



American Indian Health Commission for Washington State

“Improving Indian Health through Tribal-State Collaboration”

Tobacco 21, 3rd year of consideration by the Washington State Legislature

After cutoff today, only **2nd Substitute House Bill 1054** (Companion bill 5025) remains alive.

2nd Substitute House Bill 1054 Concerning the age of individuals at which sale or distribution of tobacco and vapor products may be made.

See bill: <http://lawfilesexternal.wa.gov/biennium/2017-18/Pdf/Bills/House%20Bills/1054-S2.pdf>

- Prohibits the sale of cigarettes, tobacco products, and vapor products to persons under the age of 21.
- Video: **Jan 23, 2018 Finance at 03:30 PM** (59.41 on the timeline)

Prior to today’s cutoff, there were three bills proposing to raise the legal age to purchase tobacco and vaping products to 21. Five other states have passed similar laws (California, Oregon, Hawaii, Maine and New Jersey). This year T-21 has strong legislative support based on compelling evidence that raising the age would greatly reduce smoking initiation and improve the health of future generations. See State Board of Health, Health Impact Reviews: SB6048 [Full Report](#); SB5025 [Full Report](#)

The Department of Health, American Cancer Society, American Heart Association, American Lung Association and other health organizations, AG’s office and other advocates seem to be confident that it would pass this year.

However, business, retail associations, grocers, and convenience stores have been consistent in their opposition. In recent hearings, opponents routinely raise issues about access to tobacco and vaping products on tribal lands, military bases, and bordering states (Idaho) who would continue to be able to sell to 18-20-year-old minors if Tobacco 21 is successful.

John Wiesman, Secretary of the Department of Health, testified on Feb 1 in support of SB5025 (companion to HB1054) to the Senate Committee on Labor and Commerce. He was asked if the state was working with tribes on the compacts. He was prepared to ask and felt sure the Governor would call



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for a government-to-government consultation with tribes, but first the state must act (by passing the legislation).

Tobacco 21 Background:

- A person who sells cigars, cigarettes, tobacco, or vapor products to a person under the age of 18 is guilty of a gross misdemeanor.
- A person under the age of 18 who purchases, possesses, or obtains—or who attempts to purchase or obtain—cigarettes or tobacco products commits a Class 3 civil infraction, which may be penalized with a \$50 fine, up to four hours of community restitution, and participation in a smoking cessation program. There is an exception for a person under the age of 18 who, with parental authorization, participates in a controlled purchase as part of a Liquor Cannabis Board (LCB), law enforcement, or local health department activity.
- Tribal Compacts. Cigarette tax contracts between the Governor and tribes prohibit tribal retailers from selling or giving cigarettes to a person under the age of 18.

To provide context for what may be raised as HB1054 moves through the process, the following are notes regarding T-21 issues that have been raised in legislative hearings this session.

NOTES: Senate Bill 5025 (Companion bill 1054), heard on Feb 1 by Senate Labor and Commerce Committee – it did not move out of committee to make the Feb 2 cutoff.

- Testimony from opponents: retail association, grocers and convenience stores raised concern about tribal and other state retail sales and exemption of military.
- Following comments in testimony about youth access tobacco and vaping products at Tribal stores, Sen. Kruderer asked if there is evidence that youth would go in amass to reservations to buy tobacco products that they could not purchase in states that recently passed T-21.
- Sen. Conway emphasized that in Washington urban areas are in close proximately to tribal smoke shops (*which those under 21 would easily be able to purchase tobacco legally*). He stated that this isn't so in California or Oregon, where tribes are in rural areas. He clarified that he was not saying no to the bill but stressed for a needed solution.



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- When asked if there were discussions with tribes, John Wiesman, Secretary of the Department of Health said that he was prepared to ask and felt sure the Governor would call for a government-to-government consultation with tribes, but first the state must take action.
- Equity issue raised: An equity issue raised by Elaine Ishihara from Healthy King County Coalition, workgroup on Tobacco, Marijuana and other Drugs asked that the civil penalties for anyone under the age 21 be removed from the bill. She testified that they will support once civil penalties are removed, stating that there is no evidence that this is effective in reducing initiation and use of tobacco products by youth.
- **Video:** [Feb 1, 2018 Labor & Commerce at 01:30 PM](#) (8:05 and then 17:07 on the timeline)

NOTES: 1st Substitute Senate Bill 6048 – did not make cutoff out of the fiscal committee.

- Raises the age at which a person may purchase and possess cigarettes, tobacco, and vapor products from 18- to 21-years of age.
- Requires licensed retailers to display signs stating the age restriction for purchasing tobacco or vapor products.
- Requires the Department of Revenue to review the applicability of the act to Indian retailers operating in Indian country (1st Substitute)
- Introduced by Senator Kuderer this session and expected to be the vehicle to move the bill forward this year.
- Referred to Senate Ways and Means.

Amendments:

- **Becker Amendment failed:** proposed additional protection/enforcement for non-tribal youth purchasing tobacco and vaping products from Tribal stores. Clarified that she was not suggesting enforcement on tribal lands.
- **Cleveland Amendment approved:** Added the requirement for DOR to review applicability to the act to Tribal retailers operating on Tribal jurisdiction and report back to the legislature by Dec 1, 2019. This would entail a review the cigarette tax contracts formed with tribes concerning the process and feasibility of amending the contracts to provide that Indian retailers in Indian country must not sell or distribute tobacco products to persons under 21-years old.
- **Video:** [Feb 1, 2018 Health & Long Term Care at 10:00 AM](#) (1:46:40 on the timeline)



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NOTES:

Excerpt from FISCAL NOTE FOR SB1054

<https://fortress.wa.gov/FNSPublicSearch/GetPDF?packageID=50090>

Assumptions:

Cigarettes: -

- Under current law, 118 million state taxed packs of cigarettes are forecasted to be sold in Fiscal Year 2019 and 117 million the following year.
- Youths aged 18 to 20 currently represent 2.5% of total cigarette smokers in Washington. (Source: WA Department of Health)
- Fifteen percent of youth smokers will quit smoking completely when the legal age for cigarette purchase and use is increased to 21. (Source: WA Department of Health)
- Currently 45% of the youth aged 18 to 20 who smoke cigarettes purchase cigarettes from stores or other means (based on a survey of 12th graders in WA). The remaining 55% obtain cigarettes from other sources.
- Assume the 45% of youths aged 18 to 20 that purchase cigarettes currently will continue to do so through other means, such as tribal smoke shops, that will not be subject to cigarette taxes.
- Overall increasing the legal age for the purchase and use of cigarettes to 21 will result in a 1.33% decline in taxable consumption.

Vapor products:

- Washington’s share of vaping consumption is 2.2 percent of the U.S. total. - Currently, 63 percent of vaping product sales are made at actual stores, not through other sources (e.g. Internet).
- Growth in vaping and the purchase of vaping products are similar to that found in the annual Wells Fargo forecast.

Other Tobacco Products:

- Under current law, tobacco products other than cigarettes are forecast to bring in \$56 million dollars in tobacco products tax revenue in Fiscal Year 2019 and \$57 million in subsequent years.
- Increasing the legal age for the purchase and use of tobacco products other than cigarettes and vaping products to 21 results in a 1.25 percent decline in taxable consumption. This is because the youth prevalence of tobacco products other than cigarettes is estimated to be only half of the prevalence of cigarettes.

General:

- The decline in taxable consumption will occur relatively quickly as it typically has when the cigarette tax has increased.

Form FN (Rev 1/00) 2 Request # 5025-1

- Bill # 5025 SB FNS062 Department of Revenue Fiscal Note - This bill does not require the tribes with cigarette compacts to restrict sales to those individuals 21 and over, and it is unclear if any tribes will voluntarily raise their minimum age for tobacco and vapor products to 21.
- The revenue impacts estimated in this fiscal note are the direct impacts to tax revenue that would occur due to the inability of individuals 18 to 20 years of age to purchase tobacco products that would be subject to state taxes.
- This is a carry-over bill from 2017 legislative session.



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- It is assumed that the bill's effective date, January 1, 2018, will be amended to be January 1, 2019. Thus, this fiscal estimate assumes effective date of January 1, 2019, with 5 months of cash collections reflected in Fiscal Year 2019.

DATA SOURCES

- Economic and Revenue Forecast Council forecast
- The Washington State Healthy Youth Survey, 2016 (Department of Health) for data on the use and source of cigarettes by Washington youths
- Table 2-11 from the publication "Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products," Bonnie RJ, Stratton K, Kwan LY, editors, Washington (DC): National Academies Press (US); 2015 July

REVENUE ESTIMATES NOTE:

- These estimates do not include any health cost savings that might occur as a result of this legislation. This legislation will reduce state revenues by \$2.7 million and local revenues by \$148,000 in the 2017-19 Biennium.

NOTE: The revenue estimates contained in this SB1054 fiscal note are lower than those found in fiscal notes for similar bills in previous years. This is due to new data provided to the Department of Revenue by the Department of Health on January 8, 2018.