
HOUSE BILL 2910

State of Washington 64th Legislature 2016 Regular Session

By Representatives Harris, Cody, Pollet, Nealey, Jinkins, Kagi, Stanford, Tarleton, and Goodman

Read first time 01/27/16. Referred to Committee on Commerce & Gaming.

1 AN ACT Relating to youth substance use prevention associated with
2 tobacco and drug delivery e-cigarettes and vapor products; amending
3 RCW 26.28.080, 28A.210.310, 70.155.010, 70.155.020, 70.155.030,
4 70.155.050, 70.155.070, 70.155.140, 70.155.080, 70.155.090,
5 70.155.100, 70.155.110, 70.155.120, and 82.24.530; adding new
6 sections to chapter 70.155 RCW; creating new sections; repealing RCW
7 70.155.130; prescribing penalties; and providing an effective date.

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

9 NEW SECTION. **Sec. 1.** (1) The legislature finds that the
10 availability and use of nicotine vapor inhalation products, such as
11 e-cigarettes, e-devices, and vape pens, have increased dramatically
12 in recent years, and that the use of such products has become
13 commonplace in this state on the part of both adults and youth. The
14 low cost of e-cigarettes and nicotine liquids for vapor products, as
15 compared to cigarettes, is a key factor with respect to the
16 popularity of such products. Despite the increasing popularity of
17 vapor products and the resultant rapid expansion of the vapor
18 products market, commerce in such products is wholly unregulated and
19 is not subject to the legal requirements regarding youth access,
20 public health disclosures, licensing, or taxation, applicable to
21 commerce in cigarettes and other tobacco products.

1 (2) The potential public health risks posed by vapor products are
2 many-faceted, and include nicotine addiction, liquid nicotine
3 poisoning, the potential inhalation of carcinogens and toxic
4 substances, and the adverse effects of nicotine on adolescent brain
5 development. When exposed to heat, the nicotine solutions used in
6 vapor products can generate a range of chemical byproducts that may
7 have adverse health consequences when inhaled. The specific chemistry
8 of the liquid nicotine solutions used in vapor products is not
9 standardized and neither manufacturers nor retailers are required to
10 disclose the chemical contents of the solutions. Consumers,
11 therefore, have no way of determining exactly what substances they
12 are inhaling or what the health consequences of such inhalation might
13 be.

14 (3) When absorbed through the skin liquid nicotine may be toxic
15 to both adults and children. In Washington, poison center calls
16 related to vapor products have increased from two in 2010 to one
17 hundred forty-four in the first nine months of 2014, ninety-seven of
18 which involved children. Of the calls involving children, eighty-four
19 percent were one to three years old. However, due to the current lack
20 of regulation, vapor products manufacturers, distributors, and
21 retailers are not subject to labeling and advertising requirements or
22 other regulations designed to provide consumers with product safety
23 warnings or other health-related information.

24 (4) The current easy access to vapor products is particularly
25 problematic with respect to teenagers. A study conducted by the
26 centers for disease control and prevention (CDC) reported that in
27 2013 more than a quarter of a million youth who had never smoked a
28 cigarette had used vapor products. The CDC also noted that in 2011
29 this number was seventy-nine thousand, which increased to more than
30 two hundred sixty-three thousand in 2013, thus reflecting a more than
31 threefold increase in the number of youth using vapor products during
32 this three-year period. Such statistics underscore the urgent need
33 for the creation of a comprehensive regulatory framework governing
34 commerce in vapor products, especially with respect to restricting
35 access to such products by children and teenagers. It is well-
36 understood that the ability to make rational decisions regarding
37 risky behaviors such as smoking cigarettes and drinking alcohol is
38 less developed in teenagers as compared to adults, and our legal
39 system has traditionally responded by protecting teenagers from such
40 risks through the restriction or prohibition of teen involvement in

1 such activities. As is the case with commerce in cigarettes and
2 alcohol, the vapor products market requires regulatory oversight that
3 focuses upon preventing children and teenagers from accessing and
4 using products that can cause addiction and other adverse health
5 consequences.

6 (5) Although it is clear that commerce in vapor products should
7 be subject to stringent regulatory controls, the development of a
8 regulatory framework must be tempered by an awareness of the
9 potential for creating an illegal black market in vapor products. If
10 regulatory measures related to licensing and taxation unduly restrict
11 the development of the market, and thus cause extreme increases in
12 retail prices, then the stage will be set for the emergence of a
13 black market similar to that experienced by the cigarette industry.

14 (6) The legislature finds, therefore, that this act is necessary
15 to protect the public health, safety, and welfare by preventing youth
16 from having access to addictive vapor products, ensuring that
17 consumers have accurate information about potentially dangerous
18 products, and protecting the public from nicotine poisoning.

19 **Sec. 2.** RCW 26.28.080 and 2013 c 47 s 1 are each amended to read
20 as follows:

21 (1) ~~((Every))~~ A person who sells or gives, or permits to be sold
22 or given, to ~~((any))~~ a person under the age of eighteen years any
23 cigar, cigarette, cigarette paper or wrapper, tobacco in any form, or
24 a vapor product is guilty of a gross misdemeanor.

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

28 (3) For the purposes of this section, "vapor product" ~~((means a
29 noncombustible tobacco derived product containing nicotine that
30 employs a mechanical heating element, battery, or circuit, regardless
31 of shape or size, that can be used to heat a liquid nicotine solution
32 contained in cartridges. Vapor product does not include any product
33 that is regulated by the United States food and drug administration
34 under chapter V of the federal food, drug, and cosmetic act))~~ has the
35 same meaning as provided in RCW 70.155.010.

36 **Sec. 3.** RCW 28A.210.310 and 1997 c 9 s 1 are each amended to
37 read as follows:

1 (1) To protect children in the public schools of this state from
2 exposure to the addictive substance of nicotine, each school district
3 board of directors (~~shall~~) must have a written policy mandating a
4 prohibition on the use of all tobacco products and vapor products on
5 public school property.

6 (2) The policy in subsection (1) of this section (~~shall~~) must
7 include, but not be limited to, a requirement that students and
8 school personnel be notified of the prohibition, the posting of signs
9 prohibiting the use of tobacco products and vapor products, sanctions
10 for students and school personnel who violate the policy, and a
11 requirement that school district personnel enforce the prohibition.
12 Enforcement policies adopted in the school board policy (~~shall be~~)
13 are in addition to the enforcement provisions in RCW 70.160.070.

14 (3) For purposes of this section, "vapor product" means any: (a)
15 Device that employs a battery or other mechanism to heat a solution
16 or substance to produce a vapor or aerosol intended for inhalation;
17 (b) cartridge or container of a solution or substance intended to be
18 used with or in such a device or to refill such a device; or (c)
19 solution or substance intended for use in such a device, including,
20 but not limited to, concentrated nicotine. "Vapor product" includes
21 any electronic cigarettes, electronic nicotine delivery systems,
22 electronic cigars, electronic cigarillos, electronic pipes, vape
23 pens, or similar products or devices, as well as any parts that can
24 be used to build such products or devices. "Vapor product" does not
25 include any drug, device, or combination product approved for sale by
26 the United States food and drug administration that is marketed and
27 sold for such approved purpose.

28 **Sec. 4.** RCW 70.155.010 and 2009 c 278 s 1 are each amended to
29 read as follows:

30 The definitions (~~set forth~~) in this section and RCW 82.24.010
31 (~~shall apply to this chapter. In addition, for the purposes of this~~
32 ~~chapter, unless otherwise required by the context:~~) apply throughout
33 this chapter unless the context clearly requires otherwise.

34 (1) "Board" means the Washington state liquor (~~control~~) and
35 cannabis board.

36 (2) "Concentrated nicotine" means any solution or substance with
37 a nicotine concentration greater than ten milligrams per milliliter.

38 (3) "Department" means the department of health.

1 (4) "Distributor" means a distributor as defined in RCW
2 82.26.010.

3 (5) "Internet" means any computer network, telephonic network, or
4 other electronic network.

5 ~~((+3))~~ (6) "Manufacturer" means any person, including but not
6 limited to a repacker or relabeler, who manufactures, fabricates,
7 assembles, processes, or labels a vapor product or who imports a
8 finished vapor product for sale or distribution into the United
9 States.

10 (7) "Minor" refers to an individual who is less than eighteen
11 years old.

12 ~~((+4))~~ (8) "Packaging" means a pack, box, carton, wrapping, or
13 container of any kind in which a vapor product is sold or offered for
14 sale to a consumer.

15 (9) "Person" means any natural person, partnership, firm, joint
16 stock company, corporation, or other legal entity, including an
17 employee of any such entity.

18 (10) "Retailer" means any person engaged in the business of
19 selling tobacco products or vapor products to ultimate consumers.

20 (11) "Sale" means any transfer, exchange, or barter, in any
21 manner or by any means, for consideration, and includes all sales
22 made by any person. "Sale" includes a gift by a person engaged in the
23 business of selling tobacco products or vapor products for
24 advertising, promoting, or as a means of evading the provisions of
25 this chapter.

26 (12) "Sample" means a tobacco product distributed to members of
27 the general public at no cost or at nominal cost for product
28 promotion purposes.

29 ~~((+5))~~ (13) "Sampling" means the distribution of samples to
30 members of the public.

31 ~~((+6))~~ (14) "Tobacco product" means a product that contains
32 tobacco and is intended for human use, including ~~((any product))~~
33 "cigarettes" defined in RCW 82.24.010~~((+2))~~ or "tobacco products"
34 defined in RCW 82.26.010~~((+1))~~, except that for the purposes of RCW
35 70.155.140 only, "tobacco product" does not include cigars defined in
36 RCW 82.26.010 as to which one thousand units weigh more than three
37 pounds.

38 (15) "Vapor product" means any: (a) Device that employs a battery
39 or other mechanism to heat a solution or substance to produce a vapor
40 or aerosol intended for inhalation; (b) cartridge or container of a

1 solution or substance intended to be used with or in such a device or
2 to refill such a device; or (c) solution or substance intended for
3 use in such a device, including, but not limited to, concentrated
4 nicotine. "Vapor product" includes any electronic cigarettes,
5 electronic nicotine delivery systems, electronic cigars, electronic
6 cigarillos, electronic pipes, vape pens, or similar products or
7 devices, as well as any parts that can be used to build such products
8 or devices. "Vapor product" does not include any drug, device, or
9 combination product approved for sale by the United States food and
10 drug administration that is marketed and sold for such approved
11 purpose.

12 **Sec. 5.** RCW 70.155.020 and 1993 c 507 s 3 are each amended to
13 read as follows:

14 A person who holds a license issued under RCW 82.24.520 ~~((or))~~,
15 82.24.530 ~~((shall))~~, or section 23 of this act must:

16 (1) Display the license or a copy in a prominent location at the
17 outlet for which the license is issued; and

18 (2)(a) Display a sign concerning the prohibition of tobacco
19 product and vapor product sales to minors.

20 (b) Such sign ~~((shall))~~ must:

21 ~~((a))~~ (i) Be posted so that it is clearly visible to anyone
22 purchasing tobacco products or vapor products from the licensee;

23 ~~((b))~~ (ii) Be designed and produced by the department of health
24 to read: "THE SALE OF TOBACCO PRODUCTS AND VAPOR PRODUCTS TO PERSONS
25 UNDER AGE 18 IS STRICTLY PROHIBITED BY STATE LAW. IF YOU ARE UNDER
26 18, YOU COULD BE PENALIZED FOR PURCHASING A TOBACCO PRODUCT OR A
27 VAPOR PRODUCT; PHOTO ID REQUIRED"; and

28 ~~((c))~~ (iii) Be provided free of charge by the ~~((liquor~~
29 ~~control))~~ board.

30 NEW SECTION. **Sec. 6.** A new section is added to chapter 70.155
31 RCW to read as follows:

32 A person who holds a license issued under chapter 82.24 or 82.26
33 RCW or section 23 of this act must conduct the business and maintain
34 the premises in compliance with Titles 9 and 9A RCW and chapter 69.50
35 RCW.

36 **Sec. 7.** RCW 70.155.030 and 1994 c 202 s 1 are each amended to
37 read as follows:

1 Unless preempted by federal law, no person ((shall)) may sell or
2 permit to be sold any tobacco product or vapor product through any
3 device that mechanically dispenses tobacco products or vapor products
4 unless the device is located fully within premises from which minors
5 are prohibited or in industrial worksites where minors are not
6 employed and not less than ten feet from all entrance or exit ways to
7 and from each premises. The board ((shall)) must adopt rules that
8 allow an exception to the requirement that a device be located not
9 less than ten feet from all entrance or exit ways to and from a
10 premises if it is architecturally impractical for the device to be
11 located not less than ten feet from all entrance and exit ways.

12 **Sec. 8.** RCW 70.155.050 and 2006 c 14 s 3 are each amended to
13 read as follows:

14 ((~~(1)~~)) Unless preempted by federal law, no person may engage in
15 the business of sampling tobacco products or vapor products.

16 ((~~(2) A violation of this section is a misdemeanor.~~))

17 **Sec. 9.** RCW 70.155.070 and 1993 c 507 s 8 are each amended to
18 read as follows:

19 No person ((shall)) may give or distribute vapor products,
20 cigarettes, or other tobacco products to a person by a coupon if such
21 coupon is redeemed in any manner that does not require an in-person
22 transaction in a retail store.

23 **Sec. 10.** RCW 70.155.140 and 2009 c 278 s 2 are each amended to
24 read as follows:

25 (1) A person may not:

26 (a) Ship or transport, or cause to be shipped or transported, any
27 tobacco product or vapor product ordered or purchased by mail or
28 through the internet to anyone in this state other than a licensed
29 wholesaler, distributor, or retailer; or

30 (b) With knowledge or reason to know of the violation, provide
31 substantial assistance to a person who is in violation of this
32 section.

33 (2) This section does not prohibit shipping, selling, or
34 transporting, or causing to be sold, shipped, or transported,
35 concentrated nicotine ordered or purchased by mail or through the
36 internet to a person who:

37 (a) Is engaged in business in this state;

1 (b) Has a documented commercial or industrial need for
2 concentrated nicotine that is not related to the sale, distribution,
3 or manufacture of vapor products; and

4 (c) Receives a waiver from the board.

5 (3)(a) A person who knowingly violates subsection (1) of this
6 section is guilty of a class C felony, except that the maximum fine
7 that may be imposed is five thousand dollars.

8 (b) In addition to or in lieu of any other civil or criminal
9 remedy provided by law, a person who has violated subsection (1) of
10 this section is subject to a civil penalty of up to five thousand
11 dollars for each violation. The attorney general, acting in the name
12 of the state, may seek recovery of the penalty in a civil action in
13 superior court. For purposes of this subsection, each shipment or
14 transport of tobacco products or vapor products constitutes a
15 separate violation.

16 ~~((3))~~ (4) The attorney general may seek an injunction in
17 superior court to restrain a threatened or actual violation of
18 subsection (1) of this section and to compel compliance with
19 subsection (1) of this section.

20 ~~((4))~~ (5) Any violation of subsection (1) of this section is
21 not reasonable in relation to the development and preservation of
22 business and is an unfair and deceptive act or practice and an unfair
23 method of competition in the conduct of trade or commerce in
24 violation of RCW 19.86.020. Standing to bring an action to enforce
25 RCW 19.86.020 for violation of subsection (1) of this section lies
26 solely with the attorney general. Remedies provided by chapter 19.86
27 RCW are cumulative and not exclusive.

28 ~~((5))~~ (6)(a) In any action brought under this section, the
29 state is entitled to recover, in addition to other relief, the costs
30 of investigation, expert witness fees, costs of the action, and
31 reasonable attorneys' fees.

32 (b) If a court determines that a person has violated subsection
33 (1) of this section, the court ~~((shall))~~ must order any profits,
34 gain, gross receipts, or other benefit from the violation to be
35 disgorged and paid to the state treasurer for deposit in the general
36 fund.

37 ~~((6))~~ (7) Unless otherwise expressly provided, the penalties or
38 remedies, or both, under this section are in addition to any other
39 penalties and remedies available under any other law of this state.

1 NEW SECTION. **Sec. 11.** A new section is added to chapter 70.155
2 RCW to read as follows:

3 (1) Subject to the provisions of this section, the board, in
4 consultation with the department, must adopt rules regarding vapor
5 product labeling and advertising disclosure requirements. These rules
6 must address requirements regarding product health and safety
7 warnings and the disclosure of the ingredients contained in vapor
8 products that are advertised or offered for sale in this state.

9 (2) Prior to the adoption of the rules required under this
10 section, the board and the department must jointly conduct a study
11 that includes:

12 (a) The identification of the chemicals and substances commonly
13 found in the liquids contained in vapor products;

14 (b) The identification of the chemicals and substances contained
15 in the vapors or aerosols emitted from vapor products;

16 (c) The determination of whether any of the chemicals or
17 substances contained within, or emitted from, vapor products contain
18 toxins or carcinogens, or otherwise pose a risk to public health and
19 safety; and

20 (d) Any other matter relating to potential health risks posed by
21 the use of vapor products, as determined by the board and the
22 department.

23 (3) In conducting the study, the board and the department must
24 consult with the following:

25 (a) Scientists, physicians, researchers, academics, or other
26 professionals with expertise relevant to the understanding of the
27 design, operation, and/or health effects of vapor products;

28 (b) Public health professionals and organizations;

29 (c) Vapor product manufacturers, distributors, and/or retailers;

30 (d) Governmental representatives; and

31 (e) Other individuals or entities with relevant expertise, as
32 determined by the board and the department.

33 (4) Upon completion of the study, and prior to the adoption of
34 the rules authorized under this section, the board must prepare a
35 written report regarding the results of the study and containing
36 findings and recommendations regarding vapor product labeling and
37 advertising requirements. The report must be submitted to the
38 governor and the appropriate committees of the legislature not later
39 than December 1, 2016.

1 NEW SECTION. **Sec. 12.** A new section is added to chapter 70.155
2 RCW to read as follows:

3 (1) Unless preempted by federal law, the board is authorized to
4 promulgate rules regulating the chemical composition of the liquids
5 contained in vapor products, including substances included for
6 flavoring purposes. In developing such rules the board must consult
7 with the department.

8 (2) Upon request by the board or the department, either the
9 manufacture or the distributor of a vapor product must provide the
10 board with a list of all substances, and their relative proportions,
11 contained in the liquid contents of the product.

12 (3) The board may prohibit the sale of vapor products that
13 contain or emit chemicals or substances, other than nicotine, that
14 pose a substantial threat to public health and safety.

15 NEW SECTION. **Sec. 13.** A new section is added to chapter 70.155
16 RCW to read as follows:

17 (1) No person may offer a tobacco product or a vapor product for
18 sale in an open, unsecured display that is accessible to the public
19 without the intervention of a store employee.

20 (2) This section does not apply to a person licensed under RCW
21 82.24.520, 82.24.530, or section 23 of this act if access to the
22 licensed premises is restricted to individuals who are eighteen years
23 of age or older.

24 NEW SECTION. **Sec. 14.** A new section is added to chapter 70.155
25 RCW to read as follows:

26 (1) Unless preempted by federal law, any substance intended for
27 use in a vapor product that is sold at retail in this state must
28 satisfy the child-resistant effectiveness standards under 16 C.F.R.
29 Sec. 1700, the poison prevention packaging act, as it existed on the
30 effective date of this section, or such subsequent date as may be
31 provided by the board by rule, consistent with the purposes of this
32 section.

33 (2) A manufacturer that knowingly sells or distributes a
34 substance intended for use in a vapor product that does not satisfy
35 the requirements of this section is guilty of a class C felony.

36 (3) The provisions of this section are null and void and of no
37 force and effect, upon the effective date of final regulations issued
38 by the United States food and drug administration or from any other

1 federal agency, where such regulations mandate child-resistant
2 effectiveness standards for liquid nicotine containers.

3 NEW SECTION. **Sec. 15.** A new section is added to chapter 70.155
4 RCW to read as follows:

5 A person may not sell, offer for sale, or possess with intent to
6 sell or offer for sale any vapor product within the state that
7 contains a substance that increases the absorption of nicotine as
8 determined by the board in consultation with the department.

9 **Sec. 16.** RCW 70.155.080 and 2002 c 175 s 47 are each amended to
10 read as follows:

11 (1) A person under the age of eighteen who purchases or attempts
12 to purchase, possesses, or obtains or attempts to obtain cigarettes
13 ~~((~~or~~))~~, tobacco products, or vapor products commits a class 3 civil
14 infraction under chapter 7.80 RCW and is subject to a fine as set out
15 in chapter 7.80 RCW or participation in up to four hours of community
16 restitution, or both. The court may also require participation in a
17 ~~((~~smoking~~))~~ cessation program. This provision does not apply if a
18 person under the age of eighteen, with parental authorization, is
19 participating in a controlled purchase as part of a ~~((~~liquor~~~~
20 ~~control~~)) board, law enforcement, or local health department
21 activity.

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

24 **Sec. 17.** RCW 70.155.090 and 2006 c 14 s 4 are each amended to
25 read as follows:

26 (1) Where there may be a question of a person's right to purchase
27 or obtain tobacco products or vapor products by reason of age, the
28 retailer or agent thereof ~~((, shall))~~ must require the purchaser to
29 present any one of the following officially issued identification
30 that shows the purchaser's age and bears his or her signature and
31 photograph: (a) ~~((Liquor control authority card of identification of~~
32 ~~a state or province of Canada; (b))~~) Driver's license, instruction
33 permit, or identification card of a state or province of Canada;
34 ~~((+e))~~ (b) "identocard" issued by the Washington state department of
35 licensing under chapter 46.20 RCW; ~~((+d))~~ (c) United States military
36 identification; ~~((+e))~~ (d) passport; ~~((+f))~~ (e) enrollment card,
37 issued by the governing authority of a federally recognized Indian

1 tribe located in Washington, that incorporates security features
2 comparable to those implemented by the department of licensing for
3 Washington drivers' licenses. At least ninety days prior to
4 implementation of an enrollment card under this subsection, the
5 appropriate tribal authority (~~((shall))~~) must give notice to the board.
6 The board (~~((shall))~~) must publish and communicate to licensees
7 regarding the implementation of each new enrollment card; or (~~((g))~~)
8 (f) merchant marine identification card issued by the United States
9 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 (~~((liquor control))~~) board (~~((shall))~~) must waive the suspension or
14 revocation of a license if the licensee clearly establishes that he
15 or she acted in good faith to prevent violations and a violation
16 occurred despite the licensee's exercise of due diligence.

17 **Sec. 18.** RCW 70.155.100 and 2006 c 14 s 5 are each amended to
18 read as follows:

19 (1) The (~~((liquor control))~~) board may suspend or revoke a
20 retailer's license issued under RCW 82.24.510(1)(b) or section
21 23(1)(b) of this act held by a business at any location, or may
22 impose a monetary penalty as set forth in subsection (2) of this
23 section, if the (~~((liquor control))~~) board finds that the licensee has
24 violated RCW 26.28.080, 70.155.020(~~((, 70.155.030, 70.155.040,~~
25 ~~70.155.050, 70.155.070, or 70.155.090))~~) through 70.155.070,
26 70.155.090, sections 13 through 15 of this act, or 21 C.F.R. Sec.
27 1140.14 as it exists on the effective date of this section.

28 (2) The sanctions that the (~~((liquor control))~~) board may impose
29 against a person licensed under RCW (~~((82.24.530))~~) 82.24.510(1)(b) or
30 section 23(1)(b) of this act based upon one or more findings under
31 subsection (1) of this section may not exceed the following:

32 (a) For violations of RCW 26.28.080 (~~((or))~~) 70.155.020, sections
33 14 and 15 of this act, or 21 C.F.R. Sec. 1140.14, and for violations
34 of RCW 70.155.040 occurring on the licensed premises:

35 (i) A monetary penalty of (~~((one))~~) two hundred dollars for the
36 first violation within any (~~((two))~~) three-year period;

37 (ii) A monetary penalty of (~~((three))~~) six hundred dollars for the
38 second violation within any (~~((two))~~) three-year period;

1 (iii) A monetary penalty of ~~((one))~~ two thousand dollars and
2 suspension of the license for a period of six months for the third
3 violation within any ~~((two))~~ three-year period;

4 (iv) A monetary penalty of ~~((one))~~ three thousand ~~((five~~
5 ~~hundred))~~ dollars and suspension of the license for a period of
6 twelve months for the fourth violation within any ~~((two))~~ three-year
7 period;

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

11 (b) For violations of section 6 of this act, suspension or
12 revocation of the license;

13 (c) For violations of RCW 70.155.030, a monetary penalty in the
14 amount of ~~((one))~~ two hundred dollars for each day upon which such
15 violation occurred;

16 ~~((c) For violations of RCW 70.155.040 occurring on the licensed~~
17 ~~premises;~~

18 ~~(i) A monetary penalty of one hundred dollars for the first~~
19 ~~violation within any two-year period;~~

20 ~~(ii) A monetary penalty of three hundred dollars for the second~~
21 ~~violation within any two-year period;~~

22 ~~(iii) A monetary penalty of one thousand dollars and suspension~~
23 ~~of the license for a period of six months for the third violation~~
24 ~~within any two-year period;~~

25 ~~(iv) A monetary penalty of one thousand five hundred dollars and~~
26 ~~suspension of the license for a period of twelve months for the~~
27 ~~fourth violation within any two-year period;~~

28 ~~(v) Revocation of the license with no possibility of~~
29 ~~reinstatement for a period of five years for the fifth or more~~
30 ~~violation within any two-year period;))~~

31 (d) For violations of RCW 70.155.050 or section 13 of this act, a
32 monetary penalty in the amount of ~~((three))~~ six hundred dollars for
33 each violation;

34 (e) For violations of RCW 70.155.070, a monetary penalty in the
35 amount of ~~((one))~~ two thousand dollars for each violation.

36 (3) The ~~((liquor control))~~ board may impose a monetary penalty
37 upon any person other than a licensed cigarette or vapor product
38 retailer if the ~~((liquor control))~~ board finds that the person has
39 violated RCW 26.28.080, 70.155.020(~~(, 70.155.030, 70.155.040,~~

1 ~~70.155.050, 70.155.070, or 70.155.090~~) through 70.155.070,
2 70.155.090, or sections 13 through 15 of this act.

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

6 (a) For violations of RCW 26.28.080 (~~or 70.155.020, fifty~~),
7 70.155.020, or sections 14 and 15 of this act, one hundred dollars
8 for the first violation and (~~one~~) two hundred dollars for each
9 subsequent violation;

10 (b) For violations of RCW 70.155.030, (~~one~~) two hundred dollars
11 for each day upon which such violation occurred;

12 (c) For violations of RCW 70.155.040, (~~one~~) two hundred dollars
13 for each violation;

14 (d) For violations of RCW 70.155.050 or section 13 of this act,
15 (~~three~~) six hundred dollars for each violation;

16 (e) For violations of RCW 70.155.070, (~~one~~) two thousand
17 dollars for each violation.

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

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

29 (7) The (~~liquor control~~) board may seek injunctive relief to
30 enforce the provisions of RCW 26.28.080 (~~or~~), 82.24.500, section 23
31 of this act, or this chapter. The (~~liquor control~~) board may
32 initiate legal action to collect civil penalties imposed under this
33 chapter if the same have not been paid within thirty days after
34 imposition of such penalties. In any action filed by the (~~liquor~~
35 ~~control~~) board under this chapter, the court may, in addition to any
36 other relief, award the (~~liquor control~~) board reasonable
37 attorneys' fees and costs.

38 (8) All proceedings under subsections (1) through (6) of this
39 section (~~shall~~) must be conducted in accordance with chapter 34.05
40 RCW.

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

8 **Sec. 19.** RCW 70.155.110 and 1993 c 507 s 12 are each amended to
9 read as follows:

10 (1) The (~~liquor control~~) board (~~shall~~) must, in addition to
11 the board's other powers and authorities, have the authority to
12 enforce the provisions of this chapter and RCW 26.28.080(~~(4) and~~),
13 82.24.500, and section 23 of this act. The (~~liquor control~~) board
14 (~~shall have~~) has full power to revoke or suspend the license of any
15 retailer (~~(or)~~), distributor, or wholesaler in accordance with the
16 provisions of RCW 70.155.100.

17 (2) The (~~liquor control~~) board and the board's (~~authorized~~
18 ~~agents~~) enforcement officers or employees (~~shall~~) have full power
19 and authority to enter any place of business where tobacco products
20 or vapor products are sold for the purpose of enforcing the
21 provisions of this chapter.

22 (3) For the purpose of enforcing the provisions of this chapter
23 and RCW 26.28.080(~~(4) and~~), 82.24.500, and section 23 of this act,
24 a peace officer or enforcement officer of the (~~liquor control~~)
25 board who has reasonable grounds to believe a person observed by the
26 officer purchasing, attempting to purchase, or in possession of
27 tobacco products or vapor products is under the age of eighteen years
28 of age, may detain such person for a reasonable period of time and in
29 such a reasonable manner as is necessary to determine the person's
30 true identity and date of birth. Further, tobacco products or vapor
31 products possessed by persons under the age of eighteen years of age
32 are considered contraband and may be seized by a peace officer or
33 enforcement officer of the (~~liquor control~~) board.

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

37 **Sec. 20.** RCW 70.155.120 and 1993 c 507 s 13 are each amended to
38 read as follows:

1 (1) The youth tobacco and vapor products prevention account is
2 created in the state treasury. All fees collected pursuant to RCW
3 82.24.520 ~~((and)),~~ 82.24.530, 82.26.160, 82.26.170, section 23 of
4 this act, and section 24 of this act and funds collected by the
5 ~~((liquor control))~~ board from the imposition of monetary penalties
6 ~~((and samplers' fees shall))~~ under chapters 82.24 and 82.26 RCW and
7 this chapter must be deposited into this account, except that ten
8 percent of all such fees and penalties ~~((shall))~~ must be deposited in
9 the state general fund.

10 (2) Moneys appropriated from the youth tobacco and vapor products
11 prevention account to the department ~~((of health shall))~~ must be used
12 by the department ~~((of health))~~ for implementation of this chapter,
13 including collection and reporting of data regarding enforcement and
14 the extent to which access to tobacco products and vapor products by
15 youth has been reduced.

16 (3) The department ~~((of health shall))~~ must enter into
17 interagency agreements with the ~~((liquor control))~~ board to pay the
18 costs incurred, up to thirty percent of available funds, in carrying
19 out its cigarette, tobacco product, and vapor product enforcement
20 responsibilities under this chapter and chapters 82.24 and 82.26 RCW.
21 Such agreements ~~((shall))~~ must set forth standards of enforcement,
22 consistent with the funding available, so as to reduce the extent to
23 which tobacco products and vapor products are available to
24 individuals under the age of eighteen. The agreements ~~((shall))~~ must
25 also set forth requirements for data reporting by the ~~((liquor~~
26 ~~control))~~ board regarding its enforcement activities.

27 (4) The department ~~((of health))~~, the board, and the department
28 of revenue ~~((shall))~~ must enter into an interagency agreement for
29 payment of the cost of administering the tobacco and vapor product
30 retailer licensing system and for the provision of quarterly
31 documentation of tobacco and vapor product wholesaler, retailer, and
32 vending machine names and locations.

33 (5) The department ~~((of health shall))~~ must, within up to seventy
34 percent of available funds, provide grants to local health
35 departments or other local community agencies to develop and
36 implement coordinated tobacco and vapor product intervention
37 strategies to prevent and reduce ~~((tobacco))~~ use by youth.

38 NEW SECTION. Sec. 21. RCW 70.155.130 (Preemption of political
39 subdivisions) and 1993 c 507 s 14 are each repealed.

1 NEW SECTION. **Sec. 22.** A new section is added to chapter 70.155
2 RCW to read as follows:

3 The board, in consultation with the department, may adopt rules
4 to implement and enforce the requirements of this chapter.

5 NEW SECTION. **Sec. 23.** A new section is added to chapter 70.155
6 RCW to read as follows:

7 (1) The licenses issuable by the board under this chapter are as
8 follows:

9 (a) A vapor products distributor's license; and

10 (b) A vapor products retailer's license.

11 (2) Application for the licenses must be made through the
12 business licensing system under chapter 19.02 RCW. The board may
13 adopt rules regarding the regulation of the licenses. The board may
14 refuse to issue any license under this chapter if the board has
15 reasonable cause to believe that the applicant has willfully withheld
16 information requested for the purpose of determining the eligibility
17 of the applicant to receive a license, or if the board has reasonable
18 cause to believe that information submitted in the application is
19 false or misleading or is not made in good faith. In addition, for
20 the purpose of reviewing an application for a distributor's license
21 or retailer's license and for considering the denial, suspension, or
22 revocation of any such license, the board may consider criminal
23 conduct of the applicant, including an administrative violation
24 history record with the board and a criminal history record
25 information check within the previous five years, in any state,
26 tribal, or federal jurisdiction in the United States, its
27 territories, or possessions, and the provisions of RCW 9.95.240 and
28 chapter 9.96A RCW do not apply to such cases. The board may, in its
29 discretion, issue or refuse to issue the distributor's license or
30 retailer's license, subject to the provisions of section 29 of this
31 act.

32 (3) No person may qualify for a distributor's license or a
33 retailer's license under this section without first undergoing a
34 criminal background check. The background check must be performed by
35 the board and must disclose any criminal conduct within the previous
36 five years in any state, tribal, or federal jurisdiction in the
37 United States, its territories, or possessions. If the applicant or
38 licensee also has a license issued under chapter 66.24, 82.24, or
39 82.26 RCW, the background check done under the authority of chapter

1 66.24, 82.24, or 82.26 RCW satisfies the requirements of this
2 subsection.

3 (4) Each license issued under this chapter expires on the
4 business license expiration date. The license must be continued
5 annually if the licensee has paid the required fee and complied with
6 all the provisions of this chapter and the rules of the board adopted
7 pursuant to this chapter.

8 (5) Each license and any other evidence of the license required
9 under this chapter must be exhibited in each place of business for
10 which it is issued and in the manner required for the display of a
11 business license.

12 (6) License issuances and renewals are subject to board authority
13 and the rules adopted under the board including, but not limited to,
14 rights of cities, towns, county legislative authorities, the public,
15 churches, schools, and public institutions that object to or prevent
16 issuance of licenses.

17 NEW SECTION. **Sec. 24.** A new section is added to chapter 70.155
18 RCW to read as follows:

19 (1)(a) No person may engage in or conduct business as a
20 distributor or retailer in this state without a valid license issued
21 under this chapter, except as otherwise provided by law. Any person
22 who sells vapor products to persons other than ultimate consumers or
23 who meets the definition of "distributor" under this chapter must
24 obtain a distributor's license under this chapter. Any person who
25 sells vapor products to ultimate consumers must obtain a retailer's
26 license under this chapter.

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

29 (2) No person engaged in or conducting business as a distributor
30 or retailer in this state may refuse to allow the enforcement
31 officers of the board, on demand, to make full inspection of any
32 place of business or vehicle where any of the vapor products
33 regulated under this chapter are sold, stored, transported, or
34 handled, or otherwise hinder or prevent such inspection. A person who
35 violates this subsection (2) is guilty of a gross misdemeanor.

36 (3) Any person licensed under this chapter as a distributor, and
37 any person licensed under this chapter as a retailer, may not operate
38 in any other capacity unless the additional appropriate license is

1 first secured, except as otherwise provided by law. A violation of
2 this subsection (3) is a misdemeanor.

3 (4) The penalties provided in this section are in addition to any
4 other penalties provided by law for violating the provisions of this
5 chapter or the rules adopted under this chapter.

6 NEW SECTION. **Sec. 25.** A new section is added to chapter 70.155
7 RCW to read as follows:

8 A fee of six hundred fifty dollars must accompany each vapor
9 products distributor's license application or license renewal
10 application under section 23 of this act. If a distributor sells or
11 intends to sell vapor products at two or more places of business,
12 whether established or temporary, a separate license with a license
13 fee of one hundred fifteen dollars is required for each additional
14 place of business.

15 NEW SECTION. **Sec. 26.** A new section is added to chapter 70.155
16 RCW to read as follows:

17 A fee of two hundred fifty dollars must accompany each vapor
18 products retailer's license application or license renewal
19 application under section 23 of this act. A separate license is
20 required for each separate location at which the retailer operates.

21 **Sec. 27.** RCW 82.24.530 and 2012 2nd sp.s. c 4 s 12 are each
22 amended to read as follows:

23 A fee of (~~ninety-three~~) two hundred fifty dollars must
24 accompany each retailer's license application or license renewal
25 application. A separate license is required for each separate
26 location at which the retailer operates. A fee of thirty additional
27 dollars for each vending machine must accompany each application or
28 renewal for a license issued to a retail dealer operating a cigarette
29 vending machine. An additional fee of ninety-three dollars (~~shall~~)
30 must accompany each application or renewal for a license issued to a
31 retail dealer operating a cigarette-making machine.

32 NEW SECTION. **Sec. 28.** A new section is added to chapter 70.155
33 RCW to read as follows:

34 (1) Every vapor products retailer licensed under section 23 of
35 this act must procure itemized invoices of all vapor products

1 purchased. The invoices must show the seller's name and address, the
2 date of purchase, and all prices and discounts.

3 (2) The retailer must keep at each retail outlet copies of
4 complete, accurate, and legible invoices for that retail outlet or
5 place of business. All invoices required to be kept under this
6 section must be preserved for five years from the date of purchase.

7 (3) At any time during usual business hours the department,
8 board, or its duly authorized agents or employees may enter any
9 retail outlet without a search warrant, and inspect the premises for
10 invoices required to be kept under this section and the vapor
11 products contained in the retail outlet, to determine whether or not
12 all the provisions of this chapter are being fully complied with. If
13 the department, board, or any of its agents or employees are denied
14 free access or are hindered or interfered with in making the
15 inspection, the registration certificate issued under RCW 82.32.030
16 of the retailer at the premises is subject to revocation by the
17 department, and any licenses issued under this chapter or chapter
18 82.26 or 82.24 RCW are subject to suspension or revocation by the
19 board.

20 NEW SECTION. **Sec. 29.** A new section is added to chapter 70.155
21 RCW to read as follows:

22 (1) The board must enforce this chapter. The board may adopt,
23 amend, and repeal rules necessary to enforce this chapter.

24 (2) The department may adopt, amend, and repeal rules necessary
25 to administer this chapter. The board may revoke or suspend the
26 distributor's or retailer's license of any distributor or retailer of
27 vapor products in the state upon sufficient cause showing a violation
28 of this chapter or upon the failure of the licensee to comply with
29 any of the rules adopted under it.

30 (3) A license may not be suspended or revoked except upon notice
31 to the licensee and after a hearing as prescribed by the board. The
32 board, upon finding that the licensee has failed to comply with any
33 provision of this chapter or of any rule adopted under it, must, in
34 the case of the first offense, suspend the license or licenses of the
35 licensee for a period of not less than thirty consecutive business
36 days, and in the case of a second or further offense, suspend the
37 license or licenses for a period of not less than ninety consecutive
38 business days but not more than twelve months, and in the event the

1 board finds the licensee has been guilty of willful and persistent
2 violations, it may revoke the license or licenses.

3 (4) Any licenses issued under chapter 82.24 or 82.26 RCW to a
4 person whose license or licenses have been suspended or revoked under
5 this section must also be suspended or revoked during the period of
6 suspension or revocation under this section.

7 (5) Any person whose license or licenses have been revoked under
8 this section may reapply to the board at the expiration of one year
9 of the license or licenses. The license or licenses may be approved
10 by the board if it appears to the satisfaction of the board that the
11 licensee will comply with the provisions of this chapter and the
12 rules adopted under it.

13 (6) A person whose license has been suspended or revoked may not
14 sell vapor products, tobacco products, or cigarettes or permit vapor
15 products, tobacco products, or cigarettes to be sold during the
16 period of suspension or revocation on the premises occupied by the
17 person or upon other premises controlled by the person or others or
18 in any other manner or form.

19 (7) Any determination and order by the board, and any order of
20 suspension or revocation by the board of the license or licenses
21 issued under this chapter, or refusal to reinstate a license or
22 licenses after revocation is reviewable by an appeal to the superior
23 court of Thurston county. The superior court must review the order or
24 ruling of the board and may hear the matter de novo, having due
25 regard to the provisions of this chapter and the duties imposed upon
26 the board.

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

30 NEW SECTION. **Sec. 30.** If any provision of this act or its
31 application to any person or circumstance is held invalid, the
32 remainder of the act or the application of the provision to other
33 persons or circumstances is not affected.

34 NEW SECTION. **Sec. 31.** If any part of this act is found to be in
35 conflict with federal requirements that are a prescribed condition to
36 the allocation of federal funds to the state, the conflicting part of
37 this act is inoperative solely to the extent of the conflict and with
38 respect to the agencies directly affected, and this finding does not

1 affect the operation of the remainder of this act in its application
2 to the agencies concerned. Rules adopted under this act must meet
3 federal requirements that are a necessary condition to the receipt of
4 federal funds by the state.

5 NEW SECTION. **Sec. 32.** This act takes effect October 1, 2016.

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