
Health Care & Wellness Committee

HB 1246

Brief Description: Regulating tobacco products.

Sponsors: Representatives Cody, Harris, Dunshee, Green, Seaquist, Van De Wege, Appleton, Clibborn, Walsh, Johnson, Roberts, Jinkins, Kenney and Billig.

Brief Summary of Bill

- Modifies the Youth Access to Tobacco Law to prohibit the sale or distribution of tobacco products that are flavored or scented or that consist of capsular smokeless tobacco (such as lozenges or other single dose units).
- Prohibits the sale or storage of tobacco products where those products are accessible to consumers without direct assistance by sales personnel, except for sales from vending machines located in certain places.

Hearing Date: 1/31/11

Staff: Chris Cordes (786-7103).

Background:

Tobacco Regulation in Washington.

Persons selling cigarettes or other tobacco products in this state are required to hold either a wholesaler or retailer cigarette license or a distributor or retailer tobacco products license and pay certain tobacco taxes.

State law prohibits the sale of tobacco, in any form, to persons under 18 years of age. The Youth Access to Tobacco Law also prohibits the purchase of tobacco products by a person under 18 years of age and prohibits the sale of tobacco products through mechanical dispensing devices (vending machines) unless the device is located in places that are off-limits to minors or are in places where minors are not employed.

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.

The Liquor Control Board (Board) enforces the tobacco regulation requirements, including requirements for licensure and paying state tobacco taxes and prohibitions against selling tobacco to persons under 18 years of age. Under the Youth Access to Tobacco Law, the Board may suspend or revoke the license of a cigarette retailer who violates the law and impose a monetary penalty ranging from \$100 to \$1,500, depending on the violation. (Penalties may be waived if there are mitigating circumstances, and larger penalties may be imposed based on aggravating circumstances.)

The Youth Access to Tobacco Law preempts local jurisdictions from adopting or enforcing licensing and regulatory requirements for tobacco product sales within retail stores, other than general business taxes or license fees, or regulating activities covered by the Youth Access to Tobacco Law unless the local regulations are consistent with the Youth Access to Tobacco Law.

Federal Regulation of Tobacco.

The federal Family Smoking Prevention and Tobacco Control Act (Act) was enacted in 2009. The Act gives the federal Food and Drug Administration (FDA) new authority to establish tobacco product standards, among other things. The Act also preempts certain state tobacco laws, such as regulation of tobacco standards, but allows state laws to be more stringent than federal law in some areas, including regulating the sale, distribution, or possession of tobacco products or nicotine-containing products (except for products approved by the FDA).

On September 22, 2009, the FDA banned the sale of flavored cigarettes other than menthol cigarettes. The ban includes loose tobacco likely to be offered to consumers as cigarette or roll-your-own tobacco. Guidance issued by the FDA on December 23, 2009, states that the ban does not apply to bona fide pipe tobacco, but notes the inclusion of loose tobacco in the ban.

The Act directs an FDA scientific advisory committee to review menthol cigarettes and flavored smokeless dissolvable tobacco products that resemble candy. The advisory committee has begun a study of menthol cigarettes, and in early 2010 the FDA issued a request for information from tobacco companies on the smokeless dissolvable tobacco products. In March 2010, the FDA solicited public comment related to how the use of dissolvable tobacco products might impact public health. The comment period closed in September 2010.

Under its authority to regulate drugs, the FDA approves certain tobacco products as tobacco cessation products.

Summary of Bill:

Sales of Flavored, Scented, or Capsular Smokeless Tobacco.

The Youth Access to Tobacco Law is amended to prohibit the sale or distribution of tobacco products that:

- have a distinguishable flavor or aroma other than tobacco, or are labeled or marketed as a flavored or scented tobacco product; or
- contain or are comprised of capsular smokeless tobacco (not including loose tobacco, but including products that are offered in single dose lozenges, pouches, pills, capsules, or other single dose units intended for oral consumption).

For this purpose, "tobacco product" includes any product containing tobacco or nicotine that is intended for human consumption, but does not apply to cigarettes subject to the federal rule regarding characterizing flavors in cigarettes or to products approved by the FDA for sale as a tobacco cessation product or for other medical purposes.

Display or Storage of Tobacco Products.

Tobacco products may not be displayed or stored where those products are accessible to consumers without direct assistance by sales personnel. However, this requirement does not apply to regulated vending machines or to tobacco displays located in a commercial establishment off-limits to persons under 18 years of age.

Local Regulation of Tobacco Products.

The state's preemption of local tobacco product regulation that is inconsistent with state law is repealed. Local jurisdictions' regulations are not preempted if the regulations are at least as restrictive as the state's regulations under the Youth Access to Tobacco Law.

Enforcement.

The Liquor Control Board may suspend or revoke a cigarette or tobacco product retailer's license, and impose monetary penalties ranging from \$100 to \$1,500, if the licensee has violated the Youth Access to Tobacco Law.

Appropriation: None.

Fiscal Note: Available.

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