

SENATE BILL REPORT

SB 5621

**AS REPORTED BY COMMITTEE ON HEALTH & HUMAN SERVICES,
MARCH 3, 1993**

Brief Description: Modifying minors' access to tobacco.

SPONSORS: Senators Prentice, Moyer, Fraser, Winsley and Oke; by request of Department of Health, Department of Social and Health Services and Board of Health

SENATE COMMITTEE ON HEALTH & HUMAN SERVICES

Majority Report: That Substitute Senate Bill No. 5621 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

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

Staff: Martin Lovinger (786-7443)

Hearing Dates: March 1, 1993; March 3, 1993

SENATE COMMITTEE ON WAYS & MEANS

Staff: Terry Wilson (786-7715)

Hearing Dates; March 5, 1993

BACKGROUND:

According to the Department of Health (DOH) and the Department of Social and Health Services (DSHS) one in five deaths in Washington State can be attributed to tobacco use, making tobacco this state's leading cause of preventable death. More than half of all smokers begin before the age of 14 and over 75 percent begin by the age of 18. Approximately 25 percent of high school seniors are smokers by the time they graduate. In the 1992 State Health Report, the State Board of Health found that young people do not make decisions about using tobacco products in isolation. Among the factors influencing the decision is the ease with which tobacco products can be purchased. National estimates indicate that more than three million children in the U.S. regularly use tobacco products.

In response to this major health problem Congress in 1992 passed the "Synar Amendment" to the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA) Reorganization Act. Under this amendment prevention and treatment of substance abuse block grants to each state will be cut by 10 percent a year up to a total of 40 percent for states which do not satisfy two requirements. The first is that each state must

pass a law that prohibits the sale of tobacco products to any individual under the age of 18. The second requirement is that the state must enforce the prohibition "in a manner that can reasonably be expected to reduce the extent to which tobacco products are available to individuals under the age of 18."

Washington receives approximately \$20 million per year in ADAMHA grants. At current levels the state will lose approximately \$2 million the first year which is fiscal year 1994 (beginning in October, 1993) if Washington is found to be not in compliance with the Synar requirements. At the end of four years, Washington State would lose approximately \$8 million per year at current funding levels. Much of the ADAMHA block grant funds are used for substance abuse treatment for pregnant and parenting women, individuals at risk for HIV/AIDS, and intravenous drug users. Twenty percent is used for prevention programs.

A prohibition on sale of tobacco products to those under 18 has been law for many years in Washington. There are no federal rules to determine if Washington is in compliance with the second Synar requirement. It is the position of DOH and DSHS that children in Washington State continue to have easy access to tobacco and that Washington currently could not certify that the prohibition is being enforced "in a manner that can reasonably be expected to reduce the extent to which tobacco products are available to individuals under the age of 18."

DOH, DSHS and the Board of Health have reviewed a number of programs and have developed SB 5621 in order to reduce tobacco use among Washington State youth and to comply with the Synar Amendment.

SUMMARY:

Cigarette wholesalers and retailers are required to display their license and a sign concerning the prohibition of tobacco sales to minors. The sign which shall be designed and produced by DOH and distributed free of charge by local county health departments and clearly visible to a person purchasing tobacco products must read "THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER AGE 18 IS STRICTLY PROHIBITED BY STATE LAW, PHOTO ID REQUIRED."

The sale of tobacco products through vending machines is prohibited unless the device is located fully within premises from which minors are prohibited and not less than ten feet from all entrances or exits.

The sale of a tobacco product that is not in the original unopened package with the required stamps affixed is prohibited. This provision does not apply to businesses that specialize in the sale of loose leaf tobacco and generate a minimum of 60 percent of annual gross sales from tobacco sales.

Free distribution of tobacco products is prohibited.

Distribution of tobacco products at a reduced price by means of a coupon is prohibited if the coupon redemption does not require an in-person transaction between the buyer and the seller.

The Board of Health is permitted to adopt rules which at a minimum shall ensure enforcement of the above provisions in a manner to reduce the extent to which tobacco products are available to individuals under age 18.

The youth tobacco account is created and license fees and penalties collected under this act, other than penalties collected by local health departments, are to be deposited in the account. Appropriations from this account to DOH must be used for enforcement and prevention efforts under this act. Civil penalties collected by local health departments under this chapter shall be retained by them and used for enforcement and prevention efforts.

DOH and the Department of Revenue must enter into an interagency agreement to pay the cost of administering the tobacco wholesaler, retailer and vending machine licensing systems out of funds appropriated to DOH from the Youth Tobacco Account. DOH is required to use appropriations to contract with local health departments for youth tobacco prevention and education and necessary enforcement activities.

Local health departments shall enforce the provisions of this act and the retail tobacco licensing law. They are authorized to enter a place of business where tobacco products are sold in order to do so.

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 health officer may pursue legal action and courts may award attorneys' fees and costs to the health officers. Orders may be appealed to the local health board where the health officer will have the burden of proving the violation by a preponderance of the evidence.

The tobacco wholesaler's license fee is raised from \$650 to \$1,300. The license fee for a wholesaler's secondary locations is raised from \$115 to \$250.

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.

Cigarette licensing enforcement is transferred from the Department of Revenue to local health departments.

EFFECT OF PROPOSED SUBSTITUTE:

Enforcement authority is given to the Liquor Control Board (board) instead of local health departments.

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 and wholesale operations, 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.

Cigarette vending machines are also permitted at industrial worksites where minors are not employed.

Sellers must request identification when a tobacco product purchaser's age is in question. The types of acceptable identification are specified. It is a defense to prosecution for illegal sale of cigarettes or tobacco products to a person under age 18 that the seller relied reasonably upon officially issued identification.

A person under the age of 18 who buys or attempts to buy cigarettes or tobacco is subject to a penalty up to \$100, unless the purchase is part of law enforcement activities.

Sanctions under this act include the possible suspension or revocation of a liquor license. Proceedings on sanctions are to be conducted in compliance with the Administrative Procedure Act.

When there are reasonable grounds to believe a person under the age of 18 is purchasing or in possession of tobacco products the board is authorized to detain the person to obtain identification and to seize tobacco products if the person is under 18. The board may work with local health departments and law enforcement agencies to conduct random sting operations.

DOH must enter an interagency agreement with the board to pay the costs of enforcement activities under this act, and may use up to 30 percent of available funds in the youth tobacco prevention account. Up to 70 percent of the funds in that account may be distributed as grants to local health departments for prevention and education activities.

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.

It is clarified that to be convicted under the criminal statute prohibiting the sale of cigarettes or tobacco products

to someone under age 18 a person must have done so knowingly or through failure to check identification.

DOH must implement a tobacco education program that emphasizes no new smokers, targets young people, and promotes reduction of use. This program must include a media advertizing component to stress the dangers of tobacco use, and strive to reach all subcultures and subgroups of local communities. This program shall be funded by no less than half of the savings to the state through compliance with the Synar Amendment.

Appropriation: none

Revenue: yes

Fiscal Note: available

TESTIMONY FOR (Health & Human Services):

This bill is important to protect the health of young people by preventing them from becoming addicted to tobacco. The money that will be saved through compliance with the Synar Amendment is substantial and is needed for the programs that would be cut. This bill moves us closer to a smoke-free society which will be healthier with fewer unnecessary deaths and reduced health care costs. Local government experience with laws similar to this have been successful in reducing tobacco use and consumption by young people. This bill is a very good example of a public health population-based service. Currently it is much too easy for young people to obtain cigarettes, especially from vending machines.

TESTIMONY AGAINST (Health & Human Services):

Clerks should not be penalized for selling tobacco products to minors inadvertently. Young people who purchase or attempt to purchase tobacco products illegally should also be subject to punishment, not just the clerk who sold them the product.

TESTIFIED (Health & Human Services): PRO: Mimi Fields, DOH; Ken Stark, DSHS; Lisa Hoffman, Board of Health; Jim Boldt, Jan Gee, Washington Retail Association; Willa Fisher, Bremerton-Kitsap Health District; Ragina McCown, Port Orchard; Paul Zemann, King County Environmental Health; Linda Tanz, Washington Coalition on Smoking and Health; CON: T.K. Bentler, United Food and Commercial Workers

TESTIMONY FOR (Ways & Means):

Something must be done about tobacco sales.

TESTIMONY AGAINST (Ways & Means):

A part of the bill weakens federal law. The liquor license revocation is extreme. The preemption of local regulation and licensing is too broad.

TESTIFIED (Ways & Means): Jean Wessman, Washington State Association of Counties (pro in part); Ken Stark, Department of Social and Health Services (pro-most); Carl Nelson, Washington State Medical Association (pro); Carol Washburn, Department of Health; Jackie McFayden, Association of Washington Cities (pro); Jan Gee, Washington Retailers (con); Steve Wehrly, Smokeless Tobacco Council (con); Carter Mitchell, Liquor Control Board