

HOUSE BILL REPORT

ESSB 5365

As Passed House - Amended:

April 7, 2023

Title: An act relating to the purchase, use, and possession of vapor and tobacco products by minors.

Brief Description: Preventing use of vapor and tobacco products by minors.

Sponsors: Senate Committee on Labor & Commerce (originally sponsored by Senators Saldaña, Lias, Billig, Dhingra, Hunt, Lovelett, Nguyen, Pedersen, Randall, Robinson, Stanford, Valdez, Wellman and Wilson, C.).

Brief History:

Committee Activity:

Regulated Substances & Gaming: 3/16/23, 3/23/23 [DPA].

Floor Activity:

Passed House: 4/7/23, 57-39.

Brief Summary of Engrossed Substitute Bill (As Amended by House)

- Increases the maximum monetary penalties that the Liquor and Cannabis Board (LCB) may impose against cigarette and tobacco products retailer licensees and vapor products retailer licensees for selling or giving cigarette, tobacco, or vapor products to persons under 21 years old.
- Modifies the enforcement of the civil infraction for the purchase or possession of tobacco or vapor products.
- Modifies the penalties for minors that purchase or possess tobacco or vapor products.
- Requires the LCB to ensure enforcement officers receive certain training and collect specific information about interactions between enforcement officers and youth to provide an annual report to the appropriate

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legislative committees.

HOUSE COMMITTEE ON REGULATED SUBSTANCES & GAMING

Majority Report: Do pass as amended. Signed by 6 members: Representatives Kloba, Co-Chair; Wylie, Co-Chair; Stearns, Vice Chair; Morgan, Orwall and Reeves.

Minority Report: Do not pass. Signed by 3 members: Representatives Robertson, Assistant Ranking Minority Member; Walsh and Waters.

Minority Report: Without recommendation. Signed by 1 member: Representative Chambers, Ranking Minority Member.

Staff: Matt Sterling (786-7289).

Background:

Penalties for Sales to Individuals Under 21 Years of Age.

A person who sells or gives, or permits to be sold or given, any cigar, cigarette, cigarette paper or wrapper, tobacco product in any form, or a vapor product to any person under 21 years old is guilty of a gross misdemeanor.

The Liquor and Cannabis Board (LCB) may suspend or revoke a retailer's license issued or held by a business at any location, if the LCB finds that the licensee has sold or provided any cigarettes, tobacco products, or vapor products to a person under 21 years old.

Additionally, the LCB may assess the following penalties for violations within any three-year period:

- a monetary penalty of \$200 for the first violation;
- a monetary penalty of \$600 for the second violation;
- a monetary penalty of \$2,000 and a suspension of the license for a period of six months for the third violation;
- a monetary penalty of \$3,000 and a suspension of the license for a period of 12 months for the third violation; and
- the revocation of the license with no possibility of reinstatement for a period of five years for the fifth or more violation.

Use of Monetary Penalties. Ninety percent of the licensing fees and monetary penalties that are collected from tobacco and vapor products licensees are deposited in the Youth Tobacco and Vapor Products Prevention Account (Account) with the other 10 percent deposited in the State General Fund. The Department of Health (Department) is required to enter into interagency agreements with the LCB to pay for costs incurred by the LCB in carrying out its enforcement responsibilities and to establish requirements for data reporting by the LCB

regarding its enforcement activities. Up to 30 percent of the moneys in the Account may be paid to the LCB for costs incurred in carrying out its enforcement responsibilities. The Department is directed to use the other 70 percent of available funds to 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.

Penalties for Minor Possession.

A person under the age of 18 who purchases or attempts to purchase, possesses, or obtains or attempts to obtain cigarettes, tobacco products, or vapor products commits a class 3 civil infraction and is subject to up to four hours of community restitution, a class 3 civil infraction of \$50 and court ordered costs, or both. The court may also require participation in a smoking cessation program. This provision does not apply if a person under the age of 18, with parental authorization, is participating in a controlled purchase as part of the LCB, law enforcement, or local health department activity.

A peace officer or LCB enforcement officer who has reasonable grounds to believe a person observed by the officer is purchasing, attempting to purchase, or in possession of tobacco or vapor products and is under the age of 18 years, may detain such person to determine the person's true identity and date of birth. Tobacco or vapor products possessed by persons under the age of 18 years are considered contraband and may be seized by a peace officer or an LCB enforcement officer.

Summary of Amended Bill:

Penalties for Sales to Individuals Under 21 Years of Age.

A person who sells or gives, or permits to be sold or given, to any person under 21 years old any cigar, cigarette, cigarette paper or wrapper, tobacco in any form, or a vapor product is guilty of a gross misdemeanor.

The Liquor and Cannabis Board (LCB) may suspend or revoke a retailer's license issued or held by a business at any location, if the LCB finds that the licensee has sold or provided any cigarettes, tobacco products, or vapor products to a person under 21 years old.

Additionally, the penalties that the LCB may assess for violations within any three-year period are increased to:

- a monetary penalty of \$1,000 for the first violation;
- a monetary penalty of \$2,500 for the second violation;
- a monetary penalty of \$5,000 and a suspension of the license for a period of six months for the third violation;
- a monetary penalty of \$10,000 and a suspension of the license for a period of 12 months for the third violation; and
- the revocation of the license with no possibility of reinstatement for a period of five years for the fifth or more violation.

Penalties for Minor Possession.

A person under the age of 18 who purchases or attempts to purchase, possesses, or obtains or attempts to obtain cigarettes, tobacco products, or vapor products commits a class 3 civil infraction and is subject to up to four hours of community service and referral to a smoking cessation program at no cost.

An LCB enforcement officer who observes a person within 100 feet of a tobacco or vapor retailer and has reasonable grounds to believe a person observed by the officer is purchasing, attempting to purchase, or in possession of tobacco or vapor products and is under the age of 18 years, may detain such person to determine the person's true identity and date of birth. Tobacco or vapor products possessed by persons under the age of 18 years are considered contraband and may be seized by a LCB enforcement officer.

Liquor and Cannabis Board Data Collection and Reporting Requirements.

The LCB must require all enforcement officers to collect the following information about all interactions with persons who are stopped if the officer has reasonable grounds to believe the person is a minor who has purchased or possesses tobacco or vapor products:

- the total number of interactions where an enforcement officer detained a person;
- information on the nature of each interaction;
- how many interactions converted to administrative violation notices; and
- how many of the interactions and administrative violation notices converted to retailer education and violations.

The LCB must compile all information collected by enforcement officers and conduct a comparative analysis of interactions that enforcement officers have with persons while enforcing liquor and cannabis provisions. The LCB must provide the appropriate legislative committees with an annual report of the comparative analysis beginning on December 1, 2023.

Other Provisions.

Nothing in the act may be interpreted to limit the ability of a peace officer or an enforcement officer of the LCB to enforce the law pertaining to the sale of tobacco and vapor products to persons under 21 years old and the purchase or possession of such products by persons under 18 years old.

The LCB, law enforcement, or a local health department may, with parental authorization, include persons under the age of 18 in compliance activities. Legislative findings are made related to vapor and tobacco usage by persons under the age of 21.

The LCB must ensure that all enforcement officers who have interactions with minors are participating in training with the United States Department of Justice Office of Juvenile Justice and Delinquency Prevention.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill came from a coalition of substance abuse prevention organizations that work with young people and their families on substance prevention and cessation. They worked on raising the legal age to purchase tobacco and vapor products to 21. When young people are exposed to tobacco and vapor products, it can ruin their lives. These organizations want to make sure there is outreach, education, and prevention and avoid negative interactions with law enforcement and disrupt the school to prison pipeline. It is important to keep tobacco and vapor products out of the hands of minors, so the bill focuses on the retailers and holds them more accountable. Tobacco use remains the leading cause of preventable death in Washington and the United States. Big tobacco is focused on getting new lifetime users of their products and youth are very vulnerable. Vaping has taken our youth by storm, but some of these interventions such as detaining minors are not public health interventions. Examples of good interventions include smoke and vape-free parks and access to cessation services. Holding retailers responsible is a good intervention. The 2022 compliance rates showed that one in five tobacco retailers and one in four vapor retailers sold their products to minors during a compliance check. The focus of law enforcement officers should be on retailers and not the minors. Support the intent of the bill in taking away punitive measures because we do not have any evidence that criminal justice interventions prevent youth use. Public health organizations are guided by the science and public health. Youth purchase, use, and possession laws disproportionately impact minorities and young men. A consortium of public health organizations issued a statement about decriminalizing tobacco to address systemic racism in the enforcement of commercial tobacco control. Compliance checks with retailers and investments in community-based cessations are the best strategies. There have been major incidents, centered around tobacco in interactions with the police, where people like Eric Garner and Sarah Bland lost their lives. There was support to increase the age to 21 for tobacco products, but there are concerns around the issues with possession and law enforcement interactions. The original goal was to eliminate all law enforcement interactions, but a compromise was to have some sort of consequences for minors, so that is why they can be assigned community service or sent to cessation programs under the program. This bill does not preclude the authority of schools based on their policies. Cessation and prevention funding is underfunded. This issue is about maintaining healthy lifestyles for young people. The intent of the Senate amendments to limit interactions with law enforcement is appreciated.

(Opposed) It is not a criminal offense for a minor to possess tobacco or vapor products and no one goes to jail. It is very rare for an officer to issue a citation. The vast majority of the time, officers engage with youth to educate them and take away the tobacco or vapor products. Everyone pays attention to what authority law enforcement has and what

authority the Legislature takes away. This has occurred with drug use and with people fleeing from the police in vehicles. When people notice that law enforcement is unable to take action in certain circumstances, that undesirable behavior will increase. If law enforcement is not going to enforce these provisions to keep tobacco and vapor products out of the hands of youth, then who will?

Persons Testifying: (In support) Senator Rebecca Saldaña, prime sponsor; Jeff Ketchel, Washington State Public Health Association; Elaine Ishihara, Healthy King County Coalition–Tobacco Marijuana and Other Drugs Workgroup; and Ben Yisrael, Healthy King County Coalition.

(Opposed) James McMahan, Washington Association Sheriffs and Police Chiefs.

(Other) Carrie Nyssen, American Lung Association.

Persons Signed In To Testify But Not Testifying: None.