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HOUSE BILL 1074

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State of Washington

66th Legislature

2019 Regular Session

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

Prefiled 12/31/18. Read first time 01/14/19. Referred to Committee on Health Care & Wellness.

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 70.345.080, and 70.155.120; creating a new section; and providing an  
6 effective 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 2019 (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. As of October 2018, six states (California, Hawaii,  
23 Maine, Massachusetts, New Jersey, and Oregon), the District of  
24 Columbia, the territory of Guam, and more than three hundred fifty  
25 cities and counties in twenty-one states have raised the minimum  
26 legal sales age to twenty-one. Approximately thirty percent of the  
27 population of the United States is covered by such a policy.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (~~(5))~~ (4) "Sampling" means the distribution of samples to  
9 members of the public.

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

16 (6) "Vapor product" has the same meaning as defined in RCW  
17 70.345.010.

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

20 The definitions in this section apply throughout this chapter  
21 unless the context clearly requires otherwise.

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

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

26 (3) "Child care facility" has the same meaning as provided in RCW  
27 70.140.020.

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

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

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

1 (b) The vapor product is delivered by use of the mails or of a  
2 delivery service. The foregoing sales of vapor products constitute a  
3 delivery sale regardless of whether the seller is located within or  
4 without this state. "Delivery sale" does not include a sale of any  
5 vapor product not for personal consumption to a retailer.

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

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

8 (a) Sells vapor products to persons other than ultimate  
9 consumers; or

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

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

18 (9) "Manufacturer" means a person who manufactures and sells  
19 vapor products.

20 (10) (~~"Minor" refers to an individual who is less than eighteen~~  
21 ~~years old.~~

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

30 ~~((12))~~ (11) "Place of business" means any place where vapor  
31 products are sold or where vapor products are manufactured, stored,  
32 or kept for the purpose of sale.

33 ~~((13))~~ (12) "Playground" means any public improved area  
34 designed, equipped, and set aside for play of six or more children  
35 which is not intended for use as an athletic playing field or  
36 athletic court, including but not limited to any play equipment,  
37 surfacing, fencing, signs, internal pathways, internal land forms,  
38 vegetation, and related structures.

39 ~~((14))~~ (13) "Retail outlet" means each place of business from  
40 which vapor products are sold to consumers.

1       (~~(15)~~) (14) "Retailer" means any person engaged in the business  
2 of selling vapor products to ultimate consumers.

3       (~~(16)~~) (15)(a) "Sale" means any transfer, exchange, or barter,  
4 in any manner or by any means whatsoever, for a consideration, and  
5 includes and means all sales made by any person.

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

9       (~~(17)~~) (16) "School" has the same meaning as provided in RCW  
10 70.140.020.

11       (~~(18)~~) (17) "Self-service display" means a display that  
12 contains vapor products and is located in an area that is openly  
13 accessible to customers and from which customers can readily access  
14 such products without the assistance of a salesperson. A display case  
15 that holds vapor products behind locked doors does not constitute a  
16 self-service display.

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

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

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

31       (c) For purposes of this subsection (~~(19)~~) (18), "marijuana,"  
32 "useable marijuana," "marijuana concentrates," and "marijuana-infused  
33 products" have the same meaning as provided in RCW 69.50.101.

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

36       A person who holds a license issued under RCW 82.24.520 or  
37 82.24.530 shall:

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

1 (2) Display a sign concerning the prohibition of tobacco sales to  
2 ~~((minors))~~ persons under the age of twenty-one.

3 Such sign shall:

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

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

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

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

15 (1) Except as provided in subsection (2) of this section, a  
16 person who holds a retailer's license issued under this chapter must  
17 display a sign concerning the prohibition of vapor product sales to  
18 ~~((minors))~~ persons under the age of twenty-one. Such sign must:

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

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

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

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

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

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

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

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

4 (b) The tastings are offered only within the licensed premises  
5 operated by the licensee and the products tasted are not removed from  
6 within the licensed premises by the customer;

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

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

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

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

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

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

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

31 **Sec. 9.** RCW 70.345.080 and 2017 c 210 s 1 are each amended to  
32 read as follows:

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

36 (2) It is unlawful to sell or distribute vapor products from  
37 self-service displays.

1 (3) Retail establishments are exempt from subsections (1) and (2)  
2 of this section if (~~minors~~) persons under the age of twenty-one are  
3 not allowed in the store and such prohibition is posted clearly on  
4 all entrances.

5 **Sec. 10.** RCW 70.155.120 and 2016 1st sp.s. c 38 s 2 are each  
6 amended to read as follows:

7 (1) The youth tobacco and vapor products prevention account is  
8 created in the state treasury. All fees collected pursuant to RCW  
9 82.24.520, 82.24.530, 82.26.160, and 82.26.170 and funds collected by  
10 the liquor and cannabis board from the imposition of monetary  
11 penalties shall be deposited into this account, except that ten  
12 percent of all such fees and penalties shall be deposited in the  
13 state general fund.

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

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

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

36 (5) The department of health shall, within up to seventy percent  
37 of available funds, provide grants to local health departments or  
38 other local community agencies to develop and implement coordinated

1 tobacco and vapor product intervention strategies to prevent and  
2 reduce tobacco and vapor product use by youth.

3 NEW SECTION. **Sec. 11.** In recognition of the sovereign authority  
4 of tribal governments, the governor may seek government-to-government  
5 consultations with Indian tribes regarding raising the minimum legal  
6 age of sale in compacts entered into pursuant to RCW 43.06.455,  
7 43.06.465, and 43.06.466. The office of the governor shall report to  
8 the appropriate committees of the legislature regarding the status of  
9 such consultations no later than December 1, 2020.

10 NEW SECTION. **Sec. 12.** This act takes effect January 1, 2020.

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

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