

2SHB 1054 - H AMD 1455

By Representative Vick

NOT ADOPTED 03/07/2018

1 Strike everything after the enacting clause and insert the
2 following:

3

4 **"Sec. 1.** RCW 26.28.080 and 2016 sp.s. c 38 s 1 are each amended
5 to read as follows:

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

10 (2) It is not a defense to a prosecution for a violation of this
11 section that the person acted, or was believed by the defendant to
12 act, as agent or representative of another.

13 (3) For the purposes of this section, "vapor product" has the
14 same meaning as provided in RCW 70.345.010.

15

16 **Sec. 2.** RCW 70.155.005 and 1993 c 507 s 1 are each amended to
17 read as follows:

18 (1) The legislature finds that chapter ..., Laws of 2018 (this
19 act) furthers the public health, safety, and welfare by reducing
20 youth access to addictive and harmful products.

21 (2) While present state law prohibits the sale and distribution
22 of tobacco and vapor products to (~~minors~~) youth under the age of
23 eighteen, youth obtain (~~tobacco~~) these products with ease.
24 (~~Availability and lack of enforcement put tobacco products in the~~
25 hands of youth.))

26 (3) The legislature recognizes that many people who purchase
27 cigarettes for minors are eighteen year old high school students. By

1 decreasing the number of eligible buyers in high school, raising the
2 minimum legal age to sell tobacco and vapor products will decrease
3 the access of students to tobacco products. According to the 2014
4 healthy youth survey, forty-one percent of tenth graders say it is
5 "sort of easy" to "very easy" to get cigarettes. Nationally, among
6 youth who smoke, more than twice as many get their cigarettes from
7 social sources than from a store or vending machine.

8 (4) The legislature recognizes that eighty percent of smokers
9 start by the age of eighteen.

10 (5) The legislature recognizes that jurisdictions across the
11 country are increasing the age of sale for tobacco products to
12 nineteen.

13 (6) The legislature recognizes the national institute of
14 medicine report predicted increasing the tobacco sale age will make
15 the greatest difference among those ages fifteen to seventeen, who
16 will no longer be able to pass for legal age and will have a harder
17 time getting tobacco products from older classmates and friends.

18 (7) The legislature recognizes that reducing the youth smoking
19 rate will save lives and reduce health care costs. Every year, two
20 billion eight hundred ten million dollars in health care costs can
21 be directly attributed to tobacco use in Washington. Smoking-caused
22 government expenditures cost every Washington household eight
23 hundred twenty-one dollars per year.

24 (8) Federal law requires states to enforce laws prohibiting sale
25 and distribution of tobacco products to minors in a manner that can
26 reasonably be expected to reduce the extent to which the products
27 are available to minors. It is imperative to effectively reduce the
28 sale, distribution, and availability of tobacco products to minors.
29

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

32 The definitions set forth in RCW 82.24.010 (~~shall~~) apply to
33 this chapter. In addition, for the purposes of this chapter, unless
34 otherwise required by the context:

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

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

5 (~~(3) ("Minor" refers to an individual who is less than eighteen~~
6 ~~years old.~~

7 ~~(4))~~ "Sample" means a tobacco product distributed to members of
8 the general public at no cost or at nominal cost for product
9 promotion purposes.

10 ~~((5))~~ (4) "Sampling" means the distribution of samples to
11 members of the public.

12 ~~((6))~~ (5) "Tobacco product" means a product that contains
13 tobacco and is intended for human use, including any product defined
14 in RCW 82.24.010(2) or 82.26.010(~~(11))~~ (21), except that for the
15 purposes of RCW 70.155.140 only, "tobacco product" does not include
16 cigars defined in RCW 82.26.010 as to which one thousand units weigh
17 more than three pounds.

18 (6) "Vapor product" has the same meaning as defined in RCW
19 70.345.010.

20

21 **Sec. 4.** RCW 70.345.010 and 2016 1st sp.s. c 38 s 4 are each
22 amended to read as follows:

23 The definitions in this section apply throughout this chapter
24 unless the context clearly requires otherwise.

25 (1) "Board" means the Washington state liquor and cannabis
26 board.

27 (2) "Business" means any trade, occupation, activity, or
28 enterprise engaged in for the purpose of selling or distributing
29 vapor products in this state.

30 (3) "Child care facility" has the same meaning as provided in
31 RCW 70.140.020.

32 (4) "Closed system nicotine container" means a sealed,
33 prefilled, and disposable container of nicotine in a solution or
34 other form in which such container is inserted directly into an

1 electronic cigarette, electronic nicotine delivery system, or other
2 similar product, if the nicotine in the container is inaccessible
3 through customary or reasonably foreseeable handling or use,
4 including reasonably foreseeable ingestion or other contact by
5 children.

6 (5) "Delivery sale" means any sale of a vapor product to a
7 purchaser in this state where either:

8 (a) The purchaser submits the order for such sale by means of a
9 telephonic or other method of voice transmission, the mails or any
10 other delivery service, or the internet or other online service; or

11 (b) The vapor product is delivered by use of the mails or of a
12 delivery service. The foregoing sales of vapor products constitute a
13 delivery sale regardless of whether the seller is located within or
14 without this state. "Delivery sale" does not include a sale of any
15 vapor product not for personal consumption to a retailer.

16 (6) "Delivery seller" means a person who makes delivery sales.

17 (7) "Distributor" means any person who:

18 (a) Sells vapor products to persons other than ultimate
19 consumers; or

20 (b) Is engaged in the business of selling vapor products in this
21 state and who brings, or causes to be brought, into this state from
22 outside of the state any vapor products for sale.

23 (8) "Liquid nicotine container" means a package from which
24 nicotine in a solution or other form is accessible through normal
25 and foreseeable use by a consumer and that is used to hold soluble
26 nicotine in any concentration. "Liquid nicotine container" does not
27 include closed system nicotine containers.

28 (9) "Manufacturer" means a person who manufactures and sells
29 vapor products.

30 (10) "Minor" refers to an individual who is less than
31 (~~eighteen~~) nineteen years old.

32 (11) "Person" means any individual, receiver, administrator,
33 executor, assignee, trustee in bankruptcy, trust, estate, firm,
34 copartnership, joint venture, club, company, joint stock company,

1 business trust, municipal corporation, the state and its departments
2 and institutions, political subdivision of the state of Washington,
3 corporation, limited liability company, association, society, any
4 group of individuals acting as a unit, whether mutual, cooperative,
5 fraternal, nonprofit, or otherwise.

6 (12) "Place of business" means any place where vapor products
7 are sold or where vapor products are manufactured, stored, or kept
8 for the purpose of sale.

9 (13) "Playground" means any public improved area designed,
10 equipped, and set aside for play of six or more children which is
11 not intended for use as an athletic playing field or athletic court,
12 including but not limited to any play equipment, surfacing, fencing,
13 signs, internal pathways, internal land forms, vegetation, and
14 related structures.

15 (14) "Retail outlet" means each place of business from which
16 vapor products are sold to consumers.

17 (15) "Retailer" means any person engaged in the business of
18 selling vapor products to ultimate consumers.

19 (16)(a) "Sale" means any transfer, exchange, or barter, in any
20 manner or by any means whatsoever, for a consideration, and includes
21 and means all sales made by any person.

22 (b) The term "sale" includes a gift by a person engaged in the
23 business of selling vapor products, for advertising, promoting, or
24 as a means of evading the provisions of this chapter.

25 (17) "School" has the same meaning as provided in RCW
26 70.140.020.

27 (18) "Self-service display" means a display that contains vapor
28 products and is located in an area that is openly accessible to
29 customers and from which customers can readily access such products
30 without the assistance of a salesperson. A display case that holds
31 vapor products behind locked doors does not constitute a self-
32 service display.

33 (19) "Vapor product" means any noncombustible product that may
34 contain nicotine and that employs a heating element, power source,

1 electronic circuit, or other electronic, chemical, or mechanical
2 means, regardless of shape or size, that can be used to produce
3 vapor or aerosol from a solution or other substance.

4 (a) "Vapor product" includes any electronic cigarette,
5 electronic cigar, electronic cigarillo, electronic pipe, or similar
6 product or device and any vapor cartridge or other container that
7 may contain nicotine in a solution or other form that is intended to
8 be used with or in an electronic cigarette, electronic cigar,
9 electronic cigarillo, electronic pipe, or similar product or device.

10 (b) "Vapor product" does not include any product that meets the
11 definition of marijuana, useable marijuana, marijuana concentrates,
12 marijuana-infused products, cigarette, or tobacco products.

13 (c) For purposes of this subsection (19), "marijuana," "useable
14 marijuana," "marijuana concentrates," and "marijuana-infused
15 products" have the same meaning as provided in RCW 69.50.101.

16

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

19 A person who holds a license issued under RCW 82.24.520 or
20 82.24.530 shall:

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

23 (2) Display a sign concerning the prohibition of tobacco sales
24 to minors.

25 Such sign shall:

26 (a) Be posted so that it is clearly visible to anyone purchasing
27 tobacco products from the licensee;

28 (b) Be designed and produced by the department of health to
29 read: "THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER AGE (~~(18)~~) 19
30 IS STRICTLY PROHIBITED BY STATE LAW. IF YOU ARE UNDER (~~(18)~~) 19, YOU
31 COULD BE PENALIZED FOR PURCHASING A TOBACCO PRODUCT; PHOTO ID
32 REQUIRED"; and

33 (c) Be provided free of charge by the liquor (~~(control)~~) and
34 cannabis board.

1 **Sec. 6.** RCW 70.345.070 and 2016 1st sp.s. c 38 s 12 are each
2 amended to read as follows:

3 (1) Except as provided in subsection (2) of this section, a
4 person who holds a retailer's license issued under this chapter must
5 display a sign concerning the prohibition of vapor product sales to
6 minors. Such sign must:

7 (a) Be posted so that it is clearly visible to anyone purchasing
8 vapor products from the licensee;

9 (b) Be designed and produced by the department of health to
10 read: "The sale of vapor products to persons under age (~~eighteen~~)
11 nineteen is strictly prohibited by state law. If you are under age
12 (~~eighteen~~) nineteen, you could be penalized for purchasing a vapor
13 product; photo id required;" and

14 (c) Be provided free of charge by the department of health.

15 (2) For persons also licensed under RCW 82.24.510 or 82.26.150,
16 the board may issue a sign to read: "The sale of tobacco or vapor
17 products to persons under age (~~eighteen~~) nineteen is strictly
18 prohibited by state law. If you are under age (~~eighteen~~) nineteen,
19 you could be penalized for purchasing a tobacco or vapor product;
20 photo id required," provided free of charge by the board.

21 (3) A person who holds a license issued under this chapter must
22 display the license or a copy in a prominent location at the outlet
23 for which the license is issued.

24

25 **Sec. 7.** RCW 70.345.100 and 2016 1st sp.s. c 38 s 19 are each
26 amended to read as follows:

27 (1) No person may offer a tasting of vapor products to the
28 general public unless:

29 (a) The person is a licensed retailer under RCW 70.345.020;

30 (b) The tastings are offered only within the licensed premises
31 operated by the licensee and the products tasted are not removed
32 from within the licensed premises by the customer;

33 (c) Entry into the licensed premises is restricted to persons
34 (~~eighteen~~) nineteen years of age or older;

1 (d) The vapor product being offered for tasting contains zero
2 milligrams per milliliter of nicotine or the customer explicitly
3 consents to a tasting of a vapor product that contains nicotine; and

4 (e) If the customer is tasting from a vapor device owned and
5 maintained by the retailer, a disposable mouthpiece tip is attached
6 to the vapor product being used by the customer for tasting or the
7 vapor device is disposed of after each tasting.

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

9

10 **Sec. 8.** RCW 70.155.030 and 1994 c 202 s 1 are each amended to
11 read as follows:

12 (1) No person shall sell or permit to be sold any tobacco
13 product through any device that mechanically dispenses tobacco
14 products unless the device is located fully within premises from
15 which (~~(minors)~~) persons under the age of nineteen are prohibited or
16 in industrial worksites where (~~(minors)~~) persons under the age of
17 nineteen are not employed and not less than ten feet from all
18 entrance or exit ways to and from each premise.

19 (2) The board shall adopt rules that allow an exception to the
20 requirement that a device be located not less than ten feet from all
21 entrance or exit ways to and from a premise if it is architecturally
22 impractical for the device to be located not less than ten feet from
23 all entrance and exit ways.

24

25 **Sec. 9.** RCW 70.155.120 and 2016 1st sp.s. c 38 s 2 are each
26 amended to read as follows:

27 (1) The youth tobacco and vapor products prevention account is
28 created in the state treasury. All fees collected pursuant to RCW
29 82.24.520, 82.24.530, 82.26.160, and 82.26.170 and funds collected
30 by the liquor and cannabis board from the imposition of monetary
31 penalties shall be deposited into this account, except that ten
32 percent of all such fees and penalties shall be deposited in the
33 state general fund.

34

1 (2) Moneys appropriated from the youth tobacco and vapor
2 products prevention account to the department of health shall be
3 used by the department of health for implementation of this chapter,
4 including collection and reporting of data regarding enforcement and
5 the extent to which access to tobacco products and vapor products by
6 youth has been reduced.

7 (3) The department of health shall enter into interagency
8 agreements with the liquor and cannabis board to pay the costs
9 incurred, up to thirty percent of available funds, in carrying out
10 its enforcement responsibilities under this chapter. Such agreements
11 shall set forth standards of enforcement, consistent with the
12 funding available, so as to reduce the extent to which tobacco
13 products and vapor products are available to individuals under the
14 age of ((~~eighteen~~)) nineteen. The agreements shall also set forth
15 requirements for data reporting by the liquor and cannabis board
16 regarding its enforcement activities.

17 (4) The department of health, the liquor and cannabis board, and
18 the department of revenue shall enter into an interagency agreement
19 for payment of the cost of administering the tobacco retailer
20 licensing system and for the provision of quarterly documentation of
21 tobacco wholesaler, retailer, and vending machine names and
22 locations.

23 (5) The department of health shall, within up to seventy percent
24 of available funds, provide grants to local health departments or
25 other local community agencies to develop and implement coordinated
26 tobacco and vapor product intervention strategies to prevent and
27 reduce tobacco and vapor product use by youth.

28

29 NEW SECTION. **Sec. 10.** This act takes effect January 1, 2019.

30

31 NEW SECTION. **Sec. 11.** If any provision of this act or its
32 application to any person or circumstance is held invalid, the
33 remainder of the act or the application of the provision to other
34 persons or circumstances is not affected."

EFFECT: Lowers the age of a person who can be sold cigars, cigarettes, tobacco, or vapor products to 19, instead of 21 years old. Replaces intent language that focused on raising the legal age to purchase tobacco to individuals 21 or older, with information about raising the age to 19 years old.

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