

SENATE BILL REPORT

ESSB 5365

As Amended by House, 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: Labor & Commerce: 2/06/23, 2/14/23 [DPS, DNP].

Floor Activity: Passed Senate: 2/28/23, 29-19.

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

Brief Summary of Engrossed First Substitute Bill

- Increases the maximum monetary penalties the Liquor and Cannabis Board (LCB) may impose against cigarette and tobacco products retailer licensees and vapor products retailer licensees for violations of provisions related to selling or giving cigarette, tobacco, or vapor products to minors.
- Limits the provisions regarding detaining persons under 18 to determine their identity and date of birth and seizing the products to LCB enforcement officers, not peace officers, and when the actions are in proximity to a retailer licensee, which is within 100 feet or less.
- Modifies the sanctions and fines for purchasing, possessing cigarette, tobacco or vapor products by persons under 18 to participation in up to four hours of community service and referral to a smoking cessation program at no cost.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: That Substitute Senate Bill No. 5365 be substituted therefor, and the substitute bill do pass.

Signed by Senators Keiser, Chair; Conway, Vice Chair; Saldaña, Vice Chair; Robinson and Stanford.

Minority Report: Do not pass.

Signed by Senators King, Ranking Member; Braun, MacEwen and Schoesler.

Staff: Susan Jones (786-7404)

Background: Penalties and Sanctions Against Cigarette and Tobacco and Vapor Product Licensees. The Liquor and Cannabis Board (LCB) may suspend or revoke cigarette and tobacco products retailer licenses or may impose a monetary penalty, if it finds a violation of certain laws related to selling or giving cigarette, tobacco, or vapor products to minors. This law makes it a gross misdemeanor to sell, give or permit to be sold or given certain products to any person under 21 years of age. The products include any cigar, cigarette, cigarette paper or wrapper, tobacco in any form, or a vapor product.

The monetary penalties the LCB may impose against cigarette and tobacco products retailer licensees and vapor products retailer licensees may not exceed the following:

- \$200 for the first violation within any three-year period;
- \$600 for the second violation within any three-year period;
- \$2,000 and suspension of the license for six months for the third violation within any three-year period; and
- \$3,000 and suspension of the license for 12 months for the fourth violation within any three-year period.

The LCB may revoke the license with no possibility of reinstatement for five years for the fifth or more violation within any three-year period.

Each subsequent violation of either of the person's license counts as an additional violation within that three-year period.

The LCB may take other actions for violating these provisions, including monetary penalties against non-licensees, issuing a cease and desist orders, seeking injunctive relief, and initiating legal action. The LCB may waive or reduce penalties or licensing actions under certain circumstances.

A peace officer or LCB officer may detain persons under 18 to determine their identity and date of birth, and seize the products.

Sanctions and Fines for Purchasing, Possessing Cigarette, Tobacco or Vapor Products by Persons Under Eighteen. A person under the age of 18 who purchases or attempts to

purchase, possesses, or obtains or attempts to obtain cigarette, tobacco, or vapor products commits a class 3 civil infraction, and is subject to a fine up to \$50 or participation in up to four hours of community restitution, or both. A 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 an LCB, law enforcement, or local health department activity.

Summary of Engrossed First Substitute Bill: Increasing Penalties. The maximum monetary penalties the LCB may impose against cigarette and tobacco products retailer licensees and vapor products retailer licensees for violations of provisions related to selling or giving cigarette, tobacco, or vapor products to minors are increased to the following:

- \$1,000 for the first violation within any three-year period;
- \$2,500 for the second violation within any three-year period;
- \$5,000 and suspension of the license for six months for the third violation within any three-year period; and
- \$10,000 and suspension of the license for 12 months for the fourth violation within any three-year period.

Ninety percent of these penalties will be deposited into the Youth Tobacco and Vapor Products Prevention Account. The remaining 10 percent will be deposited into the state general fund.

Modifying Provisions Related to Persons Under 18. Only LCB enforcement officers may detain persons under 18 to determine their identity and date of birth, and seize the products if the actions are in proximity to a retailer licensee, which is within 100 feet or less. The sanctions and fines for purchasing, possessing cigarette, tobacco, or vapor products by persons under 18 are modified to participation in up to four hours of community service and referral to a smoking cessation program at no cost. Any officers issuing citations to these persons must collect demographic data, which must be provided to the LCB. The LCB must compile this information into a statewide report and provide the report annually to the Legislature.

Other Provisions. 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.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: The bill needs to hold retailers and adults accountable. Washington needs prevention programs to stop minors from using vapor and tobacco products. This bill will recognize that minors who are using these products have a disorder and require professional help. Current use and possession laws are not effective at dissuading youth from use, and the enforcement disproportionately impacts youth based on race and sexual orientation. Washington needs counter marketing to oppose the millions of dollars that vapor and tobacco sellers spend on marketing targeted at youth. The state should focus on rehabilitating youth who use these products rather than punishing them, since they are victims of predatory marketing and illegal sales. The state should instead punish the retailers making the sales to youth. There is no research showing that law enforcement helps prevent substance use among youth, and it is instead a pipeline to prison for many, especially BIPOC youth.

CON: This bill makes achieving the goals of previous legislation, reducing youth access, difficult by prohibiting enforcement. The bill dissuades officers from intervening and detaining underage people who illegally have vapor and tobacco products. Current law does not make it a crime and officers may have positive encounters with youth.

OTHER: While we agree with the intent of focusing on merchants and not ticketing youth, not allowing any underage law enforcement stops could embolden more retailers to sell products to youth as they are less likely to be caught. The LCB compliance officers need the age of a buyer to enforce the bill. We could see fewer violations issued.

Persons Testifying: PRO: Senator Rebecca Saldaña, Prime Sponsor; Carrie Nyssen, American Lung Association; Crystal Shen, WA Chapter of the American Academy of Pediatrics; Carol Coram, American Cancer Society Cancer Action Network; Jeff Ketchel, Washington State Public Health Association; Brittany Grant, Campaign for Tobacco Free Kids; Phillip Gardiner, African American Tobacco Control Leadership Council; Elaine Ishihara, Healthy King County Coalition - Tobacco Marijuana & Other Drug Workgroup (TMOD); Rahul Sharma, LYAC; Ben Yisrael, Healthy King County Coalition.

CON: Taylor Gardner, WA Assn of Sheriffs and Police Chiefs.

OTHER: Marc Webster, Washington State Liquor and Cannabis Board.

Persons Signed In To Testify But Not Testifying: No one.

EFFECT OF HOUSE AMENDMENT(S):

- Removes provisions requiring officers issuing citations to persons under age 18 for purchasing and possessing cigarette and vapor products to collect demographic data and the liquor and cannabis board to compile this information and provide the report annually to the Legislature.
- Adds an additional limitation to the authority of a LCB enforcement officer to detain a

person observed by the enforcement officer purchasing or attempting to purchase tobacco or vapor products within 100 feet of a tobacco or vapor products retailer to determine the person's identity and birthdate and to seize the product, that the detaining also be within 100 feet of the retailer.

- Requires: (a) LCB enforcement officers to collect certain information about all interactions with persons who are detained and, for those who will have interactions with minors, to receive training with the United States Department of Justice Office of Juvenile Justice and Delinquency Prevention before July 1, 2024; (b) LCB to compile the collected information and conduct a comparative analysis of interactions that enforcement officers have with persons detained while enforcing liquor and cannabis laws and provide the appropriate legislative committees with an annual report beginning on December 1, 2023.
- Modified the provision that the act is not to be interpreted to limit a peace officer or an LCB enforcement officer enforcement authority for certain laws to remove the references to certain laws related to tobacco and vapor products, except laws related to giving and selling cigarette and vapor products to persons under age 21 and prohibiting sales or cigarettes without a license.