

SENATE BILL REPORT

ESHB 2071

AS REPORTED BY COMMITTEE ON HEALTH & HUMAN SERVICES,
APRIL 1, 1993

Brief Description: Regulating access to tobacco.

SPONSORS: House Committee on Health Care (originally sponsored by Representatives L. Johnson, Dellwo, Quall, Campbell and Karahalios)

HOUSE COMMITTEE ON HEALTH CARE

HOUSE COMMITTEE ON REVENUE

SENATE COMMITTEE ON HEALTH & HUMAN SERVICES

Majority Report: Do pass as amended.

Signed by Senators Talmadge, Chairman; Wojahn, Vice Chairman; Deccio, Franklin, McAuliffe, McDonald, Moyer, Quigley, Sheldon, L. Smith, and Winsley.

Staff: Martin Lovinger (786-7443)

Hearing Dates: March 29, 1993; April 1, 1993

BACKGROUND:

In the 1992 State Health Report, the State Board of Health concluded that:

"The vast majority of smokers, some 75 percent, become addicted to tobacco in their teens. For tobacco prevention and education activities to be effective, they need to be targeted at youthful populations. Since smoking and use of other tobacco products containing nicotine are addictive, it is easier to reduce prevalence of tobacco use by preventing people from starting than by getting them to stop.

A young person's decision to start or not to start using tobacco products is not made in isolation. Factors influencing such decisions include: level of societal acceptance; prevalence with which peers or role models are using; price and ease with which tobacco products can be purchased; and extent to which tobacco products are advertised and promoted, especially at sporting events and other events frequented by young people.

A 1990 survey conducted in Washington public schools showed that 11 percent of 6th graders had tried smoking, and 1.4 percent were already regular smokers. Smoking experimentation and prevalence gradually increases by grade level, with over 50 percent of 12th graders having tried smoking and over 24 percent being regular smokers by time of high school completion. A survey of three Washington school districts

with a large percentage of Native American students found that 34 percent of Native American male adolescents and 24 percent of Native American female adolescents used smokeless tobacco, compared to 20 percent of white males and 4 percent of white females.

Health professionals believe that the tobacco industry specifically targets advertising at younger populations. A 1992 article in the Journal of the American Medical Association reports cartoon characters utilized in tobacco advertising are readily recognized by very young children. In a study of 229 children ages three to six, 30 percent of the three-year-olds were able to match a picture of the Old Joe (Camel cigarettes) character with a picture of a cigarette. By age six, 91 percent were able to do the same. Research shows that the younger individuals are when they start smoking, the more cigarettes per day they are likely to smoke as adults. Among men who began to smoke at or before age 14, 19.6 percent reported smoking 41 or more cigarettes per day in adulthood, compared to 10.3 percent of those who started when they were age 20 or older. Among women, 26.9 percent of those who started smoking at or before age 16 smoked 31 or more cigarettes per day as adults, compared with 15.4 percent of those who started at age 20 or older."

At the federal level, Congress passed the "Synar Amendment" the Prevention and Treatment of Substance Abuse Block Grant Act to address minors' access to tobacco. The amendment requires that "states receiving block grant money have in effect a law providing that it is unlawful for any manufacturer, retailer, or distributor of tobacco products to sell or distribute any such product to any individual under the age of 18," and that "the state involved will enforce the law in a manner than can reasonably be expected to reduce the extent to which tobacco products are available to individuals under the age of 18." Failure to comply with these federal laws beginning in the federal fiscal year 1994 (October 1993) will result in the reduction of the grant to the state of 10 percent each year for four years.

HB 2071 is the effort of the Department of Health, Department of Social and Health Services, and the Board of Health to comply with the Synar Amendment.

SUMMARY:

The Liquor Control Board is empowered with the responsibility to implement this act.

Cigarette wholesalers and retailers are required to display their license to sell cigarettes and a sign concerning the prohibition of tobacco sales to minors. The sign, which shall be provided free of charge by the Liquor Control Board, shall be clearly visible to a person purchasing tobacco products and shall read: "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." Proof of age is required.

The sale of tobacco products is prohibited through vending machines unless the device is located fully within the premises from which minors are prohibited and not less than 10 feet from all entrances or exits, or in industrial work places where minors are not employed.

The sale of tobacco products not in the original unopened package or a container with the appropriate stamp is prohibited. This provision does not apply to the sale of loose leaf tobacco by a retail business that generates a minimum of 60 percent of gross annual sales from the sale of tobacco products.

No person may engage in the business of sampling unless licensed to do so by the Liquor Control Board. Licensing requirements and restrictions on sampling are set forth.

Distribution of tobacco products by means of a coupon is prohibited if the coupon redemption does not require an in-person transaction in a retail store.

The youth tobacco prevention account is created and license fees and penalties collected under this act, other than 13 percent of such fees and penalties which will be deposited in the state general fund, are to be deposited in the account. Appropriations from this account to the Department of Health (DOH) must be used for implementation of this act.

DOH and the Liquor Control Board must enter into an interagency agreement to pay the costs incurred, up to 30 percent of available funds, of enforcing the provisions of this act. The agreement must address standards of enforcement and data reporting regarding enforcement activities.

DOH and the Department of Revenue shall enter into an interagency agreement for payment of the cost of administering the tobacco retailer licensing system. DOH is required to provide grants, using up to 70 percent of available funds, to local health departments for youth tobacco prevention and education activities.

The Liquor Control Board is authorized to enter a place of business where tobacco products are sold in order to enforce this act, may reasonably detain persons who appear to be under 18 and in violation of this act, and may seize tobacco products in the possession of those under 18 as contraband.

Sanctions for violations include the suspension or revocation of a cigarette retailer's license, civil penalties up to \$1,500, cease and desist orders, and injunctions. If civil penalties are not paid within 30 days, the Liquor Control Board may pursue legal action and courts may award attorneys' fees and costs to the Liquor Control Board. Orders may be appealed pursuant to the Administrative Procedure Act.

The tobacco retailer's license fee is raised from \$10 to \$93, with a separate license required for each place of business. The vending machine license fee is raised from \$1 to \$30.

Local governments are preempted from imposing local license or other fees on retailers or wholesalers for possessing or selling tobacco products. Local governments are also preempted from regulating tobacco promotions and sales within retail stores, location and use of cigarette vending machines, the sign requirements about the sale of tobacco products to people under age 18, the use of coupons to purchase cigarettes or tobacco, and the types of identification that may be used to prove the age of a purchaser of tobacco products. However, political subdivisions that have adopted ordinances prohibiting sampling by January 1, 1993, may continue to enforce those ordinances.

DOH must report to the Legislature by February 1, 1995 on the effectiveness of enforcement and education activities under this act, including the adequacy of revenue to support those activities.

SUMMARY OF PROPOSED SENATE AMENDMENT:

Minors are prohibited from purchasing or obtaining or attempting to purchase or obtain cigarettes or tobacco products. The Liquor Control Board may impose penalties for failure to check identification for proof of age when the age is in question. Samplers' fees are to be deposited in the youth tobacco prevention account. The amount of fees and penalties to be deposited in the state general fund is reduced from 13 to 10 percent.

Appropriation: none

Revenue: yes

Fiscal Note: available

TESTIMONY FOR:

The bill is necessary to avoid reduction of federal block grant funds for alcohol and drug treatment. Smoking represents a major health hazard, particularly for young children. This bill is not perfect but it is a giant step in the right direction and a compromise reached by a large coalition. This bill has an enforcement mechanism that will meet the federal test of reasonableness. Maternal smoking is linked with major health problems. Increased fees are reasonable for purposes of this bill. Preemption is very important for retailers with stores in more than one county.

TESTIMONY AGAINST:

Cigarette smoking leads to addiction and disease which leads to death and the bill is not strong enough to reduce tobacco use. The bill allows free distribution of cigarettes and tobacco, preempts local governments from restricting free distribution of cigarettes and sets licensing fees that are much too low. Sampling introduces people to an addictive product and should be prohibited. The penalties are too

light. The local health departments would provide stronger enforcement. Tobacco sales should be prohibited to persons under 19.

TESTIFIED: Representative Johnson, prime sponsor; Ken Stark, DSHS (pro); Carol Washburn, DOH (pro); Carter Mitchell, Liquor Control Board (pro); Ward Hinds, State Board of Health (pro); Jean Wessman, Washington State Association of Counties (pro); Jackie McFayden, Association of Washington Cities (pro); Sharon Wolvin, Tacoma-Pierce County Health Department (pro); Sharon Foster, YMCA and Council of Youth Agencies (pro); Ken Bertrand, Group Health Cooperative (pro); Carl Nelson, Washington State Medical Association (pro); Beverly Jacobsen, Washington State Hospital Association (pro); Steve Wehrly, Smokeless Tobacco Council (pro); Jan Gee, Washington Retail Association (pro); Lisa Thatcher, Washington Food Dealers (pro); Stephen Albrecht, M.D., Washington DOC (con); Linda Tanz, Coalition on Smoking or Health (con)