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**SUBSTITUTE HOUSE BILL 1645**

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**State of Washington**

**64th Legislature**

**2015 Regular Session**

**By** House Commerce & Gaming (originally sponsored by Representatives Pollet, Harris, Carlyle, Cody, Johnson, Tharinger, Robinson, Lytton, Kagi, Ryu, S. Hunt, Farrell, Moscoso, Riccelli, McBride, and Jinkins; by request of Governor Inslee and Attorney General)

READ FIRST TIME 04/01/15.

1 AN ACT Relating to youth substance use prevention associated with  
2 tobacco and drug delivery e-cigarettes and vapor products; amending  
3 RCW 26.28.080, 28A.210.310, 70.155.010, 70.155.020, 70.155.030,  
4 70.155.050, 70.155.070, 70.155.080, 70.155.090, 70.155.100,  
5 70.155.110, 70.155.120, and 70.155.130; reenacting and amending RCW  
6 43.79A.040; adding new sections to chapter 70.155 RCW; creating new  
7 sections; prescribing penalties; and providing an effective date.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

9 NEW SECTION. **Sec. 1.** (1) The legislature finds that the  
10 availability and use of nicotine vapor inhalation products, such as  
11 e-cigarettes, e-devices, and vape pens, have increased dramatically  
12 in recent years, and that the use of such products has become  
13 commonplace in this state on the part of both adults and youth. The  
14 low cost of e-cigarettes and nicotine liquids for vapor products, as  
15 compared to cigarettes, is a key factor with respect to the  
16 popularity of such products. Despite the increasing popularity of  
17 vapor products and the resultant rapid expansion of the vapor  
18 products market, commerce in such products is wholly unregulated and  
19 is not subject to the legal requirements regarding youth access,  
20 public health disclosures, licensing, or taxation, applicable to  
21 commerce in cigarettes and other tobacco products.

1 (2) The potential public health risks posed by vapor products are  
2 many-faceted, and include nicotine addiction, liquid nicotine  
3 poisoning, the potential inhalation of carcinogens and toxic  
4 substances, and the adverse effects of nicotine on adolescent brain  
5 development. When exposed to heat, the nicotine solutions used in  
6 vapor products can generate a range of chemical byproducts that may  
7 have adverse health consequences when inhaled. The specific chemistry  
8 of the liquid nicotine solutions used in vapor products is not  
9 standardized and neither manufacturers nor retailers are required to  
10 disclose the chemical contents of the solutions. Consumers,  
11 therefore, have no way of determining exactly what substances they  
12 are inhaling or what the health consequences of such inhalation might  
13 be.

14 (3) When absorbed through the skin liquid nicotine may be toxic  
15 to both adults and children. In Washington, poison center calls  
16 related to vapor products have increased from two in 2010 to one  
17 hundred forty-four in the first nine months of 2014, ninety-seven of  
18 which involved children. Of the calls involving children, eighty-four  
19 percent were one to three years old. However, due to the current lack  
20 of regulation, vapor products manufacturers, distributors, and  
21 retailers are not subject to labeling and advertising requirements or  
22 other regulations designed to provide consumers with product safety  
23 warnings or other health-related information.

24 (4) The current easy access to vapor products is particularly  
25 problematic with respect to teenagers. A study conducted by the  
26 Centers for Disease Control and Prevention (CDC) reported that in  
27 2013 more than a quarter of a million youth who had never smoked a  
28 cigarette had used vapor products. The CDC also noted that in 2011  
29 this number was seventy-nine thousand, which increased to more than  
30 two hundred sixty-three thousand in 2013, thus reflecting a more than  
31 threefold increase in the number of youth using vapor products during  
32 this three-year period. Such statistics underscore the urgent need  
33 for the creation of a comprehensive regulatory framework governing  
34 commerce in vapor products, especially with respect to restricting  
35 access to such products by children and teenagers. It is well-  
36 understood that the ability to make rational decisions regarding  
37 risky behaviors such as smoking cigarettes and drinking alcohol is  
38 less developed in teenagers as compared to adults, and our legal  
39 system has traditionally responded by protecting teenagers from such  
40 risks through the restriction or prohibition of teen involvement in

1 such activities. As is the case with commerce in cigarettes and  
2 alcohol, the vapor products market requires regulatory oversight that  
3 focuses upon preventing children and teenagers from accessing and  
4 using products that can cause addiction and other adverse health  
5 consequences.

6 (5) Although it is clear that commerce in vapor products should  
7 be subject to stringent regulatory controls, the development of a  
8 regulatory framework must be tempered by an awareness of the  
9 potential for creating an illegal black market in vapor products. If  
10 regulatory measures related to licensing and taxation unduly restrict  
11 the development of the market, and thus cause extreme increases in  
12 retail prices, then the stage will be set for the emergence of a  
13 black market similar to that experienced by the cigarette industry.

14 (6) The legislature finds, therefore, that this act is necessary  
15 to protect the public health, safety, and welfare by preventing youth  
16 from having access to addictive vapor products, ensuring that  
17 consumers have accurate information about potentially dangerous  
18 products, and protecting the public from nicotine poisoning.

19 **Sec. 2.** RCW 26.28.080 and 2013 c 47 s 1 are each amended to read  
20 as follows:

21 (1) ~~((Every))~~ A person who sells or gives, or permits to be sold  
22 or given, to ~~((any))~~ a person under the age of eighteen years any  
23 cigar, cigarette, cigarette paper or wrapper, tobacco in any form, or  
24 a vapor product is guilty of a gross misdemeanor.

25 (2) It ~~((shall be no))~~ is not a defense to a prosecution for a  
26 violation of this section that the person acted, or was believed by  
27 the defendant to act, as agent or representative of another.

28 (3) For the purposes of this section, "vapor product" ~~((means a  
29 noncombustible tobacco derived product containing nicotine that  
30 employs a mechanical heating element, battery, or circuit, regardless  
31 of shape or size, that can be used to heat a liquid nicotine solution  
32 contained in cartridges. Vapor product does not include any product  
33 that is regulated by the United States food and drug administration  
34 under chapter V of the federal food, drug, and cosmetic act))~~ has the  
35 same meaning as provided in RCW 70.155.010.

36 **Sec. 3.** RCW 28A.210.310 and 1997 c 9 s 1 are each amended to  
37 read as follows:

1 (1) To protect children in the public schools of this state from  
2 exposure to the addictive substance of nicotine, each school district  
3 board of directors (~~shall~~) must have a written policy mandating a  
4 prohibition on the use of all tobacco products and vapor products on  
5 public school property.

6 (2) The policy in subsection (1) of this section (~~shall~~) must  
7 include, but not be limited to, a requirement that students and  
8 school personnel be notified of the prohibition, the posting of signs  
9 prohibiting the use of tobacco products and vapor products, sanctions  
10 for students and school personnel who violate the policy, and a  
11 requirement that school district personnel enforce the prohibition.  
12 Enforcement policies adopted in the school board policy (~~shall be~~)  
13 are in addition to the enforcement provisions in RCW 70.160.070.

14 (3) For purposes of this section, "vapor product" means any: (a)  
15 Device that employs a battery or other mechanism to heat a solution  
16 or substance to produce a vapor or aerosol intended for inhalation;  
17 (b) cartridge or container of a solution or substance intended to be  
18 used with or in such a device or to refill such a device; or (c)  
19 solution or substance intended for use in such a device, including,  
20 but not limited to, concentrated nicotine. "Vapor product" includes  
21 any electronic cigarettes, electronic nicotine delivery systems,  
22 electronic cigars, electronic cigarillos, electronic pipes, vape  
23 pens, or similar products or devices, as well as any parts that can  
24 be used to build such products or devices. "Vapor product" does not  
25 include any drug, device, or combination product approved for sale by  
26 the United States food and drug administration that is marketed and  
27 sold for such approved purpose.

28 **Sec. 4.** RCW 70.155.010 and 2009 c 278 s 1 are each amended to  
29 read as follows:

30 The definitions (~~set forth~~) in this section and RCW 82.24.010  
31 (~~shall apply to this chapter. In addition, for the purposes of this~~  
32 ~~chapter, unless otherwise required by the context:~~) apply throughout  
33 this chapter unless the context clearly requires otherwise.

34 (1) "Board" means the Washington state liquor control board.

35 (2) "Concentrated nicotine" means any solution or substance with  
36 a nicotine concentration greater than ten milligrams per milliliter.

37 (3) "Department" means the department of health.

38 (4) "Distributor" means a distributor as defined in RCW  
39 82.26.010.

1       (5) "Internet" means any computer network, telephonic network, or  
2 other electronic network.

3       ~~((+3))~~ (6) "Manufacturer" means any person, including but not  
4 limited to a repacker or relabeler, who manufactures, fabricates,  
5 assembles, processes, or labels a vapor product or who imports a  
6 finished vapor product for sale or distribution into the United  
7 States.

8       (7) "Minor" refers to an individual who is less than eighteen  
9 years old.

10       ~~((+4))~~ (8) "Packaging" means a pack, box, carton, wrapping, or  
11 container of any kind in which a vapor product is sold or offered for  
12 sale to a consumer.

13       (9) "Person" means any natural person, partnership, firm, joint  
14 stock company, corporation, or other legal entity, including an  
15 employee of any such entity.

16       (10) "Retailer" means any person engaged in the business of  
17 selling tobacco products or vapor products to ultimate consumers.

18       (11) "Sale" means any transfer, exchange, or barter, in any  
19 manner or by any means, for consideration, and includes all sales  
20 made by any person. "Sale" includes a gift by a person engaged in the  
21 business of selling tobacco products or vapor products for  
22 advertising, promoting, or as a means of evading the provisions of  
23 this chapter.

24       (12) "Sample" means a tobacco product distributed to members of  
25 the general public at no cost or at nominal cost for product  
26 promotion purposes.

27       ~~((+5))~~ (13) "Sampling" means the distribution of samples to  
28 members of the public.

29       ~~((+6))~~ (14) "Tobacco product" means a product that contains  
30 tobacco and is intended for human use, including ~~((any product))~~  
31 "cigarettes" defined in RCW 82.24.010~~((+2))~~ or "tobacco products"  
32 defined in RCW 82.26.010~~((+1))~~, except that for the purposes of RCW  
33 70.155.140 only, "tobacco product" does not include cigars defined in  
34 RCW 82.26.010 as to which one thousand units weigh more than three  
35 pounds.

36       (15) "Vapor product" means any: (a) Device that employs a battery  
37 or other mechanism to heat a solution or substance to produce a vapor  
38 or aerosol intended for inhalation; (b) cartridge or container of a  
39 solution or substance intended to be used with or in such a device or  
40 to refill such a device; or (c) solution or substance intended for

1 use in such a device, including, but not limited to, concentrated  
2 nicotine. "Vapor product" includes any electronic cigarettes,  
3 electronic nicotine delivery systems, electronic cigars, electronic  
4 cigarillos, electronic pipes, vape pens, or similar products or  
5 devices, as well as any parts that can be used to build such products  
6 or devices. "Vapor product" does not include any drug, device, or  
7 combination product approved for sale by the United States food and  
8 drug administration that is marketed and sold for such approved  
9 purpose.

10 **Sec. 5.** RCW 70.155.020 and 1993 c 507 s 3 are each amended to  
11 read as follows:

12 A person who holds a license issued under RCW 82.24.520 ~~((or))~~,  
13 82.24.530 ~~((shall))~~, or section 24 of this act must:

14 (1) Display the license or a copy in a prominent location at the  
15 outlet for which the license is issued; and

16 (2)(a) Display a sign concerning the prohibition of tobacco  
17 product and vapor product sales to minors.

18 (b) Such sign ~~((shall))~~ must:

19 ~~((a))~~ (i) Be posted so that it is clearly visible to anyone  
20 purchasing tobacco products or vapor products from the licensee;

21 ~~((b))~~ (ii) Be designed and produced by the department of health  
22 to read: "THE SALE OF TOBACCO PRODUCTS AND VAPOR PRODUCTS TO PERSONS  
23 UNDER AGE 18 IS STRICTLY PROHIBITED BY STATE LAW. IF YOU ARE UNDER  
24 18, YOU COULD BE PENALIZED FOR PURCHASING A TOBACCO PRODUCT OR A  
25 VAPOR PRODUCT; PHOTO ID REQUIRED"; and

26 ~~((c))~~ (iii) Be provided free of charge by the ~~((liquor~~  
27 ~~control))~~ board.

28 NEW SECTION. **Sec. 6.** A new section is added to chapter 70.155  
29 RCW to read as follows:

30 A person who holds a license issued under chapter 82.24 or 82.26  
31 RCW or section 24 of this act must conduct the business and maintain  
32 the premises in compliance with Titles 9 and 9A RCW and chapter 69.50  
33 RCW.

34 **Sec. 7.** RCW 70.155.030 and 1994 c 202 s 1 are each amended to  
35 read as follows:

36 Unless preempted by federal law, no person ~~((shall))~~ may sell or  
37 permit to be sold any tobacco product or vapor product through any

1 device that mechanically dispenses tobacco products or vapor products  
2 unless the device is located fully within premises from which minors  
3 are prohibited or in industrial worksites where minors are not  
4 employed and not less than ten feet from all entrance or exit ways to  
5 and from each premises. The board (~~shall~~) must adopt rules that  
6 allow an exception to the requirement that a device be located not  
7 less than ten feet from all entrance or exit ways to and from a  
8 premises if it is architecturally impractical for the device to be  
9 located not less than ten feet from all entrance and exit ways.

10 **Sec. 8.** RCW 70.155.050 and 2006 c 14 s 3 are each amended to  
11 read as follows:

12 (1) Unless preempted by federal law, no person may engage in the  
13 business of sampling tobacco products or vapor products.

14 (2) No person may offer a tasting of vapor products to the  
15 general public unless:

16 (a) The person is a licensed retailer under section 24 of this  
17 act;

18 (b) The tastings are offered only within the licensed premises  
19 operated by the licensee and the products tasted are not removed from  
20 within the licensed premises by the customer; and

21 (c) Entry into the licensed premises is restricted to persons  
22 eighteen years of age or older.

23 (3) A violation of this section is a misdemeanor.

24 **Sec. 9.** RCW 70.155.070 and 1993 c 507 s 8 are each amended to  
25 read as follows:

26 No person (~~shall~~) may give or distribute vapor products,  
27 cigarettes, or other tobacco products to a person by a coupon if such  
28 coupon is redeemed in any manner that does not require an in-person  
29 transaction in a retail store.

30 NEW SECTION. **Sec. 10.** A new section is added to chapter 70.155  
31 RCW to read as follows:

32 (1) In accordance with the provisions of this section, the holder  
33 of a license to manufacture, distribute, or engage in the retail sale  
34 of vapor products in this state or another state may ship its vapor  
35 products to a person who is a resident of Washington and is eighteen  
36 years of age or older for that person's personal use and not for  
37 resale.

1 (2) Before vapor products may be shipped by an in-state or out-  
2 of-state vapor products manufacturer, distributor, or retailer to a  
3 person who is a resident of Washington, the manufacturer,  
4 distributor, or retailer must:

5 (a) Obtain a vapor products shipper's permit under procedures  
6 prescribed by the board by rule and pay a fee established by the  
7 board, if the vapor products manufacturer, distributor, or retailer  
8 is located outside the state; or

9 (b) Be licensed as a vapor products distributor or retailer by  
10 the board and have paid the annual license fee.

11 (3) An applicant for a vapor products shipper's permit under  
12 subsection (2)(a) of this section must:

13 (a) Operate a vapor products manufacturing, distribution, or  
14 retail facility located in the United States;

15 (b) Provide the board a copy of its valid license to manufacture,  
16 distribute, or sell vapor products that is issued by another state;  
17 and

18 (c) Certify that it holds all state and federal licenses and  
19 permits necessary to manufacture, distribute, or sell vapor products.

20 (4) A domestic vapor products distributor or retailer, or a vapor  
21 product's shippers permit holder, must clearly label the outside of  
22 all vapor products shipping packages and containers sent into or out  
23 of this state under this chapter to indicate that the package cannot  
24 be delivered to a person under eighteen years of age.

25 (5) A domestic vapor products distributor or retailer, or a vapor  
26 product's shippers permit holder, must ensure that the private  
27 carrier used to deliver vapor products obtains the signature of the  
28 person who receives the vapor products upon delivery and verifies the  
29 age of the recipient.

30 (6) A domestic vapor products distributor or retailer, and a  
31 vapor product's shippers permit holder, must report to the board, on  
32 or before the twentieth day of each month, all shipments of vapor  
33 products made during the preceding calendar month directly to  
34 Washington consumers under a vapor products shippers permit or a  
35 vapor products distribution or retail license, in effect for all or  
36 any portion of the preceding year. All reports will be on forms  
37 prescribed by the board.

38 (7) A vapor product shipper's permit holder and a licensed  
39 domestic vapor products distributor or retailer that advertises or  
40 offers vapor products for direct shipment to customers within this



1 state must clearly and conspicuously display the permit or license  
2 number in its advertising.

3 (8) A fee for a vapor products shipper's permit may be  
4 established by the board.

5 (9) Holders of a vapor products shipper's permit are deemed to  
6 have consented to the jurisdiction of Washington concerning  
7 enforcement of the provisions of this chapter and all other laws,  
8 rules, and regulations related to the shipment of vapor products from  
9 vapor products manufacturers, distributors, or retailers directly to  
10 consumers.

11 (10)(a) A permit issued under this chapter to a vapor products  
12 manufacturer, distributor, or retailer located outside this state who  
13 fails to comply with the provisions of this chapter must be suspended  
14 or revoked.

15 (b) The privilege to ship vapor products directly to Washington  
16 consumers under a domestic vapor products distribution or retail  
17 license must be suspended or revoked if the licensee fails to comply  
18 with the provisions of this chapter.

19 NEW SECTION. **Sec. 11.** A new section is added to chapter 70.155  
20 RCW to read as follows:

21 (1) Subject to the provisions of this section, the board, in  
22 consultation with the department, must adopt rules regarding vapor  
23 product labeling and advertising disclosure requirements. These rules  
24 must address requirements regarding product health and safety  
25 warnings and the disclosure of the ingredients contained in vapor  
26 products that are advertised or offered for sale in this state.

27 (2) Prior to the adoption of the rules required under this  
28 section, the board and the department must jointly conduct a study  
29 that includes:

30 (a) The identification of the chemicals and substances commonly  
31 found in the liquids contained in vapor products;

32 (b) The identification of the chemicals and substances contained  
33 in the vapors or aerosols emitted from vapor products;

34 (c) The determination of whether any of the chemicals or  
35 substances contained within, or emitted from, vapor products contain  
36 toxins or carcinogens, or otherwise pose a risk to public health and  
37 safety; and

1 (d) Any other matter relating to potential health risks posed by  
2 the use of vapor products, as determined by the board and the  
3 department.

4 (3) In conducting the study, the board and the department must  
5 consult with the following:

6 (a) Scientists, physicians, researchers, academics, or other  
7 professionals with expertise relevant to the understanding of the  
8 design, operation, and/or health effects of vapor products;

9 (b) Public health professionals and organizations;

10 (c) Vapor product manufacturers, distributors, and/or retailers;

11 (d) Governmental representatives; and

12 (e) Other individuals or entities with relevant expertise, as  
13 determined by the board and the department.

14 (4) Upon completion of the study, and prior to the adoption of  
15 the rules authorized under this section, the board must prepare a  
16 written report regarding the results of the study and containing  
17 findings and recommendations regarding vapor product labeling and  
18 advertising requirements. The report must be submitted to the  
19 governor and the appropriate committees of the legislature not later  
20 than December 1, 2015.

21 NEW SECTION. **Sec. 12.** A new section is added to chapter 70.155  
22 RCW to read as follows:

23 (1) Unless preempted by federal law, the board is authorized to  
24 promulgate rules regulating the chemical composition of the liquids  
25 contained in vapor products, including substances included for  
26 flavoring purposes. In developing such rules the board must consult  
27 with the department.

28 (2) Upon request by the board or the department, either the  
29 manufacture or the distributor of a vapor product must provide the  
30 board with a list of all substances, and their relative proportions,  
31 contained in the liquid contents of the product.

32 (3) The board may prohibit the sale of vapor products that  
33 contain or emit chemicals or substances, other than nicotine, that  
34 pose a substantial threat to public health and safety.

35 NEW SECTION. **Sec. 13.** A new section is added to chapter 70.155  
36 RCW to read as follows:

1 (1) No person may offer a tobacco product or a vapor product for  
2 sale in an open, unsecured display that is accessible to the public  
3 without the intervention of a store employee.

4 (2) This section does not apply to a person licensed under RCW  
5 82.24.520, 82.24.530, or section 24 of this act if access to the  
6 licensed premises is restricted to individuals who are eighteen years  
7 of age or older.

8 NEW SECTION. **Sec. 14.** A new section is added to chapter 70.155  
9 RCW to read as follows:

10 (1) Unless preempted by federal law, any substance intended for  
11 use in a vapor product that is sold at retail in this state must  
12 satisfy the child-resistant effectiveness standards under 16 C.F.R.  
13 Sec. 1700, the poison prevention packaging act, as it existed on the  
14 effective date of this section, or such subsequent date as may be  
15 provided by the board by rule, consistent with the purposes of this  
16 section.

17 (2) A substance contained in a cartridge sold, marketed, or  
18 intended for use in a vapor product that is prefilled and sealed by  
19 the manufacturer, and not intended to be opened by the consumer, is  
20 exempt from subsection (1) of this section.

21 (3) A manufacturer that knowingly sells or distributes a  
22 substance intended for use in a vapor product that does not satisfy  
23 the requirements of this section is guilty of a class C felony.

24 (4) The provisions of this section are null and void and of no  
25 force and effect, upon the effective date of final regulations issued  
26 by the United States food and drug administration or from any other  
27 federal agency, where such regulations mandate child-resistant  
28 effectiveness standards for liquid nicotine containers.

29 NEW SECTION. **Sec. 15.** A new section is added to chapter 70.155  
30 RCW to read as follows:

31 A person may not sell, offer for sale, or possess with intent to  
32 sell or offer for sale any vapor product within the state that  
33 contains a substance that increases the absorption of nicotine as  
34 determined by the board in consultation with the department.

35 **Sec. 16.** RCW 70.155.080 and 2002 c 175 s 47 are each amended to  
36 read as follows:

1 (1) A person under the age of eighteen who purchases or attempts  
2 to purchase, possesses, or obtains or attempts to obtain cigarettes  
3 (~~(or)~~), tobacco products, or vapor products commits a class 3 civil  
4 infraction under chapter 7.80 RCW and is subject to a fine as set out  
5 in chapter 7.80 RCW or participation in up to four hours of community  
6 restitution, or both. The court may also require participation in a  
7 (~~smoking~~) cessation program. This provision does not apply if a  
8 person under the age of eighteen (~~(, with parental authorization,)~~) is  
9 participating in a controlled purchase as part of a (~~liquor~~  
10 ~~control~~) board, law enforcement, or local health department  
11 activity.

12 (2) Municipal and district courts within the state have  
13 jurisdiction for enforcement of this section.

14 **Sec. 17.** RCW 70.155.090 and 2006 c 14 s 4 are each amended to  
15 read as follows:

16 (1) Where there may be a question of a person's right to purchase  
17 or obtain tobacco products or vapor products by reason of age, the  
18 retailer or agent thereof (~~(, shall)~~) must require the purchaser to  
19 present any one of the following officially issued identification  
20 that shows the purchaser's age and bears his or her signature and  
21 photograph: (a) (~~Liquor control authority card of identification of~~  
22 ~~a state or province of Canada; (b)~~) Driver's license, instruction  
23 permit, or identification card of a state or province of Canada;  
24 (~~(c)~~) (b) "identocard" issued by the Washington state department of  
25 licensing under chapter 46.20 RCW; (~~(d)~~) (c) United States military  
26 identification; (~~(e)~~) (d) passport; (~~(f)~~) (e) enrollment card,  
27 issued by the governing authority of a federally recognized Indian  
28 tribe located in Washington, that incorporates security features  
29 comparable to those implemented by the department of licensing for  
30 Washington drivers' licenses. At least ninety days prior to  
31 implementation of an enrollment card under this subsection, the  
32 appropriate tribal authority (~~shall~~) must give notice to the board.  
33 The board (~~shall~~) must publish and communicate to licensees  
34 regarding the implementation of each new enrollment card; or (~~(g)~~)  
35 (f) merchant marine identification card issued by the United States  
36 coast guard.

37 (2) It is a defense to a prosecution under RCW 26.28.080 that the  
38 person making a sale reasonably relied on any of the officially  
39 issued identification as defined in subsection (1) of this section.

1 The (~~liquor control~~) board (~~shall~~) must waive the suspension or  
2 revocation of a license if the licensee clearly establishes that he  
3 or she acted in good faith to prevent violations and a violation  
4 occurred despite the licensee's exercise of due diligence.

5 **Sec. 18.** RCW 70.155.100 and 2006 c 14 s 5 are each amended to  
6 read as follows:

7 (1) The (~~liquor control~~) board may suspend or revoke a  
8 retailer's license issued under RCW 82.24.510(1)(b) or section  
9 24(1)(b) of this act held by a business at any location, or may  
10 impose a monetary penalty as set forth in subsection (2) of this  
11 section, if the (~~liquor control~~) board finds that the licensee has  
12 violated RCW 26.28.080, 70.155.020(~~(, 70.155.030, 70.155.040,~~  
13 ~~70.155.050, 70.155.070, or 70.155.090)~~) through 70.155.070,  
14 70.155.090, sections 13 through 15 of this act, or 21 C.F.R. Sec.  
15 1140.14 as it exists on the effective date of this section.

16 (2) The sanctions that the (~~liquor control~~) board may impose  
17 against a person licensed under RCW (~~82.24.530~~) 82.24.510(1)(b) or  
18 section 24(1)(b) of this act based upon one or more findings under  
19 subsection (1) of this section may not exceed the following:

20 (a) For violations of RCW 26.28.080 (~~(or)~~) 70.155.020, sections  
21 14 and 15 of this act, or 21 C.F.R. Sec. 1140.14, and for violations  
22 of RCW 70.155.040 occurring on the licensed premises:

23 (i) A monetary penalty of (~~one~~) two hundred dollars for the  
24 first violation within any (~~two~~) three-year period;

25 (ii) A monetary penalty of (~~three~~) six hundred dollars for the  
26 second violation within any (~~two~~) three-year period;

27 (iii) A monetary penalty of (~~one~~) two thousand dollars and  
28 suspension of the license for a period of six months for the third  
29 violation within any (~~two~~) three-year period;

30 (iv) A monetary penalty of (~~one~~) three thousand (~~five~~  
31 ~~hundred~~) dollars and suspension of the license for a period of  
32 twelve months for the fourth violation within any (~~two~~) three-year  
33 period;

34 (v) Revocation of the license with no possibility of  
35 reinstatement for a period of five years for the fifth or more  
36 violation within any (~~two~~) three-year period;

37 (b) For violations of section 6 of this act, suspension or  
38 revocation of the license;

1       (c) For violations of RCW 70.155.030, a monetary penalty in the  
2 amount of ~~((one))~~ two hundred dollars for each day upon which such  
3 violation occurred;

4       ~~((c) For violations of RCW 70.155.040 occurring on the licensed  
5 premises:~~

6       ~~(i) A monetary penalty of one hundred dollars for the first  
7 violation within any two-year period;~~

8       ~~(ii) A monetary penalty of three hundred dollars for the second  
9 violation within any two-year period;~~

10       ~~(iii) A monetary penalty of one thousand dollars and suspension  
11 of the license for a period of six months for the third violation  
12 within any two-year period;~~

13       ~~(iv) A monetary penalty of one thousand five hundred dollars and  
14 suspension of the license for a period of twelve months for the  
15 fourth violation within any two-year period;~~

16       ~~(v) Revocation of the license with no possibility of  
17 reinstatement for a period of five years for the fifth or more  
18 violation within any two-year period;)~~

19       (d) For violations of RCW 70.155.050 or section 13 of this act, a  
20 monetary penalty in the amount of ~~((three))~~ six hundred dollars for  
21 each violation;

22       (e) For violations of RCW 70.155.070, a monetary penalty in the  
23 amount of ~~((one))~~ two thousand dollars for each violation.

24       (3) The ~~((liquor control))~~ board may impose a monetary penalty  
25 upon any person other than a licensed cigarette or vapor product  
26 retailer if the ~~((liquor control))~~ board finds that the person has  
27 violated RCW 26.28.080, 70.155.020 ~~((, 70.155.030, 70.155.040,~~  
28 ~~70.155.050, 70.155.070, or 70.155.090))~~ through 70.155.070,  
29 70.155.090, or sections 13 through 15 of this act.

30       (4) The monetary penalty that the ~~((liquor control))~~ board may  
31 impose based upon one or more findings under subsection (3) of this  
32 section may not exceed the following:

33       (a) For violations of RCW 26.28.080 ~~((or 70.155.020, fifty))~~,  
34 70.155.020, or sections 14 and 15 of this act, one hundred dollars  
35 for the first violation and ~~((one))~~ two hundred dollars for each  
36 subsequent violation;

37       (b) For violations of RCW 70.155.030, ~~((one))~~ two hundred dollars  
38 for each day upon which such violation occurred;

39       (c) For violations of RCW 70.155.040, ~~((one))~~ two hundred dollars  
40 for each violation;

1 (d) For violations of RCW 70.155.050 or section 13 of this act,  
2 ((three)) six hundred dollars for each violation;

3 (e) For violations of RCW 70.155.070, ((one)) two thousand  
4 dollars for each violation.

5 (5) The ((liquor control)) board may develop and offer a class  
6 for retail clerks and use this class in lieu of a monetary penalty  
7 for the clerk's first violation.

8 (6) The ((liquor control)) board may issue a cease and desist  
9 order to any person who is found by the ((liquor control)) board to  
10 have violated or intending to violate the provisions of this chapter,  
11 RCW 26.28.080 ((or)), 82.24.500, or section 24 of this act, requiring  
12 such person to cease specified conduct that is in violation. The  
13 issuance of a cease and desist order ((shall)) does not preclude the  
14 imposition of other sanctions authorized by this statute or any other  
15 provision of law.

16 (7) The ((liquor control)) board may seek injunctive relief to  
17 enforce the provisions of RCW 26.28.080 ((or)), 82.24.500, section 24  
18 of this act, or this chapter. The ((liquor control)) board may  
19 initiate legal action to collect civil penalties imposed under this  
20 chapter if the same have not been paid within thirty days after  
21 imposition of such penalties. In any action filed by the ((liquor  
22 control)) board under this chapter, the court may, in addition to any  
23 other relief, award the ((liquor control)) board reasonable  
24 attorneys' fees and costs.

25 (8) All proceedings under subsections (1) through (6) of this  
26 section ((shall)) must be conducted in accordance with chapter 34.05  
27 RCW.

28 (9) The ((liquor control)) board may reduce or waive either the  
29 penalties or the suspension or revocation of a license, or both, as  
30 set forth in this chapter where the elements of proof are inadequate  
31 or where there are mitigating circumstances. Mitigating circumstances  
32 may include, but are not limited to, an exercise of due diligence by  
33 a retailer. Further, the board may exceed penalties set forth in this  
34 chapter based on aggravating circumstances.

35 (10) The revenue derived from the monetary sanctions authorized  
36 under this section must be deposited into the dedicated tobacco and  
37 vapor products enforcement account created in section 19 of this act.  
38 Expenditures from the account may be used only for costs and  
39 expenditures related to the enforcement of this chapter.

1        NEW SECTION.    **Sec. 19.**    A new section is added to chapter 70.155  
2    RCW to read as follows:

3        The dedicated tobacco and vapor products enforcement account is  
4    created in the custody of the state treasurer. All receipts from  
5    monetary penalties collected under this chapter must be deposited  
6    into the account. Expenditures from the account may be used only for  
7    the purposes of this chapter in order to defray the costs of  
8    activities and expenditures related to the regulation of vapor  
9    products, cigarettes, and other tobacco products. Only the chair of  
10   the board or the chair's designee may authorize expenditures from the  
11   account. The account is subject to allotment procedures under chapter  
12   43.88 RCW, but an appropriation is not required for expenditures.

13        **Sec. 20.**    RCW 70.155.110 and 1993 c 507 s 12 are each amended to  
14    read as follows:

15        (1) The (~~liquor control~~) board (~~shall~~) must, in addition to  
16    the board's other powers and authorities, have the authority to  
17    enforce the provisions of this chapter and RCW 26.28.080(~~(4) and~~),  
18    82.24.500, and section 24 of this act. The (~~liquor control~~) board  
19    (~~shall have~~) has full power to revoke or suspend the license of any  
20    retailer (~~(or)~~), distributor, or wholesaler in accordance with the  
21    provisions of RCW 70.155.100.

22        (2) The (~~liquor control~~) board and the board's (~~authorized~~  
23    ~~agents~~) enforcement officers or employees (~~shall~~) have full power  
24    and authority to enter any place of business where tobacco products  
25    or vapor products are sold for the purpose of enforcing the  
26    provisions of this chapter.

27        (3) For the purpose of enforcing the provisions of this chapter  
28    and RCW 26.28.080(~~(4) and~~), 82.24.500, and section 24 of this act,  
29    a peace officer or enforcement officer of the (~~liquor control~~)  
30    board who has reasonable grounds to believe a person observed by the  
31    officer purchasing, attempting to purchase, or in possession of  
32    tobacco products or vapor products is under the age of eighteen years  
33    of age, may detain such person for a reasonable period of time and in  
34    such a reasonable manner as is necessary to determine the person's  
35    true identity and date of birth. Further, tobacco products or vapor  
36    products possessed by persons under the age of eighteen years of age  
37    are considered contraband and may be seized by a peace officer or  
38    enforcement officer of the (~~liquor control~~) board.



1 (4) The (~~liquor control~~) board may work with local county  
2 health departments or districts and local law enforcement agencies to  
3 conduct random, unannounced(~~(r)~~) inspections to assure compliance.

4 **Sec. 21.** RCW 70.155.120 and 1993 c 507 s 13 are each amended to  
5 read as follows:

6 (1) The youth tobacco and vapor products prevention account is  
7 created in the state treasury. All fees collected pursuant to RCW  
8 82.24.520 and 82.24.530 and funds collected by the (~~liquor control~~)  
9 board from the imposition of monetary penalties (~~and samplers' fees~~  
10 ~~shall~~) under chapters 82.24 and 82.26 RCW must be deposited into  
11 this account, except that ten percent of all such fees and penalties  
12 (~~shall~~) must be deposited in the state general fund.

13 (2) Moneys appropriated from the youth tobacco and vapor products  
14 prevention account to the department (~~of health shall~~) must be used  
15 by the department (~~of health~~) for implementation of this chapter,  
16 including collection and reporting of data regarding enforcement and  
17 the extent to which access to tobacco products and vapor products by  
18 youth has been reduced.

19 (3) The department (~~of health shall~~) must enter into  
20 interagency agreements with the (~~liquor control~~) board to pay the  
21 costs incurred, up to thirty percent of available funds, in carrying  
22 out its enforcement responsibilities under this chapter. Such  
23 agreements (~~shall~~) must set forth standards of enforcement,  
24 consistent with the funding available, so as to reduce the extent to  
25 which tobacco products and vapor products are available to  
26 individuals under the age of eighteen. The agreements (~~shall~~) must  
27 also set forth requirements for data reporting by the (~~liquor~~  
28 ~~control~~) board regarding its enforcement activities.

29 (4) The department (~~of health~~), the board, and the department  
30 of revenue (~~shall~~) must enter into an interagency agreement for  
31 payment of the cost of administering the tobacco and vapor product  
32 retailer licensing system and for the provision of quarterly  
33 documentation of tobacco and vapor product wholesaler, retailer, and  
34 vending machine names and locations.

35 (5) The department (~~of health shall~~) must, within up to seventy  
36 percent of available funds, provide grants to local health  
37 departments or other local community agencies to develop and  
38 implement coordinated tobacco and vapor product intervention  
39 strategies to prevent and reduce (~~tobacco~~) use by youth.

1       **Sec. 22.** RCW 70.155.130 and 1993 c 507 s 14 are each amended to  
2 read as follows:

3       (1) This chapter preempts political subdivisions from adopting or  
4 enforcing requirements for the licensure and regulation of tobacco  
5 product promotions and sales within retail stores, except that  
6 political subdivisions that have adopted ordinances prohibiting  
7 sampling by January 1, 1993, may continue to enforce these  
8 ordinances. No political subdivision may:

9       ~~((1))~~ (a) Impose fees or license requirements on retail  
10 businesses for possessing or selling cigarettes or tobacco products,  
11 other than general business taxes or license fees not primarily  
12 levied on tobacco products; or

13       ~~((2))~~ (b) Regulate or prohibit activities covered by RCW  
14 70.155.020 through 70.155.080. This chapter does not otherwise  
15 preempt political subdivisions from adopting ordinances regulating  
16 the sale, purchase, use, or promotion of tobacco products not  
17 inconsistent with chapter 507, Laws of 1993.

18       (2) This chapter preempts a political subdivision from imposing  
19 additional regulations or restrictions on the sale, purchase, use, or  
20 promotion of vapor products.

21       NEW SECTION. **Sec. 23.** A new section is added to chapter 70.155  
22 RCW to read as follows:

23       The board, in consultation with the department, may adopt rules  
24 to implement and enforce the requirements of this chapter.

25       NEW SECTION. **Sec. 24.** A new section is added to chapter 70.155  
26 RCW to read as follows:

27       (1) The licenses issuable by the board under this chapter are as  
28 follows:

- 29       (a) A vapor products distributor's license; and
- 30       (b) A vapor products retailer's license.

31       (2) Application for the licenses must be made through the  
32 business licensing system under chapter 19.02 RCW. The board may  
33 adopt rules regarding the regulation of the licenses. The board may  
34 refuse to issue any license under this chapter if the board has  
35 reasonable cause to believe that the applicant has willfully withheld  
36 information requested for the purpose of determining the eligibility  
37 of the applicant to receive a license, or if the board has reasonable  
38 cause to believe that information submitted in the application is

1 false or misleading or is not made in good faith. In addition, for  
2 the purpose of reviewing an application for a distributor's license  
3 or retailer's license and for considering the denial, suspension, or  
4 revocation of any such license, the board may consider criminal  
5 conduct of the applicant, including an administrative violation  
6 history record with the board and a criminal history record  
7 information check within the previous five years, in any state,  
8 tribal, or federal jurisdiction in the United States, its  
9 territories, or possessions, and the provisions of RCW 9.95.240 and  
10 chapter 9.96A RCW do not apply to such cases. The board may, in its  
11 discretion, issue or refuse to issue the distributor's license or  
12 retailer's license, subject to the provisions of section 28 of this  
13 act.

14 (3) No person may qualify for a distributor's license or a  
15 retailer's license under this section without first undergoing a  
16 criminal background check. The background check must be performed by  
17 the board and must disclose any criminal conduct within the previous  
18 five years in any state, tribal, or federal jurisdiction in the  
19 United States, its territories, or possessions. If the applicant or  
20 licensee also has a license issued under chapter 66.24, 82.24, or  
21 82.26 RCW, the background check done under the authority of chapter  
22 66.24, 82.24, or 82.26 RCW satisfies the requirements of this  
23 subsection.

24 (4) Each license issued under this chapter expires on the  
25 business license expiration date. The license must be continued  
26 annually if the licensee has paid the required fee and complied with  
27 all the provisions of this chapter and the rules of the board adopted  
28 pursuant to this chapter.

29 (5) Each license and any other evidence of the license required  
30 under this chapter must be exhibited in each place of business for  
31 which it is issued and in the manner required for the display of a  
32 business license.

33 (6) License issuances and renewals are subject to board authority  
34 and the rules adopted under the board including, but not limited to,  
35 rights of cities, towns, county legislative authorities, the public,  
36 churches, schools, and public institutions that object to or prevent  
37 issuance of licenses.

38 NEW SECTION. **Sec. 25.** A new section is added to chapter 70.155  
39 RCW to read as follows:

1 A fee of six hundred fifty dollars must accompany each vapor  
2 products distributor's license application or license renewal  
3 application under section 24 of this act. If a distributor sells or  
4 intends to sell vapor products at two or more places of business,  
5 whether established or temporary, a separate license with a license  
6 fee of one hundred fifteen dollars is required for each additional  
7 place of business.

8 NEW SECTION. **Sec. 26.** A new section is added to chapter 70.155  
9 RCW to read as follows:

10 A fee of ninety-three dollars must accompany each vapor products  
11 retailer's license application or license renewal application under  
12 section 24 of this act. A separate license is required for each  
13 separate location at which the retailer operates.

14 NEW SECTION. **Sec. 27.** A new section is added to chapter 70.155  
15 RCW to read as follows:

16 (1) Every vapor products retailer licensed under section 24 of  
17 this act must procure itemized invoices of all vapor products  
18 purchased. The invoices must show the seller's name and address, the  
19 date of purchase, and all prices and discounts.

20 (2) The retailer must keep at each retail outlet copies of  
21 complete, accurate, and legible invoices for that retail outlet or  
22 place of business. All invoices required to be kept under this  
23 section must be preserved for five years from the date of purchase.

24 (3) At any time during usual business hours the department,  
25 board, or its duly authorized agents or employees may enter any  
26 retail outlet without a search warrant, and inspect the premises for  
27 invoices required to be kept under this section and the vapor  
28 products contained in the retail outlet, to determine whether or not  
29 all the provisions of this chapter are being fully complied with. If  
30 the department, board, or any of its agents or employees are denied  
31 free access or are hindered or interfered with in making the  
32 inspection, the registration certificate issued under RCW 82.32.030  
33 of the retailer at the premises is subject to revocation by the  
34 department, and any licenses issued under this chapter or chapter  
35 82.26 or 82.24 RCW are subject to suspension or revocation by the  
36 board.

1        NEW SECTION.    **Sec. 28.**    A new section is added to chapter 70.155  
2    RCW to read as follows:

3        (1) The board must enforce this chapter. The board may adopt,  
4    amend, and repeal rules necessary to enforce this chapter.

5        (2) The department may adopt, amend, and repeal rules necessary  
6    to administer this chapter. The board may revoke or suspend the  
7    distributor's or retailer's license of any distributor or retailer of  
8    vapor products in the state upon sufficient cause showing a violation  
9    of this chapter or upon the failure of the licensee to comply with  
10   any of the rules adopted under it.

11       (3) A license may not be suspended or revoked except upon notice  
12   to the licensee and after a hearing as prescribed by the board. The  
13   board, upon finding that the licensee has failed to comply with any  
14   provision of this chapter or of any rule adopted under it, must, in  
15   the case of the first offense, suspend the license or licenses of the  
16   licensee for a period of not less than thirty consecutive business  
17   days, and in the case of a second or further offense, suspend the  
18   license or licenses for a period of not less than ninety consecutive  
19   business days but not more than twelve months, and in the event the  
20   board finds the licensee has been guilty of willful and persistent  
21   violations, it may revoke the license or licenses.

22       (4) Any licenses issued under chapter 82.24 or 82.26 RCW to a  
23   person whose license or licenses have been suspended or revoked under  
24   this section must also be suspended or revoked during the period of  
25   suspension or revocation under this section.

26       (5) Any person whose license or licenses have been revoked under  
27   this section may reapply to the board at the expiration of one year  
28   of the license or licenses. The license or licenses may be approved  
29   by the board if it appears to the satisfaction of the board that the  
30   licensee will comply with the provisions of this chapter and the  
31   rules adopted under it.

32       (6) A person whose license has been suspended or revoked may not  
33   sell vapor products, tobacco products, or cigarettes or permit vapor  
34   products, tobacco products, or cigarettes to be sold during the  
35   period of suspension or revocation on the premises occupied by the  
36   person or upon other premises controlled by the person or others or  
37   in any other manner or form.

38       (7) Any determination and order by the board, and any order of  
39   suspension or revocation by the board of the license or licenses  
40   issued under this chapter, or refusal to reinstate a license or

1 licenses after revocation is reviewable by an appeal to the superior  
2 court of Thurston county. The superior court must review the order or  
3 ruling of the board and may hear the matter de novo, having due  
4 regard to the provisions of this chapter and the duties imposed upon  
5 the board.

6 (8) If the board makes an initial decision to deny a license or  
7 renewal, or suspend or revoke a license, the applicant may request a  
8 hearing subject to the applicable provisions under Title 34 RCW.

9 NEW SECTION. **Sec. 29.** If any provision of this act or its  
10 application to any person or circumstance is held invalid, the  
11 remainder of the act or the application of the provision to other  
12 persons or circumstances is not affected.

13 NEW SECTION. **Sec. 30.** If any part of this act is found to be in  
14 conflict with federal requirements that are a prescribed condition to  
15 the allocation of federal funds to the state, the conflicting part of  
16 this act is inoperative solely to the extent of the conflict and with  
17 respect to the agencies directly affected, and this finding does not  
18 affect the operation of the remainder of this act in its application  
19 to the agencies concerned. Rules adopted under this act must meet  
20 federal requirements that are a necessary condition to the receipt of  
21 federal funds by the state.

22 **Sec. 31.** RCW 43.79A.040 and 2013 c 251 s 5 and 2013 c 88 s 1 are  
23 each reenacted and amended to read as follows:

24 (1) Money in the treasurer's trust fund may be deposited,  
25 invested, and reinvested by the state treasurer in accordance with  
26 RCW 43.84.080 in the same manner and to the same extent as if the  
27 money were in the state treasury, and may be commingled with moneys  
28 in the state treasury for cash management and cash balance purposes.

29 (2) All income received from investment of the treasurer's trust  
30 fund must be set aside in an account in the treasury trust fund to be  
31 known as the investment income account.

32 (3) The investment income account may be utilized for the payment  
33 of purchased banking services on behalf of treasurer's trust funds  
34 including, but not limited to, depository, safekeeping, and  
35 disbursement functions for the state treasurer or affected state  
36 agencies. The investment income account is subject in all respects to  
37 chapter 43.88 RCW, but no appropriation is required for payments to

1 financial institutions. Payments must occur prior to distribution of  
2 earnings set forth in subsection (4) of this section.

3 (4)(a) Monthly, the state treasurer must distribute the earnings  
4 credited to the investment income account to the state general fund  
5 except under (b), (c), and (d) of this subsection.

6 (b) The following accounts and funds must receive their  
7 proportionate share of earnings based upon each account's or fund's  
8 average daily balance for the period: The Washington promise  
9 scholarship account, the Washington advanced college tuition payment  
10 program account, the accessible communities account, the community  
11 and technical college innovation account, the agricultural local  
12 fund, the American Indian scholarship endowment fund, the foster care  
13 scholarship endowment fund, the foster care endowed scholarship trust  
14 fund, the contract harvesting revolving account, the Washington state  
15 combined fund drive account, the commemorative works account, the  
16 county enhanced 911 excise tax account, the toll collection account,  
17 the developmental disabilities endowment trust fund, the dedicated  
18 tobacco and vapor products enforcement account, the energy account,  
19 the fair fund, the family leave insurance account, the food animal  
20 veterinarian conditional scholarship account, the fruit and vegetable  
21 inspection account, the future teachers conditional scholarship  
22 account, the game farm alternative account, the GET ready for math  
23 and science scholarship account, the Washington global health  
24 technologies and product development account, the grain inspection  
25 revolving fund, the industrial insurance rainy day fund, the juvenile  
26 accountability incentive account, the law enforcement officers' and  
27 firefighters' plan 2 expense fund, the local tourism promotion  
28 account, the multiagency permitting team account, the pilotage  
29 account, the produce railcar pool account, the regional  
30 transportation investment district account, the rural rehabilitation  
31 account, the stadium and exhibition center account, the youth  
32 athletic facility account, the self-insurance revolving fund, the  
33 children's trust fund, the Washington horse racing commission  
34 Washington bred owners' bonus fund and breeder awards account, the  
35 Washington horse racing commission class C purse fund account, the  
36 individual development account program account, the Washington horse  
37 racing commission operating account, the life sciences discovery  
38 fund, the Washington state heritage center account, the reduced  
39 cigarette ignition propensity account, the center for childhood  
40 deafness and hearing loss account, the school for the blind account,

1 the Millersylvania park trust fund, the public employees' and  
2 retirees' insurance reserve fund, and the radiation perpetual  
3 maintenance fund.

4 (c) The following accounts and funds must receive eighty percent  
5 of their proportionate share of earnings based upon each account's or  
6 fund's average daily balance for the period: The advanced right-of-  
7 way revolving fund, the advanced environmental mitigation revolving  
8 account, the federal narcotics asset forfeitures account, the high  
9 occupancy vehicle account, the local rail service assistance account,  
10 and the miscellaneous transportation programs account.

11 (d) Any state agency that has independent authority over accounts  
12 or funds not statutorily required to be held in the custody of the  
13 state treasurer that deposits funds into a fund or account in the  
14 custody of the state treasurer pursuant to an agreement with the  
15 office of the state treasurer shall receive its proportionate share  
16 of earnings based upon each account's or fund's average daily balance  
17 for the period.

18 (5) In conformance with Article II, section 37 of the state  
19 Constitution, no trust accounts or funds shall be allocated earnings  
20 without the specific affirmative directive of this section.

21 NEW SECTION. **Sec. 32.** This act takes effect October 1, 2015.

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