

SENATE BILL REPORT

SB 5129

As of January 21, 2021

Title: An act relating to possession of vapor, vapor products, tobacco, and tobacco products by minors.

Brief Description: Concerning the possession of vapor, vapor products, tobacco, and tobacco products by minors.

Sponsors: Senators Saldaña, Darneille, Nguyen, Nobles, Stanford and Wilson, C..

Brief History:

Committee Activity: Human Services, Reentry & Rehabilitation: 1/21/21.

Brief Summary of Bill

- Repeals civil infractions prohibiting the purchase or possession of tobacco products or vapor products by a person under the age of 18.
- Removes authority of a peace officer or Liquor and Cannabis Board (LCB) enforcement officer to detain a person purchasing or possessing tobacco products or vapor products to determine if they are under the age of 18.
- Removes authority of a peace officer or LCB enforcement officer to seize tobacco products or vapor products from a person under the age of 18.

SENATE COMMITTEE ON HUMAN SERVICES, REENTRY & REHABILITATION

Staff: Alison Mendiola (786-7488)

Background: Purchasing, attempting to purchase, possessing, obtaining, or attempting to obtain a tobacco product or vapor product by a person under 18 years of age is a class 3 civil infraction punishable by a fine up to \$50, up to four hours of community restitution, or

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both. The court may require participation in a smoking cessation program. Municipal and district courts have jurisdiction to enforce these infractions.

A peace officer or Liquor and Cannabis Board (LCB) enforcement officer may detain a person purchasing, attempting to purchase, or possessing tobacco products or vapor products for a reasonable period of time to determine if the person is under 18 years of age. An officer may also seize tobacco products or vapor products possessed by a person under 18 years of age.

Retailers are prohibited from selling tobacco products and vapor products to persons under the age of 21. A licensed retailer must prominently display a sign displaying this prohibition.

In 2019, the Legislature enacted EHB 1074 which raised the age of prohibition for selling tobacco products and vapor products by a licensed retailer or wholesaler of tobacco or vapor products from 18 to 21 years of age.

Tobacco product means a product that contains tobacco that is intended for human use. 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. It includes an 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.

Summary of Bill: A peace officer or enforcement officer of the LCB may not:

- detain a person purchasing, attempting to purchase, or possessing tobacco products or vapor products to determine if a the person is under the age of 18; or
- seize tobacco products or vapor products possessed by a person under the age of 18.

The LCB, local enforcement agencies, or local health departments may coordinate controlled purchases of tobacco products or vapor products involving people under the age of 21, and under the age of 18 with parental authorization, to enforce the ban against selling tobacco products or vapor products to those who are under the age of 21.

The class 3 infraction prohibiting purchasing, attempting to purchase, possessing, obtaining or attempting to obtain tobacco products or vapor products is repealed.

This act is not to be interpreted to limit the ability of a peace officer or an enforcement officer of the LCB to enforce legal prohibitions against selling tobacco and vapor products to people under the age of 21.

Appropriation: None.

Fiscal Note: Available.

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

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

Staff Summary of Public Testimony: PRO: This bill was brought forward by advocates who work with students in middle school and high school when the legal smoking age was raised to 21. This bill aligns the treatment of minors with those of young adults between the ages of 18-21. The bill will decrease unnecessary contact with police which disproportionately impacts communities of color and the LGBT community. We need to hold businesses accountable for selling to people under 21, not punish kids. There is no data to suggest penalties are more effective in helping youth quit smoking, what we need to focus on is prevention. When the legal smoking age was increased, the provisions related to minors were not revised. This bill is a vehicle to remedy that issue. LCB and law enforcement need to focus on the root of the problem.

CON: We all, including the Legislature, agree youth should not possess these products. The challenge is if we do not enforce the law, then who will? There is no interest in issuing an infraction.

OTHER: The LCB supports the concept of consistency between ages groups. There is a concern/challenge compliance checks alone are not the most effective tools for youth access at point of sale. Federally it is requested the LCB do three checks at retailers and the reality is we do not have the ability. Being able to see a minor's identification would help with that enforcement. Reasonable detainment is a short period of time. Whether it's a point of sale or at a bar, you need ID. If a person is of age, the transaction is two minutes. There are different methodologies to prevent the risk to ensure disparate treatment for communities of color.

Persons Testifying: PRO: Senator Rebecca Saldaña, Prime Sponsor; Matt Helder, American Cancer Society Cancer Action Network; Mike Graham-Squire, Healthy King County Coalition -Tobacco Marijuana and Other Drug Workgroup; Elaine Ishihara, chair, Healthy King County Coalition, Tobacco Marijuana and Other Drug Workgroup; Tuyet-Nhi Vo, APICAT for Health; Jalen Howard, Center for Multicultural Health; Heidi Lopez, El Centro De La Raza; Lelach Rave, Washington Chapter of the American Academy of Pediatrics/MD.

CON: James McMahan, Washington Association of Sheriffs and Police Chiefs.

OTHER: Justin Nordhorn, Washington State Liquor and Cannabis Board.

Persons Signed In To Testify But Not Testifying: No one.