
SENATE BILL 6328

State of Washington

64th Legislature

2016 Regular Session

By Senators Dammeier, Hasegawa, Conway, O'Ban, Becker, and Carlyle

Read first time 01/15/16. Referred to Committee on Health Care.

1 AN ACT Relating to vapor products in respect to provisions
2 concerning certain child-resistant packaging, definitions related to
3 "vapor product," signage requirements prohibiting vapor product sales
4 to minors, prohibition of the purchase and possession of vapor
5 products by minors, the liquor and cannabis board's enforcement
6 authority over vapor products, preemption of certain local regulation
7 of vapor products, and a requirement for vendor-assisted sales of
8 vapor products in retail establishments; amending RCW 26.28.080 and
9 70.155.130; adding a new chapter to Title 70 RCW; prescribing
10 penalties; providing a contingent effective date; and providing a
11 contingent expiration date.

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

13 **Sec. 1.** RCW 26.28.080 and 2013 c 47 s 1 are each amended to read
14 as follows:

15 (1) Every person who sells or gives, or permits to be sold or
16 given, to any person under the age of eighteen years any cigar,
17 cigarette, cigarette paper or wrapper, tobacco in any form, or a
18 vapor product is guilty of a gross misdemeanor.

19 (2) It (~~shall be no~~) is not a defense to a prosecution for a
20 violation of this section that the person acted, or was believed by
21 the defendant to act, as agent or representative of another.

1 (3) For the purposes of this section, "vapor product" (~~means a~~
2 ~~noncombustible tobacco derived product containing nicotine that~~
3 ~~employs a mechanical heating element, battery, or circuit, regardless~~
4 ~~of shape or size, that can be used to heat a liquid nicotine solution~~
5 ~~contained in cartridges. Vapor product does not include any product~~
6 ~~that is regulated by the United States food and drug administration~~
7 ~~under chapter V of the federal food, drug, and cosmetic)) has the
8 same meaning as provided in section 3 of this act.~~

9 **Sec. 2.** RCW 70.155.130 and 1993 c 507 s 14 are each amended to
10 read as follows:

11 This chapter and chapter 70.--- RCW (the new chapter created in
12 section 18 of this act) preempt(~~s~~) political subdivisions from
13 adopting or enforcing requirements for the licensure and regulation
14 of tobacco and vapor product promotions and sales (~~within retail~~
15 ~~stores)) at retail, except that political subdivisions that have
16 adopted ordinances prohibiting sampling by January 1, 1993, may
17 continue to enforce these ordinances. No political subdivision may:
18 (1) Impose fees or license requirements on retail businesses for
19 possessing or selling cigarettes (~~or~~), tobacco, or vapor products,
20 other than general business taxes or license fees not primarily
21 levied on (~~tobacco~~) such products; or (2) regulate or prohibit
22 activities covered by RCW 70.155.020 through 70.155.080 or chapter
23 70.--- RCW (the new chapter created in section 18 of this act). This
24 chapter does not otherwise preempt political subdivisions from
25 adopting ordinances regulating the sale, purchase, use, or promotion
26 of tobacco products not inconsistent with chapter 507, Laws of 1993.~~

27 NEW SECTION. **Sec. 3.** DEFINITIONS. The definitions in this
28 section apply throughout this chapter unless the context clearly
29 requires otherwise.

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

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

34 (3) "Child care facility" has the same meaning as provided in RCW
35 70.140.020.

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

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

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

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

10 (6) "Liquid nicotine container" means a bottle or other container
11 of a liquid or other substance containing nicotine where the liquid
12 or substance is sold, marketed, or intended for use in a vapor
13 product. A "liquid nicotine container" does not include a liquid or
14 other substance containing nicotine in a cartridge that is sold,
15 marketed, or intended for use in a vapor product, provided that such
16 cartridge is prefilled and sealed by the manufacturer, and not
17 intended to be opened by the consumer.

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

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

22 (9) "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 (10) "Place of business" means any place where vapor products are
31 sold or where vapor products are manufactured, stored, or kept for
32 the purpose of sale.

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

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

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

3 (14)(a) "Sale" means any transfer, exchange, or barter, in any
4 manner or by any means whatsoever, for a consideration, and includes
5 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 (15) "School" has the same meaning as provided in RCW 70.140.020.

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

16 (17) "Vapor product" means any noncombustible product that may
17 contain nicotine and that employs a heating element, power source,
18 electronic circuit, or other electronic, chemical, or mechanical
19 means, regardless of shape or size, that can be used to produce vapor
20 from a solution or other substance. "Vapor product" includes any
21 electronic cigarette, electronic cigar, electronic cigarillo,
22 electronic pipe, or similar product or device and any vapor cartridge
23 or other container that may contain nicotine in a solution or other
24 form that is intended to be used with or in an electronic cigarette,
25 electronic cigar, electronic cigarillo, electronic pipe, or similar
26 product or device. "Vapor product" does not include any product
27 regulated as a drug or device by the United States food and drug
28 administration under chapter V of the federal food, drug, and
29 cosmetic act.

30 NEW SECTION. **Sec. 4.** RETAILER'S LICENSES REQUIRED. (1)(a) No
31 person may engage in or conduct business as a retailer in this state
32 after the effective date of this section, without a valid license
33 issued under this chapter.

34 (b) A violation of this subsection (1) is punishable as a class C
35 felony according to chapter 9A.20 RCW.

36 (2)(a) No person engaged in or conducting business as a retailer
37 in this state may:

38 (i) Refuse to allow the board, on demand, to make a full
39 inspection of any place of business where any of the vapor products

1 licensed under this chapter are sold, stored, or handled, or
2 otherwise hinder or prevent such inspection; or

3 (ii) Make, use, or present or exhibit to the board any invoice
4 for any of the vapor products licensed under this chapter that bears
5 an untrue date or falsely states the nature or quantity of the goods
6 invoiced.

7 (b) A violation of this subsection (2) is a gross misdemeanor.

8 (3) The penalties provided in this section are in addition to any
9 other penalties provided by law for violating the provisions of this
10 chapter.

11 NEW SECTION. **Sec. 5.** LICENSE APPLICATION, APPROVAL, AND
12 DISPLAY. (1) Application for a retailer's license must be made
13 through the business licensing system under chapter 19.02 RCW.
14 Applications must be made on a form prescribed by the board. Upon
15 receipt of a complete application for a retailer's license and the
16 license fee required by this chapter, the board must issue the
17 license.

18 (2) Each license issued under this chapter expires on the
19 business license expiration date. The license must be continued
20 annually if the licensee has paid the required fee and complied with
21 all the provisions of this chapter.

22 (3) Each license and any other evidence of the license required
23 under this chapter must be exhibited in each place of business for
24 which it is issued and in the manner required for the display of a
25 business license.

26 NEW SECTION. **Sec. 6.** LICENSE FEES. (1) A fee of ninety-three
27 dollars must accompany each retailer's license application or license
28 renewal application. A separate license is required for each separate
29 location at which the retailer operates, except that delivery sellers
30 need only obtain a license for their principal place of business.

31 (2) The fee imposed under subsection (1) of this section does not
32 apply to any person applying for a retailer's license or for renewal
33 of a retailer's license if the person has a valid retailer's license
34 under RCW 82.24.510 or 82.26.150 for the place of business associated
35 with the retailer's license application or renewal application.

1 NEW SECTION.

2 **Sec. 7.**

3 ENFORCEMENT--LICENSE SUSPENSION,

4 REVOCATION. (1) The board, or its enforcement officers, has the
5 authority to enforce provisions of this chapter.

6 (2) The board may revoke or suspend a retailer's license issued
7 under this chapter upon sufficient cause showing a violation of this
8 chapter.

9 (3) A license may not be suspended or revoked except upon notice
10 to the licensee and after a hearing as prescribed by the board. The
11 board, upon finding that the licensee has failed to comply with any
12 provision of this chapter, may, in the case of the first offense,
13 suspend the license or licenses of the licensee for a period of not
14 less than thirty consecutive business days, and in the case of a
15 second or further offense, suspend the license or licenses for a
16 period of not less than ninety consecutive business days but not more
17 than twelve months, and in the event the board finds the licensee has
18 been guilty of willful and persistent violations, it may revoke the
19 license or licenses.

20 (4) Any retailer's licenses issued under chapter 82.24 or 82.26
21 RCW to a person whose license or licenses have been suspended or
22 revoked under this section must also be suspended or revoked during
23 the period of suspension or revocation under this section.

24 (5) Any person whose license or licenses have been revoked under
25 this section may reapply to the board at the expiration of one year
26 of the license or licenses. The license or licenses may be approved
27 by the board if it appears to the satisfaction of the board that the
28 licensee will comply with the provisions of this chapter.

29 (6) A person whose license has been suspended or revoked may not
30 sell vapor products or permit vapor products to be sold during the
31 period of suspension or revocation on the premises occupied by the
32 person or upon other premises controlled by the person or others or
33 in any other manner or form.

34 (7) Any determination and order by the board, and any order of
35 suspension or revocation by the board of the license or licenses
36 issued under this chapter, or refusal to reinstate a license or
37 licenses after revocation is reviewable by an appeal to the superior
38 court of Thurston county. The superior court must review the order or
39 ruling of the board and may hear the matter de novo, having due
40 regard to the provisions of this chapter and the duties imposed upon
41 the board.

1 (8) If the board makes an initial decision to deny a license or
2 renewal, or suspend or revoke a license, the applicant may request a
3 hearing subject to the applicable provisions under Title 34 RCW.

4 NEW SECTION. **Sec. 8.** SIGNAGE. A person who holds a license
5 issued under this chapter must display a sign concerning the
6 prohibition of vapor product sales to minors. Such sign must:

7 (1) Be posted so that it is clearly visible to anyone purchasing
8 vapor products from the licensee;

9 (2) Be designed and produced by the department of health to read:
10 "The sale of vapor products to persons under age 18 is strictly
11 prohibited by state law. If you are under 18, you could be penalized
12 for purchasing a vapor product; photo id required"; and

13 (3) Be provided free of charge by the board.

14 NEW SECTION. **Sec. 9.** PURCHASING, POSSESSING BY PERSONS UNDER
15 EIGHTEEN--CIVIL INFRACTION--JURISDICTION. (1) A person under the age
16 of eighteen who purchases or attempts to purchase, possesses, or
17 obtains or attempts to obtain vapor products commits a class 3 civil
18 infraction under chapter 7.80 RCW and is subject to a fine as set out
19 in chapter 7.80 RCW or participation in up to four hours of community
20 restitution, or both. The court may also require participation in a
21 smoking cessation program. This provision does not apply if a person
22 under the age of eighteen, with parental authorization, is
23 participating in a controlled purchase as part of a board, law
24 enforcement, or local health department activity.

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

27 NEW SECTION. **Sec. 10.** AGE IDENTIFICATION REQUIREMENT. (1) When
28 there may be a question of a person's right to purchase or obtain
29 vapor products by reason of age, the retailer or agent thereof, must
30 require the purchaser to present any one of the following officially
31 issued forms of identification that shows the purchaser's age and
32 bears his or her signature and photograph: (a) Liquor control
33 authority card of identification of a state or province of Canada;
34 (b) driver's license, instruction permit, or identification card of a
35 state or province of Canada; (c) "identocard" issued by the
36 Washington state department of licensing under chapter 46.20 RCW; (d)
37 United States military identification; (e) passport; (f) enrollment

1 card, issued by the governing authority of a federally recognized
2 Indian tribe located in Washington, that incorporates security
3 features comparable to those implemented by the department of
4 licensing for Washington drivers' licenses. At least ninety days
5 prior to implementation of an enrollment card under this subsection,
6 the appropriate tribal authority must give notice to the board. The
7 board must publish and communicate to licensees regarding the
8 implementation of each new enrollment card; or (g) merchant marine
9 identification card issued by the United States coast guard.

10 (2) It is a defense to a prosecution under RCW 26.28.080 that the
11 person making a sale reasonably relied on any of the officially
12 issued identification as defined in subsection (1) of this section.
13 The board must waive the suspension or revocation of a license if the
14 licensee clearly establishes that he or she acted in good faith to
15 prevent violations and a violation occurred despite the licensee's
16 exercise of due diligence.

17 NEW SECTION. **Sec. 11.** **VENDOR-ASSISTED SALES REQUIREMENT.** (1) It
18 is unlawful to sell or distribute vapor products at a retail
19 establishment in this state by any means other than vendor-assisted
20 sales where the customer has no direct access to the product except
21 through the assistance of the seller.

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

24 (3) Retail establishments are exempt from subsections (1) and (2)
25 of this section if minors are not allowed in the store and such
26 prohibition is posted clearly on all entrances.

27 (4) Subsections (1) and (2) of this section do not apply to
28 delivery sales of vapor products if the delivery seller meets the age
29 verification requirements set forth in subsection (5) of this
30 section.

31 (5) No person may mail, ship, or otherwise cause to be delivered
32 any vapor product in connection with a delivery sale unless prior to
33 its sale to the purchaser, the person verifies that the purchaser is
34 at least eighteen years of age through a commercially available
35 database, or aggregate of databases, that is regularly used by
36 government and businesses for the purpose of age and identity
37 verification.

1 NEW SECTION. **Sec. 12.** CHILD-RESISTANT PACKAGING REQUIREMENT.

2 (1) Any liquid nicotine container that is sold at retail in this
3 state must satisfy the child-resistant effectiveness standards set
4 forth in 16 C.F.R. Sec. 1700.15(b), as in effect on the effective
5 date of this section, when tested in accordance with the method
6 described in 16 C.F.R. Sec. 1700.20, as in effect on the effective
7 date of this section.

8 (2) Any person that engages in retail sales of liquid nicotine
9 containers in violation of this section is guilty of a gross
10 misdemeanor.

11 (3)(a) This section expires on the effective date of the final
12 regulations issued by the United States food and drug administration
13 or by any other federal agency, when such regulations mandate child-
14 resistant effectiveness standards for liquid nicotine containers.

15 (b) The board must provide notice of the expiration date of this
16 section to affected parties, the chief clerk of the house of
17 representatives, the secretary of the senate, the office of the code
18 reviser, and others as deemed appropriate by the board.

19 NEW SECTION. **Sec. 13.** USE OF VAPOR PRODUCTS IN CERTAIN PUBLIC
20 PLACES. (1) Indoor areas. The use of vapor products is prohibited in
21 the following indoor areas:

22 (a) Inside a child care facility, provided that a child care
23 facility that is home-based is excluded from this paragraph when
24 children enrolled in such child care facility are not present;

25 (b) Schools; and

26 (c) Elevators.

27 (2) Outdoor areas. The use of vapor products is prohibited in the
28 following outdoor areas:

29 (a) Real property that is under the control of a child care
30 facility and upon which the child care facility is located, provided
31 that a child care facility that is home-based is excluded from this
32 paragraph when children enrolled in such child care facility are not
33 present;

34 (b) Real property that is under the control of a school and upon
35 which the school is located; and

36 (c) Playgrounds, during the hours between sunrise and sunset,
37 when one or more persons under twelve years of age are present at
38 such playground.

1 NEW SECTION. **Sec. 14.** PENALTIES, SANCTIONS, AND ACTIONS AGAINST
2 LICENSEES. (1) The board may impose a monetary penalty as set forth
3 in subsection (2) of this section, if the board finds that the
4 licensee has violated RCW 26.28.080 or any other provision of this
5 chapter.

6 (2) The sanctions that the board may impose against a person
7 licensed under this chapter based upon one or more findings under
8 subsection (1) of this section may not exceed the following:

9 (a) A monetary penalty of one hundred dollars for the first
10 violation within any two-year period;

11 (b) A monetary penalty of three hundred dollars for the second
12 violation within any two-year period;

13 (c) A monetary penalty of one thousand dollars for the third
14 violation within any two-year period; and

15 (d) A monetary penalty of one thousand five hundred dollars for
16 the fourth or subsequent violation within any two-year period.

17 (3) The board may impose a monetary penalty upon any person other
18 than a licensed retailer if the board finds that the person has
19 violated RCW 26.28.080.

20 (4) The monetary penalty that the board may impose based upon one
21 or more findings under subsection (3) of this section may not exceed
22 fifty dollars for the first violation and one hundred dollars for
23 each subsequent violation.

24 (5) The board may develop and offer a class for retail clerks and
25 use this class in lieu of a monetary penalty for the clerk's first
26 violation.

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

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

1 (8) All proceedings under subsections (1) through (6) of this
2 section must be conducted in accordance with chapter 34.05 RCW.

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

10 NEW SECTION. **Sec. 15.** LIQUOR AND CANNABIS BOARD AUTHORITY. (1)

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

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

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

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

30 NEW SECTION. **Sec. 16.** YOUTH TOBACCO PREVENTION ACCOUNT--SOURCE
31 AND USE OF FUNDS. All fees collected pursuant to this chapter and
32 funds collected by the board from the imposition of monetary
33 penalties must be deposited into the youth tobacco prevention account
34 created by RCW 70.155.120, except that ten percent of all such fees
35 and penalties must be deposited in the state general fund.

36 NEW SECTION. **Sec. 17.** SEVERABILITY. If any provision of this
37 act or its application to any person or circumstance is held invalid,

1 the remainder of the act or the application of the provision to other
2 persons or circumstances is not affected.

3 NEW SECTION. **Sec. 18.** NEW CHAPTER CREATION. Sections 3 through
4 16 of this act constitute a new chapter in Title 70 RCW.

5 NEW SECTION. **Sec. 19.** EFFECTIVE DATE. (1) Sections 4 through 6
6 of this act take effect thirty days after the Washington state liquor
7 and cannabis board prescribes the form for an application for a
8 license required under section 5 of this act.

9 (2) The Washington state liquor and cannabis board must provide
10 written notice of the effective date of sections 4 through 6 of this
11 act to affected parties, the chief clerk of the house of
12 representatives, the secretary of the senate, the office of the code
13 reviser, and others as deemed appropriate by the department.

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