S-0962.1

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**SUBSTITUTE SENATE BILL 5057**

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**State of Washington 66th Legislature 2019 Regular Session**

**By** Senate Health & Long Term Care (originally sponsored by Senators Kuderer, Cleveland, Bailey, Wellman, King, Keiser, Walsh, Darneille, Liias, McCoy, Carlyle, Dhingra, Frockt, Hunt, Wilson, C., Pedersen, Rivers, Zeiger, Saldaña, Mullet, and O'Ban; by request of Attorney General and Department of Health)

AN ACT Relating to protecting youth from tobacco products and vapor products by increasing the minimum legal age of sale of tobacco and vapor products; amending RCW 26.28.080, 70.155.005, 70.155.010, 70.345.010, 70.155.020, 70.345.070, 70.345.100, 70.155.030, 70.345.080, and 70.155.120; creating new sections; and providing an effective date.

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

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

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

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

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

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

(1) The legislature finds that chapter ..., Laws of 2019 (this act) furthers the public health, safety, and welfare by reducing youth access to addictive and harmful products.

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

(3) The legislature recognizes that many people who purchase cigarettes for minors are between the ages of eighteen to twenty. By decreasing the number of eligible buyers in high school, raising the minimum legal age to sell tobacco and vapor products will decrease the access of students to tobacco products. According to the 2014 healthy youth survey, forty-one percent of tenth graders say it is "sort of easy" to "very easy" to get cigarettes. Nationally, among youth who smoke, more than twice as many get their cigarettes from social sources than from a store or vending machine.

(4) The legislature recognizes that ninety-five percent of smokers start by the age of twenty-one.

(5) The legislature recognizes that jurisdictions across the country are increasing the age of sale for tobacco products to twenty-one. As of October 2018, six states (California, Hawaii, Maine, Massachusetts, New Jersey, and Oregon), the District of Columbia, the territory of Guam, and more than three hundred fifty cities and counties in twenty-one states have raised the minimum legal sales age to twenty-one. Approximately thirty percent of the population of the United States is covered by such a policy.

(6) The legislature recognizes the scientific report issued by the national institute of medicine, one of the most prestigious scientific authorities in the United States, which predicted that increasing the age of sale for tobacco products in the United States to twenty-one will significantly reduce the number of adolescents and young adults who start smoking, reduce deaths from smoking, and immediately improve the health of adolescents, young adults, young mothers, and their children.

(7) The legislature recognizes the national institute of medicine report predicted increasing the tobacco sale age will make the greatest difference among those ages fifteen to seventeen, who will no longer be able to pass for legal age and will have a harder time getting tobacco products from older classmates and friends. The national institute of medicine report also predicted raising the minimum age for the sale of tobacco products in the United States to twenty-one will, over time, reduce the smoking rate by about twelve percent and smoking-related deaths by ten percent.

(8) The legislature recognizes scientific study of the brain is increasingly showing that the brain continues to be highly vulnerable to addictive substances until age twenty-five. Nicotine adversely affects the development of the cerebral cortex and hippocampus in adolescents.

(9) The legislature recognizes that a strategy of increasing the minimum legal age for alcohol was highly successful in reducing adverse effects of alcohol consumption. A national drinking age of twenty-one resulted in reduced alcohol consumption among youth, decreased alcohol dependence, and has led to significant reductions in drunk driving fatalities.

(10) The legislature recognizes that if the age of sale is raised to twenty-one, eighteen to twenty year olds will likely substitute other in-store purchases for cigarettes. The legislature recognizes that when Needham, Massachusetts raised the smoking age to twenty-one in 2005, no convenience stores went out of business.

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

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

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

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

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

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

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

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

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

((~~(6)~~)) (5) "Tobacco product" means a product that contains tobacco and is intended for human use, including any product defined in RCW 82.24.010(2) or 82.26.010((~~(1)~~)) (21), except that for the purposes of RCW 70.155.140 only, "tobacco product" does not include cigars defined in RCW 82.26.010 as to which one thousand units weigh more than three pounds.

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

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

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

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

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

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

(4) "Closed system nicotine container" means a sealed, prefilled, and disposable container of nicotine in a solution or other form in which such container is inserted directly into an electronic cigarette, electronic nicotine delivery system, or other similar product, if the nicotine in the container is inaccessible through customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion or other contact by children.

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

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

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

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

(7) "Distributor" means any person who:

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

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

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

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

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

~~(11)~~)) "Person" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, the state and its departments and institutions, political subdivision of the state of Washington, corporation, limited liability company, association, society, any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise.

((~~(12)~~)) (11) "Place of business" means any place where vapor products are sold or where vapor products are manufactured, stored, or kept for the purpose of sale.

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

((~~(14)~~)) (13) "Retail outlet" means each place of business from which vapor products are sold to consumers.

((~~(15)~~)) (14) "Retailer" means any person engaged in the business of selling vapor products to ultimate consumers.

((~~(16)~~)) (15)(a) "Sale" means any transfer, exchange, or barter, in any manner or by any means whatsoever, for a consideration, and includes and means all sales made by any person.

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

((~~(17)~~)) (16) "School" has the same meaning as provided in RCW 70.140.020.

((~~(18)~~)) (17) "Self-service display" means a display that contains vapor products and is located in an area that is openly accessible to customers and from which customers can readily access such products without the assistance of a salesperson. A display case that holds vapor products behind locked doors does not constitute a self-service display.

((~~(19)~~)) (18) "Vapor product" means any noncombustible product that may contain nicotine and that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, that can be used to produce vapor or aerosol from a solution or other substance.

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

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

(c) For purposes of this subsection ((~~(19)~~)) (18), "marijuana," "useable marijuana," "marijuana concentrates," and "marijuana-infused products" have the same meaning as provided in RCW 69.50.101.

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

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

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

(2) Display a sign concerning the prohibition of tobacco sales to ((~~minors~~)) persons under the age of twenty-one.

Such sign shall:

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

(b) Be designed and produced by the department of health to read: "THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER AGE ((~~18~~)) 21 IS STRICTLY PROHIBITED BY STATE LAW. ((~~IF YOU ARE UNDER 18, YOU COULD BE PENALIZED FOR PURCHASING A TOBACCO PRODUCT;~~)) PHOTO ID REQUIRED UPON REQUEST"; and

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

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

(1) Except as provided in subsection (2) of this section, a person who holds a retailer's license issued under this chapter must display a sign concerning the prohibition of vapor product sales to ((~~minors~~)) persons under the age of twenty-one. Such sign must:

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

(b) Be designed and produced by the department of health to read: "The sale of vapor products to persons under age ((~~eighteen~~)) twenty-one is strictly prohibited by state law. ((~~If you are under age eighteen, you could be penalized for purchasing a vapor product;~~)) Photo id required upon request;" and

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

(2) For persons also licensed under RCW 82.24.510 or 82.26.150, the board may issue a sign to read: "The sale of tobacco or vapor products to persons under age ((~~eighteen~~)) twenty-one is strictly prohibited by state law. ((~~If you are under age eighteen, you could be penalized for purchasing a tobacco or vapor product;~~)) Photo id required((~~,~~)) upon request." The sign must be provided free of charge by the board.

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

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

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

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

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

(c) Entry into the licensed premises is restricted to persons ((~~eighteen~~)) twenty-one years of age or older;

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

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

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

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

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

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

**Sec.**  RCW 70.345.080 and 2017 c 210 s 1 are each amended to read as follows:

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

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

(3) Retail establishments are exempt from subsections (1) and (2) of this section if ((~~minors~~)) persons under the age of twenty-one are not allowed in the store and such prohibition is posted clearly on all entrances.

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

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

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

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

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

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

NEW SECTION. **Sec.**  In recognition of the sovereign authority of tribal governments, the governor may seek government-to-government consultations with Indian tribes regarding raising the minimum legal age of sale in compacts entered into pursuant to RCW 43.06.455, 43.06.465, and 43.06.466. The office of the governor shall report to the appropriate committees of the legislature regarding the status of such consultations no later than December 1, 2020.

NEW SECTION. **Sec.**  Upon passage of this act and signature by the governor of the state of Washington, copies of Senate Joint Memorial No. . . . . .(S-0905/19), if adopted by the legislature by the effective date of this section, must be immediately transmitted to the Honorable Donald J. Trump, President of the United States, the president of the United States senate, the speaker of the United States house of representatives, and each member of Congress from the state of Washington.

NEW SECTION. **Sec.**  This act takes effect January 1, 2020.

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

**--- END ---**