

# HOUSE BILL REPORT

## HB 1246

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**As Reported by House Committee On:**  
Health Care & Wellness

**Title:** An act relating to regulation of tobacco products.

**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 History:**

**Committee Activity:**

Health Care & Wellness: 1/31/11, 2/17/11 [DPS].

**Brief Summary of Substitute Bill**

- Modifies the Youth Access to Tobacco Law to prohibit the sale or storage of tobacco products where those products are accessible to consumers without direct assistance by sales personnel, with certain exceptions.
- Allows local regulation of tobacco if the regulations are at least as restrictive as the state's regulations under the Youth Access to Tobacco Law.

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### HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Cody, Chair; Jinkins, Vice Chair; Clibborn, Green, Kelley, Moeller and Van De Wege.

**Minority Report:** Do not pass. Signed by 4 members: Representatives Schmick, Ranking Minority Member; Hinkle, Assistant Ranking Minority Member; Bailey and Harris.

**Staff:** Chris Cordes (786-7103).

**Background:**

Tobacco Regulation in Washington.

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*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.*

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 excise 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.

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.

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).

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#### **Summary of Substitute Bill:**

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;
- tobacco displays located in a commercial establishment off-limits to persons under 18 years of age; or
- licensed tobacco products retailers whose primary business is the sale of tobacco products other than cigarettes.

Tobacco products subject to this requirement include products containing substances derived from tobacco and intended for human use, such as nicotine.

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. However, local cigarette or tobacco products excise taxes are not authorized.

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

**Substitute Bill Compared to Original Bill:**

The substitute bill: (1) deletes the ban on the sale or distribution of tobacco products that are flavored or scented or consist of capsular smokeless tobacco; (2) adds that the requirement for keeping tobacco products "behind the counter" also applies to products containing substances derived from tobacco, such as nicotine, and adds that the requirement does not apply to licensed tobacco products retailers whose primary business is the sale of tobacco products other than cigarettes; and (3) adds that, although local ordinances are not preempted (including ordinances adopting fees or licensure), local ordinances may not impose tobacco excise taxes.

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**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on February 18, 2011.

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

**Staff Summary of Public Testimony:**

(In support) The state has made progress in getting people to quit smoking. What is needed is to focus on getting kids to not start smoking. The new tobacco products are particularly appealing to youth because of the flavors; it is curiosity about the taste that gets them interested. Some of the flavored products are clearly not intended for an adult audience. Kids see the packaging that looks like mints and carry them at school. Keeping these products behind the counter is consistent with federal regulation. Studies indicate that tobacco use among youth is closely connected with marketing and store location. Many of these new products are on full display and easily accessible. Studies show that compliance with the youth access laws is not good. Local governments need to have a role in regulating tobacco products. While the state's ability to take action is threatened by fiscal constraints, local governments could be tailoring innovative and flexible solutions needed in their communities. The threat of test marketing these products in a local area needs to be addressed. Electronic cigarettes should also be banned.

(Opposed) Banning flavored tobacco products does not address the real issues, but it will result in closing retail stores. Many stores are struggling to stay in business now, and have few options to cut back on costs if this revenue is lost. The ban is not tailored to the products

that are perceived as candy, but would include pipe tobacco, for example. It is absurd to ban pipe tobacco—the average age of pipe smokers is 70 years old. The state should focus on enforcing the existing ban for minors and raise the penalties for those violations. If there is a statewide ban, adults will get the products in Idaho or on the reservation or the black market will increase, and the state will lose the tobacco revenue. It is impossible to enforce a ban, and Washington retailers will be at a disadvantage in the region. Retail stores are the state's best ally in keeping the products away from kids. It will be a nightmare for stores with outlets statewide if there is a patchwork of regulation at the local level. If there is to be more regulation, it should be done on a product-by-product basis, as the federal government is doing with cigars and other products. The state should wait to see what action the federal government takes.

**Persons Testifying:** (In support) Mary Selecky, Washington Department of Health; David Fleming, Public Health - Seattle and King County; Shelley Cooper-Ashford, Center for MultiCultural Health; Jim Cooper, Washington Association for Substance Abuse and Violence Prevention; Meghan Sullivan, Together!; and Nick Federici, American Cancer Society.

(Opposed) Jeffrey Toole; Joseph Arundel, Rain City Cigar; Nathan Schreiner, Squaxin Indian Tribe; Stephen Martin, Altadis USA; Jeannie Lee, Korean American Grocer's Association; Stacy Thrasher, F.K. Kirsten Ltd.; Mike Erickson, Harbor Wholesale Grocery; Kelly Camoza, East Kent Shell; Jeff Packer, Tinder Box; and Mark Johnson, Washington Retail Association.

**Persons Signed In To Testify But Not Testifying:** None.