

ESSB 5365 - H COMM AMD

By Committee on Regulated Substances & Gaming

ADOPTED AS AMENDED 04/07/2023

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

3 "NEW SECTION. **Sec. 1.** (1) The legislature finds:

4 (a) Prevention is the most effective tool to reduce vapor and
5 tobacco usage by persons under the age of 21. Protection of
6 adolescents' health and well-being requires enforcement and
7 intervention efforts to focus upon effective vapor and tobacco
8 control and access strategies.

9 (b) Retailers play a key role in ensuring that state law
10 regarding access to vapor or tobacco is followed. However, the 2021
11 healthy youth survey found that 15 percent (one out of every six)
12 retail stores illegally sold tobacco or vapor products to a minor in
13 2021.

14 (c) Vapor and tobacco product purchase, use, and possession by
15 persons under the age of 21 is a critical public health issue. The
16 2021 healthy youth survey found that 16 percent of 12th graders in
17 Washington state reported using tobacco or vapor products in the past
18 30 days, youth under age 18 are far more likely to start using
19 tobacco than adults, and nearly nine out of 10 adults who smoke
20 started by age 18. The healthy youth survey also found that 104,000
21 Washington youth alive today will ultimately die prematurely from
22 smoking.

23 (d) With the passage of chapter 15, Laws of 2019, individuals
24 between the ages of 18 and 21 do not face liability for purchase or
25 possession of vapor or tobacco products but individuals under the age
26 of 18 continue to face civil liability for purchase or possession of
27 vapor or tobacco products, creating a disparity in the law.

28 (2) The legislature therefore finds that all persons under the
29 age of 21 who purchase, use, or possess vapor or tobacco products
30 should be offered community-based interventions that are more
31 effective in helping them quit. The legislature further resolves to

1 increase enforcement strategies to ensure retailer compliance with
2 tobacco and vapor product possession laws.

3 **Sec. 2.** RCW 70.155.080 and 2002 c 175 s 47 are each amended to
4 read as follows:

5 (1) A person under the age of eighteen who purchases or attempts
6 to purchase, possesses, or obtains or attempts to obtain cigarettes
7 or tobacco products commits a class 3 civil infraction under chapter
8 7.80 RCW and is subject to ~~((a fine as set out in chapter 7.80 RCW~~
9 ~~or))~~ participation in up to four hours of community ~~((restitution, or~~
10 ~~both. The court may also require participation in))~~ service and
11 referral to a smoking cessation program at no cost. This provision
12 does not apply if a person under the age of eighteen, with parental
13 authorization, is participating in a controlled purchase as part of a
14 liquor ~~((control))~~ and cannabis board, law enforcement, or local
15 health department activity.

16 (2) Municipal and district courts within the state have
17 jurisdiction for enforcement of this section.

18 (3) Any enforcement officers issuing citations under this section
19 must collect demographic data and the liquor and cannabis board must
20 compile this information into a statewide report and provide the
21 report annually to the legislature.

22 **Sec. 3.** RCW 70.345.140 and 2016 sp.s. c 38 s 14 are each amended
23 to read as follows:

24 (1) A person under the age of eighteen who purchases or attempts
25 to purchase, possesses, or obtains or attempts to obtain vapor
26 products commits a class 3 civil infraction under chapter 7.80 RCW
27 and is subject to ~~((a fine as set out in chapter 7.80 RCW or))~~
28 participation in up to four hours of community ~~((restitution, or~~
29 ~~both. The court may also require participation in))~~ service and
30 referral to a smoking cessation program at no cost. This provision
31 does not apply if a person under the age of eighteen, with parental
32 authorization, is participating in a controlled purchase as part of a
33 board, law enforcement, or local health department activity.

34 (2) Municipal and district courts within the state have
35 jurisdiction for enforcement of this section.

36 (3) Any enforcement officers issuing citations under this section
37 must collect demographic data and the liquor and cannabis board must

1 compile this information into a statewide report and provide the
2 report annually to the legislature.

3 **Sec. 4.** RCW 70.155.100 and 2016 sp.s. c 38 s 23 are each amended
4 to read as follows:

5 (1) The liquor and cannabis board may suspend or revoke a
6 retailer's license issued under RCW 82.24.510(1)(b) or
7 82.26.150(1)(b) held by a business at any location, or may impose a
8 monetary penalty as set forth in subsection (3) of this section, if
9 the liquor and cannabis board finds that the licensee has violated
10 RCW 26.28.080, 70.155.020, 70.155.030, 70.155.040, 70.155.050,
11 70.155.070, or 70.155.090.

12 (2) Any retailer's licenses issued under RCW 70.345.020 to a
13 person whose license or licenses under chapter 82.24 or 82.26 RCW
14 have been suspended or revoked for violating RCW 26.28.080 must also
15 be suspended or revoked during the period of suspension or revocation
16 under this section.

17 (3) The sanctions that the liquor and cannabis board may impose
18 against a person licensed under RCW 82.24.530 or 82.26.170 based upon
19 one or more findings under subsection (1) of this section may not
20 exceed the following:

21 (a) For violations of RCW (~~(26.28.080,)~~) 70.155.020(~~(,)~~) or 21
22 C.F.R. Sec. 1140.14, and for violations of RCW 70.155.040 occurring
23 on the licensed premises:

24 (i) A monetary penalty of (~~(two hundred dollars)~~) \$200 for the
25 first violation within any three-year period;

26 (ii) A monetary penalty of (~~(six hundred dollars)~~) \$600 for the
27 second violation within any three-year period;

28 (iii) A monetary penalty of (~~(two thousand dollars)~~) \$2,000 and
29 suspension of the license for a period of six months for the third
30 violation within any three-year period;

31 (iv) A monetary penalty of (~~(three thousand dollars)~~) \$3,000 and
32 suspension of the license for a period of (~~(twelve)~~) 12 months for
33 the fourth violation within any three-year period;

34 (v) Revocation of the license with no possibility of
35 reinstatement for a period of five years for the fifth or more
36 violation within any three-year period;

37 (b) For violations of RCW 26.28.080:

38 (i) A monetary penalty of \$1,000 for the first violation within
39 any three-year period;

1 (ii) A monetary penalty of \$2,500 for the second violation within
2 any three-year period;

3 (iii) A monetary penalty of \$5,000 and suspension of the license
4 for a period of six months for the third violation within any three-
5 year period;

6 (iv) A monetary penalty of \$10,000 and suspension of the license
7 for a period of 12 months for the fourth violation within any three-
8 year period;

9 (v) Revocation of the license with no possibility of
10 reinstatement for a period of five years for the fifth or more
11 violation within any three-year period;

12 (c) If the board finds that a person licensed under chapter 82.24
13 or 82.26 RCW and RCW 70.345.020 has violated RCW 26.28.080, each
14 subsequent violation of either of the person's licenses counts as an
15 additional violation within that three-year period(~~(-)~~);

16 ~~((~~(e)~~))~~ (d) For violations of RCW 70.155.030, a monetary penalty
17 in the amount of (~~(one hundred dollars)~~) \$100 for each day upon which
18 such violation occurred;

19 ~~((~~(d)~~))~~ (e) For violations of RCW 70.155.050, a monetary penalty
20 in the amount of (~~(six hundred dollars)~~) \$600 for each violation;

21 ~~((~~(e)~~))~~ (f) For violations of RCW 70.155.070, a monetary penalty
22 in the amount of (~~(two thousand dollars)~~) \$2,000 for each violation.

23 (4) The liquor and cannabis board may impose a monetary penalty
24 upon any person other than a licensed cigarette or tobacco product
25 retailer if the liquor and cannabis board finds that the person has
26 violated RCW 26.28.080, 70.155.020, 70.155.030, 70.155.040,
27 70.155.050, 70.155.070, or 70.155.090.

28 (5) The monetary penalty that the liquor and cannabis board may
29 impose based upon one or more findings under subsection (4) of this
30 section may not exceed the following:

31 (a) For violation of RCW 26.28.080 or 70.155.020, (~~(one hundred~~
32 ~~dollars)~~) \$100 for the first violation and (~~(two hundred dollars)~~)
33 \$200 for each subsequent violation;

34 (b) For violations of RCW 70.155.030, (~~(two hundred dollars)~~)
35 \$200 for each day upon which such violation occurred;

36 (c) For violations of RCW 70.155.040, (~~(two hundred dollars)~~)
37 \$200 for each violation;

38 (d) For violations of RCW 70.155.050, (~~(six hundred dollars)~~)
39 \$600 for each violation;

1 (e) For violations of RCW 70.155.070, (~~two thousand dollars~~)
2 \$2,000 for each violation.

3 (6) The liquor and cannabis board may develop and offer a class
4 for retail clerks and use this class in lieu of a monetary penalty
5 for the clerk's first violation.

6 (7) The liquor and cannabis board may issue a cease and desist
7 order to any person who is found by the liquor and cannabis board to
8 have violated or intending to violate the provisions of this chapter,
9 RCW 26.28.080, 82.24.500, or 82.26.190 requiring such person to cease
10 specified conduct that is in violation. The issuance of a cease and
11 desist order does not preclude the imposition of other sanctions
12 authorized by this statute or any other provision of law.

13 (8) The liquor and cannabis board may seek injunctive relief to
14 enforce the provisions of RCW 26.28.080, 82.24.500, 82.26.190 or this
15 chapter. The liquor and cannabis board may initiate legal action to
16 collect civil penalties imposed under this chapter if the same have
17 not been paid within thirty days after imposition of such penalties.
18 In any action filed by the liquor and cannabis board under this
19 chapter, the court may, in addition to any other relief, award the
20 liquor and cannabis board reasonable attorneys' fees and costs.

21 (9) All proceedings under subsections (1) through (7) of this
22 section shall be conducted in accordance with chapter 34.05 RCW.

23 (10) The liquor and cannabis board may reduce or waive either the
24 penalties or the suspension or revocation of a license, or both, as
25 set forth in this chapter where the elements of proof are inadequate
26 or where there are mitigating circumstances. Mitigating circumstances
27 may include, but are not limited to, an exercise of due diligence by
28 a retailer. Further, the board may exceed penalties set forth in this
29 chapter based on aggravating circumstances.

30 **Sec. 5.** RCW 70.155.110 and 1993 c 507 s 12 are each amended to
31 read as follows:

32 (1) The (~~liquor control~~) board shall, in addition to the
33 board's other powers and authorities, have the authority to enforce
34 the provisions of this chapter and RCW 26.28.080(~~(4)~~) and
35 82.24.500. The (~~liquor control~~) board shall have full power to
36 revoke or suspend the license of any retailer or wholesaler in
37 accordance with the provisions of RCW 70.155.100.

38 (2) The (~~liquor control~~) board and the board's authorized
39 agents or employees shall have full power and authority to enter any

1 place of business where tobacco products are sold for the purpose of
2 enforcing the provisions of this chapter.

3 (3) (a) For the purpose of enforcing the provisions of this
4 chapter and RCW 26.28.080(~~(+4)~~) and 82.24.500, (~~(a peace officer~~
5 ~~or)~~) an enforcement officer of the (~~(liquor control)~~) board who has
6 reasonable grounds to believe a person observed by the officer in
7 proximity to a retailer licensee under chapters 82.24 and 82.26 RCW
8 who is purchasing, attempting to purchase, or in possession of
9 tobacco products is under the age of eighteen years of age, may
10 detain such person in proximity to such retailer for a reasonable
11 period of time and in such a reasonable manner as is necessary to
12 determine the person's true identity and date of birth. Further,
13 tobacco products possessed by persons under the age of eighteen years
14 of age are considered contraband and may be seized by (~~(a peace~~
15 ~~officer or)~~) an enforcement officer of the (~~(liquor control)~~) board.

16 (b) For the purposes of this subsection, "proximity" means 100
17 feet or less.

18 (4) The (~~(liquor control)~~) board may work with local county
19 health departments or districts and local law enforcement agencies to
20 conduct random, unannounced, inspections to assure compliance.

21 **Sec. 6.** RCW 70.155.120 and 2019 c 415 s 979 and 2019 c 15 s 10
22 are each reenacted and amended to read as follows:

23 (1) The youth tobacco and vapor products prevention account is
24 created in the state treasury. All fees collected pursuant to RCW
25 70.155.100(3)(b), 82.24.520, 82.24.530, 82.26.160, and 82.26.170 and
26 funds collected by the (~~(liquor and cannabis)~~) board from the
27 imposition of monetary penalties shall be deposited into this
28 account, except that (~~(ten)~~) 10 percent of all such fees and
29 penalties shall be deposited in the state general fund.

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

36 (3) The department of health shall enter into interagency
37 agreements with the (~~(liquor and cannabis)~~) board to pay the costs
38 incurred, up to (~~(thirty)~~) 30 percent of available funds, in carrying
39 out its enforcement responsibilities under this chapter. Such

1 agreements shall set forth standards of enforcement, consistent with
2 the funding available, so as to reduce the extent to which tobacco
3 products and vapor products are available to individuals under the
4 age of (~~twenty-one~~) 21. The agreements shall also set forth
5 requirements for data reporting by the (~~liquor and cannabis~~) board
6 regarding its enforcement activities. During the 2019-2021 fiscal
7 biennium, the department of health shall pay the costs incurred, up
8 to (~~twenty-three~~) 23 percent of available funds, in carrying out
9 its enforcement responsibilities.

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

16 (5) The department of health shall, within up to (~~seventy~~) 70
17 percent of available funds, provide grants to local health
18 departments or other local community agencies to develop and
19 implement coordinated tobacco and vapor product intervention
20 strategies to prevent and reduce tobacco and vapor product use by
21 youth. During the 2019-2021 fiscal biennium, the department of health
22 shall, within up to (~~seventy-seven~~) 77 percent of available funds,
23 provide grants to local health departments or other local community
24 agencies to develop and implement coordinated tobacco and vapor
25 product intervention strategies to prevent and reduce tobacco and
26 vapor product use by youth.

27 **Sec. 7.** RCW 70.345.160 and 2016 sp.s. c 38 s 24 are each amended
28 to read as follows:

29 (1) The board must have, in addition to the board's other powers
30 and authorities, the authority to enforce the provisions of this
31 chapter.

32 (2) The board and the board's authorized agents or employees have
33 full power and authority to enter any place of business where vapor
34 products are sold for the purpose of enforcing the provisions of this
35 chapter.

36 (3) (a) For the purpose of enforcing the provisions of this
37 chapter, (~~a peace officer or~~) an enforcement officer of the board
38 who has reasonable grounds to believe a person observed by the
39 officer in proximity to a retailer licensee under this chapter and

1 chapter 82.25 RCW who is purchasing, attempting to purchase, or in
2 possession of vapor products is under eighteen years of age, may
3 detain such person in proximity to such retailer for a reasonable
4 period of time and in such a reasonable manner as is necessary to
5 determine the person's true identity and date of birth. Further,
6 vapor products possessed by persons under eighteen years of age are
7 considered contraband and may be seized by ((a peace officer or)) an
8 enforcement officer of the board.

9 (b) For the purposes of this subsection, "proximity" means 100
10 feet or less.

11 (4) The board may work with local county health departments or
12 districts and local law enforcement agencies to conduct random,
13 unannounced, inspections to assure compliance.

14 (5) The board, law enforcement, or a local health department may,
15 with parental authorization, include persons under the age of 18 in
16 compliance activities.

17 (6) Upon a determination by the secretary of health or a local
18 health jurisdiction that a vapor product may be injurious to human
19 health or poses a significant risk to public health:

20 (a) The board, in consultation with the department of health and
21 local county health jurisdictions, may cause a vapor product
22 substance or solution sample, purchased or obtained from any vapor
23 product retailer, distributor, or delivery sale licensee, to be
24 analyzed by an analyst appointed or designated by the board;

25 (b) If the analyzed vapor product contains an ingredient,
26 substance, or solution present in quantities injurious to human
27 health or posing a significant risk to public health, as determined
28 by the secretary of health or a local health jurisdiction, the board
29 may suspend the license of the retailer or delivery sale licensee
30 unless the retailer or delivery sale licensee agrees to remove the
31 product from sales; and

32 (c) If upon a finding from the secretary of health or local
33 health jurisdiction that the vapor product poses an injurious risk to
34 public health or significant public health risk, the retailer or
35 delivery sale licensee does not remove the product from sale, the
36 secretary of health or local health officer may file for an
37 injunction in superior court prohibiting the sale or distribution of
38 that specific vapor product substance or solution.

39 ~~((6))~~ (7) Nothing in subsection ~~((5))~~ (6) of this section
40 permits a total ban on the sale or use of vapor products.

1 NEW SECTION. **Sec. 8.** Nothing in this act shall be interpreted
2 to limit the ability of a peace officer or an enforcement officer of
3 the liquor and cannabis board to enforce RCW 26.28.080 and
4 82.24.500."

5 Correct the title.

EFFECT: Makes the following changes to the enforcement of the provisions related to purchasing, obtaining, or attempting to obtain tobacco or vapor products:

(1) Limits the authority for an enforcement officer of the Liquor and Cannabis Board (enforcement officer) to detain a person for an infraction to persons physically located within 100 feet of a tobacco or vapor products retailer who were observed by the officer purchasing or attempting to purchase such products within 100 feet of a retailer.

(2) Clarifies the requirement that for any citations issued for a civil infraction related to such products, an enforcement officer must collect demographic data to be compiled by the Liquor and Cannabis Board and reported to the legislature.

(3) Provides that the bill is not to be interpreted to limit the ability of a peace officer or an enforcement officer to enforce the law prohibiting the selling or giving of tobacco or vapor products to a person under 21 years of age.

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