

HOUSE BILL REPORT

HB 1753

*As Reported By House Committee on:
Health Care
Revenue*

Title: An act relating to tobacco control.

Brief Description: Making major changes to tobacco laws.

Sponsor(s): Representatives Valle, Sprenkle, Braddock, Morris, Moyer, Fraser, Paris, Ferguson, Locke, Prentice, Fuhrman, Vance and Rasmussen; by request of Department of Health.

Brief History:

Reported by House Committee on:
Health Care, March 4, 1991, DPS;
Revenue, March 10, 1991, DPS(HC)-A.

**HOUSE COMMITTEE ON
HEALTH CARE**

Majority Report: *That Substitute House Bill No. 1753 be substituted therefor, and the substitute bill do pass.* Signed by 9 members: Representatives Braddock, Chair; Moyer, Ranking Minority Member; Casada, Assistant Ranking Minority Member; Cantwell; Franklin; Morris; Paris; Prentice; and Sprenkle.

Minority Report: *Do not pass.* Signed by 2 members: Representatives Day, Vice Chair; and Edmondson.

Staff: Bill Hagens (786-7131).

Background: The 1990 State Health Report identifies a reduction in tobacco usage as a priority health goal for the state of Washington. The report proposes a variety of action strategies to achieve this goal. These strategies include information and education programs and direct services such as smoking cessation programs. Regulatory measures such as advertising bans or limitations, restrictive smoking bans, restrictions on tobacco sales and samples to minors, and additional taxes on tobacco sales are also suggested by the State Health Report.

Currently, Washington utilizes a number of measures to regulate tobacco use and sales. Washington's 1985 Clean

Indoor Air Act restricts smoking in public places but does not address smoking restrictions in private workplaces. Washington's 1989 state excise tax of 34 cents per pack of cigarettes was the fifth highest in the nation. The sale of cigarettes to a minor is currently a misdemeanor.

Summary of Substitute Bill: The Legislature finds that the current system of health care and public health has not made efforts to reduce death and disability from preventable noncommunicable diseases. Tobacco use is the leading cause of preventable death in Washington. Despite the leadership of Washington businesses and citizens, smoking and smoking-related disease remains high among ethnic minorities, youth and young pregnant women. The development and implementation of prevention efforts is imperative.

The Legislature intends to support the development of community and state efforts to prevent tobacco-caused disease and reduce the effects of tobacco use by: (1) regulating the sale, distribution, and promotion of tobacco products to minors; (2) conducting a state-wide advertising and public awareness campaign informing youth and their families about the negative health effects of using tobacco; and (3) providing funds for community based prevention, education, cessation programs, and other locally identified activities.

The Department of Health, in collaboration with state, local, tribal, federal and private groups, is required to use available information and resources to: (1) identify and monitor the leading causes of death and tobacco-caused disease, (2) identify trends, geographic areas and population groups at risk for preventable tobacco-related disease, (3) establish a broad, culturally relevant public media and education campaign to prevent tobacco use among children, teens, pregnant women and other high-risk groups, (4) act as a clearinghouse for tobacco-related policy and information, (5) evaluate, monitor and report on the impact of tobacco use intervention efforts and (6) request and receive funds or gifts from state, federal or private sources to pursue these duties.

The Department of Health is required to provide grants to local communities to develop and implement, in collaboration with local government and community representatives, coordinated tobacco intervention strategies to reduce the incidence and impact of tobacco use. Intervention strategies must focus on at least: (1) education of children and teens, (2) strategies focused on high-risk populations, (3) increase of local smoking and tobacco use cessation programs, (4) distribution of local versions of state-wide media campaign cessation and prevention materials or

messages to high-risk groups and (5) creation of coalitions to encourage local attitude changes. Grants shall not exceed 95 percent of the local tobacco intervention budgets, and the department shall make available to local intervention programs at least 25 percent of the total revenues.

Effective July 1, 1991, cigarette vending machines shall be limited to locations 10 feet from the entrance or exit of areas or businesses which are legally inaccessible to minors except for commercial businesses and individual plants where minors are not allowed.

Retailers are prohibited from selling cigarettes which are not in their original sealed unopened package. Violators are guilty of a gross misdemeanor.

No person may provide tobacco products by coupon, without cost or at nominal cost. Violators are guilty of a gross misdemeanor. Retailers whose annual gross sales from tobacco product sales exceed 60 percent of annual gross sales may distribute single serving samples of tobacco to adults.

Cigarette or other tobacco products may not be sold to any individual without requesting and examining officially issued identification from the purchaser. This identification must positively establish the purchaser's age as 18 years or older unless the seller has some other conclusive basis for determining the purchaser's age. Violators are guilty of a gross misdemeanor.

Retailers may not sell cigarettes or tobacco products unless the vending machine or sales location posts a clearly visible notice stating "IT IS ILLEGAL TO SELL OR PERMIT TO BE SOLD A TOBACCO PRODUCT TO A PERSON UNDER AGE EIGHTEEN." Violators are guilty of a misdemeanor.

Any person or group may initiate civil action in superior court to enforce existing bans on tobacco product sales to persons under 18 years or any of the provisions included in this bill. The court may also issue an order requiring the violator to comply with either existing prohibitions on tobacco sales to minors or the provisions of this bill. The court may impose a civil penalty of up to \$1,000 for each violation.

A nonpreemption provision is established for local ordinances that are at least as restrictive as this chapter.

The State Board of Health is authorized to adopt additional rules, consistent with the provisions of this bill,

restricting retail tobacco sales in order to limit tobacco use by minors.

Cigarette wholesaler license application or license renewal application fees are increased from \$650 to \$1,000. Licensing fees for wholesalers selling cigarettes at two or more business locations are increased from \$115 to \$300 for each additional place of business.

Retailer license applications or license renewal applications are increased from \$10 to \$75. Retail dealer licensing fees are increased from \$1 to \$25 for each cigarette vending machine.

Cigarette taxes are increased by one cent per pack; an equal tax is placed on non-cigarette tobacco. This additional tax revenue, less administrative costs, must be deposited in a newly created state tobacco prevention account.

Expenditures from the state tobacco prevention account may be used only for funding the services and programs outlined in this bill and to cover any negative impact on the general fund, the water quality account and the drug enforcement and education account created by the cigarette taxes proposed in this bill.

Substitute Bill Compared to Original Bill: The amount of local grant money is clarified at 25 percent of the amount collected. Vending machine restrictions are clarified.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect July 1, 1991.

Testimony For: The U. S. Surgeon General stated that smoking is the single most important preventable cause of death in our society. Nearly one out of five deaths in Washington State is directly attributable to smoking. In 1988, smoking caused 7,181 deaths out of 36,423 total deaths. Smoking is a significant risk factor in the four leading causes of all deaths in Washington State. Lung cancer has overtaken breast cancer as the leading cause of cancer deaths among women. In 1988, 25 percent of Washington adults smoked cigarettes. The percentage of pregnant women under the age of 20 who smoke has increased from 32 percent to 37 percent since 1984, contrary to the general decline in smoking. It is estimated that 47 infants in Washington died in 1988 due to the effects of secondhand smoke or maternal smoking while the infant was in utero. It is estimated that over \$100 million of productivity is lost per year to smoking-related illness in Washington. The

estimated yearly economic impact of smoking in Washington is between \$760.4 and \$924.4 million. Most people started smoking when they were young, if we can prevent children from starting this despicable habit in their formative years, we can perhaps prevent much human suffering and public expense in the future.

Testimony Against: It is inconceivable that at a time when the iron curtain is being torn down in Europe and freedom has begun to ring through that continent, and our boys are off fighting against tyranny in the Persian Gulf, that legislation would be considered that would seriously threaten smokers' individual rights and impose an unfair tax upon them. This bill attempts to control tobacco use by minors, when all it will do is to inconvenience adult smokers' ready access to needed tobacco products. Although anti-smokers will say that smoking causes serious illnesses often resulting in premature death, e.g., lung, stomach, colon, throat, and pancreatic cancers, and numerous heart diseases, there is not one reliable piece of scientific evidence that proves smoking has any detrimental effect on health. There are many cases where a heavy smoker has died of lung cancer and heart disease and his or her death is identified as smoking-related, when it is clear to the decedents personal friends and family members that the lung cancer and heart disease was not caused by the fact that the decedent was a heavy smoker, but because of personal family problems. Further restrictions on smokers' rights will lead to the deterioration of our civil liberties.

Witnesses: Kris Gebbie, Department of Health (pro); Mari Beth O'Connor and Tim McAfee, Group Health (pro); Mona Epstage, Washington State Nurses Association (pro); Sharon Foster, YMCA of Greater Seattle (pro); Bob Jaffe, Washington Academy of Family Practice (pro); Bill Fritz and Stu Halsan, The Tobacco Institute (con); and Don Howard, Smokers' Rights of Olympia (con).

**HOUSE COMMITTEE ON
REVENUE**

Majority Report: *The substitute bill by Committee on Health Care be substituted therefor and the substitute bill as amended by Committee on Revenue do pass.* Signed by 8 members: Representatives Wang, Chair; Fraser, Vice Chair; Belcher; Leonard; Morris; Morton; Phillips; and Rust.

Minority Report: *Do not pass.* Signed by 7 members: Representatives Holland, Ranking Minority Member; Wynne, Assistant Ranking Minority Member; Appelwick; Brumsickle; Day; Silver; and Van Luven.

Staff: Rick Peterson (786-7150).

Summary of Recommendation of Committee on Revenue Compared to Recommendation of Committee on Health Care: The provision allowing any person to bring civil action against persons selling cigarettes to minors is deleted. The section authorizing the Board of Health to adopt additional rules restricting retail tobacco sales is deleted. The restriction that no more than 5 percent of grant moneys to local communities be used for administration is deleted.

Fiscal Note: Available.

Effective Date of Substitute Bill as Amended: The bill contains an emergency clause and takes effect July 1, 1991.

Testimony For: Nearly 80 percent of adult smokers are addicted before they are 21. Smoking is responsible for a significant share of deaths in Washington each year. The money will support a program that may counterbalance the millions of dollars tobacco companies spend on advertising each year.

Testimony Against: This is the first time a tax is placed on a product in order to finance a program to put it out of business. Current taxes on cigarettes are not being fully utilized. There is no need to raise additional revenue. The rule making authority given the Department of Health is too broad. Samples and coupons are promotional activities allowed under federal law. The federal law preempts the states from regulating promotional activity.

Witnesses: Bill Fritz (con); Kathleen Durkan, Phillip Morris; Stu Halson (con); Kris Gebbie, Department of Health (pro); Mary Beth O'Connor, TAAC (pro); Marianne Lile, Washington State Nurses Association (pro); Carl Nelson, Washington Retail Association (con); Bill Van Horn, TACC (pro); Don Howard, Smokers Rights of Olympia (con); Sharon Foster, YMCA of Greater Seattle (pro); Len Eddinger, Washington State Medical Association (pro); Representative Georgette Valle, Prime Sponsor; and Mike Matson, WSATCD (con).