

CERTIFICATION OF ENROLLMENT

**ENGROSSED SUBSTITUTE SENATE BILL 5365**

Chapter 398, Laws of 2023

68th Legislature  
2023 Regular Session

VAPOR AND TOBACCO PRODUCTS—PURCHASE AND POSSESSION BY MINORS—VARIOUS  
PROVISIONS

EFFECTIVE DATE: July 23, 2023

Passed by the Senate April 17, 2023  
Yeas 26 Nays 22

DENNY HECK

**President of the Senate**

Passed by the House April 7, 2023  
Yeas 57 Nays 39

LURIE JINKINS

**Speaker of the House of  
Representatives**

Approved May 9, 2023 2:37 PM

JAY INSLEE

**Governor of the State of Washington**

CERTIFICATE

I, Sarah Bannister, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5365** as passed by the Senate and the House of Representatives on the dates hereon set forth.

SARAH BANNISTER

**Secretary**

FILED

May 10, 2023

**Secretary of State  
State of Washington**

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**ENGROSSED SUBSTITUTE SENATE BILL 5365**

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AS AMENDED BY THE HOUSE

Passed Legislature - 2023 Regular Session

**State of Washington                      68th Legislature                      2023 Regular Session**

**By** Senate Labor & Commerce (originally sponsored by Senators Saldaña, Liiias, 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 **Sec. 3.** RCW 70.345.140 and 2016 sp.s. c 38 s 14 are each amended  
32 to read as follows:

33 (1) A person under the age of eighteen who purchases or attempts  
34 to purchase, possesses, or obtains or attempts to obtain vapor  
35 products commits a class 3 civil infraction under chapter 7.80 RCW  
36 and is subject to ~~((a fine as set out in chapter 7.80 RCW or))~~  
37 participation in up to four hours of community ~~((restitution, or~~  
38 ~~both. The court may also require participation in))~~ service and

1 referral to a smoking cessation program at no cost. This provision  
2 does not apply if a person under the age of eighteen, with parental  
3 authorization, is participating in a controlled purchase as part of a  
4 board, law enforcement, or local health department activity.

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

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

9 (1) The liquor and cannabis board may suspend or revoke a  
10 retailer's license issued under RCW 82.24.510(1)(b) or  
11 82.26.150(1)(b) held by a business at any location, or may impose a  
12 monetary penalty as set forth in subsection (3) of this section, if  
13 the liquor and cannabis board finds that the licensee has violated  
14 RCW 26.28.080, 70.155.020, 70.155.030, 70.155.040, 70.155.050,  
15 70.155.070, or 70.155.090.

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

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

25 (a) For violations of RCW (~~(26.28.080,)~~) 70.155.020(~~(7)~~) or 21  
26 C.F.R. Sec. 1140.14, and for violations of RCW 70.155.040 occurring  
27 on the licensed premises:

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

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

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

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

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

4 (b) For violations of RCW 26.28.080:

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

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

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

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

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

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

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

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

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

29 (4) The liquor and cannabis board may impose a monetary penalty  
30 upon any person other than a licensed cigarette or tobacco product  
31 retailer if the liquor and cannabis board finds that the person has  
32 violated RCW 26.28.080, 70.155.020, 70.155.030, 70.155.040,  
33 70.155.050, 70.155.070, or 70.155.090.

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

37 (a) For violation of RCW 26.28.080 or 70.155.020, ~~((one hundred~~  
38 ~~dollars))~~ \$100 for the first violation and ~~((two hundred dollars))~~  
39 \$200 for each subsequent violation;

1 (b) For violations of RCW 70.155.030, (~~two hundred dollars~~)  
2 \$200 for each day upon which such violation occurred;

3 (c) For violations of RCW 70.155.040, (~~two hundred dollars~~)  
4 \$200 for each violation;

5 (d) For violations of RCW 70.155.050, (~~six hundred dollars~~)  
6 \$600 for each violation;

7 (e) For violations of RCW 70.155.070, (~~two thousand dollars~~)  
8 \$2,000 for each violation.

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

12 (7) The liquor and cannabis board may issue a cease and desist  
13 order to any person who is found by the liquor and cannabis board to  
14 have violated or intending to violate the provisions of this chapter,  
15 RCW 26.28.080, 82.24.500, or 82.26.190 requiring such person to cease  
16 specified conduct that is in violation. The issuance of a cease and  
17 desist order does not preclude the imposition of other sanctions  
18 authorized by this statute or any other provision of law.

19 (8) The liquor and cannabis board may seek injunctive relief to  
20 enforce the provisions of RCW 26.28.080, 82.24.500, 82.26.190 or this  
21 chapter. The liquor and cannabis board may initiate legal action to  
22 collect civil penalties imposed under this chapter if the same have  
23 not been paid within thirty days after imposition of such penalties.  
24 In any action filed by the liquor and cannabis board under this  
25 chapter, the court may, in addition to any other relief, award the  
26 liquor and cannabis board reasonable attorneys' fees and costs.

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

29 (10) The liquor and cannabis board may reduce or waive either the  
30 penalties or the suspension or revocation of a license, or both, as  
31 set forth in this chapter where the elements of proof are inadequate  
32 or where there are mitigating circumstances. Mitigating circumstances  
33 may include, but are not limited to, an exercise of due diligence by  
34 a retailer. Further, the board may exceed penalties set forth in this  
35 chapter based on aggravating circumstances.

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

38 (1) The (~~liquor control~~) board shall, in addition to the  
39 board's other powers and authorities, have the authority to enforce

1 the provisions of this chapter and RCW 26.28.080(~~(4)~~) and  
2 82.24.500. The (~~liquor control~~) board shall have full power to  
3 revoke or suspend the license of any retailer or wholesaler in  
4 accordance with the provisions of RCW 70.155.100.

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

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

22 (b) Any enforcement officer who detains a person for the purpose  
23 of enforcing the provisions of this chapter and RCW 26.28.080 and  
24 82.24.500 must collect the following information for each fiscal year  
25 since 2018:

26 (i) The total number of interactions where an enforcement officer  
27 detained a person;

28 (ii) Information on the nature of each interaction, including the  
29 duration of the interaction, the justification for the interaction,  
30 the number of such persons who were under 18 years of age, the number  
31 of such persons who were over 18 but under 21 years of age, and  
32 whether any citation or warning was issued;

33 (iii) How many interactions converted to administrative violation  
34 notices; and

35 (iv) How many of the interactions and administrative violation  
36 notices converted to retailer education and violations.

37 (c) The board must compile the information collected pursuant to  
38 (b) of this subsection, along with any associated demographic data in  
39 the possession of the board, and conduct a comparative analysis of  
40 all interactions of enforcement officers with persons detained for

1 the purpose of enforcing Title 66 RCW and chapter 69.50 RCW into a  
2 statewide report and provide the report to the appropriate committees  
3 of the legislature by December 1, 2023, and annually thereafter.

4 (d) All enforcement officers of the board who enforce the  
5 provisions of this section and will have interactions with persons  
6 under the age of 18 years old must begin receiving training from the  
7 United States department of justice office of juvenile justice and  
8 delinquency prevention prior to July 1, 2024.

9 (e) For the purposes of this subsection, "proximity" means 100  
10 feet or less.

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

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

16 (1) The youth tobacco and vapor products prevention account is  
17 created in the state treasury. All fees collected pursuant to RCW  
18 70.155.100(3)(b), 82.24.520, 82.24.530, 82.26.160, and 82.26.170 and  
19 funds collected by the (~~liquor and cannabis~~) board from the  
20 imposition of monetary penalties shall be deposited into this  
21 account, except that (~~ten~~) 10 percent of all such fees and  
22 penalties shall be deposited in the state general fund.

23 (2) Moneys appropriated from the youth tobacco and vapor products  
24 prevention account to the department of health shall be used by the  
25 department of health for implementation of this chapter, including  
26 collection and reporting of data regarding enforcement and the extent  
27 to which access to tobacco products and vapor products by youth has  
28 been reduced.

29 (3) The department of health shall enter into interagency  
30 agreements with the (~~liquor and cannabis~~) board to pay the costs  
31 incurred, up to (~~thirty~~) 30 percent of available funds, in carrying  
32 out its enforcement responsibilities under this chapter. Such  
33 agreements shall set forth standards of enforcement, consistent with  
34 the funding available, so as to reduce the extent to which tobacco  
35 products and vapor products are available to individuals under the  
36 age of (~~twenty-one~~) 21. The agreements shall also set forth  
37 requirements for data reporting by the (~~liquor and cannabis~~) board  
38 regarding its enforcement activities. During the 2019-2021 fiscal  
39 biennium, the department of health shall pay the costs incurred, up



1 to (~~twenty-three~~) 23 percent of available funds, in carrying out  
2 its enforcement responsibilities.

3 (4) The department of health, the (~~liquor and cannabis~~) board,  
4 and the department of revenue shall enter into an interagency  
5 agreement for payment of the cost of administering the tobacco  
6 retailer licensing system and for the provision of quarterly  
7 documentation of tobacco wholesaler, retailer, and vending machine  
8 names and locations.

9 (5) The department of health shall, within up to (~~seventy~~) 70  
10 percent of available funds, provide grants to local health  
11 departments or other local community agencies to develop and  
12 implement coordinated tobacco and vapor product intervention  
13 strategies to prevent and reduce tobacco and vapor product use by  
14 youth. During the 2019-2021 fiscal biennium, the department of health  
15 shall, within up to (~~seventy-seven~~) 77 percent of available funds,  
16 provide grants to local health departments or other local community  
17 agencies to develop and implement coordinated tobacco and vapor  
18 product intervention strategies to prevent and reduce tobacco and  
19 vapor product use by youth.

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

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

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

29 (3) (a) For the purpose of enforcing the provisions of this  
30 chapter, (~~a peace officer or~~) an enforcement officer of the board  
31 who has reasonable grounds to believe a person observed by the  
32 officer in proximity to a retailer licensee under this chapter and  
33 chapter 82.25 RCW who is purchasing, attempting to purchase, or in  
34 possession of vapor products is under eighteen years of age, may  
35 detain such person in proximity to such retailer for a reasonable  
36 period of time and in such a reasonable manner as is necessary to  
37 determine the person's true identity and date of birth. Further,  
38 vapor products possessed by persons under eighteen years of age are

1 considered contraband and may be seized by (~~a peace officer or~~) an  
2 enforcement officer of the board.

3 (b) Any enforcement officer who detains a person for the purpose  
4 of enforcing the provisions of this chapter and RCW 26.28.080 and  
5 82.24.500 must collect the following information for each fiscal year  
6 since 2018:

7 (i) The total number of interactions where an enforcement officer  
8 detained a person;

9 (ii) Information on the nature of each interaction, including the  
10 duration of the interaction, the justification for the interaction,  
11 the number of such persons who were under 18 years of age, the number  
12 of such persons who were over 18 but under 21 years of age, and  
13 whether any citation or warning was issued;

14 (iii) How many interactions converted to administrative violation  
15 notices; and

16 (iv) How many of the interactions and administrative violation  
17 notices converted to retailer education and violations.

18 (c) The board must compile the information collected pursuant to  
19 (b) of this subsection, along with any associated demographic data in  
20 the possession of the board, and conduct a comparative analysis of  
21 all interactions of enforcement officers with persons detained for  
22 the purpose of enforcing Title 66 RCW and chapter 69.50 RCW into a  
23 statewide report and provide the report to the appropriate committees  
24 of the legislature by December 1, 2023, and annually thereafter.

25 (d) All enforcement officers of the board who enforce the  
26 provisions of this section and will have interactions with persons  
27 under the age of 18 years old must begin receiving training from the  
28 United States department of justice office of juvenile justice and  
29 delinquency prevention prior to July 1, 2024.

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

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

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

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

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

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

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

20 ~~((+6))~~ (7) Nothing in subsection ~~((+5))~~ (6) of this section  
21 permits a total ban on the sale or use of vapor products.

22 NEW SECTION. **Sec. 8.** Nothing in this act shall be interpreted  
23 to limit the ability of a peace officer or an enforcement officer of  
24 the liquor and cannabis board to enforce RCW 26.28.080 and 82.24.500.

Passed by the Senate April 17, 2023.

Passed by the House April 7, 2023.

Approved by the Governor May 9, 2023.

Filed in Office of Secretary of State May 10, 2023.

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