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SENATE BILL 5025

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State of Washington

65th Legislature

2017 Regular Session

By Senators Miloscia, Walsh, O'Ban, Darneille, Cleveland, King, Keiser, Pedersen, Frockt, Liias, Hunt, Chase, and Kuderer; by request of Attorney General and Department of Health

Prefiled 01/06/17. Read first time 01/09/17. Referred to Committee on Health Care.

1 AN ACT Relating to protecting youth from tobacco products and  
2 vapor products by increasing the minimum legal age of sale of tobacco  
3 and vapor products; amending RCW 26.28.080, 70.155.005, 70.155.010,  
4 70.345.010, 70.155.020, 70.345.070, 70.345.100, 70.155.030,  
5 70.345.160, 70.155.110, and 70.155.120; and providing an effective  
6 date.

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

8 **Sec. 1.** RCW 26.28.080 and 2016 1st sp.s. c 38 s 1 are each  
9 amended to read as follows:

10 (1) (~~Every~~) A person who sells or gives, or permits to be sold  
11 or given, to any person under the age of (~~eighteen~~) twenty-one  
12 years any cigar, cigarette, cigarette paper or wrapper, tobacco in  
13 any form, or a vapor product is guilty of a gross misdemeanor.

14 (2) It is not a defense to a prosecution for a violation of this  
15 section that the person acted, or was believed by the defendant to  
16 act, as agent or representative of another.

17 (3) For the purposes of this section, "vapor product" has the  
18 same meaning as provided in RCW 70.345.010.

19 **Sec. 2.** RCW 70.155.005 and 1993 c 507 s 1 are each amended to  
20 read as follows:

1       (1) The legislature finds that chapter ..., Laws of 2017 (this  
2 act) furthers the public health, safety, and welfare by reducing  
3 youth access to addictive and harmful products.

4       (2) While present state law prohibits the sale and distribution  
5 of tobacco and vapor products to ((minors)) youth under the age of  
6 eighteen, youth obtain ((tobacco)) these products with ease.  
7 ((Availability and lack of enforcement put tobacco products in the  
8 hands of youth.))

9       (3) The legislature recognizes that many people who purchase  
10 cigarettes for minors are between the ages of eighteen to twenty. By  
11 decreasing the number of eligible buyers in high school, raising the  
12 minimum legal age to sell tobacco and vapor products will decrease  
13 the access of students to tobacco products. According to the 2014  
14 healthy youth survey, forty-one percent of tenth graders say it is  
15 "sort of easy" to "very easy" to get cigarettes. Nationally, among  
16 youth who smoke, more than twice as many get their cigarettes from  
17 social sources than from a store or vending machine.

18       (4) The legislature recognizes that ninety-five percent of  
19 smokers start by the age of twenty-one.

20       (5) The legislature recognizes that jurisdictions across the  
21 country are increasing the age of sale for tobacco products to  
22 twenty-one. More than two hundred localities in fourteen states have  
23 raised the minimum legal smoking age to twenty-one. In June 2015, the  
24 state of Hawaii became the first state in the nation to pass  
25 legislation increasing the smoking age to twenty-one. California  
26 followed in 2016.

27       (6) The legislature recognizes the scientific report issued by  
28 the national institute of medicine, one of the most prestigious  
29 scientific authorities in the United States, which predicted that  
30 increasing the age of sale for tobacco products in the United States  
31 to twenty-one will significantly reduce the number of adolescents and  
32 young adults who start smoking, reduce deaths from smoking, and  
33 immediately improve the health of adolescents, young adults, young  
34 mothers, and their children.

35       (7) The legislature recognizes the national institute of medicine  
36 report predicted increasing the tobacco sale age will make the  
37 greatest difference among those ages fifteen to seventeen, who will  
38 no longer be able to pass for legal age and will have a harder time  
39 getting tobacco products from older classmates and friends. The  
40 national institute of medicine report also predicted raising the

1 minimum age for the sale of tobacco products in the United States to  
2 twenty-one will, over time, reduce the smoking rate by about twelve  
3 percent and smoking-related deaths by ten percent.

4 (8) The legislature recognizes scientific study of the brain is  
5 increasingly showing that the brain continues to be highly vulnerable  
6 to addictive substances until age twenty-five. Nicotine adversely  
7 affects the development of the cerebral cortex and hippocampus in  
8 adolescents.

9 (9) The legislature recognizes that a strategy of increasing the  
10 minimum legal age for alcohol was highly successful in reducing  
11 adverse effects of alcohol consumption. A national drinking age of  
12 twenty-one resulted in reduced alcohol consumption among youth,  
13 decreased alcohol dependence, and has led to significant reductions  
14 in drunk driving fatalities.

15 (10) The legislature recognizes that if the age of sale is raised  
16 to twenty-one, eighteen to twenty year olds will likely substitute  
17 other in-store purchases for cigarettes. The legislature recognizes  
18 that when Needham, Massachusetts raised the smoking age to twenty-one  
19 in 2005, no convenience stores went out of business.

20 (11) The legislature recognizes that reducing the youth smoking  
21 rate will save lives and reduce health care costs. Every year, two  
22 billion eight hundred ten million dollars in health care costs can be  
23 directly attributed to tobacco use in Washington. Smoking-caused  
24 government expenditures cost every Washington household eight hundred  
25 twenty-one dollars per year.

26 (12) Federal law requires states to enforce laws prohibiting sale  
27 and distribution of tobacco products to minors in a manner that can  
28 reasonably be expected to reduce the extent to which the products are  
29 available to minors. It is imperative to effectively reduce the sale,  
30 distribution, and availability of tobacco products to minors.

31 **Sec. 3.** RCW 70.155.010 and 2009 c 278 s 1 are each amended to  
32 read as follows:

33 The definitions set forth in RCW 82.24.010 shall apply to this  
34 chapter. In addition, for the purposes of this chapter, unless  
35 otherwise required by the context:

36 (1) "Board" means the Washington state liquor (~~control~~) and  
37 cannabis board.

38 (2) "Internet" means any computer network, telephonic network, or  
39 other electronic network.

1       (3) (~~"Minor" refers to an individual who is less than eighteen~~  
2 ~~years old.~~

3       ~~(4))~~ "Sample" means a tobacco product distributed to members of  
4 the general public at no cost or at nominal cost for product  
5 promotion purposes.

6       ~~((5))~~ (4) "Sampling" means the distribution of samples to  
7 members of the public.

8       ~~((6))~~ (5) "Tobacco product" means a product that contains  
9 tobacco and is intended for human use, including any product defined  
10 in RCW 82.24.010(2) or 82.26.010(~~((1))~~) (21), except that for the  
11 purposes of RCW 70.155.140 only, "tobacco product" does not include  
12 cigars defined in RCW 82.26.010 as to which one thousand units weigh  
13 more than three pounds.

14       (6) "Vapor product" has the same meaning as defined in RCW  
15 70.345.010.

16       **Sec. 4.** RCW 70.345.010 and 2016 1st sp.s. c 38 s 4 are each  
17 amended to read as follows:

18       The definitions in this section apply throughout this chapter  
19 unless the context clearly requires otherwise.

20       (1) "Board" means the Washington state liquor and cannabis board.

21       (2) "Business" means any trade, occupation, activity, or  
22 enterprise engaged in for the purpose of selling or distributing  
23 vapor products in this state.

24       (3) "Child care facility" has the same meaning as provided in RCW  
25 70.140.020.

26       (4) "Closed system nicotine container" means a sealed, prefilled,  
27 and disposable container of nicotine in a solution or other form in  
28 which such container is inserted directly into an electronic  
29 cigarette, electronic nicotine delivery system, or other similar  
30 product, if the nicotine in the container is inaccessible through  
31 customary or reasonably foreseeable handling or use, including  
32 reasonably foreseeable ingestion or other contact by children.

33       (5) "Delivery sale" means any sale of a vapor product to a  
34 purchaser in this state where either:

35       (a) The purchaser submits the order for such sale by means of a  
36 telephonic or other method of voice transmission, the mails or any  
37 other delivery service, or the internet or other online service; or

38       (b) The vapor product is delivered by use of the mails or of a  
39 delivery service. The foregoing sales of vapor products constitute a

1 delivery sale regardless of whether the seller is located within or  
2 without this state. "Delivery sale" does not include a sale of any  
3 vapor product not for personal consumption to a retailer.

4 (6) "Delivery seller" means a person who makes delivery sales.

5 (7) "Distributor" means any person who:

6 (a) Sells vapor products to persons other than ultimate  
7 consumers; or

8 (b) Is engaged in the business of selling vapor products in this  
9 state and who brings, or causes to be brought, into this state from  
10 outside of the state any vapor products for sale.

11 (8) "Liquid nicotine container" means a package from which  
12 nicotine in a solution or other form is accessible through normal and  
13 foreseeable use by a consumer and that is used to hold soluble  
14 nicotine in any concentration. "Liquid nicotine container" does not  
15 include closed system nicotine containers.

16 (9) "Manufacturer" means a person who manufactures and sells  
17 vapor products.

18 (10) "Minor" refers to an individual who is less than  
19 (~~eighteen~~) twenty-one years old.

20 (11) "Person" means any individual, receiver, administrator,  
21 executor, assignee, trustee in bankruptcy, trust, estate, firm,  
22 copartnership, joint venture, club, company, joint stock company,  
23 business trust, municipal corporation, the state and its departments  
24 and institutions, political subdivision of the state of Washington,  
25 corporation, limited liability company, association, society, any  
26 group of individuals acting as a unit, whether mutual, cooperative,  
27 fraternal, nonprofit, or otherwise.

28 (12) "Place of business" means any place where vapor products are  
29 sold or where vapor products are manufactured, stored, or kept for  
30 the purpose of sale.

31 (13) "Playground" means any public improved area designed,  
32 equipped, and set aside for play of six or more children which is not  
33 intended for use as an athletic playing field or athletic court,  
34 including but not limited to any play equipment, surfacing, fencing,  
35 signs, internal pathways, internal land forms, vegetation, and  
36 related structures.

37 (14) "Retail outlet" means each place of business from which  
38 vapor products are sold to consumers.

39 (15) "Retailer" means any person engaged in the business of  
40 selling vapor products to ultimate consumers.

1 (16)(a) "Sale" means any transfer, exchange, or barter, in any  
2 manner or by any means whatsoever, for a consideration, and includes  
3 and means all sales made by any person.

4 (b) The term "sale" includes a gift by a person engaged in the  
5 business of selling vapor products, for advertising, promoting, or as  
6 a means of evading the provisions of this chapter.

7 (17) "School" has the same meaning as provided in RCW 70.140.020.

8 (18) "Self-service display" means a display that contains vapor  
9 products and is located in an area that is openly accessible to  
10 customers and from which customers can readily access such products  
11 without the assistance of a salesperson. A display case that holds  
12 vapor products behind locked doors does not constitute a self-service  
13 display.

14 (19) "Vapor product" means any noncombustible product that may  
15 contain nicotine and that employs a heating element, power source,  
16 electronic circuit, or other electronic, chemical, or mechanical  
17 means, regardless of shape or size, that can be used to produce vapor  
18 or aerosol from a solution or other substance.

19 (a) "Vapor product" includes any electronic cigarette, electronic  
20 cigar, electronic cigarillo, electronic pipe, or similar product or  
21 device and any vapor cartridge or other container that may contain  
22 nicotine in a solution or other form that is intended to be used with  
23 or in an electronic cigarette, electronic cigar, electronic  
24 cigarillo, electronic pipe, or similar product or device.

25 (b) "Vapor product" does not include any product that meets the  
26 definition of marijuana, useable marijuana, marijuana concentrates,  
27 marijuana-infused products, cigarette, or tobacco products.

28 (c) For purposes of this subsection (19), "marijuana," "useable  
29 marijuana," "marijuana concentrates," and "marijuana-infused  
30 products" have the same meaning as provided in RCW 69.50.101.

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

33 A person who holds a license issued under RCW 82.24.520 or  
34 82.24.530 shall:

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

37 (2) Display a sign concerning the prohibition of tobacco sales to  
38 minors.

39 Such sign shall:

1 (a) Be posted so that it is clearly visible to anyone purchasing  
2 tobacco products from the licensee;

3 (b) Be designed and produced by the department of health to read:  
4 "THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER AGE (~~18~~) 21 IS  
5 STRICTLY PROHIBITED BY STATE LAW. IF YOU ARE UNDER (~~18~~) 21, YOU  
6 COULD BE PENALIZED FOR PURCHASING A TOBACCO PRODUCT; PHOTO ID  
7 REQUIRED"; and

8 (c) Be provided free of charge by the liquor (~~control~~) and  
9 cannabis board.

10 **Sec. 6.** RCW 70.345.070 and 2016 1st sp.s. c 38 s 12 are each  
11 amended to read as follows:

12 (1) Except as provided in subsection (2) of this section, a  
13 person who holds a retailer's license issued under this chapter must  
14 display a sign concerning the prohibition of vapor product sales to  
15 minors. Such sign must:

16 (a) Be posted so that it is clearly visible to anyone purchasing  
17 vapor products from the licensee;

18 (b) Be designed and produced by the department of health to read:  
19 "The sale of vapor products to persons under age (~~eighteen~~) twenty-  
20 one is strictly prohibited by state law. If you are under age  
21 (~~eighteen~~) twenty-one, you could be penalized for purchasing a  
22 vapor product; photo id required;" and

23 (c) Be provided free of charge by the department of health.

24 (2) For persons also licensed under RCW 82.24.510 or 82.26.150,  
25 the board may issue a sign to read: "The sale of tobacco or vapor  
26 products to persons under age (~~eighteen~~) twenty-one is strictly  
27 prohibited by state law. If you are under age (~~eighteen~~) twenty-  
28 one, you could be penalized for purchasing a tobacco or vapor  
29 product; photo id required," provided free of charge by the board.

30 (3) A person who holds a license issued under this chapter must  
31 display the license or a copy in a prominent location at the outlet  
32 for which the license is issued.

33 **Sec. 7.** RCW 70.345.100 and 2016 1st sp.s. c 38 s 19 are each  
34 amended to read as follows:

35 (1) No person may offer a tasting of vapor products to the  
36 general public unless:

37 (a) The person is a licensed retailer under RCW 70.345.020;

1 (b) The tastings are offered only within the licensed premises  
2 operated by the licensee and the products tasted are not removed from  
3 within the licensed premises by the customer;

4 (c) Entry into the licensed premises is restricted to persons  
5 (~~(eighteen)~~) twenty-one years of age or older;

6 (d) The vapor product being offered for tasting contains zero  
7 milligrams per milliliter of nicotine or the customer explicitly  
8 consents to a tasting of a vapor product that contains nicotine; and

9 (e) If the customer is tasting from a vapor device owned and  
10 maintained by the retailer, a disposable mouthpiece tip is attached  
11 to the vapor product being used by the customer for tasting or the  
12 vapor device is disposed of after each tasting.

13 (2) A violation of this section is a misdemeanor.

14 **Sec. 8.** RCW 70.155.030 and 1994 c 202 s 1 are each amended to  
15 read as follows:

16 (1) No person shall sell or permit to be sold any tobacco product  
17 through any device that mechanically dispenses tobacco products  
18 unless the device is located fully within premises from which  
19 (~~(minors)~~) persons under the age of twenty-one are prohibited or in  
20 industrial worksites where (~~(minors)~~) persons under the age of  
21 twenty-one are not employed and not less than ten feet from all  
22 entrance or exit ways to and from each premise.

23 (2) The board shall adopt rules that allow an exception to the  
24 requirement that a device be located not less than ten feet from all  
25 entrance or exit ways to and from a premise if it is architecturally  
26 impractical for the device to be located not less than ten feet from  
27 all entrance and exit ways.

28 **Sec. 9.** RCW 70.345.160 and 2016 1st sp.s. c 38 s 24 are each  
29 amended to read as follows:

30 (1) The board must have, in addition to the board's other powers  
31 and authorities, the authority to enforce the provisions of this  
32 chapter.

33 (2) The board and the board's authorized agents or employees have  
34 full power and authority to enter any place of business where vapor  
35 products are sold for the purpose of enforcing the provisions of this  
36 chapter.

37 (3) For the purpose of enforcing the provisions of this chapter,  
38 (~~(a peace officer or)~~) an enforcement officer of the board who has



1 reasonable grounds to believe a person observed by the officer  
2 purchasing, attempting to purchase, or in possession of vapor  
3 products is under (~~eighteen~~) twenty-one years of age, may detain  
4 such person for a reasonable period of time and in such a reasonable  
5 manner as is necessary to determine the person's true identity and  
6 date of birth. Further, vapor products possessed by persons under  
7 (~~eighteen~~) twenty-one years of age are considered contraband and  
8 may be seized by (~~a peace officer or~~) an enforcement officer of the  
9 board.

10 (4) The board may work with local county health departments or  
11 districts and local law enforcement agencies to conduct random,  
12 unannounced, inspections to assure compliance.

13 (5) Upon a determination by the secretary of health or a local  
14 health jurisdiction that a vapor product may be injurious to human  
15 health or poses a significant risk to public health:

16 (a) The board, in consultation with the department of health and  
17 local county health jurisdictions, may cause a vapor product  
18 substance or solution sample, purchased or obtained from any vapor  
19 product retailer, distributor, or delivery sale licensee, to be  
20 analyzed by an analyst appointed or designated by the board;

21 (b) If the analyzed vapor product contains an ingredient,  
22 substance, or solution present in quantities injurious to human  
23 health or posing a significant risk to public health, as determined  
24 by the secretary of health or a local health jurisdiction, the board  
25 may suspend the license of the retailer or delivery sale licensee  
26 unless the retailer or delivery sale licensee agrees to remove the  
27 product from sales; and

28 (c) If upon a finding from the secretary of health or local  
29 health jurisdiction that the vapor product poses an injurious risk to  
30 public health or significant public health risk, the retailer or  
31 delivery sale licensee does not remove the product from sale, the  
32 secretary of health or local health officer may file for an  
33 injunction in superior court prohibiting the sale or distribution of  
34 that specific vapor product substance or solution.

35 (6) Nothing in subsection (5) of this section permits a total ban  
36 on the sale or use of vapor products.

37 **Sec. 10.** RCW 70.155.110 and 1993 c 507 s 12 are each amended to  
38 read as follows:

1 (1) The liquor (~~control~~) and cannabis board shall, in addition  
2 to the board's other powers and authorities, have the authority to  
3 enforce the provisions of this chapter and RCW 26.28.080(~~(4)~~) and  
4 82.24.500. The liquor (~~control~~) and cannabis board shall have full  
5 power to revoke or suspend the license of any retailer or wholesaler  
6 in accordance with the provisions of RCW 70.155.100.

7 (2) The liquor (~~control~~) and cannabis board and the board's  
8 authorized agents or employees shall have full power and authority to  
9 enter any place of business where tobacco products are sold for the  
10 purpose of enforcing the provisions of this chapter.

11 (3) For the purpose of enforcing the provisions of this chapter  
12 and RCW 26.28.080(~~(4)~~) and 82.24.500, (~~a peace officer or~~) an  
13 enforcement officer of the liquor (~~control~~) and cannabis board who  
14 has reasonable grounds to believe a person observed by the officer  
15 purchasing, attempting to purchase, or in possession of tobacco  
16 products is under the age of (~~eighteen~~) twenty-one years of age,  
17 may detain (~~such~~) a person for a reasonable period of time and in  
18 such a reasonable manner as is necessary to determine the person's  
19 true identity and date of birth. Further, tobacco products possessed  
20 by persons under the age of (~~eighteen~~) twenty-one years of age are  
21 considered contraband and may be seized by (~~a peace officer or~~) an  
22 enforcement officer of the liquor (~~control~~) and cannabis board.

23 (4) The liquor (~~control~~) and cannabis board may work with local  
24 county health departments or districts and local law enforcement  
25 agencies to conduct random, unannounced, inspections to assure  
26 compliance.

27 **Sec. 11.** RCW 70.155.120 and 2016 1st sp.s. c 38 s 2 are each  
28 amended to read as follows:

29 (1) The youth tobacco and vapor products prevention account is  
30 created in the state treasury. All fees collected pursuant to RCW  
31 82.24.520, 82.24.530, 82.26.160, and 82.26.170 and funds collected by  
32 the liquor and cannabis board from the imposition of monetary  
33 penalties shall be deposited into this account, except that ten  
34 percent of all such fees and penalties shall be deposited in the  
35 state general fund.

36 (2) Moneys appropriated from the youth tobacco and vapor products  
37 prevention account to the department of health shall be used by the  
38 department of health for implementation of this chapter, including  
39 collection and reporting of data regarding enforcement and the extent

1 to which access to tobacco products and vapor products by youth has  
2 been reduced.

3 (3) The department of health shall enter into interagency  
4 agreements with the liquor and cannabis board to pay the costs  
5 incurred, up to thirty percent of available funds, in carrying out  
6 its enforcement responsibilities under this chapter. Such agreements  
7 shall set forth standards of enforcement, consistent with the funding  
8 available, so as to reduce the extent to which tobacco products and  
9 vapor products are available to individuals under the age of  
10 ((eighteen)) twenty-one. The agreements shall also set forth  
11 requirements for data reporting by the liquor and cannabis board  
12 regarding its enforcement activities.

13 (4) The department of health, the liquor and cannabis board, and  
14 the department of revenue shall enter into an interagency agreement  
15 for payment of the cost of administering the tobacco retailer  
16 licensing system and for the provision of quarterly documentation of  
17 tobacco wholesaler, retailer, and vending machine names and  
18 locations.

19 (5) The department of health shall, within up to seventy percent  
20 of available funds, provide grants to local health departments or  
21 other local community agencies to develop and implement coordinated  
22 tobacco and vapor product intervention strategies to prevent and  
23 reduce tobacco and vapor product use by youth.

24 NEW SECTION. **Sec. 12.** This act takes effect January 1, 2018.

25 NEW SECTION. **Sec. 13.** If any provision of this act or its  
26 application to any person or circumstance is held invalid, the  
27 remainder of the act or the application of the provision to other  
28 persons or circumstances is not affected.

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