

HOUSE BILL REPORT

ESHB 1746

As Passed House

March 14, 1997

Title: An act relating to making minor possession of tobacco a class 3 civil infraction and clarifying penalties for violation of current laws regarding youth access to tobacco.

Brief Description: Making minor possession of tobacco a class 3 civil infraction and clarifying penalties for violation of current laws regarding youth access to tobacco.

Sponsors: By House Committee on Commerce & Labor (originally sponsored by Representatives Sherstad, Morris, Radcliff, Hatfield, D. Schmidt, Grant, Pennington, Sullivan, Koster, Mulliken, Wood, L. Thomas, Scott, Carrell, Doumit, Sheahan, Huff, Kastama, Boldt, Hickel, McMorris, Thompson, Cooke and Dunshee).

Brief History:

Committee Activity:

Commerce & Labor: 2/19/97, 3/5/97 [DPS].

Floor Activity:

Passed House: 3/14/97, 68-26.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives McMorris, Chairman; Honeyford, Vice Chairman; Boldt; Clements; Hatfield and Lisk.

Minority Report: Do not pass. Signed by 3 members: Representatives Conway, Ranking Minority Member; Wood, Assistant Ranking Minority Member; and Cole.

Staff: Pam Madson (786-7166).

Background: In 1993, the federal government required, as a condition for receiving federal substance abuse funds, that states adopt a law making it illegal for a manufacturer or retailer of tobacco products to distribute these products to a person under the age of 18. The state law must be implemented in a way that will reasonably reduce the extent to which tobacco products are available to individuals under the age of 18. In response, the state of Washington enacted restrictions on the distribution and sale of tobacco to reduce availability to minors. The state must report to the federal agency what activities it carried out, its level of success at

reducing access to tobacco by minors, and strategies it will use to enforce the law during the funding year.

Enforcement to reduce availability of tobacco to minors

The Liquor Control Board is charged with enforcement of the laws prohibiting the sale to minors and the purchase by minors of tobacco products. The Department of Revenue administers the licensing of tobacco retailers, and the Department of Health through local health departments or other local community agencies develops and implements intervention strategies to reduce tobacco use by youth.

The Liquor Control Board may work with local health districts and law enforcement to conduct inspections of retail establishments to ensure compliance. A person under the age of 18 may purchase tobacco as part of a controlled purchase under the enforcement supervision of the Liquor Control Board, law enforcement, or a local health department.

Cigarette wholesalers and retailers are licensed by the Department of Revenue. As licensees, they are required to post a sign that clearly communicates that tobacco must not be sold to minors and if a minor purchases tobacco, he or she could be penalized.

Offenses and penalties

A minor who purchases or obtains tobacco may be guilty of a class 3 civil infraction which is punishable by a maximum \$50 fine. The court may also require the individual to participate in a smoking cessation program.

Any person who sells or gives tobacco in any form to a minor may be guilty of a gross misdemeanor. A tobacco licensee must check specified identification if a purchaser's age is questionable. It is a defense to prosecution for illegal sale to a minor if the seller reasonably relied on the specified identification. The Liquor Control Board must waive any license suspension or revocation if the licensee clearly shows he or she acted with due diligence to prevent any violation.

The Liquor Control Board may fine licensees or others who violate provisions limiting access to tobacco by minors. The board may offer a training class to retail clerks in lieu of a fine for the first offense.

Youth Tobacco Prevention Account

Cigarette wholesaler and retailer license fees are deposited in the Youth Tobacco Prevention Account, along with any fines or penalties collected by the Liquor Control Board. Up to 30 percent of available funds may go to the Liquor Control Board for

enforcement responsibilities, and up to 70 percent may go to local health districts or community agencies for tobacco intervention strategies.

Summary of Bill: Enforcement to reduce availability of tobacco to minors

Local health districts are no longer involved in enforcement actions that randomly inspect licensees for compliance or in actions involving youth in a controlled purchase. Inspections conducted by the Liquor Control Board and local law enforcement must be conducted according to guidelines adopted by the board.

A retail licensee may use a person under the age of 18 in a controlled purchase at the retailer's establishment to test compliance of the retailer's business with the minor's access to tobacco law.

Offenses and penalties

In addition to purchasing tobacco, a person under the age of 18 may be guilty of a class 3 civil infraction if he or she possesses tobacco. In addition to the current penalties, a court may require four hours of community service for a violation.

In addition to the existing defense to the crime of selling or giving tobacco to a minor, a licensee may assert that the required signs were posted at the establishment and the licensee had trained his or her employees in not selling tobacco to minors.

Any person, including a parent or guardian, who sells or gives tobacco in any form to a minor may be guilty of a gross misdemeanor.

Youth Tobacco Prevention Account

The percentage of funds available to the Department of Health for the Liquor Control Board from the Youth Tobacco Prevention Account is increased from 30 percent to 50 percent. The percentage available to the Department of Health for local district grants is reduced from 70 percent to 50 percent. The department may not use local community agencies to implement intervention strategies and may only award grants to local health districts. No money from the Youth Tobacco Prevention Account may be used by private groups or individuals for lobbying or public relations services.

Appropriation: None.

Fiscal Note: Requested on February 17, 1997.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: The question is how to curb teen tobacco use and at the same time not infringe on the civil liberties of adults who choose to smoke and not violate the free speech right of the tobacco companies who wish to advertise their product. It is not currently illegal for minors to possess tobacco and once they possess it, law enforcement is unable to do anything about it. Kids should be held accountable for breaking the law and parental authority should be reinforced. The money should be shifted to law enforcement through the Liquor Control Board, and local law enforcement should be given additional tools by making possession of tobacco by a minor illegal. Currently, the Health Department contracts with local health districts and private organizations to do sting operations on retail owners. Teen smoking is on the rise. It is questionable that these education programs are being successful. Enhancing law enforcement and making possession of tobacco by a minor illegal will deter young people from starting to smoke at a young age. There are currently incentives for businesses to comply with the provisions of the youth access to tobacco law to avoid retailer violations.

Testimony Against: This bill reduces funding for education and prevention in local communities that is working. Since the law has been in effect, illegal sales to minors have gone down. A good working relationship has developed between the Liquor Control Board and local county health departments and local store owners. Many addicted smokers began smoking as children. There is no evidence that making possession illegal and subjecting youth to penalties will have any impact on illegal sales to minors. Cigarettes and tobacco products are too accessible and are easily stolen from retail displays by youth who want these products. The problem is complex and the solution must be comprehensive and needs both education and enforcement. Enforcement should focus on adults who are enabling youth to obtain tobacco. The funding shift away from local health departments effectively means no meaningful state-wide education program can exist.

Testified: (In support) Representative Mike Sherstad, prime sponsor; Richard Dugdale; John Dyer, Oak Harbor School Board; Tennille Medbury, Oak Harbor Parents Advocacy Council; Todd Medbury, Oak Harbor Student Body; Amy Armour, Washington Association of Neighborhood Stores; Richard McCleary; Joe Daniels, United Food and Commercial Workers; and Hank Armour, Washington Association of Neighborhood Stores. (Opposed) Dr. Robert Jaffe, Washington State Medical Association; Nick Federici, American Lung Association; Sharlyn Rima, American Cancer Society; Rochelle Wilson; and David Allen. (Concerns) Gary Gilbert, Liquor Control Board; and Dr. Mimi Fields, Department of Health.