

HOUSE FINANCE COMMITTEE

May 5, 2022

1:47 p.m.

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CALL TO ORDER

Co-Chair Merrick called the House Finance Committee meeting to order at 1:47 p.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 Adam Wool

MEMBERS ABSENT

Representative Steve Thompson

ALSO PRESENT

Crystal Koeneman, Staff, Representative Sarah Rasmussen; Tim Lamkin, Staff, Senator Gary Stevens; Senator David Wilson, Sponsor; Senator Roger Holland, Sponsor; Craig Valdez, Staff, Senator Roger Holland; Lori Wing-Heier, Director, Division of Insurance, Department of Commerce, Community and Economic Development

PRESENT VIA TELECONFERENCE

David Schade, Director, Division of Agriculture, Department of Natural Resources; Katie Steffens, Deputy Program Manager, Tobacco Prevention and Control Program, Department of Health and Social Services; Dr. David Logan, Alaska Dental Society, Sitka; David Nielson, Chair, Alaska Board of Dental Examiners, Anchorage; Scott Raygor, Fire Chief, Fairbanks Fire Department, Fairbanks.

SUMMARY

SB 45 AGE FOR NICOTINE/E-CIG; TAX E-CIG.

HCS CSSB 45(FIN) was REPORTED out of committee with one "do pass" recommendation, five "no recommendation" recommendations and four "amend" recommendations and with one new fiscal impact note from the Department of Revenue and two previously published zero fiscal notes: FN4 (DHS/DOH) and FN6 (GOV/Combined).

SB 131(title am)

WORKERS' COMP DISABILITY FOR FIREFIGHTERS

SB 131(title am) was HEARD and HELD in committee for further consideration.

CSSB 173(FIN)

DENTIST SPEC. LICENSE/RADIOLOGIC EQUIP

CSSB 173(FIN) was HEARD and HELD in committee for further consideration.

Co-Chair Merrick reviewed the agenda for the meeting.

#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."

[1:48:02 PM](#)

Co-Chair Merrick relayed that the meeting would continue consideration of amendments to SB 45. [Secretary Note: The

amendments were also considered during the morning meeting, 05/05/22 9:00 A.M.]

Representative Rasmussen MOVED to ADOPT Amendment 4 Replacement, 32-LS0311\D.16 (Nauman, 5/5/22) (copy on file):

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 (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:  
"\* Sec. 17. AS 43.50.310 is amended by adding a new subsection to read:  
(c) In this section,  
(1) "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 43.50.310(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 Wool OBJECTED.

Representative Rasmussen asked her staff and the bill sponsor's staff to explain the changes in the new amendment.

CRYSTAL KOENEMAN, STAFF, REPRESENTATIVE SARAH RASMUSSEN, explained the amendment. She explained that the amendment exempted marijuana, marijuana products, hemp, and hemp products from the tax. The original language in Amendment 4 created an unintended loophole for industrial hemp license holders operating another business and they would not be subject to the tax. She clarified that was not the sponsor's intention and assured the committee that any nicotine and other taxable products outside of marijuana and hemp were subject to the tax. She shared that the sponsor worked with Mr. Lamkin to correct the issue.

Representative Rasmussen asked to hear comments from the bill sponsor's staff.

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TIM LAMKIN, STAFF, SENATOR GARY STEVENS, answered that the amendment had been negotiated for a specific carve out for the hemp industry. He communicated that the hemp industry was in its inception and the sponsor wanted to let the program grow before considering taxing its products. He pointed to page 2, line 15 of the amendment that reads:

(B) is an individual registered under AS 03.05.076;

Mr. Lamkin cautioned that someone that had a tobacco endorsement and was registered as a hemp grower could still be exempted from the tax. He recommended conceptually striking line 15.

Representative Rasmussen moved Conceptual Amendment 1 to Amendment 4 Replacement to delete line 15 on page 2.

Representative Wool OBJECTED for discussion.

Representative Wool stated his understanding of the conceptual amendment. He thought it seemed strange that someone with an industrial hemp license would also operate a retail store selling tobacco products.

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Mr. Lamkin answered that he could not imagine that a hemp farmer would open a shop on their farm. He exemplified a retailer of tobacco, vape, and hemp products in an urban center who could also own a hemp farm in Delta Junction. He clarified that line 15 indicates that a registered hemp grower was exempted from paying taxes on products at their vape shop.

Representative Wool WITHDREW his OBJECTION. There being NO further OBJECTION, conceptual Amendment 1 to Amendment 4 Replacement was ADOPTED.

Representative Josephson asked what was lost by the removal of the language "retail marijuana store" from subsection (d) on page 2, line 18 to 19 from the original Amendment 4:

(d) In this section, retail marijuana store has the meaning given in AS17.38.900."

Mr. Lamkin replied that elimination of the subsection removed the potential loopholes where if someone only sold to marijuana stores, they would be exempt and removed the incentive for retailers to sell both nicotine products and cannabis.

Representative Wool recalled that when marijuana was first legalized in the state, a marijuana shop could not sell Cannabidiol (CBD) oil because they lacked the proper

license, but a grocery store could. He was uncertain what marijuana stores could sell and if that included selling tobacco with a proper license.

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Mr. Lamkin answered that he was not a student of the marijuana statutes. He indicated that the amendment clarified that if something like Representative Wool's example happened the products would not automatically be exempt from the tax. Representative Wool referenced CBD oil. He was previously unaware that there was a vape product without THC. He asked if the amendment meant the item was exempt from the tobacco tax and the marijuana tax. Mr. Lamkin answered it was correct provided it did not also contain nicotine. He stated that once a product contained nicotine it triggered the tax. Representative Wool recalled that in an earlier discussion vape liquid that did not contain nicotine was taxed as a tobacco product because the action of vaping mimics how tobacco products were consumed and could lead to consuming tobacco. He voiced that he did not object to taxing all vape liquid. He thought the amendment seemed contradictory to an earlier statement.

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Mr. Lamkin clarified that if products were approved by the Food and Drug Administration (FDA) for a therapeutic purpose such as cessation they would be exempt from the bill. He deduced that certain CBD products "might" fall under the FDA exemption. He added that the research strongly suggested that when products claimed not to contain nicotine, when tested they found nicotine in varying amounts. He qualified that the hemp and CBD carve out did not imply that consuming the products was safe. He relayed that a consumer alert and some growing research questioned their safety and whether it was safe or not was not known. The carve out was merely a negotiated concession.

Ms. Koeneman pointed to a definition for hemp and hemp products at the top of page 2 of the amendment. She explained that it applied to products that were registered under the current hemp statute AS 03.05.076 and would remove products containing nicotine or other substances. She elaborated that one of the main reasons people used CBD was for medical ailments including seizures, anxiety, and

other issues. She understood unknown health or safety reasons regarding CBD but there were medical reasons for its use. She thought that many times the risk of CBD was offset by the benefit provided to patients.

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Co-Chair Merrick interjected that there was a request for the department to comment.

DAVID SCHADE, DIRECTOR, DIVISION OF AGRICULTURE, DEPARTMENT OF NATURAL RESOURCES (via teleconference), clarified that three types of industrial hemp registrations existed under the program: producer, manufacturer, and retail sale registrations. He elaborated that the definition in the amendment referred to hemp or hemp products produced under AS 03.05.076. He delineated that the problem with the language was that it did not contemplate the fact that what was done to ensure product safety was via an endorsement. The products were endorsed and proven to be safe and free of unintended products. He emphasized that currently there were no endorsed products that contained nicotine and the division did not intend to allow nicotine in industrial hemp products sold in the state. He ascertained that the definition needed to be expanded to ensure it did not contain nicotine.

Representative Wool understood the carveout and negotiation. He was not taking a jab at the marijuana and hemp industry. He spoke to the intent of the bill to tax vaped nicotine products. He thought vaping as a mode of ingestion should be taxed because it mimicked ingesting tobacco products, which the bill was attempting to discourage. He felt carving out CBD oil was antithetical to the bill's motives.

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Representative Rasmussen thought the bill specifically pertained to nicotine and marijuana products already fell under a certain tax. She believed that not adopting the amendment would inadvertently double tax the products which was not the purpose of the bill.

Mr. Lamkin was not personally convinced that CBD was completely safe to inhale. He remarked that the studies were still in progress. He noted that some common vape base

ingredients were polyethylene glycol, vegetable glycerin, and vitamin E acetate, etc. He maintained that the hemp carve out had been a negotiation to not injure a new industry; however, "the heartbeat of the bill" was to prevent nicotine products use before the age of 21. He delineated that if initiation to nicotine could be avoided up to the age of 21 the likelihood of a lifetime of addiction was substantially lower. He shared that he began smoking in his youth and quit 20 years ago.

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Representative Rasmussen appreciated the sponsor's office stating that the underlying intention of the bill was to prevent addiction to nicotine. She believed that many ingested substances had harmful consequences like ibuprofen and fast food that were not taxed to prevent use. She understood that the intention of the bill was to prevent nicotine addiction therefore, she offered Amendment 4 Replacement to offer clarity and focus on the underlying intention of the bill.

Representative Wool referenced the phrase "double tax" used by Representative Rasmussen. He understood that CBD oil sold in a marijuana store, was taxed under marijuana laws, and if sold in a convenience store it would currently have no tax but if the bill was passed it would be taxed under SB 45. He ascertained that it would not be double taxed. He wondered whether he was correct. Mr. Lamkin knew that the hemp and marijuana statutes were separate and distinct and did not overlap. Hemp was tested to confirm that it did not contain THC and was not taxed under marijuana laws. He noted that only products containing THC were taxed under marijuana laws. He confirmed that a CBD product sold in a marijuana store was not taxed. Representative Wool referenced the point about preventing nicotine use. He agreed that "the act of smoking tobacco should be discouraged." He understood that the point was to not have youth mimicking smoking. He supported taxing all vape products under the bill.

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Representative Josephson asked if the amendment was acceptable to the sponsor. Mr. Lamkin stated that Senator Stevens currently found the amendment agreeable. He guessed

that sometime in the future the sponsor might introduce a bill taxing hemp under the program.

Representative Wool MAINTAINED his OBJECTION to Amendment 4 Replacement as amended.

A roll call vote was taken on the motion.

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

OPPOSED: Ortiz, Wool, Edgmon, Johnson

The MOTION PASSED (6/4). There being NO further OBJECTION, Amendment 4 Replacement was ADOPTED as amended.

[2:12:56 PM](#)

Representative Rasmussen MOVED to ADOPT Amendment 5, 32-LS0311\D.12 (Nauman, 5/3/22) (copy on file):

Page 7, line 6:  
Delete "45"  
Insert "15"

Representative Josephson OBJECTED.

Representative Rasmussen explained that the amendment would reduce the tax from 45 percent to 15 percent as a compromise to create revenue for health education. She believed that taxing vape products was the "wrong approach" by creating barriers to less harmful alternatives to combustible cigarettes.

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Representative Josephson asked the sponsor's staff if the bill contained a 75 percent tax before its referral to the House Labor and Commerce Committee (HL&C). Mr. Lamkin answered in the affirmative. He pointed to a document in the members' files titled "Local Level Tobacco Products Taxation Rates in Alaska" (copy on file). He explained that there were three types of nicotine taxes: Cigarette tax, Other Tobacco Products, and an E-cigarette tax. He noted that in the other tobacco column the same percent of wholesale was applied to the e-cigarette tax in any community. He corrected an error and reported that the City of Fairbanks had an 8 percent e-cigarette tax. He

informed the committee that the national average tax was currently 45 percent. He reiterated that the bill originally had a 75 percent tax, and that 45 percent was the average between 15 percent and 75 percent. He was not speaking on behalf of what percentage he thought the sponsor would support.

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Representative Josephson asked what the tax resources would be used for. Mr. Lamkin answered that the funds would be used for education programs and rehabilitation. He noted that the Division of Behavioral Health was available for additional information.

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Representative Josephson repeated the question.

KATIE STEFFENS, DEPUTY PROGRAM MANAGER, TOBACCO PREVENTION AND CONTROL PROGRAM, DEPARTMENT OF HEALTH AND SOCIAL SERVICES (via teleconference), answered that the tax revenue would be deposited into the general fund and was available for educational programs, healthcare, etc. and was not directly dedicated to the program. She deferred to the tax division as well for further clarification

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AT EASE

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RECONVENED

Vice-Chair Ortiz MOVED to ADOPT conceptual amendment 1 to Amendment 5 that would insert 25 percent instead of 15 percent.

Representative Josephson OBJECTED.

Representative Carpenter asked for clarification.

Co-Chair Merrick clarified that the language was on page 7, line 6 of the bill and on the amendment, it was found on line 3.

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Representative Josephson shared that according to a prior United States (US) surgeon general, taxation was one way to deter use of tobacco products. He noted that research by the Campaign for Tobacco Free Kids concluded that if the price of vape products were increased usage decreased. He voiced that the HL&C committee already reduced the tax to 45 percent. He noted the prevalence of a 45 percent tax used by municipalities according to the document. He related that e-cigarettes were not considered a harm reduction device per the FDA and believed that they were hazardous and unhealthy. He opposed the amendment.

Representative Carpenter stated that his community was not on the list. His municipality had not chosen to tax the product. He supported the conceptual amendment only because less tax meant less government.

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Representative Rasmussen MOVED to call the question.

[2:35:01 PM](#)

AT EASE

[2:35:30 PM](#)

RECONVENED

Representative Rasmussen WITHDREW her motion to call the question.

Representative Wool opposed the conceptual amendment.

Representative Edgmon opposed the conceptual amendment because the rationale in favor of the high taxation was based on "cause and effect." He wanted to hear an explanation and justification why 25 percent would provide the prevention the bill was meant to achieve. He thought 25 percent was insufficient and arbitrary.

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Representative Rasmussen felt it was a fair compromise as Representative Carpenter noted his community had not taxed the products. She appreciated the amendment as a "fair compromise" and thought it struck a balance between the municipalities tax levels.

Representative Edgmon noted that the previous comments did not answer his question about the regulatory aspect of a 25 percent tax.

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Co-Chair Merrick deduced that some people prefer no tax, and some prefer lower taxes, so that any tax was a compromise.

Representative Rasmussen noted that in communities with 75 and 90 percent taxes some people were still using the product, but its use was limited to those that could afford it. She believed that it did not halt use and the amendment was a compromise.

Senator Stevens commented that studies had found less consumption every time tobacco tax was increased. He heard that the governor would veto anything over 25 percent. He stated that something was better than nothing and hoped the bill would not be vetoed by the governor. He declared that he would introduce a bill with a higher tax next year.

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Vice-Chair Ortiz related that his amendment was offered in the "spirit of compromise." He fully agreed with the concerns raised by those that oppose the amendment.

Representative Josephson MAINTAINED his OBJECTION.

A roll call vote was taken on the motion.

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

OPPOSED: Wool, Edgmon, Josephson

The MOTION PASSED (7/3). There being NO further OBJECTION, conceptual Amendment 1 to Amendment 5 was ADOPTED.

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Co-Chair Merrick addressed Amendment 5 as amended.

Co-Chair Foster voiced his support of the 75 percent tax and believed that it was a deterrent but based on Senator Stevens statement he supported the amendment.

Vice-Chair Ortiz stated that no one liked paying taxes; however, he believed sometimes taxes were necessary.

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Representative Josephson appreciated the senator's position. He warned of a Mason's Manual provision that prohibited talking about the administration's position during deliberations. He opposed the amendment but would support moving the bill out of committee.

Representative Wool opposed the amendment. He agreed that if taxes were raised, consumption would decrease. He noted that the state's alcohol taxes were the highest in the nation, but no one supported lowering them. He thought that vaping products were not taxed because they were relatively new compared to standard tobacco products.

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Representative Rasmussen provided wrap up on Amendment 5 as amended and asked for support.

Representative Edgmon MAINTAINED his OBJECTION to Amendment 5 as amended.

A roll call vote was taken on the motion.

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

OPPOSED: Wool, Edgmon, Josephson

The MOTION PASSED (7/3). There being NO further OBJECTION, Amendment 5 was ADOPTED as amended.

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Co-Chair Merrick noted that Amendment 7 had been withdrawn.

Representative Edgmon supported Representative Josephson's comments. He strongly objected to the executive branch influencing what was happening in committee during the

meeting. He believed it was unfair and "pierced the veil of the separation of powers doctrine."

[2:45:33 PM](#)

Co-Chair Foster MOVED to REPORT HCS CSSB 45(FIN) out of committee with individual recommendations and the accompanying fiscal notes.

HCS CSSB 45(FIN) was REPORTED out of committee with one "do pass" recommendation, five "no recommendation" recommendations and four "amend" recommendations and with one new fiscal impact note from the Department of Revenue and two previously published zero fiscal notes: FN4 (DHS/DOH) and FN6 (GOV/Combined).

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[3:58:24 PM](#)

RECONVENED

#sb173

CS FOR SENATE BILL NO. 173 (FIN)

"An Act relating to the practice of dentistry; relating to dental radiological equipment; and providing for an effective date."

[3:58:38 PM](#)

SENATOR DAVID WILSON, SPONSOR, introduced the legislation. He reported that SB 173 transferred dental radiological equipment inspections from the Board of Dental Examiners to the Department of Health and Social Services (DHSS) and established a specialty dental license in the State of Alaska. The changes were recommended by the dental community. He thanked Vice-Chair Ortiz as the sponsor of the house companion bill [HB 295 - Dentist Spec. License/Radiologic Equip] for steering his version through the house. He emphasized that the licensing updates were necessary for the public's safety as it ensured that if a dentist advertises as a specialist, they met certain qualifications. The bill also ensured that dental equipment was inspected in a timely manner.

Co-Chair Merrick moved to invited testimony.

DR. DAVID LOGAN, ALASKA DENTAL SOCIETY, SITKA (via teleconference), thanked the sponsor and Representative Ortiz for bringing the bill forward. He indicated that there were two aspects to the legislation. The bill changed how dental x-ray units were inspected in the state and introduced a specialty license that had previously been available as recent as 2010. He explained the need to change how dental e-ray units were inspected. Inspections of dental x-ray machines were done by DHSS until 20 years ago when it was transferred to the dental board. He elaborated that the dentists would contract with private contractors to do the inspections. However, the few individuals performing x-ray inspections retired and the board had not been able to find replacements. He pointed out that x-ray inspection was a highly specialized service. Individuals able to perform inspections were either employed at a state level, by a large corporation, or had retired from the field and were not interested in working. He stressed that there were no longer any inspectors available for private dentists in the state. The dental community believed transferring the duty back to DHSS was the best option because they already performed x-ray inspections for hospitals, doctors, etc. He acknowledged that the department would have to hire another inspector to address the increased workload. Dentists would soon be out of compliance with inspections that were required every six years. He added that if the legislation did not pass some dentists would be out of compliance by years end. He requested passage of the bill.

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Representative LeBon asked if providers paid a fee for the inspection and whether the dental community would pay a fee. Mr. Logan answered that he could not speak to other providers but knew that dentists paid a fee based on complexity and number of machines. He assured the committee that the fee would cover the costs of inspection.

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DAVID NIELSON, CHAIR, ALASKA BOARD OF DENTAL EXAMINERS, ANCHORAGE (via teleconference), testified in support of the bill. He spoke to Section 3 of the bill. He explained that the dental practice act repealed specialty license categories in 2012. Since that time, the dental board had retreated from investigating false and misleading

advertising complaints. In order for the board to address the issue, it needed to reinstate the specialty license categories to defend legal scrutiny and "help reduce public confusion over deceptive or false advertising brought by dentists using the term "specialist" or "specializing in" to an area of dentistry that is professionally recognized to require significantly more training than they have received. Typically, a dental specialty residency demands at least an extra two-years of focused training beyond dental school." He added that the board had to deny several license applications to dentists that graduated from accredited specialty programs merely because it did not have a way to approve their application, lacking the license types for dental specialties. The provision would open the doors wider for more qualified dental specialists. He thanked the sponsors of the bill.

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Representative Carpenter pointed to the sectional analysis for Section 3 regarding AS 08.36.243 (b):

(b) In creating the qualifications for a specialist license, the board shall consider the standards of a nationally recognized certifying entity approved by the board.

Representative Carpenter asked how many nationally recognized certifying entities were in existence.

Senator Wilson deferred the question to one of the doctors available online. He acknowledged that there were approximately 150 specialists in the state.

Mr. Nielson answered that there was currently only one entity responsible for certifying specialty certification boards and specialty recognition, the National Commission on Recognition of Dental Specialties and Certifying Boards. He delineated that the commission had six specific criteria for specialty recognition and 15 criteria for recognizing specialty certifying boards. He furthered that currently there were 12 specialty areas and 11 certifying boards. He noted that there was one other commission and it only recognized 2 or 3 specialties and was not nationally utilized.

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Representative Carpenter wondered whether the national commission recognized all the dental specialties in existence. Mr. Nielson responded that the commission currently recognized all the dental specialties. He noted that there were a couple of groups trying to become specialties. The commission adopted some of its criteria from the American Dental Association (ADA) but were an independent commission. He listed some of the specialties: orthodontics, endodontics, pediatrics, oral surgery, oral medicine, oral facial pain, and dental anesthesiology. He qualified that all dentists could provide the same services in the categories. However, recognizing specialties enabled the public to determine who had specialty training. He emphasized that the certification was arduous.

Representative Carpenter asked how many specialties were currently in the state. Senator Wilson replied that the Senate Labor and Commerce Committee estimated that there were 150 practitioners that advertised as dental specialist in the state. Representative Carpenter asked if any of the individuals advertising as a specialist were not covered under the 12 recognized specialties.

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Mr. Nielson did not have an exact number of people that may be advertising under the word "specialist" in an area of dentistry that was not a recognized specialty by the commission. He guessed that the only one would be something like an implant specialist, but at present that was not a category. He stated that it would take significant research to find the answer. He reiterated that the board's goal was to quell any confusion caused by a dentist advertising as though they were a specialist.

Co-Chair Merrick asked whether Dr. Logan wanted to offer any observations.

Dr. Logan echoed Mr. Nielson's comments. He highlighted that the goal was to halt the practice of falsely advertising as a specialist when they did not have the qualifications or educational background. He estimated that the number of dentists "inventing" a specialty category was more than one but less than 20 and the exact number was difficult to determine. He concluded that the bill covered someone who falsely advertised as a specialist and prevented someone from claiming a specialty that did not

exist. The dentist could advertise that they provided the service but could not name themselves as a specialist.

Representative Carpenter referenced the sectional analysis and asked if the department was on board with receiving the responsibility.

Senator Wilson stated that the question had been asked in the Senate Finance Committee and the department had stated it was fine with the responsibility as long as it received funding for an extra position.

CSSB 173(FIN) was HEARD and HELD in committee for further consideration.

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AT EASE

[4:18:38 PM](#)

RECONVENED

#sb131

SENATE BILL NO. 131(title am)

"An Act relating to the presumption of compensability for a disability resulting from certain cancers in firefighters."

[4:18:44 PM](#)

SENATOR ROGER HOLLAND, SPONSOR, read the sponsor statement (copy on file):

Firefighting is an inherently dangerous job, resulting in instances of cancer in firefighters is shown to be higher than the general population. Studies that have evaluated cancer risk among women firefighters suggest women firefighters, like their male coworkers, may be at an elevated risk for overall cancer incidence (Daniels et al., 2014). These studies also suggest women firefighters may be at an elevated incidence risk for breast cancer (Daniels et al., 2014).

In addition to studies on cancer risk among firefighters, a small but growing body of research examines firefighters' exposures to toxic chemicals,

including carcinogens and hormone disruptors, on the fire ground, in stations, and from their gear.

Exposure to carcinogenic chemicals and hormone-disrupting chemicals do not discriminate based on sex or gender. Exposure to these chemicals may be mitigated, but not eliminated, through protective equipment, firehouse design, and structural changes. Firefighters involved in fire suppression, whether it be as a volunteer or career firefighter, are at higher risk of cancer.

SB 131 would help recognize this additional risk firefighters take to keep us safe. Thank you for your consideration of the addition of breast cancer to the list of presumed disability coverages for firefighters.

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CRAIG VALDEZ, STAFF, SENATOR ROGER HOLLAND, reviewed the sectional analysis (copy on file):

Amends this Act relating to the presumption of compensability for a disability resulting from certain diseases for firefighters.

Sec. 1 AS 23.30.121(b), relating to the list of coverage for firefighters, is amended by:

- Adding the terms "skin cancer, breast cancer, cervical cancer, testicular cancer, mesothelioma, multiple myeloma, colon cancer, thyroid cancer, and ovarian cancer" to list of AS 23.30.121(b).

Sec. 2 Adds a section definition of "firefighter."

Sec. 3 Clarifies this change applies to claims made on or after the effective date of this Act.

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Senator Holland introduced a PowerPoint presentation titled "Senate Bill 131: Workers' Compensation Disability for Firefighters" (copy on file). He briefly reviewed slides 2 through 5.

Senator Holland turned to slide 2 titled "SB 131:"

Firefighting is an inherently dangerous job. It is important that workers compensation insurance provides coverage for the inherent risks in that job. Currently, there is an oversight in Alaska Statutes regarding that coverage: Breast Cancer.

Senator Holland pointed to slide 3 titled "Senate Bill 131:"

SB 131 would add breast cancer to the list of presumed disability coverages for firefighters, so long as the firefighter could establish that the breast cancer was caused by their work as a firefighter.

Senator Holland indicated that the coverage was difficult to qualify for. The firefighter had to obtain a "zero year" exam that demonstrated no evidence of the disease and maintain an examination over the following seven years to qualify.

Senator Holland reviewed slide 4 titled "Firefighters at Risk:"

Instances of cancer in firefighters is shown to be higher than the general population. Studies that have evaluated cancer risk among women firefighters suggest women firefighters, like their male coworkers, may be at an elevated risk for overall cancer incidence (Daniels et al, 2014). These studies also suggest women firefighters may be at an elevated incidence of risk for breast cancer (Daniels et al, 2014).

Senator Holland briefly moved to slide 5 titled "General Statistics:"

In the general population, less than one percent of males are likely to develop breast cancer in their lifetime. Studies have found strong associations between firefighting and male breast cancer (Ma et al, 2005). Male firefighters are 7.5 times more likely to die from breast cancer than their non-Fire Service counterparts. (Ma et al, 2005) The same mechanism that would cause increases in breast cancer in men is thought to result in proportional increases in risk among women.

Senator Holland shared that a Fairbanks fire chief, Fire Chief Warren Cummings died of breast cancer in 2017 after 42 years of service.

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Senator Holland moved to slide 6 titled "General Statistics:"

In the general population, one in eight women (12 %) will likely contract breast cancer in their lifetime. At only about four percent of the firefighter population, small sample sizes make it difficult to draw conclusions about females and breast cancer in the Fire Service.

This bill protects not only women, because exposure to carcinogenic chemicals, which often occurs in the normal course of a firefighter's job, does not discriminate based on sex or gender.

Senator Holland reviewed slide 7 titled "Presumptive Laws:"

Presumptive laws are regulations that assume a given disease is linked, by default, to a specific occupation. This means that when someone is diagnosed with an illness covered under a presumptive law, they are automatically entitled to disability or workers' compensation, medical expense coverage, and medical leave, provided they meet certain criteria.

Senator Holland continued to slide 8 titled "Presumptive Laws:"

Without presumptive laws, to get these benefits, firefighters and other workers may have to prove that their line of work caused their disease.

This process can be lengthy and expensive at a time when resources should be dedicated toward treatment, wellness, and, sometimes, end-of-life decisions.

Senator Holland highlighted slide 9 titled "Alaska Statute 23.30.121:"

Breast Cancer would join the existing list, including:

Respiratory Disease, Cardiovascular Events (Limited), Primary Brain Cancer, Malignant Melanoma, Non-Hodgkin's Lymphoma, Bladder Cancer, Ureter Cancer, Kidney Cancer, Prostate Cancer.

Senator Holland briefly mentioned slide 10 that repeated what presumptive laws were on slide 7 and asked the question, "What are those criteria?"

Senator Holland highlighted slide 11 titled "Alaska Statute 23.30.121:"

Once added to the list, several standard limitations would apply.

The firefighter must:

Have been a firefighter for at least seven years,  
Have had initial and annual medical exams showing no evidence of disease,  
Be able to demonstrate exposure to a known carcinogen while in the Fire Service,  
At a minimum, be certified as a Firefighter I.

Senator Holland referred to bullet point number 3 and interjected that proving exposure was difficult. There were so many chemicals in structures that were burning.

Senator Holland highlighted slide 12 titled "Alaska Statute 23.30.121:"

Other qualifying criteria would apply, including:

1. Coverage may be denied based on:
  - a. Use of tobacco products,
  - b. Physical fitness and weight,
  - c. Lifestyle decisions,
  - d. Hereditary factors,
  - e. Exposure from other employment/non-employment activities.
2. Some post-employment coverage is available,
  - a. Three months accrued for every year of service,
  - b. Five year maximum.

Senator Holland pointed to slide 13 titled "Senate Bill 131" that listed the 14 states that added breast cancer in presumptive laws. Slide 14 concluded by asking that Alaska be added to the list of states.

[4:29:26 PM](#)

Representative Rasmussen asked why a five year limit after retirement was set. She asked if it was possible a person could develop cancer seven to ten years after retiring. Senator Holland believed that it was an industry standard. He would follow up with information.

Co-Chair Merrick moved to invited testimony.

SCOTT RAYGOR, FIRE CHIEF, FAIRBANKS FIRE DEPARTMENT, FAIRBANKS (via teleconference), asked to hear the question repeated.

Representative Rasmussen wondered why the limit was set for 5 years considering the state's retention problems and that many firefighters were serving their communities for over 20 years. She noted that a firefighter could develop cancer 7 or 10 years after retirement. Mr. Raygor answered that the reason was related to the presumptive law. He explained that after the 5 year period it was not presumed that the cancer was caused by exposure; other things post retirement could be the cause. He added that it did not mean the claim would be denied, work exposure was just not the presumed cause.

Co-Chair Merrick asked to hear Mr. Raygor's testimony.

Mr. Raygor urged the committee to pass SB 131. He shared that he had worked with former Fire Chief Cummings who had died from breast cancer. At the time, he was not even aware that men could die from breast cancer. He related that firefighters were at a three times higher risk of a cancer diagnosis. He reported that less than seven percent of firefighters were women and currently studies were beginning to determine how the cancer rates affected women firefighters. He expected that the rates for female firefighters would be higher than for male firefighters. He elaborated that most structures were rarely wood based anymore and were full of petroleum based products; almost all fires caused exposure to carcinogens. He reported that research demonstrated that the places where a firefighter

sweated tended to be locations where cancers were discovered. He reiterated that "every fire was now a carcinogen." In addition, the chemicals used to fight fires were carcinogens. He summarized that firefighters were three times more likely to develop cancer. He requested that the committee pass the bill.

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Representative Josephson supported the bill. He shared that a good friend and former legislator [and attorney] Eric Croft handled many of the firefighters' legal cases regarding the issue. He referred to the "Adams Decision" that considered a challenge by a municipality to the assertion of benefits under Worker's Compensation. He reported that public employers were often very aggressive about challenging the claims. He looked at page 2, line 27 of the bill and stated the phrase, "the firefighter was exposed to a known carcinogen." He wondered how evidence of exposure was collected. Mr. Raygor replied that there were different ways exposure data was collected. Sometimes individual firefighters document every fire they fought. Currently, the National Cancer Institute had a web portal that allowed the firefighter to document the fire. In some cases, the fire department looked back over a firefighter's career and documented every fire fought. He concluded that there were many ways fire departments could manage tracking exposure incidents. Representative Josephson asked if it was true that in the Adams Decision the public employer may put up an extensive fight over the cases. Mr. Raygor believed so but was not sure of the outcome of the decision. He opined that insurance companies fought all claims, presumptive or personal.

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Representative Carpenter asked how exposure was defined by the International Agency for Research on Cancer or the National Toxicology Program. He asked how the organizations determined the exposure.

Senator Holland deferred to the testifier

Mr. Raygor did not have the answer.

Co-Chair Merrick requested they could get the answer prior to the next hearing.

Representative Carpenter observed that other cancers in addition to breast cancer were included in the bill. He read the list: (x) cervical cancer; 7 (xi) testicular cancer; 8 (xii) mesothelioma; 9 (xiii) multiple myeloma; 10 (xiv) colon cancer; 11 (xv) thyroid cancer; and 12 (xvi) ovarian cancer. He presumed the other cancers were added in the prior committee [House Labor and Commerce Committee.] Senator Holland answered that the prior committee had added other cancers to the list, and it had been somewhat of a surprise. In addition, the committee dropped malignant melanoma and added the more general skin cancer. He noted that the director of the Division of Insurance was present and could speak to the costs of adding cancers to the list. He indicated that the cost of just adding breast cancer would be almost unrecognizable in terms of cost due to the low instance of claims. He disclosed that he had some cost concerns over the inclusion of the other cancers.

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LORI WING-HEIER, DIRECTOR, DIVISION OF INSURANCE, DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT, asked Representative Carpenter if his concerns were over costs. Representative Carpenter replied that one of his concerns was over costs, but he wanted to understand how the other cancers were added.

Senator Holland believed the thought in the prior committee was that the other cancers were just as important to add. He would personally have liked to maintain the focus on breast cancer. He confirmed that the original bill only added breast cancer to the list.

Ms. Wing-Heier responded that the division did extensive research to determine what other states had done and examined the data base of the National Council on Compensation that tracked other state's data. The council set the rates that the other states adopted. The council and the division did not find any evidence that adding breast cancer or other cancers were increasing workers' compensation rates in other states. She elaborated that part of the reason was "the presumptions were so strong" and few claims were made. She indicated that currently, no data existed to support that the rates would increase. Representative Carpenter asked if the rates were not increasing it meant few claims were being submitted. Ms. Wing-Heier agreed with the conclusion. She explained that

not all states had adopted the presumption of compensability for certain cancers, and some fire departments were not eligible. She reiterated that currently, there were not enough claims to raise the rates or presume the rate would increase. Representative Carpenter thought part of the issue was about how exposure was defined. He shared from personal experience that there had been a lot of "open pit burning in Afghanistan and Iraq, that was impossible to protect oneself from. He believed that the definition of exposure was key to why an increase in claims may not be seen. He guessed that maybe firefighters were not "technically exposed" to carcinogens due to protective gear like masks.

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Senator Holland would follow up with the information. He observed that firefighting procedures had changed over the last 20 years. He commented that firefighters remain fully geared up while in the fire and refrain from removing their protective gear until after the fire and separate themselves from the gear. The protocols decreased the risk of exposure, but firefighting was still "a very dangerous career."

Representative Josephson asked Representative Carpenter to repeat the question he wanted an answer to. Representative Carpenter complied. He stated that the two entities listed in the bill would determine whether the firefighter was exposed to a known carcinogen. He exemplified a firefighter wearing a mask when fighting a fire and wondered whether that was considered an exposure or if something more had to happen. He wanted to understand the definition of exposure. Representative Josephson suggested that the Adams Decision was worth reading. He explained that the presumption meant that even if the cancer did not actually happen because of exposure an individual could still obtain coverage.

Representative Josephson asked if there was any testimony regarding other state's adding the other recently added cancers to the list. Senator Holland answered that it had not been brought forward in the Senate. Representative Josephson asked if any of the cancers or just ovarian cancer had been added by his office. Senator Holland answered that the original bill only added breast cancer. He recalled that Representative Kaufman added ovarian cancer to the list in the prior committee.

Vice-Chair Ortiz asked who would share the burden of additional costs. Senator Holland responded that there was an employee component of the insurance and with the addition of the other cancers he noted some concern over a potential cost increase to the employer. He deferred to Director Wing-Heier or Fire chief Raygnor to respond.

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Ms. Wing-Heier asked Vice-Chair Ortiz to repeat the question. Vice-Chair Ortiz complied. Ms. Wing-Heier replied that Worker's Compensation was paid completely by the employer.

Senator Holland appreciated the correction to his prior statement.

Representative LeBon noted that the prior committee substitute also expanded the definition of firefighter to include a firefighter employed by a municipal or state fire department. He wondered whether the Alaska Municipal League (AML) had weighed in with a concern. Senator Holland had received a letter of concern from AML. He would follow up with the information.

Co-Chair Merrick wondered if he had heard opposition from the Alaska Public Entity Insurance. Senator Holland was unable to answer the question.

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Representative Josephson deduced that the addition of the state firefighters, which included airport firefighters was minimal and was likely not a concern of the AML. He guessed that AML's opposition would be to the added cancers.

Co-Chair Merrick stated she would try to get the information for the committee. She asked if there had been discussion about naming the bill after the former Fire Chief Cummings. Senator Holland answered in the negative and thought it was an excellent idea.

Representative Carpenter referred to Section 1, Subsection (C) on page 2, lines 25 to 26 of the bill and read, "(C) with regard to diseases described in (1)(C) of this subsection, demonstrates..." He ascertained that the individual had to demonstrate exposure during their

employment. He wondered how the requirement or burden to prove exposure was defined. Senator Holland deferred to Mr. Raygor.

Mr. Raygor answered that the Fairbanks Fire Department procedure was through HAZMAT physicals. He detailed that an initial baseline physical was performed for a new hire and every year of employment after they were required to get a HAZMAT physical. If a firefighter developed cancer, the department examined every fire the individual fought and did "backwards detective work" to list all the potential exposures. Representative Carpenter thought the answer made it even more important to understand the definition of exposure.

Senator Holland asked the fire chief if the reason for logging the firefighters' exposure to carcinogens was to differentiate from someone working in the fire service but who did not fight fires.

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Mr. Raygor answered that it could be an exclusion. He exemplified the EMT's who worked for a fire department but never fought fires.

SB 131(title am) was HEARD and HELD in committee for further consideration.

Co-Chair Merrick reviewed the schedule for the following day.

#

ADJOURNMENT

[5:00:59 PM](#)

The meeting was adjourned at 5:00 p.m.