

HOUSE BILL REPORT

EHB 1074

As Passed Legislature

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: Representatives Harris, Orwall, Riccelli, Jinkins, DeBolt, Pollet, Stonier, Stanford, Rude, Davis, Tharinger, Macri, Slatter, Kloba, Peterson, Valdez, Kilduff, Ryu, Fitzgibbon, Robinson, Appleton, Wylie, Cody, Bergquist, Doglio, Senn, Frame, Walen and Callan; by request of Attorney General and Department of Health.

Brief History:

Committee Activity:

Health Care & Wellness: 1/15/19, 1/25/19 [DP];
Appropriations: 2/7/19, 2/13/19 [DP].

Floor Activity:

Passed House: 2/20/19, 66-30.
Passed Senate: 3/27/19, 33-12.
Passed Legislature.

Brief Summary of Engrossed 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: Do pass. Signed by 12 members: Representatives Cody, Chair; Macri, Vice Chair; Davis, DeBolt, Harris, Jinkins, Maycumber, Riccelli, Robinson, Stonier, Thai and Tharinger.

Minority Report: Do not pass. Signed by 2 members: Representatives Schmick, Ranking Minority Member; Caldier, Assistant Ranking Minority Member.

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.

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

Staff: Kim Weidenaar (786-7120).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass. Signed by 24 members: Representatives Ormsby, Chair; Bergquist, 2nd Vice Chair; Robinson, 1st Vice Chair; Rude, Assistant Ranking Minority Member; Cody, Dolan, Dye, Fitzgibbon, Hansen, Hudgins, Jinkins, Kraft, Macri, Mosbrucker, Pettigrew, Pollet, Ryu, Senn, Springer, Stanford, Steele, Tarleton, Tharinger and Ybarra.

Minority Report: Do not pass. Signed by 5 members: Representatives Stokesbary, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Caldier, Hoff and Schmick.

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

Staff: Linda Merelle (786-7092).

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, cigarette retailer, or vapor products retailer license is required to prominently display a sign concerning the prohibition of tobacco sales to persons under the age of 18. The sign states, "The sale of tobacco products to persons under age 18 is strictly prohibited by state law. If you are under 18, you could be penalized for purchasing a tobacco product. Photo ID required." 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. Statutory requirements for tribal cigarette tax contracts include:

- 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; and
- 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 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 signs that licensed retailers and wholesalers of tobacco and vapor products must display concerning the prohibition of tobacco and vapor product sales to persons under the age of 18 are updated to 21, respectively. The sign language that previously stated an individual under 18 purchasing a tobacco or vapor product could be penalized is removed, and additional language stating identification is required only upon request is added.

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. The definition of "minor" is removed.

Interagency agreements between the Department of Health and the Liquor and Cannabis Board 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 federally recognized 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, 2020.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect on January 1, 2020.

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

(In support) Last year the House of Representatives passed Tobacco 21 in a strong, bipartisan way. Raising the age of sale is the single most important policy to impact the health of youth. One in six tenth graders smokes or uses vapor products. The younger someone is when they start using tobacco, the greater the impact on brain development and the harder it is to quit. Most teens get tobacco and vapor products from social sources and from those who are age 18 to 20. Raising the legal age to 21 is key to cutting off those social sources. Raising the age to 21 rather than 19 is four times more effective in reducing overall use of tobacco and vapor products. Most people who vape don't start vaping to quit smoking. Rather, they think it tastes sweet and looks cool. Most don't even think they are even using tobacco, but they still become addicted. Give kids the freedom to not be addicted to nicotine.

Raising the age to purchase tobacco is good for the health of service members and readiness of the military. Tobacco causes significant health problems. Today just one in four individuals are qualified to serve in military, due to obesity and medical issues. Many of the medical conditions are caused by or aggravated by smoking. The military is generally young, but has a tobacco use rate of more than 33 percent. This costs the military an additional \$1.6 billion per year. The Secretary of Defense has issued an updated policy to reduce smoking. Additionally, in states where they have raised the age to 21, the bases comply with those laws. Raising the age will improve the health and fitness of all individuals.

Increasing the age to 21 will remove many tobacco products from schools. Students commonly meet to vape in school restrooms and no one ever notices. Vaping is very easy to use and hide. It is very cheap and easy to get vapor products from older students at school. Vaping or "Juuling" is thought to be cool and fresh. Many are addicted and do not see it as unhealthy. This bill can save students from a life of addiction.

Raising the smoking age to 21 is effective. Raising the age for alcohol purchase dropped consumption and premature deaths. In the United States (U.S.) 95 percent of smokers start before 21. Tobacco control is a great success story in the U.S., but there is a lot more work to do. If passed, this bill will keep our kids healthier.

Medicaid clients have higher incidence of smoking than the rest of the general population. Raising the age will have long- and short-term beneficial impacts and will improve the health

of adolescents and young adults. Raising the age will especially impact pregnant women and babies. Studies in California show savings of \$82 million related to the decrease in premature births after raising the age to 21. This bill will lower health care costs and improve health.

This bill will not have a large financial impact on convenience stores. Tobacco has one of the lowest retail margins of anything sold in convenience stores and this bill will only decrease consumption by a small percent.

(Opposed) This bill will be ineffective because of the many unregulated tribal stores and military bases in Washington. The only way to effectively accomplish this goal would be a law at the federal level. There are two bills in Congress now. All this will do is push tobacco to the black market and convenience stores will be the ones to lose. Stores selling tobacco products already face unfair competition by tribes and military bases which don't apply cigarette and gas taxes. Idaho also has lower taxes and a smoking age of 18. Unless the tribes or other states are on board this bill will not do much. The drinking age is 21 and yet many high schoolers drink. If you want to help kids, hand out tickets to kids that are smoking so that they are responsible for their actions.

This bill treats vapor products and cigarettes as though they are the same, but the science does not support this. Vapor products expose people to far fewer toxins than cigarettes. Vaping helps people get off of cigarettes and improve their health. This includes many 18 year olds who have been smoking for a long time. It is not fair to take vaping away from adults who are age 18 to 20 because it helps them.

(Other) A health impact review of this bill was completed. The findings are consistent with past reviews and found a fair amount of evidence that increasing the age to purchase to 21 will decrease use among all populations, including youth. There is also strong evidence that decreasing use will improve health outcomes.

Staff Summary of Public Testimony (Appropriations):

(In support) This bill is good health care policy. If youth do not start smoking before age 21, there is a 95 percent chance that they will never smoke. We should value our youth. Tobacco is still the leading cause of preventable death and disease. Twenty-five percent of cancers in Washington are caused by smoking. This bill will improve the health of kids and lower health care costs. In the long term, morbidity and mortality will decrease. Smoking during pregnancy increases the instance of babies born prematurely and at a low weight. Cigarette smoking-related diseases account for more than 15 percent of Medicaid spending. The economic benefit for the state translates into real life advantages, and there is solid evidence that raising the legal age will decrease smoking and save lives. This is about nicotine and addicting children as young as ages 12 and 13. Young people are still at risk. Nicotine creates dependence, and people go through withdrawal when they try to get off it. Most 15 to 17 year olds get products from social sources. Raising the age is the key to cutting off those social sources. It is critical that this bill include vapor products. Vaping is a gateway to cigarette smoking. Nationally, high school rates for vaping rose by 78 percent. Most kids are unaware that vapor products contain nicotine. Raising the age will save lives and will be a cost effective investment. Washington should join six other states in taking this

common sense approach to protect the health of our youth. This bill is good for the health of service members and the readiness of the military. About 25 percent of young people are eligible for military service, and obesity and medical problems contribute to this reduced eligibility. Tobacco use among soldiers is about 33 percent and costs about \$1.6 billion in health care. This money could be used for national security and readiness.

(Opposed) This bill is well intended but misguided. It will not be productive. It limits the choices people age 18 to 20 have to quit smoking. For many who have started smoking, they started before age 18. Online access is still available. It is not clear that raising the age for access will change anything. Education is what is necessary. Vaping is completely different from tobacco. Many people who have transitioned to vaping have also quit smoking. Vapor stores educate their customers regarding what they are getting into. Vaping stores are all checking the ID of people who come into the store. No one under 18 is allowed. Smoking rates have been dropping. A federal solution will make sure that border stores do not have any issues. Youth who are smoking will not have a way to transition from tobacco. There are 29 sovereign nations. Within 10 minutes of our shop, there are 10 tribal stores. Tribal facilities are still able to sell to kids under 21. Much stronger language is necessary to move the tribes in raising the legal age to 21. Impoverished minority youth will be unfairly affected.

(Other) This issue should be addressed on a federal level. Raising the legal age to 21 will drive people to tribal shops and underground, or internet sales.

Persons Testifying (Health Care & Wellness): (In support) Representative Harris, prime sponsor; Bob Ferguson, Office of the Attorney General; John Wiesman, Department of Health; Matthew Cooper, Military Department; Marty Reid, Tumwater High School; Madison Langer; Cami Brix; Judy Zerzan, Health Care Authority; Jonathan Bricker, Fred Hutchinson Cancer Research Center; Crystal Shen, Washington Chapter of the American Academy of Pediatrics; and David Hall.

(Opposed) Catherine Holm, Washington Food Industry; Emily Wicks, Vapor Technology Association; Margo Ross, Cloud 509 Moses Lake; and Matthew Page.

(Other) Mark Johnson; and Lindsay Heredeen, State Board of Health.

Persons Testifying (Appropriations): (In support) Representative Harris, prime sponsor; John Wiesman, Washington State Secretary of Health; Sue Birch, Health Care Authority; Jeremy Horn, Washington Military Department; Jonathan Seib, Molina Health Care of Washington; Lindsey Grad, Service Employees International Union Healthcare 1199NW; Michelle Heng, Washington Chapter of the American Academy of Pediatrics; and Lauren Baba, Seattle Cancer Care Alliance.

(Opposed) Carolyn Logue, Washington Food Industry Association; Shaun D'Sylva; Lisa Sauve and Anthony McMullen, MAXX Vape; Joshua Baba, Galaxy Vapor; Ruvin Munden, Ruze Vapor Industries Corporation; and Allen Kettle.

(Other) Mark Johnson, Washington Retail Association.

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

Persons Signed In To Testify But Not Testifying (Appropriations): None.