
ENGROSSED SUBSTITUTE SENATE BILL 5477

State of Washington

64th Legislature

2015 Regular Session

By Senate Health Care (originally sponsored by Senators Dammeier, Becker, Warnick, Kohl-Welles, and Darneille)

READ FIRST TIME 02/20/15.

1 AN ACT Relating to requiring substances intended for use in a
2 vapor product to satisfy child-resistant effectiveness standards,
3 adopting warning standards, and prohibiting the use of vapor products
4 in schools; amending RCW 70.155.010, 26.28.080, and 28A.210.310;
5 adding new sections to chapter 70.155 RCW; creating a new section;
6 and prescribing penalties.

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

8 NEW SECTION. **Sec. 1.** (1) The legislature finds it necessary to
9 protect public health, safety, and welfare by requiring vapor
10 products sold in Washington to employ child-resistant technologies
11 and clear labeling in the packaging of their products for the purpose
12 of preventing nicotine poisonings. Children are particularly
13 vulnerable. When ingested or absorbed through the skin, even small
14 amounts of liquid nicotine may be toxic or even fatal to children. In
15 Washington, poison center calls related to e-cigarettes have
16 increased precipitously over the last several years. Of the calls
17 involving children, the vast majority were one to three years old.

18 (2) The legislature also finds that teenagers are using vapor
19 products at an increasing rate, including while at school. Therefore
20 it is necessary to protect children from exposure to vapor products

1 in the public schools of this state, and to provide adequate warning
2 that vapor products should not be used by minors.

3 **Sec. 2.** RCW 70.155.010 and 2009 c 278 s 1 are each amended to
4 read as follows:

5 The definitions set forth in RCW 82.24.010 shall apply to this
6 chapter. In addition, for the purposes of this chapter, unless
7 otherwise required by the context:

8 (1) "At retail" means any engagement in the business of selling
9 tobacco products or vapor products to ultimate consumers.

10 (2) "Board" means the Washington state liquor control board.

11 ~~((+2))~~ (3) "Internet" means any computer network, telephonic
12 network, or other electronic network.

13 ~~((+3))~~ (4) "Manufacturer" means any person, including, but not
14 limited to, a repacker or relabeler, who manufactures, fabricates,
15 assembles, processes, or labels a vapor product or who imports a
16 finished vapor product for sale or distribution into the United
17 States. "Manufacturer" includes any retail establishment that mixes,
18 or permits customers to mix, flavors or solutions.

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

21 ~~((+4))~~ (6) "Sale" means any transfer, exchange, or barter, in
22 any manner or by any means, for consideration, and includes all sales
23 made by any person. "Sale" includes a gift by a person engaged in the
24 business of selling tobacco products or vapor products for
25 advertising, promoting, or as a means of evading the provisions of
26 this chapter.

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

30 ~~((+5))~~ (8) "Sampling" means the distribution of samples to
31 members of the public.

32 ~~((+6))~~ (9) "Tobacco product" means a product that contains
33 tobacco and is intended for human use, including any product defined
34 in RCW 82.24.010(2) or 82.26.010~~((+1))~~ (21), except that for the
35 purposes of RCW 70.155.140 only, "tobacco product" does not include
36 cigars defined in RCW 82.26.010 as to which one thousand units weigh
37 more than three pounds.

38 (10) "Vapor product" means any: (a) Device that employs a battery
39 or other mechanism to heat a solution or substance to produce a vapor

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

11 NEW SECTION. Sec. 3. A new section is added to chapter 70.155
12 RCW to read as follows:

13 (1) Unless preempted by federal law, any substance intended for
14 use in a vapor product that is sold at retail in this state must be
15 packaged in child resistant packaging in accordance with 16 C.F.R.
16 Part 1700, the poison prevention packaging act, as it existed on the
17 effective date of this section, or such subsequent date as may be
18 provided by the board by rule, consistent with the purposes of this
19 section.

20 (2) A substance contained in a cartridge sold, marketed, or
21 intended for use in a vapor product that is prefilled and sealed by
22 the manufacturer, and not intended to be opened by the consumer, is
23 exempt from subsection (1) of this section.

24 (3) A manufacturer that knowingly sells or distributes a
25 substance intended for use in a vapor product that does not satisfy
26 the requirements of this section is guilty of a gross misdemeanor.

27 (4) The provisions of this section are null and void and of no
28 force and effect, upon the effective date of the final regulations
29 issued by the United States food and drug administration or from any
30 other federal agency, where such regulations mandate child-resistant
31 effectiveness standards for liquid nicotine containers.

32 NEW SECTION. Sec. 4. A new section is added to chapter 70.155
33 RCW to read as follows:

34 (1) A manufacturer that sells, offers for sale, or distributes a
35 vapor product shall label the vapor product with a: (a) Warning
36 regarding the harmful effects of nicotine; and (b) warning to keep
37 away from children.

1 (2) A manufacturer that advertises a vapor product shall include
2 in any advertisement a: (a) Warning regarding the harmful effects of
3 nicotine; and (b) warning to keep away from children.

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

6 (1) It is unlawful to sell or distribute vapor products at retail
7 by any means other than vendor-assisted sales when the customer has
8 no direct access to the product except through the assistance of the
9 seller.

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

12 (3) Retailers are exempt from requiring vendor-assisted sales, if
13 minors are not allowed in the store and such prohibition is posted
14 clearly on all entrances.

15 **Sec. 6.** RCW 26.28.080 and 2013 c 47 s 1 are each amended to read
16 as follows:

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

21 (2) It shall be no defense to a prosecution for a violation of
22 this section that the person acted, or was believed by the defendant
23 to act, as agent or representative of another.

24 (3) For the purposes of this section, "vapor product" means (~~a~~
25 ~~noncombustible tobacco derived product containing nicotine that~~
26 ~~employs a mechanical heating element, battery, or circuit, regardless~~
27 ~~of shape or size, that can be used to heat a liquid nicotine solution~~
28 ~~contained in cartridges. Vapor product does not include any product~~
29 ~~that is regulated by the United States food and drug administration~~
30 ~~under chapter V of the federal food, drug, and cosmetic act)) any:~~

31 (a) Device that employs a battery or other mechanism to heat a
32 solution or substance to produce a vapor or aerosol intended for
33 inhalation; (b) cartridge or container of a solution or substance
34 intended to be used with or in such a device or to refill such a
35 device; or (c) solution or substance intended for use in such a
36 device, including concentrated nicotine. "Vapor product" includes any
37 electronic cigarettes, electronic nicotine delivery systems,
38 electronic cigars, electronic cigarillos, electronic pipes, vape

1 pens, or similar products or devices. "Vapor product" does not
2 include any substance, device, or combination product approved for
3 sale by the United States food and drug administration that is
4 marketed and sold for such approved purpose.

5 **Sec. 7.** RCW 28A.210.310 and 1997 c 9 s 1 are each amended to
6 read as follows:

7 (1) To protect children in the public schools of this state from
8 exposure to the addictive substance of nicotine, each school district
9 board of directors shall have a written policy mandating a
10 prohibition on the use of all tobacco products and vapor products on
11 public school property.

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

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

33 NEW SECTION. **Sec. 8.** A new section is added to chapter 70.155
34 RCW to read as follows:

35 (1) A person who sells vapor products at retail shall display a
36 sign concerning the prohibition of vapor product sales to minors.

37 (2) The sign must:

1 (a) Be posted so that it is clearly visible to anyone purchasing
2 vapor products from the seller;

3 (b) Be designed and produced by the department of health to read:
4 "THE SALE OF VAPOR PRODUCTS TO PERSONS UNDER AGE 18 IS STRICTLY
5 PROHIBITED BY STATE LAW. IF YOU ARE UNDER 18, YOU COULD BE PENALIZED
6 FOR PURCHASING A VAPOR PRODUCT; PHOTO ID REQUIRED"; and

7 (c) Be provided free of charge by the liquor control board.

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