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**ENGROSSED SUBSTITUTE SENATE BILL 5365**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** Senate Labor & Commerce (originally sponsored by Senators Saldaña, Liias, Billig, Dhingra, Hunt, Lovelett, Nguyen, Pedersen, Randall, Robinson, Stanford, Valdez, Wellman, and C. Wilson)

AN ACT Relating to the purchase, use, and possession of vapor and tobacco products by minors; amending RCW 70.155.080, 70.345.140, 70.155.100, 70.155.110, and 70.345.160; reenacting and amending RCW 70.155.120; and creating new sections.

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

NEW SECTION. **Sec.**  (1) The legislature finds:

(a) Prevention is the most effective tool to reduce vapor and tobacco usage by persons under the age of 21. Protection of adolescents' health and well-being requires enforcement and intervention efforts to focus upon effective vapor and tobacco control and access strategies.

(b) Retailers play a key role in ensuring that state law regarding access to vapor or tobacco is followed. However, the 2021 healthy youth survey found that 15 percent (one out of every six) retail stores illegally sold tobacco or vapor products to a minor in 2021.

(c) Vapor and tobacco product purchase, use, and possession by persons under the age of 21 is a critical public health issue. The 2021 healthy youth survey found that 16 percent of 12th graders in Washington state reported using tobacco or vapor products in the past 30 days, youth under age 18 are far more likely to start using tobacco than adults, and nearly nine out of 10 adults who smoke started by age 18. The healthy youth survey also found that 104,000 Washington youth alive today will ultimately die prematurely from smoking.

(d) With the passage of chapter 15, Laws of 2019, individuals between the ages of 18 and 21 do not face liability for purchase or possession of vapor or tobacco products but individuals under the age of 18 continue to face civil liability for purchase or possession of vapor or tobacco products, creating a disparity in the law.

(2) The legislature therefore finds that all persons under the age of 21 who purchase, use, or possess vapor or tobacco products should be offered community-based interventions that are more effective in helping them quit. The legislature further resolves to increase enforcement strategies to ensure retailer compliance with tobacco and vapor product possession laws.

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

(1) A person under the age of eighteen who purchases or attempts to purchase, possesses, or obtains or attempts to obtain cigarettes or tobacco products commits a class 3 civil infraction under chapter 7.80 RCW and is subject to ((~~a fine as set out in chapter 7.80 RCW or~~)) participation in up to four hours of community ((~~restitution, or both. The court may also require participation in~~)) service and referral to a smoking cessation program at no cost. This provision does not apply if a person under the age of eighteen, with parental authorization, is participating in a controlled purchase as part of a liquor ((~~control~~)) and cannabis board, law enforcement, or local health department activity.

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

(3) Any officers issuing citations under this section must collect demographic data, which must be provided to the liquor and cannabis board. The liquor and cannabis board must compile this information into a statewide report and provide the report annually to the legislature.

**Sec.**  RCW 70.345.140 and 2016 sp.s. c 38 s 14 are each amended to read as follows:

(1) A person under the age of eighteen who purchases or attempts to purchase, possesses, or obtains or attempts to obtain vapor products commits a class 3 civil infraction under chapter 7.80 RCW and is subject to ((~~a fine as set out in chapter 7.80 RCW or~~)) participation in up to four hours of community ((~~restitution, or both. The court may also require participation in~~)) service and referral to a smoking cessation program at no cost. This provision does not apply if a person under the age of eighteen, with parental authorization, is participating in a controlled purchase as part of a board, law enforcement, or local health department activity.

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

(3) Any officers issuing citations under this section must collect demographic data, which must be provided to the liquor and cannabis board. The liquor and cannabis board must compile this information into a statewide report and provide the report annually to the legislature.

**Sec.**  RCW 70.155.100 and 2016 sp.s. c 38 s 23 are each amended to read as follows:

(1) The liquor and cannabis board may suspend or revoke a retailer's license issued under RCW 82.24.510(1)(b) or 82.26.150(1)(b) held by a business at any location, or may impose a monetary penalty as set forth in subsection (3) of this section, if the liquor and cannabis board finds that the licensee has violated RCW 26.28.080, 70.155.020, 70.155.030, 70.155.040, 70.155.050, 70.155.070, or 70.155.090.

(2) Any retailer's licenses issued under RCW 70.345.020 to a person whose license or licenses under chapter 82.24 or 82.26 RCW have been suspended or revoked for violating RCW 26.28.080 must also be suspended or revoked during the period of suspension or revocation under this section.

(3) The sanctions that the liquor and cannabis board may impose against a person licensed under RCW 82.24.530 or 82.26.170 based upon one or more findings under subsection (1) of this section may not exceed the following:

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

(i) A monetary penalty of ((~~two hundred dollars~~)) $200 for the first violation within any three-year period;

(ii) A monetary penalty of ((~~six hundred dollars~~)) $600 for the second violation within any three-year period;

(iii) A monetary penalty of ((~~two thousand dollars~~)) $2,000 and suspension of the license for a period of six months for the third violation within any three-year period;

(iv) A monetary penalty of ((~~three thousand dollars~~)) $3,000 and suspension of the license for a period of ((~~twelve~~)) 12 months for the fourth violation within any three-year period;

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

(b) For violations of RCW 26.28.080:

(i) A monetary penalty of $1,000 for the first violation within any three-year period;

(ii) A monetary penalty of $2,500 for the second violation within any three-year period;

(iii) A monetary penalty of $5,000 and suspension of the license for a period of six months for the third violation within any three-year period;

(iv) A monetary penalty of $10,000 and suspension of the license for a period of 12 months for the fourth violation within any three-year period;

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

(c) If the board finds that a person licensed under chapter 82.24 or 82.26 RCW and RCW 70.345.020 has violated RCW 26.28.080, each subsequent violation of either of the person's licenses counts as an additional violation within that three-year period((~~.~~));

((~~(c)~~)) (d) For violations of RCW 70.155.030, a monetary penalty in the amount of ((~~one hundred dollars~~)) $100 for each day upon which such violation occurred;

((~~(d)~~)) (e) For violations of RCW 70.155.050, a monetary penalty in the amount of ((~~six hundred dollars~~)) $600 for each violation;

((~~(e)~~)) (f) For violations of RCW 70.155.070, a monetary penalty in the amount of ((~~two thousand dollars~~)) $2,000 for each violation.

(4) The liquor and cannabis board may impose a monetary penalty upon any person other than a licensed cigarette or tobacco product retailer if the liquor and cannabis board finds that the person has violated RCW 26.28.080, 70.155.020, 70.155.030, 70.155.040, 70.155.050, 70.155.070, or 70.155.090.

(5) The monetary penalty that the liquor and cannabis board may impose based upon one or more findings under subsection (4) of this section may not exceed the following:

(a) For violation of RCW 26.28.080 or 70.155.020, ((~~one hundred dollars~~)) $100 for the first violation and ((~~two hundred dollars~~)) $200 for each subsequent violation;

(b) For violations of RCW 70.155.030, ((~~two hundred dollars~~)) $200 for each day upon which such violation occurred;

(c) For violations of RCW 70.155.040, ((~~two hundred dollars~~)) $200 for each violation;

(d) For violations of RCW 70.155.050, ((~~six hundred dollars~~)) $600 for each violation;

(e) For violations of RCW 70.155.070, ((~~two thousand dollars~~)) $2,000 for each violation.

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

(7) The liquor and cannabis board may issue a cease and desist order to any person who is found by the liquor and cannabis board to have violated or intending to violate the provisions of this chapter, RCW 26.28.080, 82.24.500, or 82.26.190 requiring such person to cease specified conduct that is in violation. The issuance of a cease and desist order does not preclude the imposition of other sanctions authorized by this statute or any other provision of law.

(8) The liquor and cannabis board may seek injunctive relief to enforce the provisions of RCW 26.28.080, 82.24.500, 82.26.190 or this chapter. The liquor and cannabis board may initiate legal action to collect civil penalties imposed under this chapter if the same have not been paid within thirty days after imposition of such penalties. In any action filed by the liquor and cannabis board under this chapter, the court may, in addition to any other relief, award the liquor and cannabis board reasonable attorneys' fees and costs.

(9) All proceedings under subsections (1) through (7) of this section shall be conducted in accordance with chapter 34.05 RCW.

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

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

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

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

(3)(a) For the purpose of enforcing the provisions of this chapter and RCW 26.28.080(4) and 82.24.500, ((~~a peace officer or~~)) an enforcement officer of the ((~~liquor control~~)) board who has reasonable grounds to believe a person observed by the officer in proximity to a retailer licensee under chapters 82.24 and 82.26 RCW who is purchasing, attempting to purchase, or in possession of tobacco products is under the age of eighteen years of age, may detain such person for a reasonable period of time and in such a reasonable manner as is necessary to determine the person's true identity and date of birth. Further, tobacco products possessed by persons under the age of eighteen years of age are considered contraband and may be seized by ((~~a peace officer or~~)) an enforcement officer of the ((~~liquor control~~)) board.

(b) For the purposes of this subsection, "proximity" means 100 feet or less.

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

**Sec.**  RCW 70.155.120 and 2019 c 415 s 979 and 2019 c 15 s 10 are each reenacted and amended to read as follows:

(1) The youth tobacco and vapor products prevention account is created in the state treasury. All fees collected pursuant to RCW 70.155.100(3)(b), 82.24.520, 82.24.530, 82.26.160, and 82.26.170 and funds collected by the ((~~liquor and cannabis~~)) board from the imposition of monetary penalties shall be deposited into this account, except that ((~~ten~~)) 10 percent of all such fees and penalties shall be deposited in the state general fund.

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

(3) The department of health shall enter into interagency agreements with the ((~~liquor and cannabis~~)) board to pay the costs incurred, up to ((~~thirty~~)) 30 percent of available funds, in carrying out its enforcement responsibilities under this chapter. Such agreements shall set forth standards of enforcement, consistent with the funding available, so as to reduce the extent to which tobacco products and vapor products are available to individuals under the age of ((~~twenty-one~~)) 21. The agreements shall also set forth requirements for data reporting by the ((~~liquor and cannabis~~)) board regarding its enforcement activities. During the 2019-2021 fiscal biennium, the department of health shall pay the costs incurred, up to ((~~twenty-three~~)) 23 percent of available funds, in carrying out its enforcement responsibilities.

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

(5) The department of health shall, within up to ((~~seventy~~)) 70 percent of available funds, provide grants to local health departments or other local community agencies to develop and implement coordinated tobacco and vapor product intervention strategies to prevent and reduce tobacco and vapor product use by youth. During the 2019-2021 fiscal biennium, the department of health shall, within up to ((~~seventy-seven~~)) 77 percent of available funds, provide grants to local health departments or other local community agencies to develop and implement coordinated tobacco and vapor product intervention strategies to prevent and reduce tobacco and vapor product use by youth.

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

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

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

(3)(a) For the purpose of enforcing the provisions of this chapter, ((~~a peace officer or~~)) an enforcement officer of the board who has reasonable grounds to believe a person observed by the officer in proximity to a retailer licensee under this chapter and chapter 82.25 RCW who is purchasing, attempting to purchase, or in possession of vapor products is under eighteen years of age, may detain such person for a reasonable period of time and in such a reasonable manner as is necessary to determine the person's true identity and date of birth. Further, vapor products possessed by persons under eighteen years of age are considered contraband and may be seized by ((~~a peace officer or~~)) an enforcement officer of the board.

(b) For the purposes of this subsection, "proximity" means 100 feet or less.

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

(5) The board, law enforcement, or a local health department may, with parental authorization, include persons under the age of 18 in compliance activities.

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

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

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

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

((~~(6)~~)) (7) Nothing in subsection ((~~(5)~~)) (6) of this section permits a total ban on the sale or use of vapor products.

NEW SECTION. **Sec.**  Nothing in this act shall be interpreted to limit the ability of a peace officer or an enforcement officer of the liquor and cannabis board to enforce the provisions of chapters 70.155 and 70.345 RCW and RCW 26.28.080 and 82.24.500.

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