

ESSB 5365 - H COMM AMD

By Committee on Regulated Substances & Gaming

ADOPTED AND ENGROSSED 04/07/2023

1 Strike everything after the enacting clause and insert the
2 following:

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

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

9 (b) Retailers play a key role in ensuring that state law
10 regarding access to vapor or tobacco is followed. However, the 2021
11 healthy youth survey found that 15 percent (one out of every six)
12 retail stores illegally sold tobacco or vapor products to a minor in
13 2021.

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

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

28 (2) The legislature therefore finds that all persons under the
29 age of 21 who purchase, use, or possess vapor or tobacco products
30 should be offered community-based interventions that are more
31 effective in helping them quit. The legislature further resolves to

1 increase enforcement strategies to ensure retailer compliance with
2 tobacco and vapor product possession laws.

3 **Sec. 2.** RCW 70.155.080 and 2002 c 175 s 47 are each amended to
4 read as follows:

5 (1) A person under the age of eighteen who purchases or attempts
6 to purchase, possesses, or obtains or attempts to obtain cigarettes
7 or tobacco products commits a class 3 civil infraction under chapter
8 7.80 RCW and is subject to ~~((a fine as set out in chapter 7.80 RCW~~
9 ~~or))~~ participation in up to four hours of community ~~((restitution, or~~
10 ~~both. The court may also require participation in))~~ service and
11 referral to a smoking cessation program at no cost. This provision
12 does not apply if a person under the age of eighteen, with parental
13 authorization, is participating in a controlled purchase as part of a
14 liquor ~~((control))~~ and cannabis board, law enforcement, or local
15 health department activity.

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

18 **Sec. 3.** RCW 70.345.140 and 2016 sp.s. c 38 s 14 are each amended
19 to read as follows:

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

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

32 **Sec. 4.** RCW 70.155.100 and 2016 sp.s. c 38 s 23 are each amended
33 to read as follows:

34 (1) The liquor and cannabis board may suspend or revoke a
35 retailer's license issued under RCW 82.24.510(1)(b) or
36 82.26.150(1)(b) held by a business at any location, or may impose a
37 monetary penalty as set forth in subsection (3) of this section, if

1 the liquor and cannabis board finds that the licensee has violated
2 RCW 26.28.080, 70.155.020, 70.155.030, 70.155.040, 70.155.050,
3 70.155.070, or 70.155.090.

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

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

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

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

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

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

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

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

29 (b) For violations of RCW 26.28.080:

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

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

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

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

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

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

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

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

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

15 (4) The liquor and cannabis board may impose a monetary penalty
16 upon any person other than a licensed cigarette or tobacco product
17 retailer if the liquor and cannabis board finds that the person has
18 violated RCW 26.28.080, 70.155.020, 70.155.030, 70.155.040,
19 70.155.050, 70.155.070, or 70.155.090.

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

23 (a) For violation of RCW 26.28.080 or 70.155.020, ~~((one hundred~~
24 ~~dollars))~~ \$100 for the first violation and ~~((two hundred dollars))~~
25 \$200 for each subsequent violation;

26 (b) For violations of RCW 70.155.030, ~~((two hundred dollars))~~
27 \$200 for each day upon which such violation occurred;

28 (c) For violations of RCW 70.155.040, ~~((two hundred dollars))~~
29 \$200 for each violation;

30 (d) For violations of RCW 70.155.050, ~~((six hundred dollars))~~
31 \$600 for each violation;

32 (e) For violations of RCW 70.155.070, ~~((two thousand dollars))~~
33 \$2,000 for each violation.

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

37 (7) The liquor and cannabis board may issue a cease and desist
38 order to any person who is found by the liquor and cannabis board to
39 have violated or intending to violate the provisions of this chapter,
40 RCW 26.28.080, 82.24.500, or 82.26.190 requiring such person to cease

1 specified conduct that is in violation. The issuance of a cease and
2 desist order does not preclude the imposition of other sanctions
3 authorized by this statute or any other provision of law.

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

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

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

21 **Sec. 5.** RCW 70.155.110 and 1993 c 507 s 12 are each amended to
22 read as follows:

23 (1) The (~~liquor control~~) board shall, in addition to the
24 board's other powers and authorities, have the authority to enforce
25 the provisions of this chapter and RCW 26.28.080(~~(4)~~) and
26 82.24.500. The (~~liquor control~~) board shall have full power to
27 revoke or suspend the license of any retailer or wholesaler in
28 accordance with the provisions of RCW 70.155.100.

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

33 (3) (a) For the purpose of enforcing the provisions of this
34 chapter and RCW 26.28.080(~~(4)~~) and 82.24.500, (~~a peace officer~~
35 ~~or~~) an enforcement officer of the (~~liquor control~~) board who has
36 reasonable grounds to believe a person observed by the officer in
37 proximity to a retailer licensee under chapters 82.24 and 82.26 RCW
38 who is purchasing, attempting to purchase, or in possession of
39 tobacco products is under the age of eighteen years of age, may

1 detain such person in proximity to such retailer for a reasonable
2 period of time and in such a reasonable manner as is necessary to
3 determine the person's true identity and date of birth. Further,
4 tobacco products possessed by persons under the age of eighteen years
5 of age are considered contraband and may be seized by ~~((a peace~~
6 ~~officer or))~~ an enforcement officer of the ~~((liquor control))~~ board.

7 (b) Any enforcement officer who detains a person for the purpose
8 of enforcing the provisions of this chapter and RCW 26.28.080 and
9 82.24.500 must collect the following information for each fiscal year
10 since 2018:

11 (i) The total number of interactions where an enforcement officer
12 detained a person;

13 (ii) Information on the nature of each interaction, including the
14 duration of the interaction, the justification for the interaction,
15 the number of such persons who were under 18 years of age, the number
16 of such persons who were over 18 but under 21 years of age, and
17 whether any citation or warning was issued;

18 (iii) How many interactions converted to administrative violation
19 notices; and

20 (iv) How many of the interactions and administrative violation
21 notices converted to retailer education and violations.

22 (c) The board must compile the information collected pursuant to
23 (b) of this subsection, along with any associated demographic data in
24 the possession of the board, and conduct a comparative analysis of
25 all interactions of enforcement officers with persons detained for
26 the purpose of enforcing Title 66 RCW and chapter 69.50 RCW into a
27 statewide report and provide the report to the appropriate committees
28 of the legislature by December 1, 2023, and annually thereafter.

29 (d) All enforcement officers of the board who enforce the
30 provisions of this section and will have interactions with persons
31 under the age of 18 years old must begin receiving training from the
32 United States department of justice office of juvenile justice and
33 delinquency prevention prior to July 1, 2024.

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

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

1 **Sec. 6.** RCW 70.155.120 and 2019 c 415 s 979 and 2019 c 15 s 10
2 are each reenacted and amended to read as follows:

3 (1) The youth tobacco and vapor products prevention account is
4 created in the state treasury. All fees collected pursuant to RCW
5 70.155.100(3)(b), 82.24.520, 82.24.530, 82.26.160, and 82.26.170 and
6 funds collected by the (~~liquor and cannabis~~) board from the
7 imposition of monetary penalties shall be deposited into this
8 account, except that (~~ten~~) 10 percent of all such fees and
9 penalties shall be deposited in the state general fund.

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

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

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

35 (5) The department of health shall, within up to (~~seventy~~) 70
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 and vapor product use by
40 youth. During the 2019-2021 fiscal biennium, the department of health

1 shall, within up to (~~seventy-seven~~) 77 percent of available funds,
2 provide grants to local health departments or other local community
3 agencies to develop and implement coordinated tobacco and vapor
4 product intervention strategies to prevent and reduce tobacco and
5 vapor product use by youth.

6 **Sec. 7.** RCW 70.345.160 and 2016 sp.s. c 38 s 24 are each amended
7 to read as follows:

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

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

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

27 (b) Any enforcement officer who detains a person for the purpose
28 of enforcing the provisions of this chapter and RCW 26.28.080 and
29 82.24.500 must collect the following information for each fiscal year
30 since 2018:

31 (i) The total number of interactions where an enforcement officer
32 detained a person;

33 (ii) Information on the nature of each interaction, including the
34 duration of the interaction, the justification for the interaction,
35 the number of such persons who were under 18 years of age, the number
36 of such persons who were over 18 but under 21 years of age, and
37 whether any citation or warning was issued;

38 (iii) How many interactions converted to administrative violation
39 notices; and

1 (iv) How many of the interactions and administrative violation
2 notices converted to retailer education and violations.

3 (c) The board must compile the information collected pursuant to
4 (b) of this subsection, along with any associated demographic data in
5 the possession of the board, and conduct a comparative analysis of
6 all interactions of enforcement officers with persons detained for
7 the purpose of enforcing Title 66 RCW and chapter 69.50 RCW into a
8 statewide report and provide the report to the appropriate committees
9 of the legislature by December 1, 2023, and annually thereafter.

10 (d) All enforcement officers of the board who enforce the
11 provisions of this section and will have interactions with persons
12 under the age of 18 years old must begin receiving training from the
13 United States department of justice office of juvenile justice and
14 delinquency prevention prior to July 1, 2024.

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

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

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

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

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

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

38 (c) If upon a finding from the secretary of health or local
39 health jurisdiction that the vapor product poses an injurious risk to
40 public health or significant public health risk, the retailer or

1 delivery sale licensee does not remove the product from sale, the
2 secretary of health or local health officer may file for an
3 injunction in superior court prohibiting the sale or distribution of
4 that specific vapor product substance or solution.

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

7 NEW SECTION. **Sec. 8.** Nothing in this act shall be interpreted
8 to limit the ability of a peace officer or an enforcement officer of
9 the liquor and cannabis board to enforce RCW 26.28.080 and
10 82.24.500."

11 Correct the title.

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