

HOUSE BILL REPORT

HB 1458

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

Title: An act relating to protecting youth from tobacco products and vapor products.

Brief Description: Concerning the age of individuals at which sale or distribution of tobacco and vapor products may be made.

Sponsors: Representatives Orwall, Goodman, Pettigrew, Ryu, Stanford, Gregerson, Jinkins, Bergquist, McBride, Magendanz, Cody, Kagi, S. Hunt and Pollet; by request of Attorney General.

Brief History:

Committee Activity:

Health Care & Wellness: 2/11/15, 2/17/15 [DPS];
Finance: 3/24/15, 4/3/15 [DP2S(w/o sub HCW)].

Brief Summary of Second Substitute Bill

- Changes the age at which a person may purchase and possess cigarettes, tobacco products, and vapor products to 19 years old.
- Modifies the definition of "vapor product."

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; Riccelli, Vice Chair; Harris, Assistant Ranking Minority Member; Clibborn, DeBolt, Jinkins, Johnson, Robinson, Rodne, Short, Tharinger and Van De Wege.

Minority Report: Do not pass. Signed by 3 members: Representatives Schmick, Ranking Minority Member; Caldier and Moeller.

Staff: Alexa Silver (786-7190).

Background:

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.

A person who sells cigars, cigarettes, 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 or tobacco 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. There is an exception for a person under the age of 18 who, with parental authorization, participates in a controlled purchase as part of a Liquor Control Board (LCB), law enforcement, or local health department activity.

"Vapor product" means a noncombustible tobacco-derived product containing nicotine that employs a mechanical heating element, battery, or circuit, regardless of shape or size, that can be used to heat a liquid nicotine solution contained in cartridges. It does not include any product that is regulated by the Food and Drug Administration as a drug or device.

A person who holds a cigarette wholesaler or retailer license is required to prominently display a sign concerning the prohibition of tobacco sales to minors. 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 a worksite where minors are not employed; and (2) the device is located not less than 10 feet from entrances and exits. "Minor" is defined as a person under the age of 18.

The LCB has authority to enforce the laws governing minors' access to tobacco, including the authority to revoke a wholesaler or retailer license. The LCB may work with local county health departments or districts and law enforcement to conduct unannounced inspections to assure compliance. If an LCB peace officer or enforcement officer observes a person purchasing or in possession of tobacco, 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 products in the possession of a minor.

The Department of Health (DOH) may use monies appropriated from the Youth Tobacco Prevention Account (Account), which includes licensing fees and monetary penalties, for implementation of the laws governing minors' access to tobacco. 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 products are available to persons under the age of 18. The remainder of the funds in the Account are used for covering the cost of administering the licensing system and for providing grants to local health departments or other local community agencies to develop and implement strategies to prevent and reduce youth tobacco use.

Cigarette tax contracts between the Governor and tribes prohibit tribal retailers from selling or giving cigarettes to a person under the age of 18.

Summary of Substitute Bill:

A person who sells cigars, cigarettes, tobacco, or vapor products to a person under the age of 21 is guilty of a gross misdemeanor, and a person under the age of 21 who purchases, possesses, or obtains, or who attempts to purchase or obtain, cigarettes, tobacco products, or vapor products commits a class 3 civil infraction. A person under the age of 18 who has parental authorization, or a person who is at least 18 but under 21, may participate in a controlled purchase.

"Vapor product" means any: (1) device that employs a battery or other mechanism to heat a solution or substance to produce a vapor or aerosol intended for inhalation; (2) cartridge or container of a solution or substance intended to be used in the device; or (3) solution or substance intended for use in the device, including, but not limited to, concentrated nicotine. It excludes from the definition drugs, devices, and combination products approved for sale by the Food and Drug Administration that are sold and marketed for the approved purpose.

The sign that retailers and wholesalers must display concerns the prohibition of tobacco sales to persons under the age of 21. 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.

If a Liquor Control Board (LCB) officer observes a person purchasing or in possession of tobacco, and the officer has reasonable grounds to believe the person is under the age of 21, the officer may detain the person for a reasonable period of time and in a reasonable manner to determine the person's identity and date of birth. Liquor Control Board officers may also seize tobacco products in the possession of a person under the age of 21.

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

Substitute Bill Compared to Original Bill:

The substitute bill modifies the definition of "vapor product" and applies it to the law governing minors' access to tobacco.

Appropriation: None.

Fiscal Note: Available.

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) Parents have concerns about kids making healthy choices, especially with respect to nicotine. Nicotine is one of most addictive substances known to man, the same as

heroin and cocaine. The developing adolescent brain is more susceptible to nicotine, and youths become addicted more quickly and at lower levels than adults. The majority of lifetime smokers started in their younger years. Tobacco industry reports published in the 1980s indicated that if a person has never smoked by the age of 18, the odds are three to one that he or she never will, but if a person has never smoked by the age of 21, the odds are 20 to one. Tobacco companies target their marketing to 18- to 21-year-olds because that is when youth experiment with tobacco. Nicotine and tobacco use is increasing among seniors in high school. One in four twelfth graders use tobacco products.

Many high school seniors are 18 years old, which gives younger kids access to cigarettes and vapor products. Teens say they get tobacco from their social networks. Of the adults who purchase tobacco for kids, 90 percent are aged 18 to 21. Raising the age to 21 will reduce the impact for younger children in high school who turn to their peers for access and may also lower overall tobacco use rates.

Smoking is the leading cause of preventable deaths. Nearly half a million people die prematurely every year from tobacco-related illnesses, and smoking kills 8,300 Washingtonians every year. This bill will help prevent needless deaths from heart disease, cancer, and stroke. Nicotine alone raises blood pressure, contracts arteries, and causes cardiovascular disease. Suffering from tobacco-related illnesses is long, painful, and costly. In Washington, \$2.8 billion per year in health care costs are attributable to tobacco use. This bill would provide a return on investment that is rarely seen in public health, since it allows the Department of Health to do the same measures it now does with no additional cost, and it may reduce the smoking rate by 50 percent.

Washington has long been a leader in the fight against tobacco. This bill would make Washington the first state to raise the smoking age to 21; four states have a minimum age of 19, and local jurisdictions have raised the age to 21. Needham, Massachusetts found a 50 percent reduction in the use of tobacco in high school students. This bill would not impact military bases. This bill will simplify age verification practices for retailers by requiring the same age for alcohol, marijuana, and tobacco.

(Opposed) None.

Persons Testifying: Representative Orwall, prime sponsor; Bob Ferguson and Rusty Fallis, Office of the Attorney General; Thomas Trompeter, Health Point; John Wiesman, Department of Health; Fel Pajimula, Seattle and King County Public Health; and Patrick Godfrey, King County Alcohol and Substance Abuse Administrative Board.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON FINANCE

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Health Care & Wellness. Signed by 9 members: Representatives Carlyle, Chair; Tharinger, Vice Chair; Fitzgibbon, Pollet, Reykdal, Robinson, Ryu, Springer and Wylie.

Minority Report: Do not pass. Signed by 7 members: Representatives Nealey, Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Condotta, Manweller, Stokesbary, Vick and Wilcox.

Staff: Dominique Meyers (786-7150).

Summary of Recommendation of Committee On Finance Compared to Recommendation of Committee On Health Care & Wellness:

The legal age to purchase or sell tobacco products and vapor products is changed to 19 years old. A delayed effective date of July 1, 2019, is included for all provisions of the bill.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Second Substitute Bill: The bill takes effect on July 1, 2019.

Staff Summary of Public Testimony:

(In support) Tobacco is one of the most highly addictive substances and young people are continuing to use tobacco products. Nine out of 10 adult smokers started as a young person under the age of 21. The youth use of vapor products is increasing dramatically. If you don't start smoking by the time you are 21 years old, it is unlikely someone will ever start. Raising the age to 21 years old will reduce premature deaths by 10 percent. An extra \$819 dollars in taxes per year are paid by every household to cover health care costs related to smoking. This does not impact the purchase of tobacco on military bases for persons 18 years or older. High school students that are age 18 provide access to tobacco products to younger kids. This age increase will mirror the current requirement for liquor and marijuana. Vapor devices are now being used by teens around the state for nicotine consumption and other drugs. More than half of tenth graders surveyed say that it is easy to access tobacco products. Decreases in tobacco use will decrease medical costs to the state.

(Opposed) The bill negatively impacts sales for small convenience stores by an estimated \$100 million for the next biennium. Small stores will lose significant sales. The bill will increase cross border sales and black market sales. The state should wait for Congress to make a recommendation based on the most recent Food and Drug Administration report before changing the legal age in the state. The bill loses too much money for this upcoming biennium. The state already loses money for cigarettes to cross border sales. This will increase that revenue loss.

Persons Testifying: (In support) Representative Orwall, prime sponsor; Bob Ferguson, and Rusty Fallis, Office of the Attorney General; John Wiesman, Department of Health; Pat Godfrey, King County Alcohol and Substance Abuse Board; Tina Johnson, TOGETHER!; Stacia Wasmundt, Tobacco-free Alliance of Pierce County; Anthony Chen, Tacoma-Pierce County Health Department; and Jim Vollendroff, King County.

(Opposed) Joanie Deutch, Washington Retail Association; Larry Stewart, Washington Association of Neighborhood Stores; and Carlyne Logue, Washington Food Industry Association.

Persons Signed In To Testify But Not Testifying: None.