

HOUSE BILL ANALYSIS

HB 1746

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: Representatives Sherstad, Morris, Radcliff, Hatfield, D. Schmidt, Grant, Pennington, Sullivan, Koster, Mulliken, Wood, L. Thomas, Scott, Carrell, Doumit, Sheahan, Huff, Kastama, Boldt, Hickel, McMorris and Thompson

Hearing: February 19, 1997

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. The state law must be implemented in a way that will reasonably reduce the extent to which tobacco products are available to individuals 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. The state must report to the federal agency what activities it carried out, its level of success at reducing access to tobacco by minors, and strategies it will use to enforce the law during the funding year.

Enforcement to reduce availability of tobacco to minors

The Liquor Control Board is charged with enforcement of the laws prohibiting the sale to minors and the purchase by minors of tobacco products. The Department of Revenue administers the licensing of tobacco retailers, and the Department of Health through local health departments or other local community agencies develops and implements intervention strategies to reduce tobacco use by youth.

The Liquor Control Board may work with local health districts and law enforcement to conduct inspections of retail establishments to ensure compliance. A person under the age of 18 may purchase tobacco as part of a controlled purchase under the enforcement supervision of the Liquor Control Board, law enforcement, or a local health department.

Cigarette wholesalers and retailers are licensed by the Department of Revenue. As licensees, they are required to post a sign that clearly communicates that tobacco must not be sold to

minors and if a minor purchases tobacco, he or she could be penalized.

Offenses and penalties

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.

Any person who sells or gives tobacco in any form to a minor may be guilty of a gross misdemeanor. A tobacco licensee must check specified identification if a purchaser's age is questionable. It is a defense to prosecution for illegal sale to a minor if the seller reasonably relied on the specified identification. The Liquor Control Board must waive any license suspension or revocation if the licensee clearly shows he or she acted with due diligence to prevent any violation.

The Liquor Control Board may fine licensees or others who violate provisions limiting access to tobacco by minors. The Board may offer a training class to retail clerks in lieu of a fine for the first offense.

Youth Tobacco Prevention Account

Cigarette wholesaler and retailer license fees are deposited in the Youth Tobacco Prevention Account, along with any fines or penalties collected by the Liquor Control Board. Up to 30 percent of available funds may go to the Liquor Control Board for enforcement responsibilities, and up to 70 percent may go to local health districts or community agencies for tobacco intervention strategies.

SUMMARY OF BILL:

Enforcement to reduce availability of tobacco to minors

Local health districts are no longer involved in enforcement actions that randomly inspect licensees for compliance or in actions involving youth in a controlled purchase. A retail licensee may use a person under 18 in a controlled purchase from the retailer's establishment to test compliance.

Offenses and penalties

In addition to purchasing tobacco, a person under the age of 18 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.

In addition to the existing defense to the crime of selling or giving tobacco to a minor, a licensee may assert that the required signs were posted at the establishment and the licensee had trained his or her employees in not selling tobacco to minors.

Youth Tobacco Prevention Account

The percentage of funds available to the Liquor Control Board from the Youth Tobacco Prevention Account is increased from 30 percent to 80 percent. The percentage available to the Department of Health for local district grants is reduced from 70 percent to 20 percent. The Department no longer has the option to use local community agencies to implement intervention strategies and may only award grants to local health districts. No money from the Youth Tobacco Prevention Account may be used by private groups or individuals for lobbying or public relations services.

RULES AUTHORITY: The bill does not contain provisions addressing the rule-making powers of an agency.

FISCAL NOTE: Requested on February 17, 1997.

EFFECTIVE DATE: Ninety days after adjournment of session in which bill is passed.