
SECOND SUBSTITUTE HOUSE BILL 1645

State of Washington

64th Legislature

2015 Regular Session

By House Appropriations (originally sponsored by Representatives Pollet, Harris, Carlyle, Cody, Johnson, Tharinger, Robinson, Lytton, Kagi, Ryu, S. Hunt, Farrell, Moscoso, Riccelli, McBride, and Jinkins; by request of Governor Inslee and Attorney General)

READ FIRST TIME 04/07/15.

1 AN ACT Relating to youth substance use prevention associated with
2 tobacco and drug delivery e-cigarettes and vapor products; amending
3 RCW 26.28.080, 28A.210.310, 70.155.010, 70.155.020, 70.155.030,
4 70.155.050, 70.155.070, 70.155.140, 70.155.080, 70.155.090,
5 70.155.100, 70.155.110, 70.155.120, 70.155.130, and 82.24.530; adding
6 new sections to chapter 70.155 RCW; creating new sections;
7 prescribing penalties; and providing an effective date.

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

9 NEW SECTION. **Sec. 1.** (1) The legislature finds that the
10 availability and use of nicotine vapor inhalation products, such as
11 e-cigarettes, e-devices, and vape pens, have increased dramatically
12 in recent years, and that the use of such products has become
13 commonplace in this state on the part of both adults and youth. The
14 low cost of e-cigarettes and nicotine liquids for vapor products, as
15 compared to cigarettes, is a key factor with respect to the
16 popularity of such products. Despite the increasing popularity of
17 vapor products and the resultant rapid expansion of the vapor
18 products market, commerce in such products is wholly unregulated and
19 is not subject to the legal requirements regarding youth access,
20 public health disclosures, licensing, or taxation, applicable to
21 commerce in cigarettes and other tobacco products.

1 (2) The potential public health risks posed by vapor products are
2 many-faceted, and include nicotine addiction, liquid nicotine
3 poisoning, the potential inhalation of carcinogens and toxic
4 substances, and the adverse effects of nicotine on adolescent brain
5 development. When exposed to heat, the nicotine solutions used in
6 vapor products can generate a range of chemical byproducts that may
7 have adverse health consequences when inhaled. The specific chemistry
8 of the liquid nicotine solutions used in vapor products is not
9 standardized and neither manufacturers nor retailers are required to
10 disclose the chemical contents of the solutions. Consumers,
11 therefore, have no way of determining exactly what substances they
12 are inhaling or what the health consequences of such inhalation might
13 be.

14 (3) When absorbed through the skin liquid nicotine may be toxic
15 to both adults and children. In Washington, poison center calls
16 related to vapor products have increased from two in 2010 to one
17 hundred forty-four in the first nine months of 2014, ninety-seven of
18 which involved children. Of the calls involving children, eighty-four
19 percent were one to three years old. However, due to the current lack
20 of regulation, vapor products manufacturers, distributors, and
21 retailers are not subject to labeling and advertising requirements or
22 other regulations designed to provide consumers with product safety
23 warnings or other health-related information.

24 (4) The current easy access to vapor products is particularly
25 problematic with respect to teenagers. A study conducted by the
26 Centers for Disease Control and Prevention (CDC) reported that in
27 2013 more than a quarter of a million youth who had never smoked a
28 cigarette had used vapor products. The CDC also noted that in 2011
29 this number was seventy-nine thousand, which increased to more than
30 two hundred sixty-three thousand in 2013, thus reflecting a more than
31 threefold increase in the number of youth using vapor products during
32 this three-year period. Such statistics underscore the urgent need
33 for the creation of a comprehensive regulatory framework governing
34 commerce in vapor products, especially with respect to restricting
35 access to such products by children and teenagers. It is well-
36 understood that the ability to make rational decisions regarding
37 risky behaviors such as smoking cigarettes and drinking alcohol is
38 less developed in teenagers as compared to adults, and our legal
39 system has traditionally responded by protecting teenagers from such
40 risks through the restriction or prohibition of teen involvement in

1 such activities. As is the case with commerce in cigarettes and
2 alcohol, the vapor products market requires regulatory oversight that
3 focuses upon preventing children and teenagers from accessing and
4 using products that can cause addiction and other adverse health
5 consequences.

6 (5) Although it is clear that commerce in vapor products should
7 be subject to stringent regulatory controls, the development of a
8 regulatory framework must be tempered by an awareness of the
9 potential for creating an illegal black market in vapor products. If
10 regulatory measures related to licensing and taxation unduly restrict
11 the development of the market, and thus cause extreme increases in
12 retail prices, then the stage will be set for the emergence of a
13 black market similar to that experienced by the cigarette industry.

14 (6) The legislature finds, therefore, that this act is necessary
15 to protect the public health, safety, and welfare by preventing youth
16 from having access to addictive vapor products, ensuring that
17 consumers have accurate information about potentially dangerous
18 products, and protecting the public from nicotine poisoning.

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

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

25 (2) It ~~((shall be no))~~ is not a defense to a prosecution for a
26 violation of this section that the person acted, or was believed by
27 the defendant to act, as agent or representative of another.

28 (3) For the purposes of this section, "vapor product" ~~((means a
29 noncombustible tobacco derived product containing nicotine that
30 employs a mechanical heating element, battery, or circuit, regardless
31 of shape or size, that can be used to heat a liquid nicotine solution
32 contained in cartridges. Vapor product does not include any product
33 that is regulated by the United States food and drug administration
34 under chapter V of the federal food, drug, and cosmetic act))~~ has the
35 same meaning as provided in RCW 70.155.010.

36 **Sec. 3.** RCW 28A.210.310 and 1997 c 9 s 1 are each amended to
37 read as follows:

1 (1) To protect children in the public schools of this state from
2 exposure to the addictive substance of nicotine, each school district
3 board of directors (~~shall~~) must have a written policy mandating a
4 prohibition on the use of all tobacco products and vapor products on
5 public school property.

6 (2) The policy in subsection (1) of this section (~~shall~~) must
7 include, but not be limited to, a requirement that students and
8 school personnel be notified of the prohibition, the posting of signs
9 prohibiting the use of tobacco products and vapor products, sanctions
10 for students and school personnel who violate the policy, and a
11 requirement that school district personnel enforce the prohibition.
12 Enforcement policies adopted in the school board policy (~~shall be~~)
13 are in addition to the enforcement provisions in RCW 70.160.070.

14 (3) For purposes of this section, "vapor product" means any: (a)
15 Device that employs a battery or other mechanism to heat a solution
16 or substance to produce a vapor or aerosol intended for inhalation;
17 (b) cartridge or container of a solution or substance intended to be
18 used with or in such a device or to refill such a device; or (c)
19 solution or substance intended for use in such a device, including,
20 but not limited to, concentrated nicotine. "Vapor product" includes
21 any electronic cigarettes, electronic nicotine delivery systems,
22 electronic cigars, electronic cigarillos, electronic pipes, vape
23 pens, or similar products or devices, as well as any parts that can
24 be used to build such products or devices. "Vapor product" does not
25 include any drug, device, or combination product approved for sale by
26 the United States food and drug administration that is marketed and
27 sold for such approved purpose.

28 **Sec. 4.** RCW 70.155.010 and 2009 c 278 s 1 are each amended to
29 read as follows:

30 The definitions (~~set forth~~) in this section and RCW 82.24.010
31 (~~shall apply to this chapter. In addition, for the purposes of this~~
32 ~~chapter, unless otherwise required by the context:)~~ apply throughout
33 this chapter unless the context clearly requires otherwise.

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

35 (2) "Concentrated nicotine" means any solution or substance with
36 a nicotine concentration greater than ten milligrams per milliliter.

37 (3) "Department" means the department of health.

38 (4) "Distributor" means a distributor as defined in RCW
39 82.26.010.

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

3 (~~(3)~~) (6) "Manufacturer" means any person, including but not
4 limited to a repacker or relabeler, who manufactures, fabricates,
5 assembles, processes, or labels a vapor product or who imports a
6 finished vapor product for sale or distribution into the United
7 States.

8 (7) "Minor" refers to an individual who is less than eighteen
9 years old.

10 (~~(4)~~) (8) "Packaging" means a pack, box, carton, wrapping, or
11 container of any kind in which a vapor product is sold or offered for
12 sale to a consumer.

13 (9) "Person" means any natural person, partnership, firm, joint
14 stock company, corporation, or other legal entity, including an
15 employee of any such entity.

16 (10) "Retailer" means any person engaged in the business of
17 selling tobacco products or vapor products to ultimate consumers.

18 (11) "Sale" means any transfer, exchange, or barter, in any
19 manner or by any means, for consideration, and includes all sales
20 made by any person. "Sale" includes a gift by a person engaged in the
21 business of selling tobacco products or vapor products for
22 advertising, promoting, or as a means of evading the provisions of
23 this chapter.

24 (12) "Sample" means a tobacco product distributed to members of
25 the general public at no cost or at nominal cost for product
26 promotion purposes.

27 (~~(5)~~) (13) "Sampling" means the distribution of samples to
28 members of the public.

29 (~~(6)~~) (14) "Tobacco product" means a product that contains
30 tobacco and is intended for human use, including (~~any product~~)
31 "cigarettes" defined in RCW 82.24.010(~~(2)~~) or "tobacco products"
32 defined in RCW 82.26.010(~~(1)~~), except that for the purposes of RCW
33 70.155.140 only, "tobacco product" does not include cigars defined in
34 RCW 82.26.010 as to which one thousand units weigh more than three
35 pounds.

36 (15) "Vapor product" means any: (a) Device that employs a battery
37 or other mechanism to heat a solution or substance to produce a vapor
38 or aerosol intended for inhalation; (b) cartridge or container of a
39 solution or substance intended to be used with or in such a device or
40 to refill such a device; or (c) solution or substance intended for

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

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

12 A person who holds a license issued under RCW 82.24.520 (~~(or)~~),
13 82.24.530 (~~(shall)~~), or section 23 of this act must:

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

16 (2)(a) Display a sign concerning the prohibition of tobacco
17 product and vapor product sales to minors.

18 (b) Such sign (~~(shall)~~) must:

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

21 ((+b)) (ii) Be designed and produced by the department of health
22 to read: "THE SALE OF TOBACCO PRODUCTS AND VAPOR PRODUCTS TO PERSONS
23 UNDER AGE 18 IS STRICTLY PROHIBITED BY STATE LAW. IF YOU ARE UNDER
24 18, YOU COULD BE PENALIZED FOR PURCHASING A TOBACCO PRODUCT OR A
25 VAPOR PRODUCT; PHOTO ID REQUIRED"; and

26 ((+e)) (iii) Be provided free of charge by the (~~(liquor~~
27 ~~control)~~) board.

28 NEW SECTION. **Sec. 6.** A new section is added to chapter 70.155
29 RCW to read as follows:

30 A person who holds a license issued under chapter 82.24 or 82.26
31 RCW or section 23 of this act must conduct the business and maintain
32 the premises in compliance with Titles 9 and 9A RCW and chapter 69.50
33 RCW.

34 **Sec. 7.** RCW 70.155.030 and 1994 c 202 s 1 are each amended to
35 read as follows:

36 Unless preempted by federal law, no person (~~(shall)~~) may sell or
37 permit to be sold any tobacco product or vapor product through any

1 device that mechanically dispenses tobacco products or vapor products
2 unless the device is located fully within premises from which minors
3 are prohibited or in industrial worksites where minors are not
4 employed and not less than ten feet from all entrance or exit ways to
5 and from each premises. The board (~~shall~~) must adopt rules that
6 allow an exception to the requirement that a device be located not
7 less than ten feet from all entrance or exit ways to and from a
8 premises if it is architecturally impractical for the device to be
9 located not less than ten feet from all entrance and exit ways.

10 **Sec. 8.** RCW 70.155.050 and 2006 c 14 s 3 are each amended to
11 read as follows:

12 (1) Unless preempted by federal law, no person may engage in the
13 business of sampling tobacco products or vapor products.

14 (2) (~~A violation of this section is a misdemeanor~~) No person
15 may offer a tasting of vapor products to the general public unless:

16 (a) The person is a licensed retailer under section 23 of this
17 act;

18 (b) The tastings are offered only within the licensed premises
19 operated by the licensee and the products tasted are not removed from
20 within the licensed premises by the customer; and

21 (c) Entry into the licensed premises is restricted to persons
22 eighteen years of age or older.

23 **Sec. 9.** RCW 70.155.070 and 1993 c 507 s 8 are each amended to
24 read as follows:

25 No person (~~shall~~) may give or distribute vapor products,
26 cigarettes, or other tobacco products to a person by a coupon if such
27 coupon is redeemed in any manner that does not require an in-person
28 transaction in a retail store.

29 **Sec. 10.** RCW 70.155.140 and 2009 c 278 s 2 are each amended to
30 read as follows:

31 (1) A person may not:

32 (a) Ship or transport, or cause to be shipped or transported, any
33 tobacco product or vapor product ordered or purchased by mail or
34 through the internet to anyone in this state other than a licensed
35 wholesaler, distributor, or retailer; or

1 (b) With knowledge or reason to know of the violation, provide
2 substantial assistance to a person who is in violation of this
3 section.

4 (2) This section does not prohibit shipping, selling, or
5 transporting, or causing to be sold, shipped, or transported,
6 concentrated nicotine ordered or purchased by mail or through the
7 internet to a person who:

8 (a) Is engaged in business in this state;

9 (b) Has a documented commercial or industrial need for
10 concentrated nicotine that is not related to the sale, distribution,
11 or manufacture of vapor products; and

12 (c) Receives a waiver from the board.

13 (3)(a) A person who knowingly violates subsection (1) of this
14 section is guilty of a class C felony, except that the maximum fine
15 that may be imposed is five thousand dollars.

16 (b) In addition to or in lieu of any other civil or criminal
17 remedy provided by law, a person who has violated subsection (1) of
18 this section is subject to a civil penalty of up to five thousand
19 dollars for each violation. The attorney general, acting in the name
20 of the state, may seek recovery of the penalty in a civil action in
21 superior court. For purposes of this subsection, each shipment or
22 transport of tobacco products or vapor products constitutes a
23 separate violation.

24 ~~((3))~~ (4) The attorney general may seek an injunction in
25 superior court to restrain a threatened or actual violation of
26 subsection (1) of this section and to compel compliance with
27 subsection (1) of this section.

28 ~~((4))~~ (5) Any violation of subsection (1) of this section is
29 not reasonable in relation to the development and preservation of
30 business and is an unfair and deceptive act or practice and an unfair
31 method of competition in the conduct of trade or commerce in
32 violation of RCW 19.86.020. Standing to bring an action to enforce
33 RCW 19.86.020 for violation of subsection (1) of this section lies
34 solely with the attorney general. Remedies provided by chapter 19.86
35 RCW are cumulative and not exclusive.

36 ~~((5))~~ (6)(a) In any action brought under this section, the
37 state is entitled to recover, in addition to other relief, the costs
38 of investigation, expert witness fees, costs of the action, and
39 reasonable attorneys' fees.

1 (b) If a court determines that a person has violated subsection
2 (1) of this section, the court (~~shall~~) must order any profits,
3 gain, gross receipts, or other benefit from the violation to be
4 disgorged and paid to the state treasurer for deposit in the general
5 fund.

6 (~~(6)~~) (7) Unless otherwise expressly provided, the penalties or
7 remedies, or both, under this section are in addition to any other
8 penalties and remedies available under any other law of this state.

9 NEW SECTION. **Sec. 11.** A new section is added to chapter 70.155
10 RCW to read as follows:

11 (1) Subject to the provisions of this section, the board, in
12 consultation with the department, must adopt rules regarding vapor
13 product labeling and advertising disclosure requirements. These rules
14 must address requirements regarding product health and safety
15 warnings and the disclosure of the ingredients contained in vapor
16 products that are advertised or offered for sale in this state.

17 (2) Prior to the adoption of the rules required under this
18 section, the board and the department must jointly conduct a study
19 that includes:

20 (a) The identification of the chemicals and substances commonly
21 found in the liquids contained in vapor products;

22 (b) The identification of the chemicals and substances contained
23 in the vapors or aerosols emitted from vapor products;

24 (c) The determination of whether any of the chemicals or
25 substances contained within, or emitted from, vapor products contain
26 toxins or carcinogens, or otherwise pose a risk to public health and
27 safety; and

28 (d) Any other matter relating to potential health risks posed by
29 the use of vapor products, as determined by the board and the
30 department.

31 (3) In conducting the study, the board and the department must
32 consult with the following:

33 (a) Scientists, physicians, researchers, academics, or other
34 professionals with expertise relevant to the understanding of the
35 design, operation, and/or health effects of vapor products;

36 (b) Public health professionals and organizations;

37 (c) Vapor product manufacturers, distributors, and/or retailers;

38 (d) Governmental representatives; and

1 (e) Other individuals or entities with relevant expertise, as
2 determined by the board and the department.

3 (4) Upon completion of the study, and prior to the adoption of
4 the rules authorized under this section, the board must prepare a
5 written report regarding the results of the study and containing
6 findings and recommendations regarding vapor product labeling and
7 advertising requirements. The report must be submitted to the
8 governor and the appropriate committees of the legislature not later
9 than December 1, 2015.

10 NEW SECTION. **Sec. 12.** A new section is added to chapter 70.155
11 RCW to read as follows:

12 (1) Unless preempted by federal law, the board is authorized to
13 promulgate rules regulating the chemical composition of the liquids
14 contained in vapor products, including substances included for
15 flavoring purposes. In developing such rules the board must consult
16 with the department.

17 (2) Upon request by the board or the department, either the
18 manufacture or the distributor of a vapor product must provide the
19 board with a list of all substances, and their relative proportions,
20 contained in the liquid contents of the product.

21 (3) The board may prohibit the sale of vapor products that
22 contain or emit chemicals or substances, other than nicotine, that
23 pose a substantial threat to public health and safety.

24 NEW SECTION. **Sec. 13.** A new section is added to chapter 70.155
25 RCW to read as follows:

26 (1) No person may offer a tobacco product or a vapor product for
27 sale in an open, unsecured display that is accessible to the public
28 without the intervention of a store employee.

29 (2) This section does not apply to a person licensed under RCW
30 82.24.520, 82.24.530, or section 23 of this act if access to the
31 licensed premises is restricted to individuals who are eighteen years
32 of age or older.

33 NEW SECTION. **Sec. 14.** A new section is added to chapter 70.155
34 RCW to read as follows:

35 (1) Unless preempted by federal law, any substance intended for
36 use in a vapor product that is sold at retail in this state must
37 satisfy the child-resistant effectiveness standards under 16 C.F.R.

1 Sec. 1700, the poison prevention packaging act, as it existed on the
2 effective date of this section, or such subsequent date as may be
3 provided by the board by rule, consistent with the purposes of this
4 section.

5 (2) A substance contained in a cartridge sold, marketed, or
6 intended for use in a vapor product that is prefilled and sealed by
7 the manufacturer, and not intended to be opened by the consumer, is
8 exempt from subsection (1) of this section.

9 (3) A manufacturer that knowingly sells or distributes a
10 substance intended for use in a vapor product that does not satisfy
11 the requirements of this section is guilty of a class C felony.

12 (4) The provisions of this section are null and void and of no
13 force and effect, upon the effective date of final regulations issued
14 by the United States food and drug administration or from any other
15 federal agency, where such regulations mandate child-resistant
16 effectiveness standards for liquid nicotine containers.

17 NEW SECTION. **Sec. 15.** A new section is added to chapter 70.155
18 RCW to read as follows:

19 A person may not sell, offer for sale, or possess with intent to
20 sell or offer for sale any vapor product within the state that
21 contains a substance that increases the absorption of nicotine as
22 determined by the board in consultation with the department.

23 **Sec. 16.** RCW 70.155.080 and 2002 c 175 s 47 are each amended to
24 read as follows:

25 (1) A person under the age of eighteen who purchases or attempts
26 to purchase, possesses, or obtains or attempts to obtain cigarettes
27 ~~((or))~~, tobacco products, or vapor products commits a class 3 civil
28 infraction under chapter 7.80 RCW and is subject to a fine as set out
29 in chapter 7.80 RCW or participation in up to four hours of community
30 restitution, or both. The court may also require participation in a
31 ~~((smoking))~~ cessation program. This provision does not apply if a
32 person under the age of eighteen, with parental authorization, is
33 participating in a controlled purchase as part of a ~~((liquor~~
34 ~~control))~~ board, law enforcement, or local health department
35 activity.

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

1 **Sec. 17.** RCW 70.155.090 and 2006 c 14 s 4 are each amended to
2 read as follows:

3 (1) Where there may be a question of a person's right to purchase
4 or obtain tobacco products or vapor products by reason of age, the
5 retailer or agent thereof(~~(, shall))~~ must require the purchaser to
6 present any one of the following officially issued identification
7 that shows the purchaser's age and bears his or her signature and
8 photograph: (a) (~~Liquor control authority card of identification of~~
9 ~~a state or province of Canada;~~ (b)) Driver's license, instruction
10 permit, or identification card of a state or province of Canada;
11 ~~((+e))~~ (b) "identocard" issued by the Washington state department of
12 licensing under chapter 46.20 RCW; ~~((+d))~~ (c) United States military
13 identification; ~~((+e))~~ (d) passport; ~~((+f))~~ (e) enrollment card,
14 issued by the governing authority of a federally recognized Indian
15 tribe located in Washington, that incorporates security features
16 comparable to those implemented by the department of licensing for
17 Washington drivers' licenses. At least ninety days prior to
18 implementation of an enrollment card under this subsection, the
19 appropriate tribal authority (~~shall~~) must give notice to the board.
20 The board (~~shall~~) must publish and communicate to licensees
21 regarding the implementation of each new enrollment card; or ~~((+g))~~
22 (f) merchant marine identification card issued by the United States
23 coast guard.

24 (2) It is a defense to a prosecution under RCW 26.28.080 that the
25 person making a sale reasonably relied on any of the officially
26 issued identification as defined in subsection (1) of this section.
27 The (~~liquor control~~) board (~~shall~~) must waive the suspension or
28 revocation of a license if the licensee clearly establishes that he
29 or she acted in good faith to prevent violations and a violation
30 occurred despite the licensee's exercise of due diligence.

31 **Sec. 18.** RCW 70.155.100 and 2006 c 14 s 5 are each amended to
32 read as follows:

33 (1) The (~~liquor control~~) board may suspend or revoke a
34 retailer's license issued under RCW 82.24.510(1)(b) or section
35 23(1)(b) of this act held by a business at any location, or may
36 impose a monetary penalty as set forth in subsection (2) of this
37 section, if the (~~liquor control~~) board finds that the licensee has
38 violated RCW 26.28.080, 70.155.020(~~(, 70.155.030, 70.155.040,~~
39 ~~70.155.050, 70.155.070, or 70.155.090))~~ through 70.155.070,

1 70.155.090, sections 13 through 15 of this act, or 21 C.F.R. Sec.
2 1140.14 as it exists on the effective date of this section.

3 (2) The sanctions that the (~~liquor control~~) board may impose
4 against a person licensed under RCW (~~82.24.530~~) 82.24.510(1)(b) or
5 section 23(1)(b) of this act based upon one or more findings under
6 subsection (1) of this section may not exceed the following:

7 (a) For violations of RCW 26.28.080 (~~(e)~~), 70.155.020, sections
8 14 and 15 of this act, or 21 C.F.R. Sec. 1140.14, and for violations
9 of RCW 70.155.040 occurring on the licensed premises:

10 (i) A monetary penalty of (~~one~~) two hundred dollars for the
11 first violation within any (~~two~~) three-year period;

12 (ii) A monetary penalty of (~~three~~) six hundred dollars for the
13 second violation within any (~~two~~) three-year period;

14 (iii) A monetary penalty of (~~one~~) two thousand dollars and
15 suspension of the license for a period of six months for the third
16 violation within any (~~two~~) three-year period;

17 (iv) A monetary penalty of (~~one~~) three thousand (~~five~~
18 ~~hundred~~) dollars and suspension of the license for a period of
19 twelve months for the fourth violation within any (~~two~~) three-year
20 period;

21 (v) Revocation of the license with no possibility of
22 reinstatement for a period of five years for the fifth or more
23 violation within any (~~two~~) three-year period;

24 (b) For violations of section 6 of this act, suspension or
25 revocation of the license;

26 (c) For violations of RCW 70.155.030, a monetary penalty in the
27 amount of (~~one~~) two hundred dollars for each day upon which such
28 violation occurred;

29 (~~(c) For violations of RCW 70.155.040 occurring on the licensed~~
30 ~~premises:~~

31 (~~i) A monetary penalty of one hundred dollars for the first~~
32 ~~violation within any two-year period;~~

33 (~~ii) A monetary penalty of three hundred dollars for the second~~
34 ~~violation within any two-year period;~~

35 (~~iii) A monetary penalty of one thousand dollars and suspension~~
36 ~~of the license for a period of six months for the third violation~~
37 ~~within any two-year period;~~

38 (~~iv) A monetary penalty of one thousand five hundred dollars and~~
39 ~~suspension of the license for a period of twelve months for the~~
40 ~~fourth violation within any two-year period;~~

1 ~~(v) Revocation of the license with no possibility of~~
2 ~~reinstatement for a period of five years for the fifth or more~~
3 ~~violation within any two year period;))~~

4 (d) For violations of RCW 70.155.050 or section 13 of this act, a
5 monetary penalty in the amount of ~~((three))~~ six hundred dollars for
6 each violation;

7 (e) For violations of RCW 70.155.070, a monetary penalty in the
8 amount of ~~((one))~~ two thousand dollars for each violation.

9 (3) The ~~((liquor control))~~ board may impose a monetary penalty
10 upon any person other than a licensed cigarette or vapor product
11 retailer if the ~~((liquor control))~~ board finds that the person has
12 violated RCW 26.28.080, 70.155.020 ~~((, 70.155.030, 70.155.040,~~
13 ~~70.155.050, 70.155.070, or 70.155.090))~~ through 70.155.070,
14 70.155.090, or sections 13 through 15 of this act.

15 (4) The monetary penalty that the ~~((liquor control))~~ board may
16 impose based upon one or more findings under subsection (3) of this
17 section may not exceed the following:

18 (a) For violations of RCW 26.28.080 ~~((or 70.155.020, fifty))~~,
19 70.155.020, or sections 14 and 15 of this act, one hundred dollars
20 for the first violation and ~~((one))~~ two hundred dollars for each
21 subsequent violation;

22 (b) For violations of RCW 70.155.030, ~~((one))~~ two hundred dollars
23 for each day upon which such violation occurred;

24 (c) For violations of RCW 70.155.040, ~~((one))~~ two hundred dollars
25 for each violation;

26 (d) For violations of RCW 70.155.050 or section 13 of this act,
27 ~~((three))~~ six hundred dollars for each violation;

28 (e) For violations of RCW 70.155.070, ~~((one))~~ two thousand
29 dollars for each violation.

30 (5) The ~~((liquor control))~~ board may develop and offer a class
31 for retail clerks and use this class in lieu of a monetary penalty
32 for the clerk's first violation.

33 (6) The ~~((liquor control))~~ board may issue a cease and desist
34 order to any person who is found by the ~~((liquor control))~~ board to
35 have violated or intending to violate the provisions of this chapter,
36 RCW 26.28.080 ~~((or))~~, 82.24.500, or section 23 of this act, requiring
37 such person to cease specified conduct that is in violation. The
38 issuance of a cease and desist order ~~((shall))~~ does not preclude the
39 imposition of other sanctions authorized by this statute or any other
40 provision of law.

1 (7) The (~~liquor control~~) board may seek injunctive relief to
2 enforce the provisions of RCW 26.28.080 (~~or~~), 82.24.500, section 23
3 of this act, or this chapter. The (~~liquor control~~) board may
4 initiate legal action to collect civil penalties imposed under this
5 chapter if the same have not been paid within thirty days after
6 imposition of such penalties. In any action filed by the (~~liquor~~
7 ~~control~~) board under this chapter, the court may, in addition to any
8 other relief, award the (~~liquor control~~) board reasonable
9 attorneys' fees and costs.

10 (8) All proceedings under subsections (1) through (6) of this
11 section (~~shall~~) must be conducted in accordance with chapter 34.05
12 RCW.

13 (9) The (~~liquor control~~) board may reduce or waive either the
14 penalties or the suspension or revocation of a license, or both, as
15 set forth in this chapter where the elements of proof are inadequate
16 or where there are mitigating circumstances. Mitigating circumstances
17 may include, but are not limited to, an exercise of due diligence by
18 a retailer. Further, the board may exceed penalties set forth in this
19 chapter based on aggravating circumstances.

20 **Sec. 19.** RCW 70.155.110 and 1993 c 507 s 12 are each amended to
21 read as follows:

22 (1) The (~~liquor control~~) board (~~shall~~) must, in addition to
23 the board's other powers and authorities, have the authority to
24 enforce the provisions of this chapter and RCW 26.28.080(~~(4) and~~),
25 82.24.500, and section 23 of this act. The (~~liquor control~~) board
26 (~~shall have~~) has full power to revoke or suspend the license of any
27 retailer (~~or~~), distributor, or wholesaler in accordance with the
28 provisions of RCW 70.155.100.

29 (2) The (~~liquor control~~) board and the board's (~~authorized~~
30 ~~agents~~) enforcement officers or employees (~~shall~~) have full power
31 and authority to enter any place of business where tobacco products
32 or vapor products are sold for the purpose of enforcing the
33 provisions of this chapter.

34 (3) For the purpose of enforcing the provisions of this chapter
35 and RCW 26.28.080(~~(4) and~~), 82.24.500, and section 23 of this act,
36 a peace officer or enforcement officer of the (~~liquor control~~)
37 board who has reasonable grounds to believe a person observed by the
38 officer purchasing, attempting to purchase, or in possession of
39 tobacco products or vapor products is under the age of eighteen years

1 of age, may detain such person for a reasonable period of time and in
2 such a reasonable manner as is necessary to determine the person's
3 true identity and date of birth. Further, tobacco products or vapor
4 products possessed by persons under the age of eighteen years of age
5 are considered contraband and may be seized by a peace officer or
6 enforcement officer of the (~~liquor control~~) board.

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

10 **Sec. 20.** RCW 70.155.120 and 1993 c 507 s 13 are each amended to
11 read as follows:

12 (1) The youth tobacco and vapor products prevention account is
13 created in the state treasury. All fees collected pursuant to RCW
14 82.24.520 (~~and~~), 82.24.530, 82.26.160, 82.26.170, section 23 of
15 this act, and section 24 of this act and funds collected by the
16 (~~liquor control~~) board from the imposition of monetary penalties
17 (~~and samplers' fees shall~~) under chapters 82.24 and 82.26 RCW and
18 this chapter must be deposited into this account, except that ten
19 percent of all such fees and penalties (~~shall~~) must be deposited in
20 the state general fund.

21 (2) Moneys appropriated from the youth tobacco and vapor products
22 prevention account to the department (~~of health shall~~) must be used
23 by the department (~~of health~~) for implementation of this chapter,
24 including collection and reporting of data regarding enforcement and
25 the extent to which access to tobacco products and vapor products by
26 youth has been reduced.

27 (3) The department (~~of health shall~~) must enter into
28 interagency agreements with the (~~liquor control~~) board to pay the
29 costs incurred, up to thirty percent of available funds, in carrying
30 out its cigarette, tobacco product, and vapor product enforcement
31 responsibilities under this chapter and chapters 82.24 and 82.26 RCW.
32 Such agreements (~~shall~~) must set forth standards of enforcement,
33 consistent with the funding available, so as to reduce the extent to
34 which tobacco products and vapor products are available to
35 individuals under the age of eighteen. The agreements (~~shall~~) must
36 also set forth requirements for data reporting by the (~~liquor~~
37 ~~control~~) board regarding its enforcement activities.

38 (4) The department (~~of health~~), the board, and the department
39 of revenue (~~shall~~) must enter into an interagency agreement for

1 payment of the cost of administering the tobacco and vapor product
2 retailer licensing system and for the provision of quarterly
3 documentation of tobacco and vapor product wholesaler, retailer, and
4 vending machine names and locations.

5 (5) The department (~~(of health shall)~~) must, within up to seventy
6 percent of available funds, provide grants to local health
7 departments or other local community agencies to develop and
8 implement coordinated tobacco and vapor product intervention
9 strategies to prevent and reduce (~~(tobacco)~~) use by youth.

10 **Sec. 21.** RCW 70.155.130 and 1993 c 507 s 14 are each amended to
11 read as follows:

12 (1) This chapter preempts political subdivisions from adopting or
13 enforcing requirements for the licensure and regulation of tobacco
14 product promotions and sales within retail stores, except that
15 political subdivisions that have adopted ordinances prohibiting
16 sampling by January 1, 1993, may continue to enforce these
17 ordinances. No political subdivision may:

18 ~~((+1))~~ (a) Impose fees or license requirements on retail
19 businesses for possessing or selling cigarettes or tobacco products,
20 other than general business taxes or license fees not primarily
21 levied on tobacco products; or

22 ~~((+2))~~ (b) Regulate or prohibit activities covered by RCW
23 70.155.020 through 70.155.080. This chapter does not otherwise
24 preempt political subdivisions from adopting ordinances regulating
25 the sale, purchase, use, or promotion of tobacco products not
26 inconsistent with chapter 507, Laws of 1993.

27 (2) Nothing in this chapter preempts a political subdivision from
28 imposing additional restrictions on the sale, purchase, use, or
29 promotion of vapor products.

30 NEW SECTION. **Sec. 22.** A new section is added to chapter 70.155
31 RCW to read as follows:

32 The board, in consultation with the department, may adopt rules
33 to implement and enforce the requirements of this chapter.

34 NEW SECTION. **Sec. 23.** A new section is added to chapter 70.155
35 RCW to read as follows:

36 (1) The licenses issuable by the board under this chapter are as
37 follows:

1 (a) A vapor products distributor's license; and

2 (b) A vapor products retailer's license.

3 (2) Application for the licenses must be made through the
4 business licensing system under chapter 19.02 RCW. The board may
5 adopt rules regarding the regulation of the licenses. The board may
6 refuse to issue any license under this chapter if the board has
7 reasonable cause to believe that the applicant has willfully withheld
8 information requested for the purpose of determining the eligibility
9 of the applicant to receive a license, or if the board has reasonable
10 cause to believe that information submitted in the application is
11 false or misleading or is not made in good faith. In addition, for
12 the purpose of reviewing an application for a distributor's license
13 or retailer's license and for considering the denial, suspension, or
14 revocation of any such license, the board may consider criminal
15 conduct of the applicant, including an administrative violation
16 history record with the board and a criminal history record
17 information check within the previous five years, in any state,
18 tribal, or federal jurisdiction in the United States, its
19 territories, or possessions, and the provisions of RCW 9.95.240 and
20 chapter 9.96A RCW do not apply to such cases. The board may, in its
21 discretion, issue or refuse to issue the distributor's license or
22 retailer's license, subject to the provisions of section 29 of this
23 act.

24 (3) No person may qualify for a distributor's license or a
25 retailer's license under this section without first undergoing a
26 criminal background check. The background check must be performed by
27 the board and must disclose any criminal conduct within the previous
28 five years in any state, tribal, or federal jurisdiction in the
29 United States, its territories, or possessions. If the applicant or
30 licensee also has a license issued under chapter 66.24, 82.24, or
31 82.26 RCW, the background check done under the authority of chapter
32 66.24, 82.24, or 82.26 RCW satisfies the requirements of this
33 subsection.

34 (4) Each license issued under this chapter expires on the
35 business license expiration date. The license must be continued
36 annually if the licensee has paid the required fee and complied with
37 all the provisions of this chapter and the rules of the board adopted
38 pursuant to this chapter.

39 (5) Each license and any other evidence of the license required
40 under this chapter must be exhibited in each place of business for

1 which it is issued and in the manner required for the display of a
2 business license.

3 (6) License issuances and renewals are subject to board authority
4 and the rules adopted under the board including, but not limited to,
5 rights of cities, towns, county legislative authorities, the public,
6 churches, schools, and public institutions that object to or prevent
7 issuance of licenses.

8 NEW SECTION. **Sec. 24.** A new section is added to chapter 70.155
9 RCW to read as follows:

10 (1)(a) No person may engage in or conduct business as a
11 distributor or retailer in this state without a valid license issued
12 under this chapter, except as otherwise provided by law. Any person
13 who sells vapor products to persons other than ultimate consumers or
14 who meets the definition of "distributor" under this chapter must
15 obtain a distributor's license under this chapter. Any person who
16 sells vapor products to ultimate consumers must obtain a retailer's
17 license under this chapter.

18 (b) A violation of this subsection (1) is punishable as a class C
19 felony according to chapter 9A.20 RCW.

20 (2) No person engaged in or conducting business as a distributor
21 or retailer in this state may refuse to allow the enforcement
22 officers of the board, on demand, to make full inspection of any
23 place of business or vehicle where any of the vapor products
24 regulated under this chapter are sold, stored, transported, or
25 handled, or otherwise hinder or prevent such inspection. A person who
26 violates this subsection (2) is guilty of a gross misdemeanor.

27 (3) Any person licensed under this chapter as a distributor, and
28 any person licensed under this chapter as a retailer, may not operate
29 in any other capacity unless the additional appropriate license is
30 first secured, except as otherwise provided by law. A violation of
31 this subsection (3) is a misdemeanor.

32 (4) The penalties provided in this section are in addition to any
33 other penalties provided by law for violating the provisions of this
34 chapter or the rules adopted under this chapter.

35 NEW SECTION. **Sec. 25.** A new section is added to chapter 70.155
36 RCW to read as follows:

37 A fee of six hundred fifty dollars must accompany each vapor
38 products distributor's license application or license renewal

1 application under section 23 of this act. If a distributor sells or
2 intends to sell vapor products at two or more places of business,
3 whether established or temporary, a separate license with a license
4 fee of one hundred fifteen dollars is required for each additional
5 place of business.

6 NEW SECTION. **Sec. 26.** A new section is added to chapter 70.155
7 RCW to read as follows:

8 A fee of two hundred fifty dollars must accompany each vapor
9 products retailer's license application or license renewal
10 application under section 23 of this act. A separate license is
11 required for each separate location at which the retailer operates.

12 **Sec. 27.** RCW 82.24.530 and 2012 2nd sp.s. c 4 s 12 are each
13 amended to read as follows:

14 A fee of ((~~ninety-three~~)) two hundred fifty dollars must
15 accompany each retailer's license application or license renewal
16 application. A separate license is required for each separate
17 location at which the retailer operates. A fee of thirty additional
18 dollars for each vending machine must accompany each application or
19 renewal for a license issued to a retail dealer operating a cigarette
20 vending machine. An additional fee of ninety-three dollars ((~~shall~~))
21 must accompany each application or renewal for a license issued to a
22 retail dealer operating a cigarette-making machine.

23 NEW SECTION. **Sec. 28.** A new section is added to chapter 70.155
24 RCW to read as follows:

25 (1) Every vapor products retailer licensed under section 23 of
26 this act must procure itemized invoices of all vapor products
27 purchased. The invoices must show the seller's name and address, the
28 date of purchase, and all prices and discounts.

29 (2) The retailer must keep at each retail outlet copies of
30 complete, accurate, and legible invoices for that retail outlet or
31 place of business. All invoices required to be kept under this
32 section must be preserved for five years from the date of purchase.

33 (3) At any time during usual business hours the department,
34 board, or its duly authorized agents or employees may enter any
35 retail outlet without a search warrant, and inspect the premises for
36 invoices required to be kept under this section and the vapor
37 products contained in the retail outlet, to determine whether or not

1 all the provisions of this chapter are being fully complied with. If
2 the department, board, or any of its agents or employees are denied
3 free access or are hindered or interfered with in making the
4 inspection, the registration certificate issued under RCW 82.32.030
5 of the retailer at the premises is subject to revocation by the
6 department, and any licenses issued under this chapter or chapter
7 82.26 or 82.24 RCW are subject to suspension or revocation by the
8 board.

9 NEW SECTION. **Sec. 29.** A new section is added to chapter 70.155
10 RCW to read as follows:

11 (1) The board must enforce this chapter. The board may adopt,
12 amend, and repeal rules necessary to enforce this chapter.

13 (2) The department may adopt, amend, and repeal rules necessary
14 to administer this chapter. The board may revoke or suspend the
15 distributor's or retailer's license of any distributor or retailer of
16 vapor products in the state upon sufficient cause showing a violation
17 of this chapter or upon the failure of the licensee to comply with
18 any of the rules adopted under it.

19 (3) A license may not be suspended or revoked except upon notice
20 to the licensee and after a hearing as prescribed by the board. The
21 board, upon finding that the licensee has failed to comply with any
22 provision of this chapter or of any rule adopted under it, must, in
23 the case of the first offense, suspend the license or licenses of the
24 licensee for a period of not less than thirty consecutive business
25 days, and in the case of a second or further offense, suspend the
26 license or licenses for a period of not less than ninety consecutive
27 business days but not more than twelve months, and in the event the
28 board finds the licensee has been guilty of willful and persistent
29 violations, it may revoke the license or licenses.

30 (4) Any licenses issued under chapter 82.24 or 82.26 RCW to a
31 person whose license or licenses have been suspended or revoked under
32 this section must also be suspended or revoked during the period of
33 suspension or revocation under this section.

34 (5) Any person whose license or licenses have been revoked under
35 this section may reapply to the board at the expiration of one year
36 of the license or licenses. The license or licenses may be approved
37 by the board if it appears to the satisfaction of the board that the
38 licensee will comply with the provisions of this chapter and the
39 rules adopted under it.

1 (6) A person whose license has been suspended or revoked may not
2 sell vapor products, tobacco products, or cigarettes or permit vapor
3 products, tobacco products, or cigarettes to be sold during the
4 period of suspension or revocation on the premises occupied by the
5 person or upon other premises controlled by the person or others or
6 in any other manner or form.

7 (7) Any determination and order by the board, and any order of
8 suspension or revocation by the board of the license or licenses
9 issued under this chapter, or refusal to reinstate a license or
10 licenses after revocation is reviewable by an appeal to the superior
11 court of Thurston county. The superior court must review the order or
12 ruling of the board and may hear the matter de novo, having due
13 regard to the provisions of this chapter and the duties imposed upon
14 the board.

15 (8) If the board makes an initial decision to deny a license or
16 renewal, or suspend or revoke a license, the applicant may request a
17 hearing subject to the applicable provisions under Title 34 RCW.

18 NEW SECTION. **Sec. 30.** If any provision of this act or its
19 application to any person or circumstance is held invalid, the
20 remainder of the act or the application of the provision to other
21 persons or circumstances is not affected.

22 NEW SECTION. **Sec. 31.** If any part of this act is found to be in
23 conflict with federal requirements that are a prescribed condition to
24 the allocation of federal funds to the state, the conflicting part of
25 this act is inoperative solely to the extent of the conflict and with
26 respect to the agencies directly affected, and this finding does not
27 affect the operation of the remainder of this act in its application
28 to the agencies concerned. Rules adopted under this act must meet
29 federal requirements that are a necessary condition to the receipt of
30 federal funds by the state.

31 NEW SECTION. **Sec. 32.** This act takes effect October 1, 2015.

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