
SUBSTITUTE SENATE BILL 5057

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, Llias, McCoy, Carlyle, Dhingra, Frockt, Hunt, Wilson, C., Pedersen, Rivers, Zeiger, Saldaña, Mullet, and O'Ban; by request of Attorney General and Department of Health)

READ FIRST TIME 01/23/19.

1 AN ACT Relating to protecting youth from tobacco products and
2 vapor products by increasing the minimum legal age of sale of tobacco
3 and vapor products; amending RCW 26.28.080, 70.155.005, 70.155.010,
4 70.345.010, 70.155.020, 70.345.070, 70.345.100, 70.155.030,
5 70.345.080, and 70.155.120; creating new sections; and providing an
6 effective date.

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

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

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

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

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

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

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

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

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

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

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

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

36 (7) The legislature recognizes the national institute of medicine
37 report predicted increasing the tobacco sale age will make the
38 greatest difference among those ages fifteen to seventeen, who will
39 no longer be able to pass for legal age and will have a harder time
40 getting tobacco products from older classmates and friends. The

1 national institute of medicine report also predicted raising the
2 minimum age for the sale of tobacco products in the United States to
3 twenty-one will, over time, reduce the smoking rate by about twelve
4 percent and smoking-related deaths by ten percent.

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

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

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

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

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

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

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

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

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

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

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

8 (~~(5)~~) (4) "Sampling" means the distribution of samples to
9 members of the public.

10 (~~(6)~~) (5) "Tobacco product" means a product that contains
11 tobacco and is intended for human use, including any product defined
12 in RCW 82.24.010(2) or 82.26.010(~~(1)~~) (21), except that for the
13 purposes of RCW 70.155.140 only, "tobacco product" does not include
14 cigars defined in RCW 82.26.010 as to which one thousand units weigh
15 more than three pounds.

16 (6) "Vapor product" has the same meaning as defined in RCW
17 70.345.010.

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

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

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

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

26 (3) "Child care facility" has the same meaning as provided in RCW
27 70.140.020.

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

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

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

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

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

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

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

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

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

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

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

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

30 (~~(12)~~) (11) "Place of business" means any place where vapor
31 products are sold or where vapor products are manufactured, stored,
32 or kept for the purpose of sale.

33 (~~(13)~~) (12) "Playground" means any public improved area
34 designed, equipped, and set aside for play of six or more children
35 which is not intended for use as an athletic playing field or
36 athletic court, including but not limited to any play equipment,
37 surfacing, fencing, signs, internal pathways, internal land forms,
38 vegetation, and related structures.

39 (~~(14)~~) (13) "Retail outlet" means each place of business from
40 which vapor products are sold to consumers.

1 (~~(15)~~) (14) "Retailer" means any person engaged in the business
2 of selling vapor products to ultimate consumers.

3 (~~(16)~~) (15)(a) "Sale" means any transfer, exchange, or barter,
4 in any manner or by any means whatsoever, for a consideration, and
5 includes and means all sales made by any person.

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

9 (~~(17)~~) (16) "School" has the same meaning as provided in RCW
10 70.140.020.

11 (~~(18)~~) (17) "Self-service display" means a display that
12 contains vapor products and is located in an area that is openly
13 accessible to customers and from which customers can readily access
14 such products without the assistance of a salesperson. A display case
15 that holds vapor products behind locked doors does not constitute a
16 self-service display.

17 (~~(19)~~) (18) "Vapor product" means any noncombustible product
18 that may contain nicotine and that employs a heating element, power
19 source, electronic circuit, or other electronic, chemical, or
20 mechanical means, regardless of shape or size, that can be used to
21 produce vapor or aerosol from a solution or other substance.

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

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

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

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

36 A person who holds a license issued under RCW 82.24.520 or
37 82.24.530 shall:

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

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

3 Such sign shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 **Sec. 9.** RCW 70.345.080 and 2017 c 210 s 1 are each amended to
32 read as follows:

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

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

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

5 **Sec. 10.** RCW 70.155.120 and 2016 1st sp.s. c 38 s 2 are each
6 amended to read as follows:

7 (1) The youth tobacco and vapor products prevention account is
8 created in the state treasury. All fees collected pursuant to RCW
9 82.24.520, 82.24.530, 82.26.160, and 82.26.170 and funds collected by
10 the liquor and cannabis board from the imposition of monetary
11 penalties shall be deposited into this account, except that ten
12 percent of all such fees and penalties shall be deposited in the
13 state general fund.

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

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

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

36 (5) The department of health shall, within up to seventy percent
37 of available funds, provide grants to local health departments or
38 other local community agencies to develop and implement coordinated

1 tobacco and vapor product intervention strategies to prevent and
2 reduce tobacco and vapor product use by youth.

3 NEW SECTION. **Sec. 11.** In recognition of the sovereign authority
4 of tribal governments, the governor may seek government-to-government
5 consultations with Indian tribes regarding raising the minimum legal
6 age of sale in compacts entered into pursuant to RCW 43.06.455,
7 43.06.465, and 43.06.466. The office of the governor shall report to
8 the appropriate committees of the legislature regarding the status of
9 such consultations no later than December 1, 2020.

10 NEW SECTION. **Sec. 12.** Upon passage of this act and signature by
11 the governor of the state of Washington, copies of Senate Joint
12 Memorial No.(S-0905/19), if adopted by the legislature by
13 the effective date of this section, must be immediately transmitted
14 to the Honorable Donald J. Trump, President of the United States, the
15 president of the United States senate, the speaker of the United
16 States house of representatives, and each member of Congress from the
17 state of Washington.

18 NEW SECTION. **Sec. 13.** This act takes effect January 1, 2020.

19 NEW SECTION. **Sec. 14.** If any provision of this act or its
20 application to any person or circumstance is held invalid, the
21 remainder of the act or the application of the provision to other
22 persons or circumstances is not affected.

--- END ---