

HOUSE BILL REPORT

E2SHB 1054

As Passed House:

March 7, 2018

Title: An act relating to protecting youth from tobacco products and vapor products by increasing the minimum legal age of sale of tobacco and vapor products.

Brief Description: Protecting youth from tobacco products and vapor products by increasing the minimum legal age of sale of tobacco and vapor products.

Sponsors: House Committee on Finance (originally sponsored by Representatives Harris, Cody, Orwall, DeBolt, Johnson, McBride, Clibborn, Short, Pettigrew, Robinson, Fey, Kilduff, Riccelli, Ryu, Nealey, Goodman, Tharinger, Stanford, Frame, Pollet, Jinkins, Haler, Kagi, Hargrove, Fitzgibbon, Appleton, Chapman, Senn, Bergquist, Gregerson, Young, Farrell and Slatter; by request of Attorney General and Department of Health).

Brief History:

Committee Activity:

Health Care & Wellness: 1/24/17, 2/3/17 [DPS];

Finance: 2/20/17, 3/30/17 [DPS(HCW)], 1/23/18 [DP2S].

Floor Activity:

Passed House: 3/7/18, 63-35.

Brief Summary of Engrossed Second Substitute Bill

- Prohibits the sale of cigarettes, tobacco products, and vapor products to persons under the age of 21.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Cody, Chair; Macri, Vice Chair; Clibborn, DeBolt, Harris, Jinkins, Maycumber, Riccelli, Robinson, Slatter, Stonier and Tharinger.

Minority Report: Do not pass. Signed by 4 members: Representatives Schmick, Ranking Minority Member; Graves, Assistant Ranking Minority Member; Caldier and MacEwen.

Staff: Kim Weidenaar (786-7120).

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.

HOUSE COMMITTEE ON FINANCE

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass. Signed by 7 members: Representatives Lytton, Chair; Frame, Vice Chair; Nealey, Ranking Minority Member; Dolan, Pollet, Springer and Wylie.

Minority Report: Do not pass. Signed by 3 members: Representatives Orcutt, Assistant Ranking Minority Member; Condotta and Wilcox.

Minority Report: Without recommendation. Signed by 1 member: Representative Stokesbary.

Staff: Rachelle Harris (786-7137).

Background:

A person who sells cigars, cigarettes, cigarette paper, tobacco, or vapor products to a person under the age of 18 is guilty of a gross misdemeanor. A person under the age of 18 who purchases, possesses, or obtains or who attempts to purchase or obtain cigarettes, tobacco, or vapor products commits a class 3 civil infraction, which may be penalized with a \$50 fine, up to four hours of community restitution, and participation in a smoking cessation program.

A person who holds a cigarette wholesaler or retailer license is required to prominently display a sign concerning the prohibition of tobacco sales to persons under the age of 18. Similarly, a person who holds a vapor products retailer's license must display a sign concerning the prohibition on vapor products sales to persons under the age of 18. Tobacco products may not be sold through a device that mechanically dispenses the products unless: (1) the device is located in a place where minors are prohibited or in an industrial worksite where minors are not employed; and (2) the device is located at least 10 feet from entrances and exits. "Minor" is defined as a person under the age of 18. A person may not offer a tasting of vapor products to the general public unless the person is a licensed retailer, the tastings are offered within the licensed premises, entry is restricted to persons 18 years of age or older, either the product does not contain nicotine or the customer consents to tasting nicotine, and a disposable mouthpiece is attached to the vapor product if the device is owned by the retailer.

The Liquor and Cannabis Board (LCB) has authority to enforce the laws governing minors' access to tobacco and vapor products. The LCB may work with local county health departments or districts and law enforcement to conduct unannounced inspections to assure compliance. If a peace officer or enforcement officer of the LCB observes a person purchasing or in possession of tobacco or vapor products, and the officer has reasonable grounds to believe the person is under the age of 18, the officer may detain the person for a reasonable period of time and in a reasonable manner to determine his or her identity and date of birth. An LCB officer may also seize tobacco and vapor products in the possession of a minor.

The Department of Health (DOH) may use monies appropriated from the Youth Tobacco and Vapor Products Prevention Account, which includes licensing fees and monetary penalties,

for implementation of the laws governing minors' access to tobacco and vapor products. The DOH is required to enter into an agreement with the LCB to pay for costs incurred for enforcement, and the agreement must set standards of enforcement to reduce the extent to which tobacco and vapor products are available to persons under the age of 18.

The Governor is permitted to enter into tribal cigarette tax contracts regarding the sale of cigarettes. The Governor may delegate power to negotiate cigarette tax contracts to the Department of Revenue. There are statutory requirements for tribal cigarette tax contracts:

- The terms of the cigarette tax contract apply to retail sales by Indian sellers in Indian country, which is land within the boundaries of the reservation and land held in trust for a tribe or by a tribal member; tribal retail sales are limited to Indian country.
- Cigarettes may only be sold or given to individuals 18 years and older.
- Tribal cigarette tax must be used for essential government services.
- Cigarettes sold under this contract must bear a tribal cigarette tax stamp.
- Tribal retailers must purchase cigarettes only from approved wholesalers.
- Contracts must contain provisions for compliance.

Disputes regarding the interpretation and administration of the contract's provisions may be resolved by mediation and other non-judicial processes.

Summary of Engrossed Second Substitute Bill:

A person who sells cigars, cigarettes, cigarette paper, tobacco, or vapor products to a person under the age of 21 is guilty of a gross misdemeanor.

The sign that retailers and wholesalers of tobacco and vapor products must display concerns the prohibition of tobacco and vapor product sales to persons under the age of 21, respectively. Tobacco products may not be sold through a vending machine unless the machine is located in a place where persons under the age of 21 are prohibited or in an industrial worksite where persons under the age of 21 are not employed, and it is located at least 10 feet from entrances and exits. A person may not offer a tasting of vapor products to the general public unless, among other things, entry into the licensed premises is restricted to persons 21 years of age and older.

Interagency agreements between the Department of Health and the Liquor and Cannabis Board (LCB) must set enforcement standards to reduce the extent to which tobacco and vapor products are available to persons under the age of 21.

The Governor is permitted to seek government-to-government consultations with Indian tribes regarding raising the minimum age of sale in compacts for cigarette tax contracts. The Office of the Governor must report to the appropriate committees of the Legislature on the status of the consultations by December 1, 2019.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect on January 1, 2019.

Staff Summary of Public Testimony (Health Care & Wellness):

(In support) Smoking is the most common preventable cause of death. This bill will save kids from asthma, cancer, heart disease, and stroke. One in five kids smokes or vapes, and one in three young smokers will die of smoking-related illnesses. Nicotine is one of the most addictive substances known. Because kids' brains are still developing, they are more likely to become addicted. Adolescent brains favor immediate pleasure over long-term risk. Raising the smoking age to 21 is four times more effective than raising it to 19. Prevention is the best way to ensure public health.

This bill will make it more difficult for kids to obtain nicotine from their 18- to 20-year-old suppliers. Many high school seniors are 18 years old. Peer pressure is a big motivator, and seniors are the most influential. The younger a person starts smoking, the more likely he or she is to become addicted and have serious health problems later in life. Using tobacco also makes a person more likely to use other drugs. Different substances can be put into an e-cigarette. Kids vape marijuana on school buses. The message that cigarettes are bad has been lost in high school. E-cigarette ads cause confusion and make people think they are healthy.

Tobacco causes significant health problems for military members, which makes recruitment a challenge. Military members who use tobacco are less combat ready, less physically fit, and take longer to heal if they are injured. Raising the age to use tobacco will make the military more ready to serve our country and at a lower cost. Society has decided that there are things that are counter to the health of young people, such as the drinking age, gambling in casinos, and carrying a concealed firearm.

This bill will reduce the smoking rate for pregnant women who are 20 years old or younger. Babies who are born premature and at a low birth weight are expensive to the medical system. A significant portion of the annual Medicaid budget is spent on smoking-related medical services.

California, Hawaii, and 200 municipalities have already raised the age for using tobacco and have not lost revenue. The real impact will be in the future. Each pack of cigarettes leads to \$7 of health care costs. This bill has broad support from health plans, health care providers, and the public.

(Opposed) The loss of tobacco sales means a loss of other sales, as well. Retailers in border areas or near reservations could see a loss in sales across the border. Raising the legal age is unnecessary because retailers have a 95 percent tobacco compliance rate. People aged 18 to 21 often live on their own.

(Other) The provisions in the bill removing a peace officer's authority to enforce the law related to underage sales should be removed.

Staff Summary of Public Testimony (Finance):

See House Bill Report in the 2017 Legislative Session.

Persons Testifying (Health Care & Wellness): (In support) Representative Harris, prime sponsor; Bob Ferguson, Attorney General; Brigadier General John Tuohy, Washington Air National Guard; John Wiesman, Secretary of Health; Hannah Stewart; Aiden Rees; Michael Alston, American Academy of Pediatrics; Miles Schoenberg; Joelle Fathi; Katie Kolan, Washington State Medical Association; David Foster, Tobacco Free Kids, American Heart Association, and the American Cancer Society Cancer Action Network; Ryan Day, March of Dimes; Patricia Seib, Molina Healthcare of Washington; and Madeline Grant, Seattle Cancer Care Alliance.

(Opposed) Mark Johnson, Washington Retail Association.

(Other) James McMahan, Washington Association of Sheriffs and Police Chiefs.

Persons Testifying (Finance):

See House Bill Report in the 2017 Legislative Session.

Persons Signed In To Testify But Not Testifying (Health Care & Wellness): None.

Persons Signed In To Testify But Not Testifying (Finance):

See House Bill Report in the 2017 Legislative Session.