
ENGROSSED SUBSTITUTE SENATE BILL 5365

State of Washington

68th Legislature

2023 Regular Session

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

READ FIRST TIME 02/15/23.

1 AN ACT Relating to the purchase, use, and possession of vapor and
2 tobacco products by minors; amending RCW 70.155.080, 70.345.140,
3 70.155.100, 70.155.110, and 70.345.160; reenacting and amending RCW
4 70.155.120; and creating new sections.

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

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

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

12 (b) Retailers play a key role in ensuring that state law
13 regarding access to vapor or tobacco is followed. However, the 2021
14 healthy youth survey found that 15 percent (one out of every six)
15 retail stores illegally sold tobacco or vapor products to a minor in
16 2021.

17 (c) Vapor and tobacco product purchase, use, and possession by
18 persons under the age of 21 is a critical public health issue. The
19 2021 healthy youth survey found that 16 percent of 12th graders in
20 Washington state reported using tobacco or vapor products in the past
21 30 days, youth under age 18 are far more likely to start using

1 tobacco than adults, and nearly nine out of 10 adults who smoke
2 started by age 18. The healthy youth survey also found that 104,000
3 Washington youth alive today will ultimately die prematurely from
4 smoking.

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

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

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

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

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

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

36 **Sec. 3.** RCW 70.345.140 and 2016 sp.s. c 38 s 14 are each amended
37 to 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 vapor
3 products commits a class 3 civil infraction under chapter 7.80 RCW
4 and is subject to ~~((a fine as set out in chapter 7.80 RCW or))~~
5 participation in up to four hours of community ~~((restitution, or~~
6 ~~both. The court may also require participation in))~~ service and
7 referral to a smoking cessation program at no cost. This provision
8 does not apply if a person under the age of eighteen, with parental
9 authorization, is participating in a controlled purchase as part of a
10 board, law enforcement, or local health department activity.

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

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

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

20 (1) The liquor and cannabis board may suspend or revoke a
21 retailer's license issued under RCW 82.24.510(1)(b) or
22 82.26.150(1)(b) held by a business at any location, or may impose a
23 monetary penalty as set forth in subsection (3) of this section, if
24 the liquor and cannabis board finds that the licensee has violated
25 RCW 26.28.080, 70.155.020, 70.155.030, 70.155.040, 70.155.050,
26 70.155.070, or 70.155.090.

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

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

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

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

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

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

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

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

14 (b) For violations of RCW 26.28.080:

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

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

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

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

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

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

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

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

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

39 (4) The liquor and cannabis board may impose a monetary penalty
40 upon any person other than a licensed cigarette or tobacco product

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

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

7 (a) For violation of RCW 26.28.080 or 70.155.020, (~~one hundred~~
8 ~~dollars~~) \$100 for the first violation and (~~two hundred dollars~~)
9 \$200 for each subsequent violation;

10 (b) For violations of RCW 70.155.030, (~~two hundred dollars~~)
11 \$200 for each day upon which such violation occurred;

12 (c) For violations of RCW 70.155.040, (~~two hundred dollars~~)
13 \$200 for each violation;

14 (d) For violations of RCW 70.155.050, (~~six hundred dollars~~)
15 \$600 for each violation;

16 (e) For violations of RCW 70.155.070, (~~two thousand dollars~~)
17 \$2,000 for each violation.

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

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

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

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

38 (10) The liquor and cannabis board may reduce or waive either the
39 penalties or the suspension or revocation of a license, or both, as
40 set forth in this chapter where the elements of proof are inadequate

1 or where there are mitigating circumstances. Mitigating circumstances
2 may include, but are not limited to, an exercise of due diligence by
3 a retailer. Further, the board may exceed penalties set forth in this
4 chapter based on aggravating circumstances.

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

7 (1) The (~~liquor control~~) board shall, in addition to the
8 board's other powers and authorities, have the authority to enforce
9 the provisions of this chapter and RCW 26.28.080(~~(4)~~) and
10 82.24.500. The (~~liquor control~~) board shall have full power to
11 revoke or suspend the license of any retailer or wholesaler in
12 accordance with the provisions of RCW 70.155.100.

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

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

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

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

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

37 (1) The youth tobacco and vapor products prevention account is
38 created in the state treasury. All fees collected pursuant to RCW

1 70.155.100(3)(b), 82.24.520, 82.24.530, 82.26.160, and 82.26.170 and
2 funds collected by the (~~liquor and cannabis~~) board from the
3 imposition of monetary penalties shall be deposited into this
4 account, except that (~~ten~~) 10 percent of all such fees and
5 penalties shall be deposited in the state general fund.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 ~~((+6))~~ (7) Nothing in subsection ~~((+5))~~ (6) of this section
16 permits a total ban on the sale or use of vapor products.

17 NEW SECTION. **Sec. 8.** Nothing in this act shall be interpreted
18 to limit the ability of a peace officer or an enforcement officer of
19 the liquor and cannabis board to enforce the provisions of chapters
20 70.155 and 70.345 RCW and RCW 26.28.080 and 82.24.500.

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