

HOUSE BILL REPORT

HB 1118

As Reported by House Committee On:

Criminal Justice & Corrections

Title: An act relating to penalties for violations of the state liquor code.

Brief Description: Allowing local option penalties for public drinking.

Sponsors: Representatives O'Brien, Darneille, Lovick, Conway, Cairnes, Mielke, Pearson, Roach, Benson and Wallace.

Brief History:

Committee Activity:

Criminal Justice & Corrections: 1/28/03, 2/7/03 [DPS].

Brief Summary of Substitute Bill

- Authorizes counties and cities to enact an ordinance to increase the penalties to a misdemeanor offense for violating the prohibition of the open container law and consuming liquor in a public place.

HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives O'Brien, Chair; Darneille, Vice Chair; Mielke, Ranking Minority Member; Ahern, Assistant Ranking Minority Member; Kagi, Lovick and Pearson.

Staff: Yvonne Walker (786-7841).

Background:

Throughout the state liquor laws, actions that violate various provisions of the statute are designated misdemeanors (carrying a maximum sentence of one-year of incarceration, a fine of \$5,000 or both), however there are some exceptions. For example, it is a criminal offense to open a package containing liquor or consume liquor in a public place. A violation of this offense is a class 3 civil infraction offense punishable by a monetary penalty of up to \$50.

With certain exceptions, a "public place" can generally be defined as such areas as streets and alleys of incorporated cities and towns; state, county or township highways or roads; buildings and grounds used for school purposes; public dance halls and adjacent grounds; certain establishments where beer may be sold, soft drink establishments, public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theaters, stores, garages and filling stations which are open to and are generally used by the public, railroad trains, publicly owned bathing beaches, parks, and playgrounds; and other such places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public.

Some municipalities and counties prohibit the consumption of alcohol in certain areas known as alcohol impact areas. An alcohol impact area, as defined in Chapter 314-12 of the Washington Administrative Code (WAC) rules, is a geographic area within a city, town, or county that is adversely affected by chronic public inebriation or illegal activity associated with alcohol sales or consumption. The area must be designated by ordinance of the government subdivision and recognized by resolution of the Liquor Control Board.

Summary of Substitute Bill:

County and city legislatures are authorized to enact an ordinance providing for an alternative penalty to the class 3 civil infraction crimes of: 1) opening a liquor container; and 2) consuming liquor, in a public place. If one of these offenses occurs in a business district then the alternative penalty, if enacted by a local ordinance, may be punishable as a misdemeanor offense. Any new ordinance that is enacted by a locality must require that the law enforcement officer have probable cause to believe that the person being arrested is inebriated; and (2) must define the term "business district."

Substitute Bill Compared to Original Bill:

The provision that originally authorized localities to enact an ordinance to increase the penalties for violations of the open container law in "alcohol impact areas" is eliminated.

A provision is added that requires that any new ordinance that is enacted by localities: (1) requires the law enforcement officer have probable cause to believe that the person being arrested is inebriated; and (2) must define the term "business district."

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect ninety days after adjournment of

session in which bill is passed.

Testimony For: In 1999 the Legislature amended state law regarding opening a container in public places. Previously it was a misdemeanor offense but it was amended down to a class 3 civil infraction for budgetary purposes due to overcrowding in the jails during that time. King County however, maintained the crime in its ordinance as a misdemeanor offense and as a result violations in the Seattle city area were punishable as misdemeanor offenses.

Last year, the Washington State Supreme Court decided in *State v. Duncan* that the legislative action of decriminalizing misconduct in 1999 effectively decriminalizes all similar offenses in local jurisdictions which meant that local penalties could not be different from state penalties. Local jurisdictions that maintained the local misdemeanor penalties were now precluded from enforcing violations as a criminal defense.

Localities would like the ability to impose ordinances providing for a misdemeanor penalty for open container laws as long as it is limited to alcohol impact areas and business districts. By allowing the offense to remain punishable as a misdemeanor offense through local ordinance, law enforcement officers have an effective tool to give inebriated persons the option of going to jail or going to a detox center. If the penalty is only a class 3 civil infraction then it is solely punishable as a fine and there is no leverage to get a person to go to treatment.

Testimony Against: The bill is too broad. There is no definition of alcohol impact area or business district. The problem is that alcohol impact areas and the products that are banned within those areas, can be changed at any time by localities.

We need to be able to treat these people and not put them in jail. This bill will not stop people from drinking in public areas.

(Substitute bill) The substitute bill deletes all references to "alcohol impact areas" and it requires that local ordinances specifically define the term "business district."

Testified: (In support) Greg Lineberry, City of Everett Police Department; and Phil Wayt, Washington Beer and Wine Wholesalers Association.

(Opposed) Sherry Appleton, Washington Defenders Association and Washington Association of Criminal Defense Lawyers.