

HOUSE BILL REPORT

SSB 5340

As Reported by House Committee On:
Health Care & Wellness
General Government Appropriations

Title: An act relating to internet and mail order sales of certain tobacco products.

Brief Description: Concerning internet and mail order sales of tobacco products.

Sponsors: Senate Committee on Labor, Commerce & Consumer Protection (originally sponsored by Senators Prentice, Regala, Pflug, Shin and Parlette; by request of Attorney General).

Brief History:

Committee Activity:

Health Care & Wellness: 3/17/09, 3/26/09 [DPA];

General Government Appropriations: 4/1/09, 4/3/09 [DPA(APPG w/o HCW)].

**Brief Summary of Substitute Bill
(As Amended by House)**

- Prohibits a person from shipping tobacco products, other than larger cigars above a specified weight, that are purchased by mail or through the internet (a computer, telephone, or electronic network) to anyone in Washington other than a licensed wholesaler or retailer.
- Subjects a violation of the tobacco shipping restriction to both criminal and civil penalties, and allows the Attorney General to bring an action under the Consumer Protection Act.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: Do pass as amended. Signed by 13 members: Representatives Cody, Chair; Driscoll, Vice Chair; Ericksen, Ranking Minority Member; Bailey, Campbell, Clibborn, Green, Herrera, Hinkle, Kelley, Moeller, Morrell and Pedersen.

Staff: Chris Cordes (786-7103)

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Cigarette Shipping Generally.

Both federal and state law regulate the sale and shipment of cigarettes and other tobacco products. Under the federal Jenkins Act, interstate shippers of cigarettes who ship to anyone other than a licensed distributor must report to the state the names and addresses of customers and the quantities of cigarettes shipped.

Cigarette Sales in Washington.

Youth Access to Tobacco. Under the Minors' Access to Tobacco Products Act, youth access to tobacco products is limited. In addition, a person who sells or gives cigarettes to a minor is guilty of a misdemeanor, and such a seller is also subject to civil penalties. A minor who purchases tobacco products is subject to an infraction, with fines and community restitution.

Cigarette Delivery Sale Law. A person making delivery sales of cigarettes to consumers in Washington, whether the cigarettes are ordered by telephone, mail, or the Internet, must ensure that no sales are made to persons under the age of 18. They must comply with notice, delivery, and tax requirements.

When a purchaser places an order for a delivery sale of cigarettes, the seller must verify the age of the purchaser either by photocopy of the purchaser's identification or through a commercial database. The seller must then mail or e-mail the purchaser a disclosure notice that contains the federal tobacco warning, a warning that sales to minors are unlawful, and a statement that cigarettes are taxable. The statute requires sellers to use a private delivery service that will verify that cigarettes are not delivered to a minor.

A person violating the cigarette delivery sale law is subject to criminal penalties. A seller's first violation is punishable as a class C felony. A second or subsequent offense is punishable as a class B felony. Any delivery service that delivers cigarettes without first verifying the age and identity of the recipient of a delivery sale is guilty of a gross misdemeanor.

Judicial Interpretation of Cigarette Delivery Sale Law.

In 2008 the U.S. Supreme Court held that a cigarette delivery sale statute in Maine was preempted by the Federal Aviation Administration Authorization Act of 1994. The Court found that because the Maine statute required shippers to choose only carriers that would perform the age verification services required by state law, the state statute was within the scope of "price, route, or service" regulations that states are not allowed to impose.

Summary of Amended Bill:

The cigarette delivery sale statute is repealed.

A person may not ship tobacco products, other than cigars, purchased by mail or through the internet to anyone in Washington other than a licensed wholesaler or retailer. A person may

not, with knowledge, provide substantial assistance to someone violating this tobacco shipping restriction.

The "internet" is defined to mean computer, telephonic, or other electronic networks.

The Attorney General may seek an injunction to restrain a threatened or actual violation of the tobacco shipping restriction. In addition to any civil or criminal remedy provided by law, a violation of the tobacco shipping restriction is:

- punishable as an unranked class C felony for a knowing violation, except that the maximum fine is \$5,000;
- subject to a civil penalty of up to \$5,000 for each violating shipment, to be imposed by the Attorney General in an action in superior court; and
- subject to a Consumer Protection Act action, if the action is brought by the Attorney General.

A court may order a violator to disgorge profits or other gains to be paid to the State Treasurer for deposit in the State General Fund. The state is entitled to recover costs of investigation, expert witness fees, costs of the action, and reasonable attorneys' fees in any action brought under the tobacco shipping restrictions.

Amended Bill Compared to Original Bill:

The amended bill makes various clarifying and technical changes, which include: (1) adding the tobacco product shipping restriction to the chapter addressing access of minors to tobacco products instead of creating a new chapter in the code, and making related technical corrections; (2) clarifying that shipping is allowed only to licensed wholesalers and retailers; (3) using the term "internet" to describe computer, telephonic, or other electronic networks; (4) changing the criminal penalty to an unranked class C felony; and (5) adding a requirement for civil penalties to be recovered by the Attorney General in a civil action in superior court.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The state is unable to enforce the current cigarette delivery sale law because of a recent court case. It is important to be able to enforce the age limits on sales of cigarettes. This bill would allow consumer sales of cigarettes only in face-to-face store transactions, while licensed retailers and wholesalers could continue to mail order cigarettes.

Six other states have laws like the one proposed in this bill. Both the Institute of Medicine and the National Academy of Sciences endorse this approach.

The Attorney General does not anticipate adding staff to enforce this bill but would take enforcement actions within existing resources. Resources would be smartly spent for the big cases. The bill also allows disgorgement of profits and collection of fines. The state would also get information about unpaid taxes from violators.

The bill is really about reducing the burden of addiction, especially for minors. While the preferable approach would be to ban mail order cigar sales also, this bill helps eliminate one more source for most tobacco products.

(Opposed) None.

Persons Testifying: Rusty Fallis, Office of the Attorney General; and Mary Wendt, Department of Health.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS

Majority Report: Do pass as amended by Committee on General Government Appropriations and without amendment by Committee on Health Care & Wellness. Signed by 13 members: Representatives Darneille, Chair; Takko, Vice Chair; McCune, Ranking Minority Member; Hinkle, Assistant Ranking Minority Member; Blake, Crouse, Dunshee, Hudgins, Kenney, Pedersen, Sells, Short and Williams.

Minority Report: Do not pass. Signed by 1 member: Representative Armstrong.

Staff: Steve Smith (786-7178)

Summary of Recommendation of Committee On General Government Appropriations Compared to Recommendation of Committee On Health Care & Wellness:

The cigar exemption from the tobacco shipping restriction only applies to larger cigars that, for 1,000 units, weigh more than three pounds.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The Attorney General (AGO) strongly supports this important public health measure. The bill is needed to restrict youth access to tobacco. Although little cigars are

exempt in the policy committee amendment, they would have been covered in the original bill. As a public health matter, that is the best position. However, the current form of the bill is better than not having the bill at all. With regard to the fiscal note, the AGO is prepared to absorb the cost within existing resources through creating additional efficiencies and by coordinating enforcement actions with other states. On the revenue side, the bill might bring in money. Enforcement activity could obtain information about those who are not paying the applicable taxes, and the Department of Revenue would be in position to collect those taxes. The AGO could seek an order to disgorge the ill-gotten gains, which would go to the State Treasury. A Consumer Protection Act action allows the collection of damages. While enforcing this bill could bring in money, it is hard to know how much.

(Opposed) None.

Persons Testifying: Rusty Fallis, Office of the Attorney General.

Persons Signed In To Testify But Not Testifying: None.