
HOUSE BILL 2313

State of Washington

64th Legislature

2016 Regular Session

By Representatives Orwall, Magendanz, S. Hunt, Harris, Cody, Johnson, Stanford, Nealey, Haler, Goodman, Riccelli, DeBolt, Pollet, Short, Kagi, Jenkins, and Stokesbary; by request of Attorney General

Prefiled 12/18/15.

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; and amending RCW 70.155.005, 26.28.080,
4 70.155.010, 70.155.020, 70.155.030, 70.155.110, and 70.155.120.

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

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

8 (1) The legislature finds that chapter ..., Laws of 2016 (this
9 act) furthers the public health, safety, and welfare by reducing
10 youth access to addictive and harmful products.

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

16 (3) The legislature recognizes that many people who purchase
17 cigarettes for minors are between the ages of eighteen to twenty. By
18 decreasing the number of eligible buyers in high school, raising the
19 minimum legal age to sell tobacco and vapor products will decrease
20 the access of students to tobacco products. According to the 2014
21 healthy youth survey, forty-one percent of tenth graders say it is

1 "sort of easy" to "very easy" to get cigarettes. Nationally, among
2 youth who smoke, more than twice as many get their cigarettes from
3 social sources than from a store or vending machine.

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

6 (5) The legislature recognizes that jurisdictions across the
7 country are increasing the age of sale for tobacco products to
8 twenty-one. More than ninety localities in eight states have raised
9 the minimum legal smoking age to twenty-one. In June 2015, the state
10 of Hawaii became the first state in the nation to increase the
11 smoking age to twenty-one.

12 (6) The legislature recognizes the scientific report issued by
13 the national institute of medicine, one of the most prestigious
14 scientific authorities in the United States, which predicted that
15 increasing the age of sale for tobacco products in the United States
16 to twenty-one will significantly reduce the number of adolescents and
17 young adults who start smoking, reduce deaths from smoking, and
18 immediately improve the health of adolescents, young adults, young
19 mothers, and their children.

20 (7) The legislature recognizes the national institute of medicine
21 report predicted increasing the tobacco sale age will make the
22 greatest difference among those ages fifteen to seventeen, who will
23 no longer be able to pass for legal age and will have a harder time
24 getting tobacco products from older classmates and friends. The
25 national institute of medicine report also predicted raising the
26 minimum age for the sale of tobacco products in the United States to
27 twenty-one will, over time, reduce the smoking rate by about twelve
28 percent and smoking-related deaths by ten percent.

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

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

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

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

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

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

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

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

26 (3) For the purposes of this section, "vapor product" means ~~((a~~
27 ~~noncombustible tobacco derived product containing nicotine that~~
28 ~~employs a mechanical heating element, battery, or circuit, regardless~~
29 ~~of shape or size, that can be used to heat a liquid nicotine solution~~
30 ~~contained in cartridges. Vapor product does not include any product~~
31 ~~that is regulated by the United States food and drug administration~~
32 ~~under chapter V of the federal food, drug, and cosmetic act))~~ any:
33 (a) Device that employs a battery or other mechanism to heat a
34 solution or substance to produce a vapor or aerosol intended for
35 inhalation; (b) cartridge or container of a solution or substance
36 intended to be used with or in such a device; or (c) solution or
37 substance intended for use in such a device, including, but not
38 limited to, concentrated nicotine. "Vapor product" includes any
39 electronic cigarettes, electronic nicotine delivery systems,

1 electronic cigars, electronic cigarillos, electronic pipes, vape
2 pens, or similar products or devices, as well as any parts that can
3 be used to build such products or devices. "Vapor product" does not
4 include any product that has been approved by the United States food
5 and drug administration for sale as a tobacco cessation product or
6 for other therapeutic purposes where the product is marketed and sold
7 solely for such an 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))~~ and
14 cannabis board.

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

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

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

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

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

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

1 not include any product that has been approved by the United States
2 food and drug administration for sale as a tobacco cessation product
3 or for other therapeutic purposes where the product is marketed and
4 sold solely for such an approved purpose.

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

7 A person who holds a license issued under RCW 82.24.520 or
8 82.24.530 shall:

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

11 (2) Display a sign concerning the prohibition of tobacco and
12 vapor product sales to ((minors)) persons under the age of twenty-
13 one.

14 Such sign shall:

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

17 (b) Be designed and produced by the department of health to read:
18 "THE SALE OF TOBACCO PRODUCTS AND VAPOR PRODUCTS TO PERSONS UNDER AGE
19 ((18)) 21 IS STRICTLY PROHIBITED BY STATE LAW. IF YOU ARE UNDER
20 ((18)) 21, YOU COULD BE PENALIZED FOR PURCHASING A TOBACCO PRODUCT OR
21 VAPOR PRODUCT; PHOTO ID REQUIRED"; and

22 (c) Be provided free of charge by the liquor ((control)) and
23 cannabis board.

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

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

34 (2) The board shall adopt rules that allow an exception to the
35 requirement that a device be located not less than ten feet from all
36 entrance or exit ways to and from a premise if it is architecturally
37 impractical for the device to be located not less than ten feet from
38 all entrance and exit ways.

1 **Sec. 6.** RCW 70.155.110 and 1993 c 507 s 12 are each amended to
2 read as follows:

3 (1) The liquor (~~control~~) and cannabis board shall, in addition
4 to the board's other powers and authorities, have the authority to
5 enforce the provisions of this chapter and RCW 26.28.080(~~(4)~~) and
6 82.24.500. The liquor (~~control~~) and cannabis board shall have full
7 power to revoke or suspend the license of any retailer or wholesaler
8 in accordance with the provisions of RCW 70.155.100.

9 (2) The liquor (~~control~~) and cannabis board and the board's
10 authorized agents or employees shall have full power and authority to
11 enter any place of business where tobacco products or vapor products
12 are sold for the purpose of enforcing the provisions of this chapter.

13 (3) For the purpose of enforcing the provisions of this chapter
14 and RCW 26.28.080(~~(4)~~) and 82.24.500, a peace officer or
15 enforcement officer of the liquor (~~control~~) and cannabis board who
16 has reasonable grounds to believe a person observed by the officer
17 purchasing, attempting to purchase, or in possession of tobacco
18 products or vapor products is under the age of (~~eighteen~~) twenty-
19 one years of age, may detain (~~such~~) a person for a reasonable
20 period of time and in such a reasonable manner as is necessary to
21 determine the person's true identity and date of birth. Further,
22 tobacco products or vapor products possessed by persons under the age
23 of (~~eighteen~~) twenty-one years of age are considered contraband and
24 may be seized by a peace officer or enforcement officer of the liquor
25 (~~control~~) and cannabis board.

26 (4) The liquor (~~control~~) and cannabis board may work with local
27 county health departments or districts and local law enforcement
28 agencies to conduct random, unannounced, inspections to assure
29 compliance.

30 **Sec. 7.** RCW 70.155.120 and 1993 c 507 s 13 are each amended to
31 read as follows:

32 (1) The youth tobacco prevention account is created in the state
33 treasury. All fees collected pursuant to RCW 82.24.520 and 82.24.530
34 and funds collected by the liquor (~~control~~) and cannabis board from
35 the imposition of monetary penalties and samplers' fees shall be
36 deposited into this account, except that ten percent of all such fees
37 and penalties shall be deposited in the state general fund.

38 (2) Moneys appropriated from the youth tobacco prevention account
39 to the department of health shall be used by the department of health

1 for implementation of this chapter, including collection and
2 reporting of data regarding enforcement and the extent to which
3 access to tobacco products by youth has been reduced.

4 (3) The department of health shall enter into interagency
5 agreements with the liquor (~~control~~) and cannabis board to pay the
6 costs incurred, up to thirty percent of available funds, in carrying
7 out its enforcement responsibilities under this chapter. Such
8 agreements shall set forth standards of enforcement, consistent with
9 the funding available, so as to reduce the extent to which tobacco
10 products are available to individuals under the age of (~~eighteen~~)
11 twenty-one. The agreements shall also set forth requirements for data
12 reporting by the liquor (~~control~~) and cannabis board regarding its
13 enforcement activities.

14 (4) The department of health and the department of revenue shall
15 enter into an interagency agreement for payment of the cost of
16 administering the tobacco retailer licensing system and for the
17 provision of quarterly documentation of tobacco wholesaler, retailer,
18 and vending machine names and locations.

19 (5) The department of health shall, within up to seventy percent
20 of available funds, provide grants to local health departments or
21 other local community agencies to develop and implement coordinated
22 tobacco intervention strategies to prevent and reduce tobacco use by
23 youth.

24 NEW SECTION. **Sec. 8.** If any provision of this act or its
25 application to any person or circumstance is held invalid, the
26 remainder of the act or the application of the provision to other
27 persons or circumstances is not affected.

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