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SUBSTITUTE HOUSE BILL 1458

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State of Washington

64th Legislature

2015 Regular Session

**By** House Health Care & Wellness (originally sponsored by Representatives Orwall, Goodman, Pettigrew, Ryu, Stanford, Gregerson, Jinkins, Bergquist, McBride, Magendanz, Cody, Kagi, S. Hunt, and Pollet; by request of Attorney General)

1 AN ACT Relating to protecting youth from tobacco products and  
2 vapor products; and amending RCW 70.155.005, 26.28.080, 70.155.010,  
3 70.155.020, 70.155.030, 70.155.080, 70.155.110, and 70.155.120.

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

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

7 (1) The legislature finds that chapter ..., Laws of 2015 (this  
8 act) furthers the public health, safety, and welfare by reducing  
9 youth access to addictive and harmful products.

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

15 (3) Almost all adults who smoke started smoking when they were  
16 teenagers. At the same time, according to the 2012 healthy youth  
17 survey, forty-six percent of tenth graders say it is "sort of easy"  
18 to "very easy" to get cigarettes. Of these tenth graders who smoked,  
19 more than twice as many said they got their cigarettes from social  
20 sources, not from a store or vending machine.

1       (4) The years between age eighteen and age twenty-one are a  
2 critical period in which more than a quarter of those using tobacco  
3 move from experimentation to daily use. The legislature recognizes  
4 academic research projecting that raising the legal smoking age to  
5 twenty-one could cut the youth smoking rate in half within seven  
6 years.

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

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

18       **Sec. 2.** RCW 26.28.080 and 2013 c 47 s 1 are each amended to read  
19 as follows:

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

24       (2) It shall be no defense to a prosecution for a violation of  
25 this section that the person acted, or was believed by the defendant  
26 to act, as agent or representative of another.

27       (3) For the purposes of this section, "vapor product" means ~~((a~~  
28 ~~noncombustible tobacco derived product containing nicotine that~~  
29 ~~employs a mechanical heating element, battery, or circuit, regardless~~  
30 ~~of shape or size, that can be used to heat a liquid nicotine solution~~  
31 ~~contained in cartridges. Vapor product does not include any product~~  
32 ~~that is regulated by the United States food and drug administration~~  
33 ~~under chapter V of the federal food, drug, and cosmetic act))~~ any:

34 (a) Device that employs a battery or other mechanism to heat a  
35 solution or substance to produce a vapor or aerosol intended for  
36 inhalation; (b) cartridge or container of a solution or substance  
37 intended to be used with or in such a device; or (c) solution or  
38 substance intended for use in such a device, including, but not  
39 limited to, concentrated nicotine. "Vapor product" includes any

1 electronic cigarettes, electronic nicotine delivery systems,  
2 electronic cigars, electronic cigarillos, electronic pipes, vape  
3 pens, or similar products or devices, as well as any parts that can  
4 be used to build such products or devices. "Vapor product" does not  
5 include any drug, device, or combination product approved for sale by  
6 the United States food and drug administration that is marketed and  
7 sold for such approved purpose.

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

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

13 (1) "Board" means the Washington state liquor control board.

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

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

18 ~~(4))~~ (4) "Sample" means a tobacco product distributed to members of  
19 the general public at no cost or at nominal cost for product  
20 promotion purposes.

21 ~~((5))~~ (4) "Sampling" means the distribution of samples to  
22 members of the public.

23 ~~((6))~~ (5) "Tobacco product" means a product that contains  
24 tobacco and is intended for human use, including any product defined  
25 in RCW 82.24.010(2) or 82.26.010(~~((1))~~) (21), except that for the  
26 purposes of RCW 70.155.140 only, "tobacco product" does not include  
27 cigars defined in RCW 82.26.010 as to which one thousand units weigh  
28 more than three pounds.

29 (6) "Vapor product" means any: (a) Device that employs a battery  
30 or other mechanism to heat a solution or substance to produce a vapor  
31 or aerosol intended for inhalation; (b) cartridge or container of a  
32 solution or substance intended to be used with or in such a device;  
33 or (c) solution or substance intended for use in such a device,  
34 including, but not limited to, concentrated nicotine. "Vapor product"  
35 includes any electronic cigarettes, electronic nicotine delivery  
36 systems, electronic cigars, electronic cigarillos, electronic pipes,  
37 vape pens, or similar products or devices, as well as any parts that  
38 can be used to build such products or devices. "Vapor product" does  
39 not include any drug, device, or combination product approved for

1 sale by the United States food and drug administration that is  
2 marketed and sold for such approved purpose.

3 **Sec. 4.** RCW 70.155.020 and 1993 c 507 s 3 are each amended to  
4 read as follows:

5 A person who holds a license issued under RCW 82.24.520 or  
6 82.24.530 shall:

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

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

11 Such sign shall:

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

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

19 (c) Be provided free of charge by the liquor control board.

20 **Sec. 5.** RCW 70.155.030 and 1994 c 202 s 1 are each amended to  
21 read as follows:

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

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

34 **Sec. 6.** RCW 70.155.080 and 2002 c 175 s 47 are each amended to  
35 read as follows:

36 (1) A person under the age of ~~((eighteen))~~ twenty-one who  
37 purchases or attempts to purchase, possesses, or obtains or attempts

1 to obtain cigarettes (~~(or)~~), tobacco products, or vapor products  
2 commits a class 3 civil infraction under chapter 7.80 RCW and is  
3 subject to a fine as set out in chapter 7.80 RCW or participation in  
4 up to four hours of community restitution, or both. The court may  
5 also require participation in a (~~(smoking)~~) cessation program. This  
6 provision does not apply if a person under the age of eighteen, with  
7 parental authorization, or a person at least eighteen years of age,  
8 but less than twenty-one years of age is participating in a  
9 controlled purchase as part of a liquor control board, law  
10 enforcement, or local health department activity.

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

13 **Sec. 7.** RCW 70.155.110 and 1993 c 507 s 12 are each amended to  
14 read as follows:

15 (1) The liquor control board shall, in addition to the board's  
16 other powers and authorities, have the authority to enforce the  
17 provisions of this chapter and RCW 26.28.080(~~((4))~~) and 82.24.500.  
18 The liquor control board shall have full power to revoke or suspend  
19 the license of any retailer or wholesaler in accordance with the  
20 provisions of RCW 70.155.100.

21 (2) The liquor control board and the board's authorized agents or  
22 employees shall have full power and authority to enter any place of  
23 business where tobacco products are sold for the purpose of enforcing  
24 the provisions of this chapter.

25 (3) For the purpose of enforcing the provisions of this chapter  
26 and RCW 26.28.080(~~((4))~~) and 82.24.500, a peace officer or  
27 enforcement officer of the liquor control board who has reasonable  
28 grounds to believe a person observed by the officer purchasing,  
29 attempting to purchase, or in possession of tobacco products is under  
30 the age of (~~(eighteen)~~) twenty-one years of age, may detain (~~(such)~~)  
31 a person for a reasonable period of time and in such a reasonable  
32 manner as is necessary to determine the person's true identity and  
33 date of birth. Further, tobacco products possessed by persons under  
34 the age of (~~(eighteen)~~) twenty-one years of age are considered  
35 contraband and may be seized by a peace officer or enforcement  
36 officer of the liquor control board.

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

1       **Sec. 8.** RCW 70.155.120 and 1993 c 507 s 13 are each amended to  
2 read as follows:

3       (1) The youth tobacco prevention account is created in the state  
4 treasury. All fees collected pursuant to RCW 82.24.520 and 82.24.530  
5 and funds collected by the liquor control board from the imposition  
6 of monetary penalties and samplers' fees shall be deposited into this  
7 account, except that ten percent of all such fees and penalties shall  
8 be deposited in the state general fund.

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

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

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

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

33       NEW SECTION.   **Sec. 9.** If any provision of this act or its  
34 application to any person or circumstance is held invalid, the  
35 remainder of the act or the application of the provision to other  
36 persons or circumstances is not affected.

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