.

Representative Wool commented that Representative Josephson had another amendment that reduced the fine to \$100 and felt that the amount was a "moving target."

Representative Josephson provided wrap up on Conceptual Amendment 1. He noted that his two other amendments not yet offered, reduced the fine by two amounts to \$100 and \$200 and stated that his Conceptual Amendment 1 met his amendments in the middle. He indicated that Representative Wool stated the amendments increased penalties. He countered that the conceptual amendment decreased the penalty by more than 300 percent versus the current \$500 fine. Representative Wool's proposal reduced the fine by 1000 percent. He believed that his conceptual amendment was generous enough. He agreed with Mr. Lamkin's thesis that some people were aware of authority and attempted to abide by it and a fine would have an effect.

Representative Johnson asked if it would be out of line to offer Vice-Chair Ortiz's conceptual amendment that changed the age from 18 to 19.

Co-Chair Merrick clarified that Conceptual Amendment 1 decreased the amount of the fine and she preferred to restrict it to that topic.

Representative Wool maintained his objection.

A roll call vote was taken on the motion.

IN FAVOR: Carpenter, Josephson, Ortiz, Rasmussen, Foster, Merrick

OPPOSED: Wool, Edgmon, Johnson, LeBon, Thompson

The MOTION PASSED (6/5).

[9:39:18 AM](#)

Representative Johnson offered Conceptual Amendment 2 to Amendment 1 to change from the legal age of possession from 18 to 19 years of age.

Representative Johnson deduced that most students in grade 12 were 18 years of age or younger. She believed that the age increase would further protect students in school.

Representative Wool OBJECTED.

Representative Wool voiced that there should be some value to being 18 years old. He reasoned that 18 year old students would not be prohibited from voting because they were still in school. He firmly believed that "there should be some sanctity in being 18." He reiterated that vaping was still "highly prohibited in schools." He noted that adults 21 and over were prohibited from smoking in many places even though it was legal. He reminded the committee that sale and purchase would still be illegal.

Co-Chair Merrick asked Mr. Lamkin what was in current statute regarding the issue. Mr. Lamkin answered that presently the age was 19.

Representative Wool maintained his OBJECTION.

A roll call vote was taken on the motion.

IN FAVOR: Johnson, Josephson, LeBon, Ortiz, Rasmussen, Thompson, Carpenter, Merrick, Foster

OPPOSED: Edgmon, Wool,

The MOTION PASSED (9/2).

[9:42:52 AM](#)

Representative Wool recounted that Amendment 1 was amended to increase the fine to \$150 from \$50 and increase the age of possession to 19 from 18 years of age. He still wanted to move amendment 1.

Co-Chair Merrick asked if it was 19 and over or over 19 years of age.

Representative Wool replied that from the ages of zero to 18 possession was illegal and at the ages of 19 and 20 possession was legal.

Co-Chair Merrick wanted to clarify that the legal age was 19 and over.

Representative Rasmussen thought it was a reasonable compromise and she supported the amendment. She respected those who served the country at age 18. She noted that her son would be 18 for most of his senior year and believed that 19 was much more appropriate when attempting to keep vaping out of high school.

Representative LeBon asked if the bill sponsor supported the amendment.

Senator Stevens related that the issue had been very tough on teachers. He agreed with changing it to 19 and thought that would help control use in school. He was fine with the compromise.

Representative Wool provided wrap-up comments. He appreciated the approval of the bill's sponsor.

Representative Josephson withdrew the objection.

There being NO further OBJECTION, Amendment 1 was adopted as amended.

[9:44:55 AM](#)

Representative Josephson WITHDREW Amendment 2 and Amendment 3.

Representative Rasmussen MOVED to ADOPT Amendment 4.

Page 7, line 30:  
Delete "or"

Page 8, lines 1 - 2:  
Delete all material.

Reletter the following subparagraphs accordingly.

Page 8, lines 10 - 13:

Delete "or marijuana products and intended for sale only in a retail marijuana store; in this subparagraph, "marijuana," "marijuana products," and "retail marijuana store" have the meanings given in AS 17.38.900"

Insert ", marijuana products, hemp, or hemp products; for purposes of meeting the requirements of this subparagraph, the department shall accept a notarized affidavit from the seller attesting to the intended use of the product; or

I 6 (3) marijuana, marijuana products, hemp, or hemp products if the marijuana, marijuana product, hemp, or hemp product does not contain nicotine"

Page 8, following line 13:

Insert a new bill section to read:

22 "\* Sec. 17. AS 43.50.310 is amended by adding a new subsection to read:

(c) In this section,

(1) "hemp" and "hemp products" means hemp or a hemp product

produced by an individual registered under AS 03.05.076;

(2) "marijuana" and "marijuana products" have the meanings given in AS 17.38.900."

Renumber the following bill sections accordingly.

Page 11 , following line 5:

Insert a new bill section to read:

"\* Sec. 22. AS 43.50.330 is amended by adding a new subsection to read:

(c) A licensee is not required to file a return under this section if the licensee

(1) either

(A) sells only products exempt under AS 43.50.31 0(b)

(2) (C) or

(b) (3) from the tax under this chapter; or

(B) is an individual registered under AS 03.05.076; and

(2) provides a notarized affidavit attesting to the licensee's qualification under ( 1) of this subsection."

Renumber the following bill sections accordingly.

Page 17, line 28:  
Delete "sec. 19"  
Insert "sec. 20"

Page 17, line 29:  
Delete "sec. 33"  
Insert "sec. 35"

Representative Josephson OBJECTED for discussion.

Representative Rasmussen explained the amendment. She read from a prepared statement. She indicated that Amendment 4 was offered to help clarify the bill and help protect Alaska's young and growing cannabis and hemp industries. She understood that SB 45 was offered to help prevent children from using and getting addicted to vape devices. She also learned that the vape devices relied on nicotine and that was the target of the bill. The bill seemed to be written broadly and it was unclear if the intent was to tax all vape products including those using cannabis, cannabidiol (CBD), and cessation only products. She favored taxing nicotine but the way the bill was currently drafted it encapsulated all vaping products. The amendment relied on AS 17.38.900 to define marijuana and marijuana products and references from the Department of Natural Resources (DNR) industrial hemp program. The bill attempted to protect marijuana in some provisions, but after consulting with stakeholders, she believed that SB 45 left the door open for taxation of CBD and other non-THC [Tetrahydrocannabinol (THC)] derivatives of hemp. She added that the committee previously heard the amendment that protected the devices and Replacement Amendment 4 pertained to the vape substance. She asked for the member's support.

[9:48:39 AM](#)

Representative Josephson asked for the opinion of the bill sponsor and staff.

Mr. Lamkin answered that page 1 of the amendment reflected the negotiation with the growing hemp industry. He cautioned that CBD and hemp oil was typically something that was applied as a lotion or ingested. He indicated that had research in the form of a "Consumer Alert" from the Department of Law (DOL) warning against the unregulated use of CBD oil when inhaling the substances. Currently data was sparse, but there were many warnings about inhaling CBD

oil. He agreed with page 1 and considered it reasonable. He added that it was currently popular to combine CBD oil with nicotine in an aerosolized form, but severe lung damage had been observed. He opined that as long as the product did not contain nicotine and until use was discovered to be harmful, he agreed with the provision. However, page 2 introduced a new Section 22, and the language had not been negotiated. He shared his interpretation with Legislative Legal and it agreed that the language exempted sellers from filing monthly returns who were licensed to sell tobacco and other tobacco products if they were selling their products only to marijuana stores. The language was found on page 2, line 13. He furthered that if a seller sold to both a marijuana store and nicotine vape shop the seller would be exempt from taxation of those products. He contended that it would substantially undermine the bill and the purpose of the legislation. He referenced 18 local communities in Alaska that taxed e-cigarettes and the filings were already occurring. He maintained that it was not overly onerous for sellers to copy and paste their reports they submitted locally to also submit them to the state.

[9:52:27 AM](#)

NICOLE REYNOLDS, DEPUTY DIRECTOR, TAX DIVISION, DEPARTMENT OF REVENUE (via teleconference), asked for the question to be repeated.

Co-Chair Merrick complied with the request. She asked if complying with the law to file the monthly reports was burdensome.

Mr. Lamkin interjected and clarified that page 2 of Amendment 4 , Section 22 pertained to instances where licensees under tobacco products who only sold to marijuana stores were exempt. However, if sellers sold to both a marijuana store and a shop selling nicotine the provision created an incentive for licensees to sell both marijuana and nicotine products and be exempt from filing.

Ms. Reynolds answered that the department had not seen the amendment prior to the current morning and needed additional time to analyze it pertaining to filing a report. She offered to provide the answer to the committee.

[9:54:42 AM](#)

CRYSTAL KOENEMAN, STAFF, REPRESENTATIVE SARAH RASMUSSEN, explained that the intent behind the amendment was to hold the marijuana and hemp industry harmless. She offered to circle back with industry and Legislative Legal Services to determine whether the language did what she believed it would accomplish or aligned with the sponsor's interpretation.

Co-Chair Merrick agreed with the action and thought that it was prudent.

Representative Wool asked if Ms. Koeneman was referring to the marijuana industry. Ms. Koeneman answered in the affirmative. Representative Wool asked whether Ms. Koeneman was involved in the marijuana industry. Ms. Koeneman answered that she was not. Her husband was in the marijuana industry, but she had no connection to the business. Representative Wool deduced that a vape hemp product without THC could be sold at a vape store. The goal was to discourage the act of vaping and puffing on any substance mimicked vaping. He wondered if a hemp product with zero THC and no nicotine that was sold at a vape store would be taxed as a tobacco related product.

Co-Chair Merrick indicated that Ms. Koeneman offered to verify the information and report her findings to the committee.

Representative Rasmussen WITHDREW her motion to adopt Amendment 4.

Co-Chair Merrick reviewed the agenda for the afternoon meeting.

#  
ADJOURNMENT

[9:58:18 AM](#)

The meeting was adjourned at 9:57 a.m.