

SENATE FINANCE COMMITTEE

May 4, 2023

9:07 a.m.

[9:07:19 AM](#)

CALL TO ORDER

Co-Chair Olson called the Senate Finance Committee meeting to order at 9:07 a.m.

MEMBERS PRESENT

Senator Lyman Hoffman, Co-Chair
Senator Donny Olson, Co-Chair
Senator Bert Stedman, Co-Chair
Senator Click Bishop
Senator Jesse Kiehl
Senator Kelly Merrick
Senator David Wilson

MEMBERS ABSENT

None

ALSO PRESENT

Senator Matt Claman, Sponsor; Nancy Meade, General Counsel, Alaska Court System; Stacie Kraly, Director, Civil Division, Department of Law; Senator Gary Stevens, Sponsor; Tim Lamkin, Staff, Senator Gary Stevens; Shawn Arnold, Principal, Thunder Mountain High School, Juneau; Sylvan Robb, Director, Division of Corporations, Business and Professional Licensing, Department of Commerce, Community and Economic Development; Pam Leary, Director, Treasury Division, Department of Revenue; Dr. Lisa Rabinowitz, Staff Physician, Division of Public Health, Department of Health.

PRESENT VIA TELECONFERENCE

Karen Bloxsom, Assistant Principal, Wasilla High School; Joe Darnell, Chief Investigator, Tobacco Enforcement and Youth Education, Department of Health; Katie Steffens, Deputy Program Manager, Tobacco Prevention and Control, Department of Health; Brandon Spanos, Deputy Director, Tax Division, Department of Revenue; Carrie Nyssen, American Lung Association, Vancouver, Washington; Joe O'Connor,

Director of Tobacco, Holiday Companies, St. Paul, Minnesota; David Parrott, Self, Soldotna; Alex McDonald, Self, Fairbanks; June Rogers, Self, Fairbanks; Alyssa Keill, Self, Fairbanks; Jennifer Chikoyak, Self, Kenai; Elizabeth Ripley, President and CEO, Mat-Su Health Foundation, Wasilla; Tabitha Blades, Self, Soldotna; Emily Nenon, American Cancer Society, Cancer Action Network, Anchorage; Jessi Walton, Self, Fairbanks; Patricia Patterson, Self, Kenai Peninsula; Vikki Jo Kennedy, Self, Juneau; Megan Boelter, Preventing Tobacco Addiction Foundation, New Mexico; Schell Hammel, Smoke Free Alternative Trade Association, Texas.

SUMMARY

SB 53 FIVE-YEAR INVOLUNTARY COMMITMENTS

CSSB 53 (FIN) was REPORTED out of committee with three "do pass" recommendations and with one "no recommendation" recommendation and with two "amend" recommendations, and with one new zero fiscal note from the Department of Family and Community Services, one new fiscal impact note from the Department of Law, one new zero fiscal note from the Judiciary, and two previously published fiscal impact notes: FN3 (ADM), FN 5 (ADM).

SB 89 AGE FOR TOBACCO/NICOTINE/E-CIG; TAX E-CIG

SB 89 was HEARD and HELD in committee for further consideration.

SB 133 OPIOID REMEDIATION FUNDS

SB 133 was SCHEDULED but not HEARD.

#sb53

SENATE BILL NO. 53

"An Act relating to involuntary civil commitments."

[9:07:57 AM](#)

Co-Chair Olson read the title of the bill and asked the sponsor to give a brief synopsis. He noted that Version 0 of the bill was before the committee for consideration.

[9:08:23 AM](#)

SENATOR MATT CLAMAN, SPONSOR, relayed that he supported the Committee Substitute - Version O as adopted in committee the previous day. He referenced previous discussion that had pertained to the concept that there were "two different tracks" for involuntary commitment. He noted that the bill itself did not create anything that did not already exist for people in short term psychiatric care and people in long term psychiatric care. He explained that there was a practical difference between those that were there for long periods, and some had been held for as long as 9 years. He referenced testimony that indicated there was no difference in the process of whether an individual stayed or did not stay, and there was no legal distinction. The practical consideration had to do with beds for long term patients and beds for short term patients.

Senator Claman continued his remarks and noted that the bill would close the gap between individuals whose case may be dismissed for incompetency and starting an involuntary commitment proceeding. He wanted to clarify that the process in court whereby an involuntary commitment proceeding was filed (in terms of the bill) was a fairly simple process. The court was likely to have a one- or two-page form which would take a short time for the prosecutor to fill out before the charges were dismissed. He thought more detailed questions (such as who was raising competency questions and whether an individual was found incompetent) were not changed by the bill and were already in statute.

Co-Chair Olson commented that the longer the bill was discussed the less likely it was to pass.

Senator Wilson asked if the committee could hear from Nancy Meade, the General Counsel for the Alaska Court System.

Senator Wilson referenced the sponsor's remarks about not having a "two-tiered system," and asked if the courts saw a difference in short term and long-term civil commitment. He asked about the process. He asked if the court had any issues with the current system for civil commitments.

[9:12:17 AM](#)

NANCY MEADE, GENERAL COUNSEL, ALASKA COURT SYSTEM, was not certain by what Senator Wilson meant by "two tiers." She clarified that with the bill, it was the case that someone who had previously been found incompetent to stand trial and was subsequently admitted for the beginnings of a mental commitment, could (after the periods of commitment in the statute) be additionally committed for a 5-year term. The additional commitment was only available if the individual had previously been found incompetent to stand trial, which was different to an individual that entered the mental commitment system without having been previously found incompetent to stand trial.

Senator Wilson asked about a person that might be committed for 5 years rather than a similar individual that was committed for 180 days.

Ms. Meade affirmed that it was true that someone in the system not as a result of being found incompetent to stand trial in a criminal case (and entered the system another way) could not be committed for 5 years and would have a 180-day commitment that could also be subsequent 180-day commitments. She noted that as Dr. Becker had testified the previous day that there were long-term committed individuals with serial 180-day commitments. She thought the bill did set up a different system for someone who had been previously found incompetent to stand trial in a criminal case; and the person would not be going through (necessarily) a series of 180-day commitments but could be committed once for five years. The distinction was based on being previously found incompetent to stand trial.

Senator Wilson asked if the hearings proposed in the bill and the normal civil commitment process time frames were the same.

Ms. Meade answered "yes," and noted that the bill set up a three-day evaluation, which most mental commitments started with. During the 3-day evaluation at the Alaska Psychiatric Institute (API), if the professional person in charge had reason (mental illness and likely to seriously harm self or others), the professional could file for a 30-day mental commitment and follow with a 90-day and 180-day commitment if warranted. The bill would create an option for individuals whose commitment came from a criminal case in which the person was found incompetent, there was an additional option to be committed for five years. The five-

year commitment was not an option for individuals that did not enter the system after a finding of incompetence.

9:15:58 AM

Senator Kiehl MOVED to ADOPT Amendment 1, 33-LS0172\0.1 (Dunmire, 5/2/23).

Co-Chair Olson OBJECTED for discussion.

Senator Kiehl spoke to Amendment 1. He thanked the sponsor and Co-Chair Olson's office for the CS, which he thought made some material improvements in the bill and addressed some of his concerns. He addressed a concern that there was potential for the government to hold an individual that had not been convicted of a crime for up to five years. He commented that the span of five years was longer than he trusted the government and longer than could be justified medically or constitutionally. He noted that the amendment took the maximum of five years down to a maximum of two years, which was still four times the longest that was currently in place.

Senator Kiehl explained that the reason that the amendment proposed two years was due to the powerful testimony offered by a person that had been stabbed. He thought there was a rationale for allowing a longer commitment than the current law but considered that raising the limit by 10 times raised constitutional questions. He contended that it was difficult to concur when medical personnel had testified that the current system was working. He noted that after two years the government would have to prove a person was still dangerous. He noted that the provision applied to any felony charge, some of which did not result in two years of jail time. He thought a length beyond two years brought up constitutional and freedom issues.

Co-Chair Olson questioned how to protect society from a person with mental issues, especially in rural areas.

Senator Kiehl clarified that he was referring to people that were already hospitalized and had been in a locked mental health facility, wherein medical personnel had judged the person to be dangerous. He considered that if a person was still deemed as medically dangerous, the hold would be renewed. He mentioned the victim's perspective.

9:20:30 AM

Senator Bishop asked the bill sponsor if the change to two years proposed in the amendment defeated the purpose of the bill.

Senator Claman expressed that the two-year period proposed in the amendment did not completely defeat the purpose of the bill, but the five-year time period was what was consistently proposed by testimony. He referenced multiple hearings and thought that from a victim's perspective, five years offered more assurance than two years. He noted that the bill allowed a person committed for five years that was shown to be safe the ability to go before the court in six months to establish that they were no longer a danger and be released. He reiterated his point about a five-year commitment offering more assurance to victims. He agreed that two years was better than six months.

Senator Bishop expressed concern that dangerous individuals would be released to commit additional crimes.

Senator Wilson had similar concerns as Senator Kiehl. He referenced testimony. He thought there was a difference between different court systems including a jury versus not having due process. He had concerns about individuals being committed without being evaluated. He referenced testimony from API and the Court System, and the lack of necessary facilities. He suggested that the topic would come up when considering the budget the following year as a result of API needing to renovate its facility to accommodate long term stays. He supported the amendment.

9:24:11 AM

Senator Merrick asked the sponsor if there was a way to assure that an individual released would continue on medication.

Senator Claman relayed that the most significant way for API to accomplish that was to keep individuals in involuntary commitment on an out-patient basis. He continued that API currently engaged in the practice, and API testimony had referenced an individual currently engaged in out-patient supervision.

Co-Chair Olson asked Representative Claman to comment on the amendment.

Senator Claman did not support the amendment.

Co-Chair Olson discussed individuals that could not be rehabilitated. He questioned how to stop the backup so that there was no capacity in the dedicated beds.

Senator Claman identified that a key provision of the bill was the ability for the courts to release people that were being evaluated for competency in secured release on bail. Instead of all individuals in custody through restoration, the bill provided for more ability for custody to take place not in the in-patient setting. There was testimony that indicated there were efforts already to increase the amounts of outpatient evaluation and restoration efforts, which would relieve backup.

Co-Chair Olson WITHDREW his objection.

Senator Merrick OBJECTED to Amendment 1.

A roll call vote was taken on the motion.

IN FAVOR: Kiehl, Wilson, Hoffman, Olson
OPPOSED: Bishop, Merrick

The MOTION PASSED (4/2). Amendment 1 was ADOPTED.

Senator Wilson MOVED to WITHDRAW Conceptual Amendment 2, 33-LS0172\P.6 (Dunmire, 5/3/23). There being NO OBJECTION, it was so ordered.

[9:27:19 AM](#)

AT EASE

[9:28:02 AM](#)

RECONVENED

Co-Chair Bishop MOVED to ADOPT Amendment 3, 33-LS0172\O.2 (Dunmire, 5/3/23).

Co-Chair Olson OBJECTED for discussion.

Senator Bishop explained that the previous day the committee had heard testimony from the Department of Law

and the amendment provided for allowing a victim to attend the hearing of an individual that had committed the crime.

Senator Kiehl asked if the amendment allowed for the victim to have access to information beyond what was discussed in court.

[9:29:16 AM](#)

AT EASE

[9:29:19 AM](#)

RECONVENED

Senator Wilson relayed that he had discussed the topic of the amendment with the Court System and the Department of Family and Community Services. He thought that if Amendment 3 were to pass, a victim in a case could attend but court proceedings would change to exclude certain information. He cited that there could be a chance that a victim could inadvertently be present during a breach of information and should be aware of confidential medical information. He supported the amendment with caution. He thought a victim should have the right to attend a trial but had concerns about the respondent's right to privacy.

Senator Kiehl asked to hear from the sponsor.

Co-Chair Olson asked the sponsor to comment.

Senator Claman relayed that he supported Amendment 3. He thought a victim should be able to attend the hearing and affirmed that it would be made apparent that it was a closed hearing with confidential information that should not be disclosed.

Senator Wilson wanted to ensure that people understood that there was nothing in the bill that made the hearing confidential.

Co-Chair Olson asked the sponsor to comment.

Senator Claman deferred to the Department of Law.

[9:32:11 AM](#)

STACIE KRALY, DIRECTOR, CIVIL DIVISION, DEPARTMENT OF LAW, affirmed that a civil commitment hearing was confidential

under state law. She agreed with Senator Claman that if individuals attended the hearing, they should be cautioned and instructed about the confidential nature of the hearing and maintain the confidentiality after the hearings.

Senator Wilson asked if the information should be put in the bill. He shared concerns that confidential information could be shared after a hearing.

Ms. Kraly thought a provision could be added to make it clear that the hearings were confidential. She believed that confidentiality was already part of the process. She noted that when the Civil Division processed commitment hearings, confidentiality was understood. She did not know if an additional provision was necessary since the hearing in and of itself and the entire statutory scheme was rendered confidential. She assumed that if there was a third party attending, the court would explain the confidential nature of the proceedings.

Senator Bishop asked for Ms. Meade to comment.

Ms. Meade agreed with Ms. Kraly that hearings were generally confidential. She thought that the victim's attendance was one exception and trusted that a judge would convey to those present that confidentiality must be maintained. She believed the caution from the judge would be routinely given.

Senator Claman conveyed that the structure of closed hearings was that the judge's assistant closed and locked the doors, and a victim would be aware that it was a closed proceeding.

Co-Chair Olson asked for Senator Claman's stance on the amendment.

Senator Claman supported the amendment without change.

Co-Chair Olson WITHDREW his objection. There being NO further OBJECTION, it was so ordered. Amendment 3 was ADOPTED.

[9:35:34 AM](#)

Senator Wilson MOVED to ADOPT Amendment 4, 33-LS0172\0.4 (Dunmire, 5/3/23).

Co-Chair Olson OBJECTED for discussion.

Senator Wilson spoke to Amendment 4. He considered that the committee had heard from the Department of Law, the Court System, and the sponsor that there was currently a problem in the system. He thought everyone agreed that after someone was found incompetent, no one filed for a continuation of an evaluation. The amendment left in place to allow for the prosecuting attorney to mandate a filing and included the previous amendment. He thought the committee had heard from API that it would need funding in the future to address capacity. He contended that the amendment tried to keep a "one tier" system. The amendment would return the commitment process to a 180-day cycle.

Co-Chair Olson WITHDREW his OBJECTION.

[9:37:27 AM](#)

Senator Kiehl OBJECTED.

Senator Kiehl MAINTAINED his objection.

Senator Claman did not support the amendment, which he thought changed a key part of the legislation. He furthered that part of the bill required the prosecution to file the petition for involuntary commitment, but had the person held for 3 days and started the 30-day commitment process. He summarized that the proposed amendment would continue the gap that currently existed in the system.

Senator Claman continued to speak to his objection. He conveyed that part of the bill had specific provisions that allowed for people to be bailed out if the court believed the person could be out on bail while doing an evaluation for competency and also restoration. He thought the amendment would take out provisions that were intended to relieve some of the pressure on the system for those being evaluated for competency.

Senator Kiehl spoke to his objection. He expanded on the bill sponsor's comments regarding the potential for out-patient restoration of competency. He thought the possibility of out-patient restoration had potential and mentioned advances in medication. He mentioned improvement

in the backlog of individuals waiting in jail for evaluation.

Senator Wilson MOVED to WITHDREW Amendment 4. There being NO OBJECTION, it was so ordered.

Senator Kiehl MOVED to report CSSB 53(FIN) as amended out of Committee with individual recommendations and the accompanying fiscal notes.

Senator Wilson OBJECTED for discussion. He felt the bill was a good piece of legislation that would fix an established problem but considered that the bill would cause a myriad of legal challenges within the disability community. He thought there would be imbalances in how systems were handled.

Senator Wilson WITHDREW his objection. There being NO further OBJECTION, it was so ordered.

CSSB 53 (FIN) was REPORTED out of committee with three "do pass" recommendations and with one "no recommendation" recommendation and with two "amend" recommendations, and with one new zero fiscal note from the Department of Family and Community Services, one new fiscal impact note from the Department of Law, one new zero fiscal note from the Judiciary, and two previously published fiscal impact notes: FN3 (ADM), FN 5 (ADM).

[9:41:06 AM](#)

AT EASE

[9:43:39 AM](#)

RECONVENED

#sb89

SENATE BILL NO. 89

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

9:43:39 AM

Co-Chair Olson relayed that it was the first hearing for SB 89.

9:44:09 AM

SENATOR GARY STEVENS, SPONSOR, explained the purpose of the legislation. He said that the bill would restrict the sale and possession of nicotine products to the youth of Alaska. He stressed that tobacco companies were advertising to young people in new and seductive ways that disregard the health dangers of their product.

9:45:45 AM

TIM LAMKIN, STAFF, SENATOR GARY STEVENS, noted that the legislation had passed the previous year and had been vetoed by the governor. He discussed the emergence of e-cigarettes on the market. He lamented the popularity and availability of e-cigarettes, which heated liquid to create aerosol to inhale containing nicotine flavorings and additives.

Co-Chair Olson appreciated the efforts of the sponsor.

Mr. Lamkin discussed a presentation entitled "Senate Bill 89 - Restricting Youth Access To Tobacco and E-Cigarettes" (copy on file). He looked at slide 2, "E-Cigarette Marketing," and discussed manufacturer's use of traditional un-regulated marketing techniques to secure product sales.

Mr. Lamkin showed slide 3, "Social Media - Instagram/Twitter/Youtube," and explained that e-cigarette brands used social media to promote products. He mentioned competitions involving e-cigarette use. He suggested that the messaging promoted the idea that e-cigarettes were safe for use.

Mr. Lamkin spoke to slide 4, "Recent Confiscations," that showed three photographs of devices that had been confiscated recently from a school in Anchorage. He discussed the prevalence of the products.

Mr. Lamkin showed slide 5, which showed a variety of disposable vaping products with details on usage.

Mr. Lamkin addressed slide 6, which showed photographs of e-cigarette products compared with cigarettes. He referenced traditional tobacco cigarette prices.

[9:50:13 AM](#)

Mr. Lamkin referenced slide 7, which pertained to the "Waxman hearings," in which tobacco companies had testified that cigarettes were not harmful to health. He thought there was general agreement that e-cigarettes could help with smoking cessation and were less toxic than traditional tobacco products, but he thought there should not be an assumption that use of e-cigarettes was not toxic.

Mr. Lamkin argued that e-cigarettes did not end addiction, but rather extended addiction. He thought there would be testimony that claimed the benefits of e-cigarettes in smoking cessation. He mentioned e-cigarettes and the military. He cited a news article (copy on file) that indicated that the company Juul had reached a settlement of \$462 million being paid to six states for claiming its products were safe. He cited an informal poll of over 500 schools in the state which indicated that the products were pervasive in Alaska schools.

Co-Chair Olson asked about the \$462 million was a judgement or a settlement.

Mr. Lamkin informed that the funds were part of a settlement.

Co-Chair Olson thought the settlement was a significant amount.

[9:53:45 AM](#)

Mr. Lamkin addressed a Sectional Analysis (copy on file):

SECTIONAL ANALYSIS

(version U)

Sec. 1: AS 11.76.100(a), relating to cigarette sales, makes it a violation to sell to persons under age 21; however the person making the sale at a licensed location may be age 19 or older.

Sec. 2: AS 11.76.100(b), relating to supervision 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, (a) relating to possession of tobacco, electronic smoking products (ESPs), or products containing nicotine, raises the minimum age to possess from 19 to 21 years of age; removes the exemption for incarcerated minors;

(b) makes allowable exemptions as an affirmative defense for possession under certain conditions; to include if the product is FDA-approved, is prescribed by a doctor, and given by a parent or legal guardian. and

(c) makes possession a violation punishable by a fine not to exceed \$150, or in lieu of paying a fine the court may direct a defendant to take an educational class on the harms of smoking.

Sec. 4: AS 11.76.105 (d) Directs the court system to establish a bail schedule for the fine referenced in Section 3 above, for amounts that may be forfeited without court appearance; and

(e) provides an exemption for persons age 19-20, when selling tobacco, nicotine products, or ESps, to be exempted from the prohibition of underage possession of those products.

Sec. 5: AS 11.76.106(a) prohibits the direct sale of ESps over the Internet to private consumers, with exceptions provided in the next section.

Sec. 6: 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. 7: AS 11.76.109(a), relating to other products containing nicotine (OTP), including chew, gum, patches, or E-cigarette products, makes it a violation to sell to persons under age 21; however the person making the sale at a licensed location may be age 19 or older.

Sec. 8: 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, is prescribed by a doctor, and given by a parent or legal guardian.

Sec. 9: 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. 10: AS 11.76.109(g), relating to the penalty for selling or gifting ESP or nicotine products to a person under the age of 21 as a violation punishable by a fine of not less than \$300.

Sec. 11: AS 11.81.900(b) adds a definition of nicotine, to include a chemical or chemical compound intended to simulate the effect of the plant-based chemical derived from the tobacco plant. This is intended to include the emergence of synthetic nicotine in the market as a means of evading tax and sales penalties.

Sec. 12: AS 43.50.070(a), relating to licensing requirements for buying or selling tobacco or other products containing nicotine, adds legal authority for the Dept. of Revenue to suspend, revoke a license for ESP sales.

[9:58:22 AM](#)

Mr. Lamkin continued to address the Sectional Analysis:

Sec. 13: AS 43.50.105(b), relating to wholesale cigarette 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. 14: AS 43.50.105(c), relating to common carrier transportation of cigarettes, to verify the age (21) of the recipient before delivery.

Sec. 15: AS 43.50.150(c), relating to the state being in partnership with municipalities in taxing tobacco products, is amended to include those municipalities taxing ESPs, to share data and jointly audit licensees selling those products.

Sec. 16: AS 43.50.325 adds a restriction on the transportation of OTP 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 43.50.105, which applies only to cigarettes.

Sec. 17: AS 43.50 is amended by adding Article 8, relating to ESP Sales, Shipping, Licensing, and Taxation

AS 43.50.850 levies a 25% tax on the retail sales price of closed-system ESPs and vapor products in the state.

AS 43.50.855 provides for exemptions from the tax to include closed ESPs or vapor sold on military bases, approved by the FDA as a tobacco cessation product, or sold as a marijuana or hemp product.

AS 43.50.860 requires retailers to be licensed in the state to sell ESPs, details an annual application renewal process and fee, license transferability, suspension and revocation, product packaging and labelling requirements, and restrictions on marketing flavored products to youths.

AS 43.50.865 requires ESP licensees to file a monthly tax return to the Dept. of Revenue (DOR), including information on what was sold, sales prices, and tax imposed.

AS 43.50.870, requires record keeping for licensees selling ESPs, including information on purchase prices, product sources, and volume of purchase. This information is to be kept on file for 3 years and kept confidential by the DOR.

AS 43.50.875 directs taxes collected on ESPs to be accounted for separately and that the tax revenue may be appropriated by the legislature to provide for educational programs in health care and research, advertising related to the hazards of ESPs, and for relief to schools in administering health programs and installation of ESP detection devices.

AS 43.50.880 is a conforming amendment, adding restrictions to shipping or transporting ESPs into the state without a license, consistent with same statutes relating to shipping or transporting tobacco or cigarettes.

AS 43.50.885 places restrictions on ESP vapor products to include:

1. a nicotine concentration of no more than 60mg/ml;
2. protection from breakage and leakage;
3. not containing other additives or stimulants such as caffeine, taurine, or vitamin E acetate;
4. child- and tamper-proof packaging
5. clear labeling to inform customers of all ingredients and nicotine content.

AS 43.50.900 provides a definition for "sales price" for tax purposes

AS 43.50.990 provides definitions for "closed electronic smoking product," "electronic smoking product," "vapor product," "nicotine," and "retailer." Hardware components such as batteries, battery chargers, heating elements and mouthpieces are excluded from the definition of an ESP for tax purposes, when sold separately or not part of a closed ESP.

Sec. 18: 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. 19: 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. 20: 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. 21: 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. 22: 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. This is a conforming change consistent with unlawful marketing referenced in Section 18 above.

Sec. 23: AS 47.12.030(b), relating to the juvenile justice system, and minors accused of possessing tobacco, conforms existing law to apply to possession by minors under the age of 21 (from 19).

Sec. 24: AS 11.76.100(e), relating to sales, gifting and possession exemptions for incarcerated persons, and AS 11.76.106(b)(4), allowing internet sales of ESP products to unlicensed consumers, are both repealed.

Sec. 25: Relates to applicability, conforming changes in the bill.

Sec. 26: Applies an effective date of January 1, 2024.

[10:03:26 AM](#)

Co-Chair Olson recognized that Co-Chair Stedman had joined the meeting.

Senator Kiehl asked about making the tickets available. He asked if the bill signified that if a minor received a ticket, the parents would not know.

Senator Stevens thought Senator Kiehl asked an important question.

Mr. Lamkin relayed that currently there was a mandatory court appearance in place. He agreed that a ticket could be issued to a minor, and the minor could withhold the information from the minor's parents. He noted that there was a representative from the courts that could more definitively address the issue.

Senator Stevens reiterated that Senator Kiehl had brought up an important issue and stated he would be amenable to making a change to the bill.

Senator Kiehl agreed to follow up with the sponsor at a later time.

[10:05:12 AM](#)

SHAWN ARNOLD, PRINCIPAL, THUNDER MOUNTAIN HIGH SCHOOL, JUNEAU, spoke in support of the bill. He thought the bill was an important step to help children become nicotine-free. He cited the rise in tobacco use in teens. He cited that in the past three to four years he had begun to see e-cigarette use and vaping. He estimated that in his school of 600 students, about 25 percent had tried vaping or used vaping on a regular basis. He noted that the behavior had been witnessed primarily in younger students aged 14 to 16, that smoked nicotine cartridges in fruit flavors. He thought vaping was becoming so addictive that students used it in all areas of the school.

Mr. Arnold continued his testimony and reported students often considered e-cigarettes to be harmless or were addicted. He noted that students often turned in vaping devices. He had confiscated at least 70 devices in the

current year. He described behaviors by which students obtained vaping devices. He thought the products were often purchased by an older sibling, obtained from other students on campus, purchased, occasionally purchased online, or even provided at times by a parent. He thought a low-end device was priced at \$20 and sold to other students for \$40. He discussed a sophisticated exchange system involving coordination over social media. He thought often there were adults involved. He described devices as becoming smaller and more difficult to identify. He noted that Thunder Mountain High School had revamped its efforts to share the dangers of vaping. He noted that a Juneau ordinance did exist that resulted in a citation for underage possession.

[10:10:05 AM](#)

Mr. Arnold discussed the school discipline measures involved with e-cigarette and tobacco use. Finding a device resulted in notification of law enforcement. He lamented a lack of accountability. He shared an example of the devices he had confiscated in the previous two weeks.

Senator Wilson wondered if students were buying \$200 vaping devices and how the proposed tax might impact buying the devices.

Mr. Arnold thought the tax might be a deterrent. He hoped that some of the taxes collected would go towards helping communities with tobacco cessation.

[10:12:27 AM](#)

Senator Kiehl asked if Mr. Arnold was spending any funds on detection devices. He did not think there were any at Juneau Douglas High School.

Mr. Arnold affirmed that there were no detection devices in the Juneau School District. He cited that the average cost of what was on the market was about \$1,200 per device. He referenced conversations with other Alaskan principals that had installed detection devices. He commented on students finding ways to circumvent detection by devices. He noted that there were online YouTube devices that showed methods for foiling detection. He recounted that in Anchorage, the devices were sending so many alerts that it was time-prohibitive for administrators to handle.

Senator Kiehl discussed educational impacts such as smoke-filled bathrooms. He asked Mr. Arnold to quantify what educational resources were being diverted.

Mr. Arnold listed time and staffing as impacted resources and mentioned schools that had engaged staff in signing students in and out of bathrooms. He discussed time taken from lesson planning and instruction. He cited an impact on student athletics, as vaping counted as a violation. He discussed lost student potential.

10:16:22 AM

KAREN BLOXSOM, ASSISTANT PRINCIPAL, WASILLA HIGH SCHOOL (via teleconference), spoke in support of the bill. She was passionate about keeping students safe. She cited that 75 percent of the current year's disciplinary issues at Wasilla High School (WHS) were related to vaping. She recounted doing a medical lock-down of her school after two separate students had overdosed on vaping products laced with other toxic illegal chemicals. She relayed that vaping was affecting WHS athletes. She noted that the problem existed primarily with younger students, and that 90 percent of students caught with vapes were freshman. She echoed Mr. Arnold's description of how students accessed the materials.

Ms. Bloxsom continued her remarks, and cited that vaping was increasing and students were beginning to vape in middle school and were addicted by the time they got to high school. She mentioned sophomores with as many as three vaping infractions. She described progressive discipline for possession of tobacco products.

10:19:48 AM

Ms. Bloxsom continued to discuss the penalties for vaping. She discussed fines up to and over \$500, and a third infraction consequences including 10 days suspension. She discussed vape detection and the associated costs. She supported raising the age to buy or possess vaping products to 21. She emphasized that the issue was taking away from important educational time. She thought the revenue from fines could be used for cessation and education.

Senator Wilson asked how many detection devices Ms. Bloxsom would put into WHS if money was not an object.

Ms. Bloxsom estimated that 12 devices would be needed for WHS.

Senator Wilson estimated that it would take about two and a half years to fund the devices.

10:23:03 AM

JOE DARNELL, CHIEF INVESTIGATOR, TOBACCO ENFORCEMENT AND YOUTH EDUCATION, DEPARTMENT OF HEALTH (via teleconference), thought the previous testifiers had illustrated the problem well. He noted that the federal age requirements for purchasing tobacco and nicotine products was 21, while for the state it was currently 19. He discussed enforcement by the federal government. He thought raising the statewide age requirement to 21 would make for a fair playing field for merchants. He discussed fines and noted that the bill proposed to lower the maximum fine and provided alternatives.

10:26:00 AM

Senator Kiehl asked if Mr. Darnell could discuss the provisions that did not line up the age to buy vaping products with the age to sell vaping products.

Mr. Darnell saw the age difference (of selling legally at 19 opposed to purchasing at 21) as problematic. He understood the rationale for the age of sellers to be 19 to promote job opportunities. He thought the best practice was to extend the age far enough to break the social connection with sellers being close in age to high school students.

10:28:05 AM

KATIE STEFFENS, DEPUTY PROGRAM MANAGER, TOBACCO PREVENTION AND CONTROL, DEPARTMENT OF HEALTH (via teleconference), introduced herself and relayed that she was available for questions.

Co-Chair Olson asked about educational programs that were available for educating parents and children about the risks of tobacco and nicotine use.

Ms. Steffens cited that the Department of Health had 21 grantees under the Tobacco Prevention and Control Program,

19 of which currently worked with schools on policies and programs. She noted that DOH also had a contract with the American Lung Association, which had developed a successful educational program piloted in Alaska. She mentioned a program through the Food and Drug Administration that was free and offered online.

Co-Chair Olson asked if Ms. Steffens had data pertaining to tobacco use and vaping to show if usage was on the rise.

Ms. Steffens relayed that collaboration with the Department of Education and Early Development, DOH was monitoring school suspensions. She mentioned the difficulty in collecting data. In the 2016-17 school year there were 414 school suspensions related to tobacco use or possession (including e-cigarettes), and since that time the number of suspensions had increased 232 percent. In the 2021-22 school year, there were 964 suspensions. The suspensions were found in all grades.

Co-Chair Olson noted that there were seven zero fiscal notes and one fiscal impact note.

[10:31:42 AM](#)

BRANDON SPANOS, DEPUTY DIRECTOR, TAX DIVISION, DEPARTMENT OF REVENUE (via teleconference), introduced himself.

[10:32:14 AM](#)

AT EASE

[10:33:01 AM](#)

RECONVENED

Mr. Spanos addressed FN 5 from the Department of Revenue, OMB Component 2476. There was no revenue impact for the change in age from 19 to 21. The department estimated the 25 percent tax for closed electronic smoking products and vapor products in the state would generate an additional \$3.39 million in FY 24, growing slightly in future years due to market and population growth. The estimation assumed no inflation. The bill designated the purpose for the tax profits to be healthcare, health programs, education programs, and advertising related to hazards of electronic smoking products. The department had put the revenue under a temporary designation with a General Fund code.

Mr. Spanos read from the fiscal note analysis on page 2:

The Department estimates that license fees would generate an additional \$70.4 thousand in unrestricted general fund revenue. Implementation Cost This fiscal note reflects a higher implementation cost than similar bills introduced in past sessions seeking to tax ESPs. The reason is that past bills would have broadened the existing tax on "Other Tobacco Products" (OTP) which are taxed at the wholesale level. This bill creates a new tax at the retail level. Broadening the OTP tax to include ESPs would require only small changes to the Department's systems to implement the tax. This fiscal note reflects the costs to stand up a new tax which would require developing a new module in our Tax Revenue Management System (TRMS). Two new positions are required, a Tax Auditor 2 and a Tax Technician 2, to run the licensing, return processing, auditing, and customer service functions of the program since the bill would create a new taxpayer base. The staff would have an enforcement function requiring travel. Services costs include annual overhead for facilities rent and department and statewide core service rates. Commodity costs include a one-time cubicle buildout for the two new positions and required equipment. Out years are reduced to annual office supply costs.

The Department will need to engage FAST Enterprises, our TRMS contractor, to develop a retail ESP module, including a license function, into TRMS and integrate the module with our existing imaging, accounting, and collections modules. The \$500.0 in FY2023 supplemental costs is an estimate for the needed contract with FAST Enterprises to develop the new tax module by the end of the fiscal year.

[10:36:29 AM](#)

Senator Wilson asked about the last paragraph of the note and did not see the additional \$500,000 cost in the fiscal notes.

Mr. Spanos noted that the \$500,000 was reflected on page 1 of the fiscal note for estimated supplemental FY 23 costs.

Senator Wilson asked how many retailers the tax would apply to in the state, and if the proposed staff additions would be sufficient.

Mr. Spanos did not recall a precise number, and estimated there would be hundreds of retailers. He noted that the two new employees would be part of the department's excise group, which was a larger group which would absorb many of the duties.

Senator Wilson thought he could count hundreds of retailers in the Mat-Su area alone, and wondered if there would be thousands.

Mr. Spanos affirmed that the department would get back to Senator Wilson with the information. He discussed methods of estimating the numbers.

[10:39:07 AM](#)

SYLVAN ROBB, DIRECTOR, DIVISION OF CORPORATIONS, BUSINESS AND PROFESSIONAL LICENSING, DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT, cited that in FY 22 there were 1,654 business license endorsements to sell tobacco products.

Senator Wilson asked if the number represented all stores.

Ms. Robb identified that each individual location that sold tobacco required its own tobacco endorsement.

Senator Kiehl asked if one would need to file two tax returns if an establishment sold leaf tobacco products (like cigars) and also the e-cigarette products.

Mr. Spanos relayed that the current tobacco product tax was paid at the wholesale level, and distributors filed the return and paid the tax.

Senator Kiehl queried if Mr. Spanos' division had enough auditors to handle the online sellers. He mentioned a consortium doing online sales.

Mr. Spanos did not believe that the current bill language had a tax on online sales. He thought the question could better be directed at the sponsor. He thought the department had the experience to audit online sales.

Mr. Lamkin relayed that as the bill was currently written there was an outright ban on sales of e-cigarette products. He relayed that the sponsor was interested in revisiting the topics provided there was age verification and tax levied.

Senator Kiehl considered that whether the ban remained or not, he thought Mr. Spanos' section would still need to do some auditing.

Mr. Lamkin deferred to the tax division and noted that there was language available to make online filing possible.

Senator Wilson addressed the issue of online sales, and asked if it was currently illegal to mail e-cigarette products.

Mr. Lamkin relayed that there were currently no restrictions.

Senator Wilson asked if SB 89 banned all carrier services from carrying e-cigarette components. He asked if it was possible to have someone out of state mail the components if it was not a sale.

Mr. Lamkin answered affirmatively.

[10:43:48 AM](#)

Co-Chair Olson OPENED public testimony.

[10:43:57 AM](#)

CARRIE NYSSSEN, AMERICAN LUNG ASSOCIATION, VANCOUVER, WASHINGTON (via teleconference), spoke in support of the bill. She asserted that tobacco use almost always began in childhood or adolescence. She cited that in Alaska 1 out of 14 high school students were active users of e-cigarettes. She referenced an article published by the American Academy of Pediatrics that cited several evidence-based policy recommendations, including increasing tobacco and nicotine prices. She discussed the adverse effects of nicotine and flavor additives.

[10:45:27 AM](#)

JOE O'CONNOR, DIRECTOR OF TOBACCO, HOLIDAY COMPANIES, ST. PAUL, MINNESOTA (via teleconference), testified in opposition to the bill. He asserted that responsible retailers did not sell to youth. He emphasized the issue of youth prevention and employee training. He agreed with much of the previous testimony but thought the bill addressed the wrong area. He did not want retailers to be penalized.

[10:46:43 AM](#)

DAVID PARROTT, SELF, SOLDOTNA (via teleconference), spoke in opposition to the bill. He considered that the tax on retailers was an increase that would punish adults for the actions of youth. He discussed vaping and the reduced amount of nicotine consumed.

[10:48:07 AM](#)

ALEX MCDONALD, SELF, FAIRBANKS (via teleconference), testified in opposition to the bill. He noted that previous testifiers had not indicated that youth were obtaining e-cigarettes from retailers. He did not think the retail tax would deter youth. He thought retailers would have to file two tax returns because there were no distribution centers in the state to pay the tax and retailers ordered straight from companies. He did not understand the additional license requirements. He discussed product shipping.

[10:49:40 AM](#)

JUNE ROGERS, SELF, FAIRBANKS (via teleconference), spoke in support of the bill. She expressed gratitude to the sponsor. She encouraged the committee to support the bill, which supported a healthy community. She recounted contacting legislators regarding tobacco use. She shared that her brother had passed away from cancer.

[10:51:09 AM](#)

ALYSSA KEILL, SELF, FAIRBANKS (via teleconference), testified in support of the bill. She was a part-time swimming coach that worked with students ages 11 to 14. Her student athletes had indicated that vaping products were easy to obtain and were in use by student athletes.

[10:52:12 AM](#)

JENNIFER CHIKOYAK, SELF, KENAI (via teleconference), spoke in support of the bill. She worked with school districts in the state on the issue of tobacco use and described the districts as being in crisis. She encouraged the committee to support the bill.

[10:52:47 AM](#)

ELIZABETH RIPLEY, PRESIDENT AND CEO, MAT-SU HEALTH FOUNDATION, WASILLA (via teleconference), testified in support of the bill. She cited that most tobacco use started before the age of 18 before the brain was fully developed. She cited the 2019 Youth Risk Behavior Survey, which indicated that 31.8 percent of traditional high school students and 49.9 percent of alternative high school students currently vaped. Over 50 percent of traditional Mat-Su high schoolers, and 71 percent of alternative high schoolers had tried e-cigarettes. She thought the state needed to align itself with federal law and tax tobacco products and protect the youth of the state.

[10:54:07 AM](#)

TABITHA BLADES, SELF, SOLDOTNA (via teleconference), testified in support of the bill. She relayed that she was an assistant principal on the Kenai Peninsula. She thought most school policies supported out-of-school suspension for students that obtained e-cigarettes from adults. She emphasized that there was no benefit to the suspension. She asked the committee to support the bill.

[10:55:28 AM](#)

EMILY NENON, AMERICAN CANCER SOCIETY, CANCER ACTION NETWORK, ANCHORAGE (via teleconference), spoke in support of the bill. She referenced page 12, line 15 of the bill, regarding the disposition of proceeds. She appreciated the effort to get some projected revenues going towards tobacco and e-cigarette prevention work. She suggested that the easiest way to make sure that the revenues went towards comprehensive evidence-based interventions was to put them into the Tobacco Use Education Cessation Fund, which had been a designated fund for over 20 years.

[10:56:31 AM](#)

JESSI WALTON, SELF, FAIRBANKS (via teleconference), spoke in opposition to the bill. She discussed smoking as an adolescent. She recounted trading for cigarettes as a teenager. She did not think the bill provisions would result in prevention.

[10:57:15 AM](#)

PATRICIA PATTERSON, SELF, KENAI PENINSULA (via teleconference), supported the bill with two changes. She thought the tax needed to be on a wholesale level. The second change she supported would allow adults 19 and 20 to be able to sell the product. She understood the rationale for raising the age to 21, but thought it was unnecessary to cause adults to lose their jobs.

[10:58:34 AM](#)

VIKKI JO KENNEDY, SELF, JUNEAU (via teleconference), testified in support of the bill. She professed to being a 53-year cigarette smoker. She emphasized that e-cigarettes were geared towards children. She emphasized that it was appropriate to raise the age required to sell e-cigarettes. She adamantly supported the bill.

[10:59:56 AM](#)

MEGAN BOELTER, PREVENTING TOBACCO ADDICTION FOUNDATION, NEW MEXICO (via teleconference), spoke in support of the bill. She explained that she worked in tobacco prevention and had worked with various states and agencies. She cited that Alaska was one of 11 states that did not have a law requiring a person be 21 years of age to sell the production. She discussed predatory marketing. She emphasized that SB 89 was aligned with federal law.

[11:01:17 AM](#)

SCHELL HAMMEL, SMOKE FREE ALTERNATIVE TRADE ASSOCIATION, TEXAS (via teleconference), testified in opposition to the bill. She cited that while she supported the bill, she had concerns that many youths received the products from adults. She cited that FDA compliance data showed that referenced inspection of stores with vapor products. She discussed placing products in age-restricted stores.

SB 89 was HEARD and HELD in committee for further consideration.

Co-Chair Olson relayed that SB 133 would be heard at a later time.

[11:03:03 AM](#)

AT EASE

[11:03:18 AM](#)

RECONVENED

Co-Chair Olson discussed the agenda for the afternoon meeting.

#

ADJOURNMENT

[11:03:35 AM](#)

The meeting was adjourned at 11:03 a.m.