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10/2/03

2003 HOUSE JUDICIARY

HB 1171

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10/2/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1171

House Judiciary Committee

☐ Conference Committee

Hearing Date 1-27-03

Tape Number	Side A	Side B	Meter #
1	xx		36-end
1		xx	0-15
Committee Clerk Signature <i>D Penrose</i>			

Minutes: 11 members present, 2 members absent (Rep. Maragos and Rep. Onstad)

Rep. Kretschmar, acting chairperson: We will now hear testimony on HB 1171.

Rep. DeKrey: Explained the bill; all we are doing is to raise the age for buying tobacco to 21 in the state of North Dakota. It doesn't change any of the possession laws.

Rep. Klemin: On pg 2, subsection 4, is there a flat fee of \$25 penalty.

Rep. DeKrey: Yes.

Rep. Bernstein: How much revenue of sales will be lost to the other states where the age limit is still 18. If there anyway to figure that out.

Rep. DeKrey: I talked about getting a fiscal note, but we don't really know how much effect it's actually going to have.

Rep. Kretschmar: Is there a penalty on the seller, who sells to a minor?

Rep. DeKrey: Yes, if they knowingly sell to a minor. If it happens enough times, you can actually have your license revoked.

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Hearing Date 1-27-03

Rep. Delmore: It seems like there is a lot of emphasis put on the people who sell tobacco, if I buy and I'm 20 years old, is there a penalty for me as well, not only for buying but for smoking if it's illegal.

Rep. DeKrey: There is no penalty for smoking because it doesn't change any of the possession laws. You can buy it anywhere else but ND, and still have it on you and still smoke it and not be in violation of the law.

Rep. Delmore: How is that really going to deter from me, especially in an area like Fargo, Grand Forks, Wahpeton, where I can easily drive across the bridge and purchase these products.

Rep. DeKrey: The only deterrent it is going to have that it is inconvenient to drive. It may help the people living in the interior of the state. The bill is an alternative to the Governor's bill.

Rep. Delmore: Are there any other states that do this.

Rep. DeKrey: No.

Rep. Klemin: How do you prove a violation of this bill. If possession is not illegal, and only the act of purchasing it is illegal.

Rep. DeKrey: By the AG office doing a sting operation on a retailer.

Rep. Klemin: That would be a violation on the part of the retailer, but how do you prove a violation by a person who does it.

Rep. DeKrey: I guess if ND would have a stamp on the bottom of each package, and you have a pack of ND cigarettes.

Rep. Klemin: I guess I am trying to reconcile section 2a and 4. It is a non-criminal offense for an individual under 21 to purchase cigarettes, and then section 4, an individual under 21 found to have violated subdivision a of subsection 2 must pay a fee of \$25. I guess the only way I can see

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that happening is if you catch them in the act of buying, because possession itself is not the violation subject to the \$25 fee. How do you prove a violation by the minor unless you catch them in the act?

Rep. Bernstein: Was there an incidence that precipitated this, or just an idea.

Rep. DeKrey: Just an idea that got a lot of positive response until I put the bill in.

Rep. Kingsbury: Just commenting on this violation under the age of 21. There is a law now, that under the age of 18 that if you're caught smoking, you have to pay the fine.

Rep. DeKrey: Yes.

Rep. Galvin: What is the age of an adult, if an 18 year old can go to war, how can we increase the age to 21. Have you had discussion on this matter.

Rep. DeKrey: The point is that 18 is an impressionable age group. If you can get a kid to 21 or 22 and they haven't started smoking, the likelihood is that they won't start.

Rep. Kingsbury: Do you think that this will help the person selling them to kids, to help determine age a little better.

Rep. Klemin: So it would not be a violation to give somebody tobacco products.

Rep. DeKrey: The major way that kids are getting tobacco now, is that their parents are giving it to them. We wouldn't want to make parents responsible.

Rep. Boehning: What is the amount of fines that have been levied on the 18 year old and younger crowd. I'm sure you could get that from the AG's office, but I don't have them.

Rep. Kretschmar: Thank you. Anyone else wishing to testify in support of HB 1171.

Kathleen Mangskau, Tobacco Progrm. Admin. of ND Dept of Health: (see attached testimony)

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Hearing Date 1-27-03

We would support the age of 19.

Rep. Eckre: Why is the rate of smokers so high.

Ms. Mangskau: ND ranks among the highest for a number of reasons. We haven't developed comprehensive programs to educate the children.

Rep. Eckre: ND hasn't put as much into education about the dangers of smoking as other states.

Ms. Mangskau: That is true to some extent. However, it goes beyond education. It also is putting in place policies that support no tobacco use.

Rep. Eckre: Going back a ways before the last 20 years, when there has been such a push on not using tobacco, was there studies done to show what % of ND youth's smoke back in the 1970's, compared to the early 2000's. Were we high back then compared to other states.

Ms. Mangskau: ND has tracked tobacco use since the 1980's and during the '80s and early '90s, we saw an increase in tobacco use among the youth in our state. We have been trying to educate and kids and the public about the dangers of smoking.

Rep. Delmore: Where I teach, this training has become a major part of the health curriculum, and I don't agree that we are not educating the youth. I think schools across the state, and health classes, which we're now providing, are doing an excellent job with students. What beyond that do we really need to do if that message has gotten across to every single student in school.

Ms. Mangskau: I wasn't saying that schools weren't providing education, they are; we have programs in more schools due to a grant we received. In addition to educating students, we need to have policies, not only in schools, but in communities to support the no tobacco use; to keep visitors, faculty, etc. from smoking in schools, etc.

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Rep. Delmore: What schools do you know of in this state, where faculty, visitors and others can smoke on school property?

Ms. Mangskau: We are just in the process of completing an assessment regarding school tobacco's policies. While practically all schools do not allow smoking in the building, it is not always restricted to everyone. It does restrict all students, but there are cases where visitors can smoke in buildings, like on weekends, in special events, etc.

Rep. Wrangham: I'm a little surprised at our high ranking for the percentage of use, using tobacco. You use two different terms, tobacco use and smokers. Is there a difference?

Ms. Mangskau: That is correct, there are two different terms. Tobacco use includes use of all other tobacco products, and ND ranks relatively high among use of smokeless tobacco, chewing tobacco, as well.

Rep. Eckre: You'd be surprised at the number of girls and boys using chewing tobacco. It's more than actually smoke, I believe.

Rep. Maragos: We rank relatively high in tobacco usage. How do we rank with the other states with regard to the other, harder drug usage and alcohol. Do you make correlations between these.

Ms. Mangskau: I am not prepared, nor have expertise in other areas. We are high for alcohol, as well.

Rep. Delmore: I would see that as kind of an irony with that, because alcohol is 21, why would raising this give us any better guarantee. You'd like 19 not 21. It would seem to me that would lead us to believe that whether you are 21 or 18 or 19, some of these that education might be a better way to solve, instead of playing around with the age.

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Ms. Mangskau: The department supports the age of 19. We are trying discourage high school kids from smoking.

Rep. Kretschmar: Thank you. Anyone else wishing to appear on this bill.

Bruce Levi ND Medical Association: Support the Health Department of increasing the age to 19. We advocate education and training programs.

Rep. Maragos: In states where the limit is 19, what are the penalties, and do they bother to enforce them.

Mr. Levi: The information is not available yes. I don't know.

Rep. Eckre: The three states (Ohio, Florida & New York), are they currently at 19 or did they try to go to 21 and failed.

Mr. Levi: They tried to go to 21 and failed.

Rep. Eckre: What states do have 19 right now.

Mr. Levi: Alaska, Utah and Alabama.

Rep. Eckre: What do those states do when they've got federal military bases on them. They can't enforce it on those, can they.

Mr. Levi: I don't know.

Rep. Kretschmar: Thank you. Anyone else wishing to testify HB 1171. We will close the hearing.

(Reopened later in the same session)

Chairman DeKrey: What are the committee's wishes on HB 1171.

Rep. Maragos: Make a motion for Do Not Pass

Rep. Wrangham: Seconded.

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House Judiciary Committee
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Chairman DeKrey: Discussion.

11 YES 1 NO 1 ABSENT DO NOT PASS

CARRIER: Rep. Maragos

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1/2/03
Date

FISCAL NOTE
Requested by Legislative Council
01/02/2003

Bill/Resolution No.: HB 1171

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

HB 1171 restricts the purchasing, possession or use of tobacco products for persons under 21 years of age. While this legislation will discourage youth smoking, it is uncertain what, if any, decreases in tobacco tax revenues will result from the passage of this bill.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Kathryn L. Strombeck	Agency:	Tax Dept.
Phone Number:	328-3402	Date Prepared:	01/24/2003

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Date: 1/27/03
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1171

House Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do not Pass

Motion Made By Rep. Maragos Seconded By Wrangham

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey		✓	Rep. Delmore	✓	
Vice Chairman Maragos	✓		Rep. Eckre	✓	
Rep. Bernstein	✓		Rep. Onstad	AB	
Rep. Boehning	✓				
Rep. Galvin	✓				
Rep. Grande	✓				
Rep. Kingsbury	✓				
Rep. Klemin	✓				
Rep. Kretschmar	✓				
Rep. Wrangham	✓				

Total (Yes) 11 No 1

Absent 1

Floor Assignment Rep. Maragos

If the vote is on an amendment, briefly indicate intent:

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10/2/03
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REPORT OF STANDING COMMITTEE (410)
January 27, 2003 10:54 a.m.

Module No: HR-15-1103
Carrier: Maragos
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
HB 1171: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO NOT PASS
(11 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). HB 1171 was placed on the
Eleventh order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-15-1103

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2003 TESTIMONY

HB 1171

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Date

Testimony

HB No. 1171

House Judiciary Committee

January 27, 2003

8:30 a.m.

North Dakota Department of Health

Good morning Chairman DeKrey and members of the House Judiciary Committee. My name is Kathleen Mangskau, and I am the Tobacco Program Administrator with the North Dakota Department of Health. I am here to provide neutral testimony concerning House Bill 1171, but would support raising the age for purchase, possession, distribution and use of tobacco to age 19.

According to the 2001 Youth Risk Behavior Survey, North Dakota's youth tobacco use rate is among the highest in the nation. More than one in three high school students (35.3%) in North Dakota are current smokers, compared to 28.5 percent nationally. Close to one-half of all current smokers tried their first cigarette before the age of 13. Tobacco often is the first drug used by young people who later use alcohol, marijuana and other illegal drugs. Nearly all first-use of tobacco occurs before high school graduation. If adolescents are kept tobacco free, most will remain tobacco free for the rest of their lives.

It is estimated that around one-fifth of high school students in North Dakota reach age 18 before graduating. Increasing the age for purchase and possession of tobacco products could help in dealing with the high school student who is 18 years of age and the enforcement issues it presents. Schools have difficulty addressing smoking by students who can legally purchase, possess and use tobacco. Students who can purchase legally are more likely to have cigarettes at school, in their cars, and purchase or provide them for other students. Depending on school policy, in some cases, 18-year-old students can go beyond the school property and smoke legally. Raising the legal age for use of tobacco to 19 and strictly enforcing the law has the potential to reduce the number of youth smoking in North Dakota. In addition, raising the age for purchase, possession, distribution and use of tobacco products to age 19 would help take tobacco out of the hands of high school students in the state.

Although the Department of Health believes no one should use tobacco and we support an increase in the legal age for tobacco use, we cannot fully support House Bill 1171 for two reasons.

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First, we have no science-based evidence to indicate that raising the age to 21 will reduce tobacco usage. Currently no states have age-21 restrictions for tobacco use. Three states (Utah, Alabama, and Alaska) have the legal age for tobacco use set at age 19. Impact studies from those states are not available at this time.

Second, it appears that House Bill 1171 would make it illegal to sell to anyone under age 21, but individuals age 18 to 21 could use and possess tobacco. Section 12.1-31-03, line 8 prohibits use by minors, when the term minor legally refers to a person younger than 18. These sections should be made consistent so that the age restrictions for purchase, possession, distribution or use are the same.

Mr. Chairman, this completes my formal testimony. I am pleased to answer any questions that you or other members of the committee have regarding tobacco prevention and control issues. Thank you.

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