

# HOUSE BILL ANALYSIS

## HB 1877

**Brief Description:** Providing for regulation and control of tobacco products.

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**Sponsors:** Representatives Skinner, Cole, Cody, and Clements; by request of Governor Locke and the Attorney General

Hearing: February 26, 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.

#### No sale to minors and posting of signs by licensees

Any person who sells or gives tobacco in any form to a minor may be guilty of a gross misdemeanor. Cigarette wholesalers and retailers are licensed by the Department of Revenue. As licensees, they are required to post their license and 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. If a licensee violates this provision, the fine is \$100. The monetary penalty increases for each violation within a two year period and may ultimately result in a five year license revocation. Penalties are less if the violator is a nonlicensee.

#### Cigarette vending machines

Cigarette vending machines may only be located in areas where access by minors is prohibited. The machine must be located at least 10 feet from an entrance or exit to the area. The monetary penalty for violation is \$100 for each day of violation.

#### Cigarettes sold in original packages

Cigarettes must be sold in their original packages. The inference is that individual cigarettes may not be sold. If a licensee violates this provision, the fine is \$100. The monetary penalty increases for each violation within a two year period and may ultimately result in a five year license revocation. Penalties are less if the violator is a nonlicensee.

#### Tobacco sampling

The Liquor Control Board licenses businesses to engage in tobacco sampling at lawful locations. No sampling may occur in public places except where minors are prohibited entry, within a retail licensee's establishment, or at a production, repair, or outdoor construction site. Distribution of samples may not occur within 500 feet of a playground or school frequented by minors. The penalty for each violation is \$300.

#### Distribution by coupons

Coupons may be used to distribute tobacco products only if the coupon is redeemable in person at a retail store. The penalty for improperly using coupons for distribution is \$1,000 for each violation.

#### State preemption

Local jurisdictions are preempted from licensing or regulating tobacco products or prohibiting any activity covered by state law.

### **SUMMARY OF BILL:**

#### Tobacco sampling

Distributing tobacco products using samples is prohibited. Any person who violates this prohibition may be guilty of a misdemeanor.

#### Penalties enhanced

The monetary penalties for violations of the minor's access to tobacco law are enhance. Penalties include a minimum and maximum penalty with the minimum set at the level of current law. For violations involving selling tobacco products to minors, failing to display a license or the required sign prohibiting sale to minors, and selling cigarettes that are not in original packages, the Liquor Control Board may modify the monetary penalty for the first violation based on aggravating or mitigating circumstances.

The Liquor Control Board may impose monetary penalties and license suspensions on licensees who violate board rules.

#### Additional crimes created

No person may knowingly or willfully resist or oppose any state or local law enforcement officer or liquor enforcement officer in the discharge of the officer's duties under this law. A violation is punishable as a misdemeanor.

Possession of cigarettes without a license and with intent to sell is punishable as a misdemeanor.

Suspended or revoked licensees may not sell or allow cigarettes or tobacco products to be sold on their premises. A violation is punishable as a misdemeanor.

No manufacturer or wholesaler may pay the fine of a retailer nor may a retailer accept such payment. A violation is a gross misdemeanor punishable by a minimum fine of \$2500 for the first offense and a minimum fine of \$5000 for the second and subsequent offenses.

Self-service displays of tobacco products are prohibited. Sales may only be in-person sales where the product is sold from behind a counter. The monetary penalty range is a minimum of \$100 and a maximum of \$250 for each violation.

Fixed outdoor advertising of tobacco products is prohibited within 1000 feet of schools or government owned or operated playgrounds. The monetary penalty range is a minimum of \$100 and a maximum of \$250 for each violation.

#### State preemption

Local jurisdictions may adopt regulations that are at least as restrictive as state law.

**RULES AUTHORITY:** The bill does contain provisions addressing the rule-making powers of an agency.

**FISCAL NOTE:** Available.

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