

# SENATE BILL REPORT

## SB 6333

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As of January 31, 2020

**Title:** An act relating to reducing youth access to products intended for consumption only by adults age twenty-one and over.

**Brief Description:** Reducing youth access to products intended for consumption only by adults age twenty-one and over.

**Sponsors:** Senators Salomon, Carlyle, Kuderer, Nguyen and Wilson, C.

**Brief History:**

**Committee Activity:** Labor & Commerce: 2/03/20.

### Brief Summary of Bill

- Bans the use of billboard advertising by marijuana licensees while eliminating certain restrictions for on-premise signs and advertisements of marijuana licensees and modifying the rule-making authority of the Liquor and Cannabis Board.
- Bans the use of billboard advertising for vapor products and adds new restrictions to vapor product advertising and licensing.
- Increases the fine for violations of advertising requirements applicable to marijuana and imposes a new fine for vapor product advertising violations.
- Establishes restrictions for operators of web sites, online services, mobile applications, and advertising services related to the marketing of vapor products to minors and how operators and businesses use and share minors' personal information.
- Requires school districts to add vapor products to their tobacco policies, expands the definition of "school" in the vapor products law to include postsecondary institutions, and requires postsecondary institutions to adopt certain policies.

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### SENATE COMMITTEE ON LABOR & COMMERCE

*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Staff:** Richard Rodger (786-7461)

**Background:** Marijuana Advertising. Advertising by licensed marijuana businesses is regulated in state law and rules, with enforcement by the Washington State Liquor and Cannabis Board (LCB). Except for the use of billboards, marijuana retailers may not display signage outside their premises other than two signs that are no larger than 1600 square inches and permanently affixed to a building or other structure. These two signs are limited to text that identifies the retail outlet by the licensee's business or trade name, states the location of the business, and identifies the type or nature of the business. The signs may not contain any depictions of marijuana plants, marijuana products, or images that might be appealing to children. The LCB may regulate the text and images that are permissible on outdoor advertising. All signs, billboards, or other print advertising for marijuana businesses or products must contain text stating marijuana products may be purchased or possessed only by persons age 21 or older.

Outdoor advertising by marijuana licensees is prohibited on signs and placards in arenas, stadiums, shopping malls, fairs that receive state allocations, farmers markets, and video game arcades, but not including any sign or placard located in an adult-only facility. State law generally prohibits billboard advertising by licensees. Retail outlets may use a billboard or outdoor sign solely for the purpose of identifying the name of the business, the nature of the business, and providing the public with directional information to the retail outlet.

Placing a sign or advertisement for a marijuana business or product is prohibited within 1000 feet of the perimeter of:

- school grounds, playgrounds, recreation centers or facilities;
- child care centers, public parks, or libraries; or
- any game arcade admission to which is not restricted to persons aged 21 and older.

All transit advertising by marijuana licensees is prohibited. Transit advertising is advertising on or within private or public vehicles and all advertisements placed at any bus stop, taxi stand, transportation waiting area, train station, airport, or any similar transit-related location.

A marijuana licensee may not (1) target youth in advertising or take action the primary purpose of which is to initiate, maintain, or increase the incidence of youth marijuana use; (2) use objects like toys, movie or cartoon characters, or other depictions or images likely to appeal to youth, where it indicates an intent to cause youth to become interested in purchasing or consuming marijuana; or (3) use a commercial mascot, such as a person in costume or spinning a sign, outside of a marijuana business. State law required the LCB to fine a licensee \$1,000 for each advertising violation until the LCB adopted rules prescribing penalties for violations.

Vapor Product Regulation. The LCB licenses vapor product retailers, distributors, and delivery sellers. There is a prohibition on selling vapor products to persons under age 21, and restrictions on packaging, the use of coupons, sampling conducted in retail outlets, and on where vapor products may be used. Fines for violations by licensees start at \$200 for a first violation in a three-year period and escalate for additional violations. The maximum monetary fine is \$3,000, and a license may be revoked with no possibility for reinstatement for five years for five or more violations in a three-year period. The use of vapor products is

prohibited inside schools, within 500 feet of schools, and outdoors on real property under the control of a school and upon which the school is located. "School" is defined as a public or private kindergarten, elementary, or secondary school.

Tobacco Products at Schools. School district boards of directors must have a written policy mandating a prohibition on the use of all tobacco products on public school property. These policies must include a requirement that students and school personnel be notified of the prohibition, the posting of signs prohibiting the use of tobacco products, sanctions for students and school personnel who violate the policy, and a requirement that school district personnel enforce the prohibition.

**Summary of Bill:** Marijuana Advertising. The requirement is eliminated that licensed marijuana retailers may not display signage outside of their premises other than two signs identifying the retail outlet by the licensee's business or trade name, stating the location of the business, and identifying the nature of the business. The requirements are eliminated that each sign on a marijuana retailer's premise be no larger than 1600 square inches, be permanently affixed to a building or other structure, and not contain depictions of marijuana plants or marijuana products.

While these requirements are eliminated, an additional requirement is added that licensed marijuana retailers may not display signage outside of their licensed premises that is appealing to youth or violates other remaining applicable requirements for advertisements. Outdoor advertising by marijuana licensees is prohibited on any billboard in Washington. All references to permitted marijuana billboards are eliminated. The rule-making authority of the LCB related to regulating on-premises signs and on-premises advertisements of marijuana licensees is limited to rules designed to prevent signs and advertisements from being appealing to children and persons under 21 years of age. Nothing authorizes the LCB to limit the number or size of on-premise signs or advertisements used by marijuana licensee at their licensed location.

Vapor Product Regulation. *Advertising restrictions* on vapor products are established. No billboard may be placed or maintained in Washington advertising a vapor product or a vapor product business. Vapor product retailers may not display signage outside of their licensed premises that is appealing to youth. No transit advertisement may be placed or maintained by a person or vapor business advertising a vapor product or vapor product business. Transit advertising is defined as advertising on or within private or public vehicles and all advertisements placed at any bus stop, taxi stand, transportation waiting area, train station, airport, or any similar transit-related location.

Except for signs at premises licensed on the effective date of the bill, no sign or other advertisement of a vapor product or a vapor product business may be placed or maintained, in any form or through any medium, within 1000 feet of the perimeter of a school ground, playground, recreation center or facility, child care center, public park, or library, or any game arcade where admission is not restricted to persons aged twenty-one years or older. The LCB is also prohibited from issuing a license to a vapor product retailer, distributor, or delivery seller applicant for a premises located within those same distances.

The LCB must fine a licensee \$2,500 for a first advertising violation. The LCB may establish a fine in excess of \$2,500 for cumulative violations and may include license suspension and revocation as a penalty. The definition of "school" in the vapor products law is amended to also include all postsecondary institutions. Nothing prohibits the use of vapor products in a designated smoking area on the property of a postsecondary institution.

*Internet and Mobile Ads for Vapor Products.* An operator of a web site, online service, online application, or mobile application directed to minors may not market or advertise a vapor product on its web site, online service, online application, or mobile application directed to minors. An operator may not market or advertise a vapor product to a minor who the operator has actual knowledge of using its web site, online service, online application, or mobile application, if the marketing or advertising is specifically directed to the minor based upon information specific to that minor including, but not limited to, the minor's profile, activity, address, or location sufficient to establish contact with a minor. If the operator takes reasonable actions in good faith designed to avoid prohibited marketing or advertising, the operator is deemed in compliance with the requirements.

An operator of a web site, online service, online application, or mobile application directed to minors, or who has actual knowledge that a minor is using its web site, online service, online application, or mobile application, may not knowingly use, disclose, compile, or allow a third party to use, disclose, or compile a minor's personal information with actual knowledge that it is being done for purposes of advertising a vapor product to that minor.

With respect to advertising provided by an advertising service, the operator of a web site, online service, online application, or mobile application directed to minors is in compliance if the operator notifies the advertising service that the site, service, or application is directed to minors. If an advertising service is notified of this, the advertising service may not market or advertise a vapor product or a vapor product business on the operator's web site, online service, online application, or mobile application. The new advertising restrictions do not apply to the incidental placement of products or services embedded in content if the content is not distributed by or at the direction of the operator primarily for marketing and advertising vapor products or a vapor product business. A violation of these new advertising requirements for web sites and other online services is a violation of the state Consumer Protection Act.

Vapor and Tobacco Products at Schools and Postsecondary Institutions. School districts' policies prohibiting tobacco use on school property must be updated to prohibit using vapor products on school property. The signs that school districts must post concerning the prohibition on using tobacco products on public school property must be updated to include the prohibition on using vapor products. Postsecondary institutions must have a written policy mandating a prohibition on smoking and on the use of vapor products, except for in designated smoking areas. The policy must require students and personnel to be notified of the prohibition, the posting of signs prohibiting smoking and the use of vapor products except for in any designated areas, sanctions for students and personnel who violate the policy, and a requirement that personnel enforce the prohibition.

**Appropriation:** None.

**Fiscal Note:** Requested on January 15, 2020.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.