

SENATE BILL REPORT

2ESHB 1746

As Reported By Senate Committee On:
Commerce & Labor, February 27, 1998

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: House Committee on Commerce & Labor (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: 3/25/97, 4/1/97 [DPA, DNPA]; 2/25/98, 2/27/98 [DPA, DNPA].

SENATE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass as amended.

Signed by Senators Schow, Chair; Horn, Vice Chair; Anderson and Fraser.

Minority Report: Do not pass as amended.

Signed by Senators Franklin and Heavey.

Staff: Genevieve Pisarski (786-7488)

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 18.

Licensed cigarette wholesalers and retailers 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.

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 18. 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 Amended Bill: Possession of tobacco by a minor is also a class 3 civil infraction. Four hours of community service is an alternative penalty. Municipal and district courts have jurisdiction for enforcement.

The Liquor Control Board is authorized to reduce or waive penalties against licensed retailers, given inadequate proof or mitigating circumstances, including exercise of due diligence. The board may exceed penalties, given aggravating circumstances.

Amended Bill Compared to Substitute Bill: Four hours of community service is an alternative rather than an additional penalty. Courts do not retain fines.

Authority for the board to reduce or exceed penalties in response to the circumstances is added.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: Because health departments and not law enforcement agencies conduct compliance checks, the due diligence provision provides balance. The provision for aggravating circumstances is needed to penalize a small proportion of unscrupulous retailers. The regulated community and the public health community have agreed that the board should have latitude to deal with circumstances by rule and have worked together to reach a compromise for holding both youths and retailers accountable, but this is a complex issue on which there is no complete agreement. Enforcement of the laws against possession of alcohol by minors is intended to be the model. This involves checking identifications and applying mitigating or aggravating circumstances to penalties. Most police officers do not have time to focus excessively on minors possessing tobacco. An integrated strategy to reduce access and use is needed.

Testimony Against: This is a complicated issue that has no single solution. The amended version is the better approach. Courts do not retain fines.

Testified: PRO: Jan Gee, WA Food Industry; Gary Gilbert, Liquor Control Board; Amy Brackenbury, WA Association of Neighborhood Stores; Greg Hewett, Seattle-King County Department of Public Health; CON: David Allen, American Cancer Society; Robert Jaffe, WA State Medical Association; Elaine Rose, Attorney General's Office; David Allen, ACS; David Vance, WA State Association of Local Public Health Officers; Chuck Fortis, Office of the Court Administrator; Nick Federici, Lung Association.