

HOUSE BILL REPORT

2ESHB 1746

As Passed Legislature

Title: An act relating to making minor possession of tobacco a class 3 civil infraction and clarifying penalties for violation of current laws regarding youth access to tobacco.

Brief Description: Making minor possession of tobacco a class 3 civil infraction and clarifying penalties for violation of current laws regarding youth access to tobacco.

Sponsors: By House Committee on Commerce & Labor (originally sponsored by By House Committee on Commerce/Lab (originally sponsored by Representatives Sherstad, Morris, Radcliff, Hatfield, D. Schmidt, Grant, Pennington, Sullivan, Koster, Mulliken, Wood, L. Thomas, Scott, Carrell, Doumit, Sheahan, Huff, Kastama, Boldt, Hickel, McMorris, Thompson, Cooke and Dunshee)).

Brief History:

Committee Activity:

Commerce & Labor: 2/19/97, 3/5/97 [DPS].

Floor Activity:

Passed House: 3/14/97, 68-26.

Passed House: 2/13/98, 94-2.

Senate Amended.

House Concurred.

Passed Legislature.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives McMorris, Chairman; Honeyford, Vice Chairman; Boldt; Clements; Hatfield and Lisk.

Minority Report: Do not pass. Signed by 3 members: Representatives Conway, Ranking Minority Member; Wood, Assistant Ranking Minority Member; and Cole.

Staff: Pam Madson (786-7166).

Background: In 1993, the federal government required, as a condition for receiving federal substance abuse funds, that states adopt a law making it illegal for a manufacturer or retailer of tobacco products to distribute these products to a person under the age of 18. In response, the state of Washington enacted restrictions on the

distribution and sale of tobacco to reduce availability to minors. One provision dealt with requirements for licensed cigarette retailers and another provision dealt with the purchase of tobacco by persons under the age of eighteen.

The Liquor Control Board may suspend or revoke a retailer's license or impose monetary penalties on a retailer if the Board finds the retailer has violated provisions of the youth access to tobacco law. Provisions include selling tobacco to minors, failing to post a warning sign with penalties for purchase of tobacco by a minor, failing to prevent access to cigarette vending machines by minors, failing to require identification if age is questioned, and selling cigarettes other than in their original packaging.

A minor who purchases or obtains tobacco may be guilty of a class 3 civil infraction which is punishable by a maximum \$50 fine. The court may also require the individual to participate in a smoking cessation program.

Juvenile courts have exclusive jurisdiction over most proceedings involving youth under the age of eighteen. Certain proceedings involving juveniles are specifically removed from juvenile court jurisdiction. Municipal and district courts are courts of limited jurisdiction and handle proceedings involving adults unless jurisdiction is specifically provided for handling juveniles.

Summary of Bill: In addition to purchasing tobacco, a person under the age of eighteen may be guilty of a class 3 civil infraction if he or she possesses tobacco. In addition to the current penalties, a court may require four hours of community service for a violation.

The Liquor Control Board is authorized to reduce penalties or waive license revocations or suspensions if there are mitigating circumstances including the exercise of due diligence by a tobacco retailer or if the elements of proof are inadequate. The Board may exceed penalties if there are aggravating circumstances.

Municipal and district courts have jurisdiction to enforce laws prohibiting minors from purchasing or possessing tobacco.

Appropriation: None.

Fiscal Note: Requested on February 17, 1997.

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

Testimony For: The question is how to curb teen tobacco use and at the same time not infringe on the civil liberties of adults who choose to smoke and not violate the free speech right of the tobacco companies who wish to advertise their product. It is

not currently illegal for minors to possess tobacco and once they possess it, law enforcement is unable to do anything about it. Kids should be held accountable for breaking the law and parental authority should be reinforced. The money should be shifted to law enforcement through the Liquor Control Board, and local law enforcement should be given additional tools by making possession of tobacco by a minor illegal. Currently, the Health Department contracts with local health districts and private organizations to do sting operations on retail owners. Teen smoking is on the rise. It is questionable that these education programs are being successful. Enhancing law enforcement and making possession of tobacco by a minor illegal will deter young people from starting to smoke at a young age. There are currently incentives for businesses to comply with the provisions of the youth access to tobacco law to avoid retailer violations.

Testimony Against: This bill reduces funding for education and prevention in local communities that is working. Since the law has been in effect, illegal sales to minors have gone down. A good working relationship has developed between the Liquor Control Board and local county health departments and local store owners. Many addicted smokers began smoking as children. There is no evidence that making possession illegal and subjecting youth to penalties will have any impact on illegal sales to minors. Cigarettes and tobacco products are too accessible and are easily stolen from retail displays by youth who want these products. The problem is complex and the solution must be comprehensive and needs both education and enforcement. Enforcement should focus on adults who are enabling youth to obtain tobacco. The funding shift away from local health departments effectively means no meaningful state-wide education program can exist.

Testified: (In support) Representative Mike Sherstad, prime sponsor; Richard Dugdale; John Dyer, Oak Harbor School Board; Tennille Medbury, Oak Harbor Parents Advocacy Council; Todd Medbury, Oak Harbor Student Body; Amy Armour, Washington Association of Neighborhood Stores; Richard McCleary; Joe Daniels, United Food and Commercial Workers; and Hank Armour, Washington Association of Neighborhood Stores. (Opposed) Dr. Robert Jaffe, Washington State Medical Association; Nick Federici, American Lung Association; Sharlyn Rima, American Cancer Society; Rochelle Wilson; and David Allen. (Concerns) Gary Gilbert, Liquor Control Board; and Dr. Mimi Fields, Department of Health.