
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 70.155.100, 70.155.110, and
3 70.345.160; reenacting and amending RCW 70.155.120; creating new
4 sections; and repealing RCW 70.155.080 and 70.345.140.

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

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

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

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

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

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

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

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

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

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

12 (b) For violations of RCW 26.28.080:

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

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

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

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

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

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

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

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

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

37 (4) The liquor and cannabis board may impose a monetary penalty
38 upon any person other than a licensed cigarette or tobacco product
39 retailer if the liquor and cannabis board finds that the person has

1 violated RCW 26.28.080, 70.155.020, 70.155.030, 70.155.040,
2 70.155.050, 70.155.070, or 70.155.090.

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

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

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

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

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

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

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

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

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

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

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

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

4 **Sec. 3.** RCW 70.155.110 and 1993 c 507 s 12 are each amended to
5 read as follows:

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

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

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

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

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

34 **Sec. 4.** RCW 70.155.120 and 2019 c 415 s 979 and 2019 c 15 s 10
35 are each reenacted and amended to read as follows:

36 (1) The youth tobacco and vapor products prevention account is
37 created in the state treasury. All fees collected pursuant to RCW
38 70.155.100(3)(b), 82.24.520, 82.24.530, 82.26.160, and 82.26.170 and

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

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

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

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

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

1 **Sec. 5.** RCW 70.345.160 and 2016 sp.s. c 38 s 24 are each amended
2 to read as follows:

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

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

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

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

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

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

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

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

38 (b) If the analyzed vapor product contains an ingredient,
39 substance, or solution present in quantities injurious to human
40 health or posing a significant risk to public health, as determined

1 by the secretary of health or a local health jurisdiction, the board
2 may suspend the license of the retailer or delivery sale licensee
3 unless the retailer or delivery sale licensee agrees to remove the
4 product from sales; and

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

12 ~~((+6))~~ (7) Nothing in subsection ~~((+5))~~ (6) of this section
13 permits a total ban on the sale or use of vapor products.

14 NEW SECTION. **Sec. 6.** Nothing in this act shall be interpreted
15 to limit the ability of a peace officer or an enforcement officer of
16 the liquor and cannabis board to enforce the provisions of chapters
17 70.155 and 70.345 RCW and RCW 26.28.080 and 82.24.500.

18 NEW SECTION. **Sec. 7.** The following acts or parts of acts are
19 each repealed:

20 (1) RCW 70.155.080 (Purchasing, possessing by persons under
21 eighteen—Civil infraction—Jurisdiction) and 2002 c 175 s 47, 1998 c
22 133 s 2, & 1993 c 507 s 9; and

23 (2) RCW 70.345.140 (Purchase or possession by persons under
24 eighteen—Penalty—Jurisdiction) and 2016 sp.s. c 38 s 14.

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