

SENATE BILL REPORT

SB 5380

As of February 17, 2011

Title: An act relating to regulation of tobacco products.

Brief Description: Regulating tobacco products.

Sponsors: Senators White, Harper, Pridemore, Kline, Nelson, Kohl-Welles and Tom.

Brief History:

Committee Activity: Labor, Commerce & Consumer Protection: 2/07/11.

SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

Staff: Ingrid Mungia (786-7423)

Background: Tobacco Regulation in Washington. 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 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. Depending on the violation, 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. (Penalties may be waived if there are mitigating circumstances, and larger penalties may be imposed based on aggravating circumstances.)

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.

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.

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).

On September 22, 2009, the FDA banned the sale of flavored cigarettes other than menthol cigarettes. The ban includes loose tobacco likely to be offered to consumers as cigarette or roll-your-own tobacco. Guidance issued by the FDA on December 23, 2009, states that the ban does not apply to bona fide pipe tobacco, but notes the inclusion of loose tobacco in the ban.

The Act directs an FDA scientific advisory committee to review menthol cigarettes and flavored smokeless dissolvable tobacco products that resemble candy. The advisory committee has begun a study of menthol cigarettes, and in early 2010 the FDA issued a request for information from tobacco companies on the smokeless dissolvable tobacco products. In March 2010, the FDA solicited public comment related to how the use of dissolvable tobacco products might impact public health. The comment period closed in September 2010.

Under its authority to regulate drugs, the FDA approves certain tobacco products as tobacco cessation products.

Summary of Bill: Sales of Flavored, Scented, or Capsular Smokeless Tobacco. The Youth Access to Tobacco Law is amended to prohibit the sale or distribution of tobacco products that:

- have a distinguishable flavor or aroma other than tobacco; or
- are labeled or marketed as a flavored or scented tobacco product; or
- contain or are comprised of capsular smokeless tobacco (not including loose tobacco, but including products that are offered in single dose lozenges, pouches, pills, capsules, or other single dose units intended for oral consumption).

Display or Storage of Tobacco Products. 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 or to tobacco displays located in a commercial establishment off-limits to persons under 18 years of age.

Local Regulation of Tobacco Products. The state's preemption of local tobacco product regulation 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.

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

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: This bill is aimed at youth who have not started using tobacco and making it less attractive to use tobacco. This bill will help us continue in the progress that we have made. We don't want people to use tobacco because it is harmful to their health. Limiting tobacco products that are appealing to young people is a major step to our goal of keeping all kids from starting to use tobacco. This bill also gives local control to the use of tobacco products. So far we have not been able to give local areas the ability to deal with tobacco in their areas. Keeping tobacco behind the counter is in line with FDA rules that ban self service displays. We want to limit the use of tobacco and limit the cost on the health care side because treating health-related tobacco illnesses are expensive. Washington has been a leader in tobacco control, but that leadership is in jeopardy because of the decline in revenue for tobacco programs and increased tobacco use by our kids. Statewide laws to regulate tobacco are really important, but so are local ordinances. Local jurisdictions play an important role in tobacco control. Lifting local preemption is very important right now. Communities need the ability to tailor local intervention to their own needs. Communities differ widely in values so a one size fits all approach at the state level does not make sense in all situations. We need to make local community values drive the regulations that are the most relevant. Local control allows us the flexibility and innovation we are going to need as resources decline. We need to give local jurisdictions the ability to rapidly respond when the need arises and target their own local issues and community values. The preemption language in this bill will help our work in focusing on teen smoking. These products that look like candy need to be kept behind the counter. Every dollar we spent in tobacco cessation is helping people spend \$5 in the community.

CON: People are unaware of what flavored tobacco really is. Flavored tobacco is flavored with food ingredients as opposed to cigarettes. Flavored tobacco is grown, picked, dried and then flavored with food ingredients. Cigar smokers do not typically inhale the product like cigarette smokers do. Kids are not smoking flavored cigars for the cigars themselves, they are using it to smoke marijuana. We are concerned with the provisions for local control. There will be a patchwork of varying regulations from municipality to municipality. We do not support teen smoking. This bill will impact pipe tobacco shops. This bill is too broad. The product doesn't need to be banned, the existing law needs to be enforced. This bill would be devastating to small grocery stores. If this bill passes, many small groceries will have to lay off employees or close stores. In this economy, representatives should be helping small business owners. This is an enforcement issue, and it will hurt state revenue. This bill represents an attack on adults doing what they want to do. This bill will punish businesses and not deter underage tobacco use. We want a fair and achievable approach. This is a difficult time for business owners in Washington. Small retailers are looking at \$1.3 million loss if this bill passes.

Persons Testifying: PRO: Mary Selecky, Department of Health; David Fleming, Public Health, Seattle & King County; Sharon Ness, United Way Pierce County; Jim Cooper, Washington Association for Substance Abuse & Violence Prevention, TOGETHER!; Meghan Sullivan, TOGETHER!; Nick Federici, American Cancer Society.

CON: Joe Arundel, Cigar Association of Washington; Stacey Thrasher, J.R. Kirsten; Dale Taylor, Rain City Cigar; Jeannie Lee, Korean American Grocers Association; Mark Johnson, Washington Retail Association; Brian Nelson, Chris Baker, Harbor Wholesale Grocery; Jeff Packer, Tinder Box; Roger St. George, St. Georges, Incorporated; Kelly Carioza, East Kent Shell.