

SENATE FINANCE COMMITTEE
February 2, 2022
1:04 p.m.

1:04:03 PM

CALL TO ORDER

Co-Chair Bishop called the Senate Finance Committee meeting to order at 1:04 p.m.

MEMBERS PRESENT

Senator Click Bishop, Co-Chair
Senator Bert Stedman, Co-Chair
Senator Lyman Hoffman
Senator Donny Olson
Senator Natasha von Imhof
Senator Bill Wielechowski
Senator David Wilson

MEMBERS ABSENT

None

ALSO PRESENT

Senator Gary Stevens, Sponsor; Tim Lamkin, Staff, Senator Gary Stevens.

PRESENT VIA TELECONFERENCE

Christy Knight, Program Manager, AKHSS Tobacco Prevention and Control, Anchorage; Joe Darnell, Chief Investigator, AKHSS Tobacco Enforcement and Youth Education Program, Anchorage; Emily Nenon, AK Government Relations Director, American Cancer Society, Cancer Action Network, Anchorage; Megan A. Boelter, Western Regional Director, Preventing Tobacco Addiction Foundation/Tobacco 21, New Mexico; David Hancox, RJ Reynolds, New York; Hunter Johnson, Self, Soldotna; Wade Nelson, Self, Soldotna; Rich Marianos, Professor, Georgetown University, Washington DC; Cody Walker, Self, Soldotna; Steven Green, Western Director, R Street Institute, Sacramento; Guy Bentley, Reason Foundation, Director of Consumer Freedom, Virginia; Amanda Wheeler, President, American Vapor Manufactures, Arizona;

Justin Hansen, Youth Encouraging Alaska Health, Kenai; Alex McDonald, Self, Fairbanks; Jon Berrier, Vice-President, State Government Affairs, Juul Labs, California; Shaun D'Sylva, Member, Alaska Smoke Free Trade Association, Anchorage; Elizabeth Hicks, Consumer Choice Center, Detroit; Crystal Meade, Alaska Native Tribal Health Consortium, Anchorage; Tenny Palmquist, Self, Anchorage; Terrence Robbins, Self, Ketchikan; Lindsey Straud, Tax Payers Alliance, Washington DC; Robin Minard, Chief Communication Officer, Matsu Health Foundation, Wasilla; Jay Oku, Self, California; Gregory Conley, American Vaping Association, Medford, NJ; Kassandra Moody, Self, Soldotna; Jesse Walton, Self, Fairbanks; Ben Rajadurai, Americans for Tax Reform, Washington DC; Jamie Morgan, Government Relations Regional Lead American Heart Association, Sacramento; Adam Dotson, Self, Soldotna.

SUMMARY

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

SB 45 was HEARD and HELD in committee for further consideration.

#sb45

SENATE BILL NO. 45

"An Act raising the minimum age to purchase, sell, exchange, or possess tobacco, a product containing nicotine, or an electronic smoking product; relating to transporting tobacco, a product containing nicotine, or an electronic smoking product; relating to the taxation of electronic smoking products; and providing for an effective date."

1:04:13 PM

SENATOR GARY STEVENS, SPONSOR, stated that electronic cigarettes were a current trend in smoking, and was commonly referred to as "vaping." He shared that use of traditional tobacco cigarettes was clearly on the decline, but tobacco manufacturers had recently offered new smoking options in the form of e-cigarettes and related devices that were designed to appeal to a wide variety of consumers particularly young people. He felt that as time went on, people would become addicted to this unhealthy habit, and therefore allowing the companies to profit off that habit.

1:05:49 PM

TIM LAMKIN, STAFF, SENATOR GARY STEVENS, discussed the presentation, "Senate Bill 45, Restricting Youth Access To Tobacco and E-Cigarettes" (copy on file). He looked at slide 2, which outlined the different types of options for e-cigarettes. He addressed slide 3:

5 Given Ingredients:

1. Glycerol
2. Propylene Glycol
3. Flavors
4. Nicotine
5. Benzoic Acid

Other ingredients found:

Acetaldehyde - Cancer Causing

Acrolein - created by heating up glycerin, can damage lungs and contribute to heart disease

Diacytal- causes popcorn lung (bronchiolitis obliterans)

Antifreeze

Arsenic

Benzene

Cadmium

A variety of Carcinogens

Formaldehyde

Heavy Metals: Lead, Nickel, Tin, Aluminum, Mercury

Mr. Lamkin pointed to slide 4, "E-CIGARETTE AEROSOL: NOT JUST A VAPOR":

E-cigarette juices can contain harmful and potentially harmful ingredients, including:

Ultrafine particles that create an aerosol (not water vapor)

Flavorents such as diacetyl, a chemical linked to serious lung disease

Volatile organic compounds

Heavy metals, such as nickel, tin, and lead

Nicotine

Benzoic Acid in pod systems to create nicotine salts

Mr. Lamkin pointed to slide 5, "E-Cigarette Marketing":

Youth are targets of industry marketing. While the legislation protects advertising of tobacco products on the left, vapor product marketing is totally unregulated.

Mr. Lamkin addressed slide 6, which showed many celebrities glamorizing vape use. He looked at slide 7, which showed how social media targeted young people with vape use. He noted slide 8, which addressed how nicotine was disguised as different flavors. He looked at slide 9, "What are the health risks of E-cigarettes?"

E-cigarettes are not a quit smoking product

The Food and Drug Administration has not found any e-cigarette to be safe or effective in helping smokers quit.

Mr. Lamkin pointed to slide 10:

E-cigarettes help sustain the addiction to nicotine and tobacco. "Quitting" means ending the addiction.

- More than half of all adult e-cigarette users continue to use traditional cigarettes at the same time.
- Only 10.1 percent of the smokers who used e-cigarettes had quit smoking after six months compared to 26.6 percent of smokers who did not use e-cigarettes

Mr. Lamkin discussed slide 11, "2017 Alaska Youth Risk Behavioral Survey: Current Use Rates."

Mr. Lamkin pointed to slide 13, "1994 - The "Waxman Hearings" - After 50+ years, the CEO's of the major U.S. cigarette manufacturers appear before Congress, swearing under oath that their products (nicotine in particular) were neither addictive nor harmful to human health.

2007-present - Industry advocates insist E-Cigarettes are neither addictive nor harmful, that they are safe, a healthy alternative to tobacco, and that more time, research, and data is needed to study its effect on human health.

Mr. Lamkin pointed to slide 14, "Factors Leading to Youth Smoking":

Youth-Appealing Flavors
Youth-Resonating Themes
Low Prices / Price Promotions
Ease of Access and Use
Exposure to Ads
Health Claims

[1:14:01 PM](#)

Co-Chair Bishop wondered whether the military had a prohibition.

Mr. Lamkin replied in the affirmative.

Senator Olson wondered what specific diseases or tumors were caused by vaping.

Mr. Lamkin pointed to slide 3, which had disease-causing ingredients.

Senator Olson asked the types of cancers and other diseases were caused by vaping.

Mr. Lamkin agreed to provide the detailed information.

Co-Chair Bishop listed those available for testimony who could speak to the health and disease questions.

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Mr. Lamkin discussed the Sectional Analysis (copy on file):

Sec. 1: AS 11.76.100(a), relating to selling or giving tobacco to a minor, raises the minimum age from 19 to 21.

Sec. 2: AS 11.76.100(b), relating to the requirement for vendors to supervise the operation of tobacco

product vending machines (TVM), amends the exemption for TVMs situated in a private break room, provided there is signage posted indicating the minimum age to possess tobacco products is age 21 (from 19).

Sec. 3: AS 11.76.105, relating to possession of tobacco, electronic smoking products (ESP), or products containing nicotine, raises the minimum age to possess from 19 to 21 years of age, and removes the exemption for incarcerated minors.

Sec. 4: AS 11.76.106(a), bans tobacco and ESPs sales to individuals over the internet.

Sec. 5: AS 11.76.106(b), relating to the 'behind the counter' control provisions of selling tobacco products, allowing exemptions for wholesalers, tobacco shops or online sales, raising the minimum, age to sell from 19 to 21 years of age.

Sec. 6: AS 11.76.109(a), relating to other products containing nicotine, including chew, gum, patches, or E-cigarette products, raises the minimum age to sell or give such products from 19 to 21.

Sec. 7: AS 11.76.109(b), relating to exemptions to selling products containing nicotine to persons under the age of 21, if the product is FDA-approved, prescribed by a doctor, or given by a parent or legal guardian.

Sec. 8: AS 11.76.109(d), relating to the requirement for vendors to supervise the operation of ESP or nicotine product vending machines (EVM), amends the exemption for EVMs situated in a private break room, provided there is signage posted indicating the minimum age to possess tobacco products is age 21 (from 19).

Sec. 9: AS 11.76.109(g), relating to the penalty for selling or giving ESP or nicotine products to a minor as being a \$300 violation, raises the minimum age from 19 to 21 years of age.

Sec. 10: AS 21.96.055 adds a new subsection, under miscellaneous provisions of state insurance law,

requiring a manufacturer of ESPs sold in the state to obtain a commercial general liability insurance policy filed with the state Division of Insurance in the amount of \$10,000,000. Persons having claims against an electronic smoking product manufacturer required to file a bond may bring suit on the bond for failure to pay a liability described in AS 21.96.055.

Sec. 11: AS 43.50.105(b), relating to wholesale tobacco sales and licensees, to restrict licensees from selling or transporting tobacco products to persons that are at least 21 (from 19) years of age, and to implement an age verification process when conducting transactions.

Sec. 12: AS 43.50.105(c), relating to common carrier transportation of cigarettes and tobacco products, to verify the age of the recipient before delivery.

Sec. 13: AS 43.50.150(c), relating to state being in partnership with municipalities in taxing tobacco products, is amended to include taxing ESPs.

Sec. 14: AS 43.50.300, relating to existing state excise tax on tobacco products, is amended to include taxing ESPs at the same 75% of their wholesale value.

Sec. 15: AS 43.50.310(b) exempts the excise tax for ESPs that are a marijuana product, and do not contain nicotine, or are FDA-approved.

Sec. 16: AS 43.50.320(a), includes a requirement to be licensed as a distributor of ESPs for those products subject to an excise tax.

Sec. 17: AS 43.50.320, is a new subsection prohibiting distributors from selling ESPs with flavorings, if an ESP is not clearly packaged and labelled as a tobacco product, and any ESP that resembles a household or school object.

Sec. 18: AS 43.50.325 adds a new section in the tax code, restricting the transportation of tobacco and ESPs into the state, requiring licensing to do so, and makes clear provisions for age verification

for delivery of and labelling for such products. This is a conforming amendment, replicating AS 43.50.015, which applies only to cigarettes.

Sec. 19: AS 43.50.330(a), relating to annual reporting requirements for tax purposes, amends existing tobacco sales reporting to include ESP reporting.

Sec. 20: AS 43.50.335, relating to existing tobacco tax credits and refunds for faulty or destroyed products, to include credits for similarly faulty or destroyed ESPs.

Sec. 21: AS 43.50.340, relating to existing record keeping requirements for licensed businesses selling tobacco products, to also be required to track sales and product information on ESPs being sold.

Sec. 22: AS 43.50.350 adds an exception, described in Section 23 below, to depositing of tax collected into the general fund, which may be used by the legislature to make appropriations for health care, health research, health promotion, and health education.

Sec. 23 AS 43.50.350(b) adds a new subsection directing taxes collected on ESPs to be accounted for separately and may be appropriated by the legislature to provide for education, programs, and advertising related to the hazards of ESPs.

Sec. 24: AS 43.50.390(1), relating to the definition of a distributor of tobacco products, to also include ESPs, for purposes of identifying business who bring ESPs in and out of state, manufactures ESPs in the state, or ships ESPs to retailers in the state.

Sec. 25: AS 43.50.390(5), relating to the term "wholesale price" for purposes of taxing tobacco products, includes ESPs as part of wholesale pricing and taxing.

Sec. 26: AS 43.50.390 provides a definition of "electronic smoking product" for taxing purposes, to

clarify an ESP includes all its parts, but excludes batteries and chargers when sold separately.

Sec. 27: AS 43.70.075(f), relating to business license endorsements for selling tobacco products, amends the existing requirement for signage to be posted on vendor premises, stating it being illegal to sell tobacco or ESPs to minors under the age of 21 (from 19).

Sec. 28: AS 43.70.075(m), relating to the process for suspending business licensees holding a tobacco endorsement, amends existing statute referring to tobacco or ESPs being sold to minors under the age of 21 (from 19).

Sec. 29: AS 43.70.075(t), relating to penalties for licensees violating the T21 laws, amends existing statute for lessening the penalties if a license holder has a written tobacco or ESPs sales policy to include employees not selling tobacco or ESPs to minors under the age of 21 (from 19).

Sec. 30: AS 43.70.075(w), relating to the appeal and administrative process of license suspension, conforms existing law regarding tobacco and ESP sales, to apply to sales to minors under the age of 21 (from 19).

Sec. 31: AS 45.50.471(b), relating to consumer protection and unlawful business practices, adds a new subsection making it unlawful to market or advertise ESPs to persons under the age of 21 in the state.

Sec. 32: AS 47.12.030(b), relating to the juvenile justice system, and minors accused of possessing tobacco, confirms existing law to apply to possession by minors under the age of 21 (from 19).

Sec. 33: AS 11.76.100(e), relating to sales exemptions for incarcerated persons, and AS 11.76.106(b)(4), relating to exemptions for ESP internet sales, are both repealed.

Sec. 34: Relates to applicability of offenses committed on or after the effective of the bill.

Sec. 35: Applies an effective date of January 1, 2022

[1:22:22 PM](#)

Senator von Imhof queried the tax effect of e-cigarettes on the effective date.

Mr. Lamkin replied that there was an desire to amend the effective date to 2023.

Senator Wilson wondered whether there was a tax increase, and how it compared to the tobacco tax.

Mr. Lamkin replied that the current rate was 75 percent of the wholesale product. He stated that how the tax was applied was a "moving target." He noted that it would put the state at one of the highest in the country.

Senator Wilson queried the social economic class of e-cigarette users.

Mr. Lamkin replied that the data would be presented shortly by a presenter.

Senator Wilson assumed that it could be the highest tax increase on a community that could least afford it, and doubted that people would stop using because of the tax, and rather substitute other means in order to continue to purchase even with the tax.

Senator von Imhof looked at Section 17, and wondered whether other states had prohibited flavorings.

Mr. Lamkin replied in the affirmative, and stated that the Public Health Law Center had published that data.

Senator von Imhof felt that the prohibition was prescriptive to the detail.

[1:26:47 PM](#)

Senator Wielechowski looked at Section 4, and queried the enforcement agency for internet sales. He wondered whether there would be a penalty on the purchaser of the product.

Mr. Lamkin replied that it was a challenge in the discussions. He stated that the business community tended

to police itself, so the amendment would assist the storefront that did not want the competition of the internet.

Senator Wielechowski wondered whether there would be jobs lost due to the increase in the age requirement for sellers.

Mr. Lamkin replied that it was conforming language and felt that the issue could be compared to bars who could not hire those individuals who were not at least 21 years old.

Senator Olson queried the amount of money spent on health care related to smoking or e-cigarettes in Alaska.

Mr. Lamkin agreed to provide that information.

Senator Olson wondered whether the bill would lower the amount of money spent on health care related to smoking or e-cigarettes in Alaska.

Mr. Lamkin stated that the data related to taxing the product showed that it drove people away from the additive behavior.

Senator von Imhof wondered whether the tax would be on both the hardware and oils.

Mr. Lamkin replied that the approach had been difficult to craft due to the wide variety of products. He stated that the approach was to tax all items related to e-cigarettes.

Senator Wilson wondered how the bill would halt the after market products. He noted that he recently was visited by a physician who advocated for the use of e-cigarettes versus smoking, and noted that there was a report from the FDA that stated that e-cigarettes were an approved alternative to smoking. He felt that there was some conflicting information.

Mr. Lamkin replied that e-cigarettes might be safer than smoking, but were not proven to be "safe."

Senator Wilson felt that encouraging a person to use a "safer product", and tax had shown a decrease in any usage. He wondered why there should be a decrease in the use of a "safer product."

Mr. Lamkin responded that the focus was to first enact a policy to restrict access to help deter the beginning of the addiction. He stressed that there was less of a focus on the tax aspect of the proposal.

[1:35:24 PM](#)

Senator Olson stressed that he wanted to ensure that young people did not become addicted to vaping.

Mr. Lamkin shared an anecdote, where he asked his teenage son if he had been exposed to vaping, who said that he was exposed when he was 12 years old after finding a vaping product on the street.

Senator Stevens stressed that there were two issues within the bill. He stated that the first issue was keeping the e-cigarettes from young people. He furthered that the second issue was taxation, and he did not have the right answer about the exact tax level.

Senator Wielechowski surmised that Alaska did not have any tax on e-cigarette products.

Mr. Lamkin replied in the affirmative.

Senator Wielechowski asked whether there was a federal tax on e-cigarette products.

Mr. Lamkin agreed to provide that information.

Senator Wilson stated that he did not oppose the age restriction in the bill.

[1:40:32 PM](#)

Co-Chair Bishop wondered whether one cartridge of an e-cigarette was equivalent to smoking one pack of cigarettes.

Mr. Lamkin responded that it varied greatly.

[1:43:41 PM](#)

CHRISTY KNIGHT, PROGRAM MANAGER, AKHSS TOBACCO PREVENTION AND CONTROL, ANCHORAGE (via teleconference), testified in support of the legislation.

[1:50:57 PM](#)

Senator Wielechowski queried any research related to health costs to the state.

Ms. Knight replied that there was no current data for current costs to the state.

Senator Wielechowski queried the way that youth were obtaining e-cigarettes.

Ms. Knight replied that the large majority of youth borrow the products from older peers.

Senator Wielechowski wondered whether the bill adequately addressed that aspect acquisition.

Ms. Knight felt that by increase the age to 21, there was an increase in the gap between high school and those who were legally able to purchase the products.

[1:54:27 PM](#)

JOE DARNELL, CHIEF INVESTIGATOR, AKHSS TOBACCO ENFORCEMENT AND YOUTH EDUCATION PROGRAM, ANCHORAGE (via teleconference), spoke in support of the legislation.

[1:58:10 PM](#)

EMILY NENON, AK GOVERNMENT RELATIONS DIRECTOR, AMERICAN CANCER SOCIETY, CANCER ACTION NETWORK, ANCHORAGE (via teleconference), spoke in support of the bill.

[2:03:38 PM](#)

MEGAN A. BOELTER, WESTERN REGIONAL DIRECTOR, PREVENTING TOBACCO ADDICTION FOUNDATION/TOBACCO 21, NEW MEXICO (via teleconference), spoke in support of the bill.

[2:09:23 PM](#)

Co-Chair Bishop OPENED public testimony.

[2:09:41 PM](#)

DAVID HANCOX, RJ REYNOLDS, NEW YORK (via teleconference), testified against the legislation.

[2:12:10 PM](#)

HUNTER JOHNSON, SELF, SOLDOTNA (via teleconference), testified against the legislation.

[2:13:35 PM](#)

WADE NELSON, SELF, SOLDOTNA (via teleconference), spoke to the comments of Ms. Nenon. He spoke against the legislation.

[2:14:29 PM](#)

RICH MARIANOS, PROFESSOR, GEORGETOWN UNIVERSITY, WASHINGTON DC (via teleconference), spoke against the legislation.

[2:16:52 PM](#)

CODY WALKER, SELF, SOLDOTNA (via teleconference), stated that there was no trace of formaldehyde in vape pens. He wanted to ask about why there was legislation proposed by "ignorant people."

Co-Chair Bishop asked for a position on the legislation.

Mr. Walker stated that he was against the bill.

[2:17:47 PM](#)

STEVEN GREEN, WESTERN DIRECTOR, R STREET INSTITUTE, SACRAMENTO (via teleconference), testified against the bill.

[2:19:38 PM](#)

GUY BENTLEY, REASON FOUNDATION, DIRECTOR OF CONSUMER FREEDOM, VIRGINIA (via teleconference), spoke against the bill.

[2:21:23 PM](#)

AMANDA WHEELER, PRESIDENT, AMERICAN VAPOR MANUFACTURES, ARIZONA (via teleconference), spoke against the bill.

[2:24:14 PM](#)

JUSTIN HANSEN, YOUTH ENCOURAGING ALASKA HEALTH, KENAI (via teleconference), spoke in support of the bill.

[2:25:13 PM](#)

Senator Wilson requested the testimony in writing.

[2:25:31 PM](#)

ALEX MCDONALD, SELF, FAIRBANKS (via teleconference), testified against the bill.

[2:28:34 PM](#)

JON BERRIER, VICE-PRESIDENT, STATE GOVERNMENT AFFAIRS, JUUL LABS, CALIFORNIA (via teleconference), spoke against the age requirement in the bill.

[2:30:46 PM](#)

SHAUN D'SYLVA, MEMBER, ALASKA SMOKE FREE TRADE ASSOCIATION, ANCHORAGE (via teleconference), spoke against the bill.

[2:33:03 PM](#)

ELIZABETH HICKS, CONSUMER CHOICE CENTER, DETROIT (via teleconference), spoke against the legislation.

[2:35:08 PM](#)

CRYSTAL MEADE, ALASKA NATIVE TRIBAL HEALTH CONSORTIUM, ANCHORAGE (via teleconference), spoke in support of the legislation.

[2:36:57 PM](#)

TENNY PALMQUIST, SELF, ANCHORAGE (via teleconference), testified in support of the bill.

[2:38:35 PM](#)

TERRENCE ROBBINS, SELF, KETCHIKAN (via teleconference), spoke in support of the legislation.

[2:41:26 PM](#)

LINDSEY STRAUD, TAXPAYERS ALLIANCE, WASHINGTON DC (via teleconference), testified against the bill.

[2:43:37 PM](#)

ROBIN MINARD, CHIEF COMMUNICATION OFFICER, MATSU HEALTH FOUNDATION, WASILLA (via teleconference), spoke in support of the bill.

[2:45:09 PM](#)

JAY OKU, SELF, CALIFORNIA (via teleconference), testified against the bill.

[2:47:59 PM](#)

GREGORY CONLEY, AMERICAN VAPING ASSOCIATION, MEDFORD, NJ (via teleconference), spoke against the bill.

[2:49:19 PM](#)

KASSANDRA MOODY, SELF, SOLDOTNA (via teleconference), testified against the bill.

[2:50:05 PM](#)

JESSE WALTON, SELF, FAIRBANKS (via teleconference), spoke against the bill.

[2:51:24 PM](#)

BEN RAJADURAI, AMERICANS FOR TAX REFORM, WASHINGTON DC (via teleconference), spoke against the bill.

[2:52:38 PM](#)

JAMIE MORGAN, GOVERNMENT RELATIONS REGIONAL LEAD AMERICAN HEART ASSOCIATION, SACRAMENTO (via teleconference), spoke in support of the bill.

[2:55:22 PM](#)

ADAM DOTSON, SELF, SOLDOTNA (via teleconference), testified against the bill.

[2:56:26 PM](#)

Co-Chair Bishop CLOSED public testimony.

SB 45 was HEARD and HELD in committee for further consideration.

#

ADJOURNMENT

2:56:44 PM

The meeting was adjourned at 2:56 p.m.

