

SENATE BILL REPORT

EHB 1074

As Reported by Senate Committee On:
Ways & Means, March 21, 2019

Title: An act relating to protecting youth from tobacco products and vapor products by increasing the minimum legal age of sale of tobacco and vapor products.

Brief Description: Protecting youth from tobacco products and vapor products by increasing the minimum legal age of sale of tobacco and vapor products.

Sponsors: Representatives Harris, Orwall, Riccelli, Jenkins, DeBolt, Pollet, Stonier, Stanford, Rude, Davis, Tharinger, Macri, Slatter, Kloba, Peterson, Valdez, Kilduff, Ryu, Fitzgibbon, Robinson, Appleton, Wylie, Cody, Bergquist, Doglio, Senn, Frame, Walen and Callan; by request of Attorney General and Department of Health.

Brief History: Passed House: 2/20/19, 66-30.

Committee Activity: Ways & Means: 3/14/19, 3/21/19 [DP, DNP, w/oRec].

Brief Summary of Bill

- Prohibits the sale of cigarettes, tobacco products, and vapor products to persons under the age of twenty-one.

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Operating, Capital Lead; Braun, Ranking Member; Bailey, Billig, Carlyle, Conway, Darneille, Hunt, Keiser, Lias, Pedersen and Van De Wege.

Minority Report: Do not pass.

Signed by Senators Honeyford, Assistant Ranking Member, Capital; Becker, Hasegawa and Wagoner.

Minority Report: That it be referred without recommendation.

Signed by Senators Brown, Assistant Ranking Member, Operating; Schoesler and Warnick.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: Alia Kennedy (786-7405)

Background: A person who sells cigars, cigarettes, cigarette paper, tobacco, or vapor products to a person under the age of eighteen is guilty of a gross misdemeanor. A person under the age of eighteen who purchases, possesses, obtains, or who attempts to purchase or obtain cigarettes, tobacco, or vapor products commits a class 3 civil infraction, which may be penalized with a \$50 fine, up to four hours of community restitution, and participation in a smoking cessation program.

A person who holds a cigarette wholesaler, cigarette retailer, or vapor products retailer license is required to prominently display a sign concerning the prohibition of tobacco sales to persons under the age of eighteen. The sign states, "The sale of tobacco products to persons under age 18 is strictly prohibited by state law. If you are under 18, you could be penalized for purchasing a tobacco product. Photo ID required." Tobacco products may not be sold through a device that mechanically dispenses the products unless (1) the device is located in a place where minors are prohibited or in an industrial worksite where minors are not employed, and (2) the device is located at least 10 feet from entrances and exits. "Minor" is defined as a person under the age of eighteen. A person may not offer a tasting of vapor products to the general public unless the person is a licensed retailer, the tastings are offered within the licensed premises, entry is restricted to persons eighteen years of age or older, either the product does not contain nicotine or the customer consents to tasting nicotine, and a disposable mouthpiece is attached to the vapor product if the device is owned by the retailer.

The Liquor and Cannabis Board (LCB) has authority to enforce the laws governing minors' access to tobacco and vapor products. The LCB may work with local county health departments or districts and law enforcement to conduct unannounced inspections to assure compliance. If a peace officer or enforcement officer of the LCB observes a person purchasing or in possession of tobacco or vapor products, and the officer has reasonable grounds to believe the person is under the age of eighteen, the officer may detain the person for a reasonable period of time and in a reasonable manner to determine their identity and date of birth. An LCB officer may also seize tobacco and vapor products in the possession of a minor.

The Department of Health (DOH) may use monies appropriated from the Youth Tobacco and Vapor Products Prevention Account, which includes licensing fees and monetary penalties, for implementing laws governing minors' access to tobacco and vapor products. DOH is required to enter into an agreement with LCB to pay for costs incurred for enforcement, and the agreement must set standards of enforcement to reduce the extent to which tobacco and vapor products are available to persons under the age of eighteen.

The Governor is permitted to enter into tribal cigarette tax contracts regarding the sale of cigarettes. The Governor may delegate power to negotiate cigarette tax contracts to the Department of Revenue. Statutory requirements for tribal cigarette tax contracts include:

- the terms of the cigarette tax contract apply to retail sales by Indian sellers in Indian country, which is land within the boundaries of the reservation and land held in trust for a tribe or by a tribal member; tribal retail sales are limited to Indian country;
- cigarettes may only be sold or given to individuals eighteen years and older;

- tribal cigarette tax must be used for essential government services;
- cigarettes sold under this contract must bear a tribal cigarette tax stamp;
- tribal retailers must purchase cigarettes only from approved wholesalers; and
- contracts must contain provisions for compliance.

Disputes regarding the interpretation and administration of the contract's provisions may be resolved by mediation and other non-judicial processes.

Summary of Bill: A person who sells cigars, cigarettes, cigarette paper, tobacco, or vapor products to a person under the age of twenty-one is guilty of a gross misdemeanor.

The signs that licensed retailers and wholesalers of tobacco and vapor products must display concerning the prohibition of tobacco and vapor product sales to persons under the age of eighteen are updated to twenty-one, respectively. The sign language that previously stated an individual under eighteen purchasing a tobacco or vapor product could be penalized is removed, and additional language stating identification is required only upon request is added.

Tobacco products may not be sold through a vending machine unless the machine is located in a place where persons under the age of twenty-one are prohibited or in an industrial worksite where persons under the age of twenty-one are not employed, and it is located at least ten feet from entrances and exits. A person may not offer a tasting of vapor products to the general public unless, among other things, entry into the licensed premises is restricted to persons twenty-one years of age and older. The definition of minor is removed.

Interagency agreements between the DOH and the LCB must set enforcement standards to reduce the extent to which tobacco and vapor products are available to persons under the age of twenty-one.

The Governor is permitted to seek government-to-government consultations with federally recognized Indian tribes regarding raising the minimum age of sale in compacts for cigarette tax contracts. The Office of the Governor must report to the appropriate committees of the Legislature on the status of the consultations by December 1, 2020.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill takes effect on January 1, 2020.

Staff Summary of Public Testimony: PRO: Youth vaping is increasing across the country at both the high school and middle school level. This bill may not eliminate youth vaping or tobacco use but it will make it more difficult to access those products. Oregon and California have both passed this legislation. Vapor products are not always a device used to quit smoking and some users end up turning to cigarettes. This bill will dramatically improve the health of many Washingtonians. By making Washingtonians healthier, this bill will also

provide extraordinary cost savings for both working families and the state itself. Tobacco use has a huge financial impact on the state's economy. The Center for Disease Control and Prevention (CDC) estimates that tobacco use in Washington alone results in \$2.8 billion in healthcare costs each year. Productivity loss totals more than \$2 billion annually because of tobacco use, not including business loss from smoke breaks and sick days. The cost savings outweigh the loss in revenue. If you pass this legislation, you are providing significant cost savings for working families and future legislatures. Those savings represent fewer Washingtonians suffering from pain, smoking related diseases, and premature deaths. Raising the minimum legal age to purchase tobacco will decrease the prevalence of tobacco users and improve the health of adolescents and young adults over the long term. This bill will reduce smoking related morbidity and mortality, and especially benefit pregnant women and developing fetuses. Smoking during pregnancy significantly increases the incidence of babies born prematurely or with low birth weight. The Health Care Authority currently pays for over 50 percent of all births in the state of Washington. This bill is more important than ever because tobacco use is changing and the way young people see it is changing. It is a rite of passage for young people to buy tobacco and vapor products when they turn eighteen. Tobacco among young people is not just normal it is widely popular. In Washington, lung cancer costs on average over \$100,000 per patient to diagnose, treat, and care for at the end of life. A recent national study stated that Medicaid enrollees are about twice as likely as the general population to smoke and those who start smoking have more difficulties quitting and suffer higher rates of chronic conditions and psychological distress than the privately insured. A CDC study estimated that 18 percent of Washington's Medicaid costs were due to smoking. This policy is designed to prevent youth initiation and prevent a lifetime of nicotine addiction. The tobacco industry continues to target youth; spending nearly \$93 million in Washington alone. Each year we have a tremendous opportunity to dramatically reduce smoking and prevent future generations from a lifetime of suffering from devastating and costly tobacco related disease. The law today states that eighteen year olds can legally purchase tobacco products but the law is clearly not effective in stopping those who are younger from doing so. The only way to prevent youth access to tobacco is not only to raise the legal age but to also put some teeth behind when kids are found in possession with swifter consequences. Youth tobacco use is not a phenomenon of the past but a quickly spreading epidemic. No younger person or non-nicotine user should ever try a jewel product. Raising the minimum purchase age for all tobacco products has been shown to reduce youth smoking rates.

CON: This bill will have a financial impact on smaller stores as purchasers of tobacco move to other retailers, such as on tribal property or out of state. There is a rippling effect to this bill as fewer customer's coming in to stores to buy cigarettes also means fewer purchases of ancillary items. This law should be changed at the federal level because legislation at the state level does not have any effect on the tribes or other states.

Persons Testifying: PRO: Representative Paul Harris, Prime Sponsor; Bob Ferguson, Washington Attorney General; Sue Birch, Director, Health Care Authority; Madison Langer, High School Student; Lauren Baba, Seattle Cancer Care Alliance; Patty Seib, Molina Healthcare; Lindsay Hovind, American Heart Association, ACS CAN, American Lung Association, Campaign for Tobacco Free Kids, Fdn for Healthy Generations; Cami Brix, High School Student; Washington State Parent Teacher Association; Ann Simons, JUUL Labs; Al Ralston, Open Window School Bellevue-TVW Classroom Program; Shaun D'Sylva,

citizen.

CON: Carolyn Logue, Washington Food Industry Association; Mark Johnson, Washington Retail.

Persons Signed In To Testify But Not Testifying: No one.