



Washington State Liquor and Cannabis Board

Bill Description: Preventing use of vapor and tobacco products by minors

Bill Number: ESSB 5365

Sponsor: Senator Rebecca Saldaña

Effective Date: July 23rd, 2023

Amends: RCW 70.155.080, 70.345.140, 70.155.100, 70.155.110, and 70.345.160; reenacts and amends RCW 70.155.120; and creates new sections

Background

Since 2019, tobacco and vapor products may be sold only to persons at least 21 years old. The bill raising the legal purchase age from 18 to 21 did not make the possession or tobacco by persons 18-20 years old a civil infraction. However, people below age 18 are guilty of a class 3 civil infraction if they purchase or attempt to purchase tobacco or vapor products. The penalty for a class 3 civil infraction is a fine of up to \$50, and they may be subject to court-ordered community service and/or referral to a smoking cessation program.

The Liquor and Cannabis Board (LCB) enforces laws governing underage sales of tobacco and vapor products and uses compliance checks and other means to assess a retailer's compliance. Compliance checks involve a youth working with the LCB's Enforcement and Education staff who attempts to purchase tobacco or vapor products. In addition, LCB enforcement staff may detail a person they suspect is under 21 to check their ID and age and seize and tobacco or vapor products they may have purchased.

Both LCB Enforcement and Education staff and all general authority law enforcement officers have the right to stop and detain a person they suspect is under 18 and who was purchasing or attempting to purchase tobacco and vapor products. Any tobacco/vapor products could be seized by the officers if they determine the person is under 18.

The penalties for retail licensees violating these laws is an escalating series of fines depending on the number of times a retailer has made an underage sale within a three year period. At the third offense, the retailer's license is suspended for six months, and with the fourth, the license is suspended for a year. The fifth violation within a three-year period results in the permanent revocation of the license. The fines are \$200 for the first offense within a three-year period, \$600 for the second, \$2,000 for the third, and \$3,000 for the fourth offense.

Summary

ESSB 5365 creates a two-tiered system of penalties for retailers. The existing fines (\$200 for first offense, rising to \$3,000 for the fourth) now apply only to lower-level

violations such as the failure to display adequate signage. A new, higher, set of fines now applies to underage sales of tobacco and vapor products: \$1,000 for the first violation, \$2,500 for the second within a three-year period, \$5,000 for the third, and \$10,000 for the fourth, which also comes with a 12-month license suspension. The ability of general authority law enforcement officers to stop a suspected underage buyer of tobacco and vapor products is removed. LCB Enforcement and Education officers still may stop a suspected underage buyer, but only in “proximity” of a tobacco or vapor retailer. The bill defines proximity as within 100 feet of the retailer. If LCB staff do detain suspected underage purchasers, they must collect and report certain data, including the total number of such stops, information about the nature and duration of these stops, the number of stops of people under 18 years old, and the number of people between 18 and 20 years old, how many interactions led to violations issued to retailers, and an analysis on if there are disparities in the demographics of the youth stopped by enforcement officers. Finally, the bill requires that any enforcement staff that perform stops of suspected youth buyers must at least begin receiving training from the US Department of Justice’s Office of Juvenile Justice and Delinquency Prevention (OJJDP) by July 1, 2024. However, section 8 of the bill states that nothing in the bill can be interpreted as limiting the ability of either a peace officer/general authority law enforcement officer or an LCB enforcement officer to enforce the laws on underage tobacco or unlicensed sales of tobacco.

A proviso in the biennial operating budget re-states the reporting requirement for LCB enforcement stops of suspected underage tobacco and vapor products buyers. The proviso, in section 146(7), requires the LCB to provide the number of such stops in each year from 2018 through 2022. Much of the information on the nature of the stops aligns with the requirements in ESSB 5365, but it also requires the LCB to describe the training enforcement officers take on interacting with youth, with a particular focus on LGBTQ and youth of color.

###