

2SHB 1645 - H AMD 685

By Representative Cody

ADOPTED 02/12/2016

1 Strike everything after the enacting clause and insert the
2 following:

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

17 (2) The potential public health risks posed by vapor products are
18 many-faceted, and include nicotine addiction, liquid nicotine
19 poisoning, the potential inhalation of carcinogens and toxic
20 substances, and the adverse effects of nicotine on adolescent brain
21 development. When exposed to heat, the nicotine solutions used in
22 vapor products can generate a range of chemical byproducts that may
23 have adverse health consequences when inhaled. The specific chemistry
24 of the liquid nicotine solutions used in vapor products is not
25 standardized and neither manufacturers nor retailers are required to
26 disclose the chemical contents of the solutions. Consumers,
27 therefore, have no way of determining exactly what substances they
28 are inhaling or what the health consequences of such inhalation might
29 be.

30 (3) When absorbed through the skin liquid nicotine may be toxic
31 to both adults and children. In Washington, poison center calls
32 related to vapor products have increased from two in 2010 to one

1 hundred forty-four in the first nine months of 2014, ninety-seven of
2 which involved children. Of the calls involving children, eighty-four
3 percent were one to three years old. However, due to the current lack
4 of regulation, vapor product manufacturers, distributors, and
5 retailers are not subject to labeling and advertising requirements or
6 other regulations designed to provide consumers with product safety
7 warnings or other health-related information.

8 (4) The current easy access to vapor products is particularly
9 problematic with respect to teenagers. A study conducted by the
10 Centers for Disease Control and Prevention (CDC) reported that in
11 2013 more than a quarter of a million youth who had never smoked a
12 cigarette had used vapor products. The CDC also noted that in 2011
13 this number was seventy-nine thousand, which increased to more than
14 two hundred sixty-three thousand in 2013, thus reflecting a more than
15 threefold increase in the number of youth using vapor products during
16 this three-year period. Such statistics underscore the urgent need
17 for the creation of a comprehensive regulatory framework governing
18 commerce in vapor products, especially with respect to restricting
19 access to such products by children and teenagers.

20 (5) It is well-understood that the ability to make rational
21 decisions regarding risky behaviors such as smoking cigarettes and
22 drinking alcohol is less developed in teenagers as compared to
23 adults, and our legal system has traditionally responded by
24 protecting teenagers from such risks through the restriction or
25 prohibition of teen involvement in such activities. As is the case
26 with commerce in cigarettes and alcohol, the vapor products market
27 requires regulatory oversight that focuses upon preventing children
28 and teenagers from accessing and using products that can cause
29 addiction and other adverse health consequences.

30 (6) In order to ensure that youth access to vapor products is
31 subject to comprehensive regulatory controls, it is imperative that
32 the statutory framework for the regulation of vapor products includes
33 a prohibition on the shipment or transportation of vapor products
34 purchased at retail through the internet. Simply requiring motor
35 carrier delivery companies to verify the age of the customer at the
36 time of delivery is not an option, insofar as the United States
37 supreme court has ruled that such state-imposed age verification
38 procedures are preempted by federal laws regulating the services that
39 may be provided by motor carriers. Furthermore, allowing consumers to
40 make vapor products purchases via the internet would make it all but

1 impossible to ensure that vapor products purchased by state residents
2 meet state legal standards regarding child-resistant packaging and
3 public health disclosure requirements. Accordingly, a complete ban on
4 internet sales is the least restrictive, and most practical, means of
5 preventing minors from making illegal purchases and ensuring that
6 vapor products meet state packaging and product disclosure standards.

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

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

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

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

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

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

37 **Sec. 3.** RCW 28A.210.310 and 1997 c 9 s 1 are each amended to
38 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, in school-owned and other approved vehicles
6 used to transport students to and from school or school activities,
7 and at school-sponsored or school-approved activities.

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

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

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

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

36 (1) "Board" means the Washington state liquor (~~control~~) and
37 cannabis board.

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

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

2 (4) "Distributor" means: (a) Any person who sells vapor products
3 to persons other than ultimate consumers; or (b) any person who meets
4 the definition of distributor under RCW 82.26.010.

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

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

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

14 ~~((+4))~~ (8) "Packaging" means a pack, box, carton, wrapping, or
15 container of any kind in which a vapor product is sold or offered for
16 sale to a consumer.

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

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

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

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

31 ~~((+5))~~ (13) "Sampling" means the distribution of samples to
32 members of the public.

33 ~~((+6))~~ (14) "Tobacco product" means a product that contains
34 tobacco and is intended for human use, including ~~((any product))~~
35 "cigarettes" defined in RCW 82.24.010~~((+2))~~ or "tobacco products"
36 defined in RCW 82.26.010~~((+1))~~, except that for the purposes of RCW
37 70.155.140 only, "tobacco product" does not include cigars defined in
38 RCW 82.26.010 as to which one thousand units weigh more than three
39 pounds.

1 (15) "Vapor product" means any: (a) Device that employs a battery
2 or other mechanism to heat a solution or substance to produce a vapor
3 or aerosol intended for inhalation; (b) cartridge or container of a
4 solution or substance intended to be used with or in such a device or
5 to refill such a device; or (c) solution or substance intended for
6 use in such a device, including, but not limited to, concentrated
7 nicotine. "Vapor product" includes any electronic cigarettes,
8 electronic nicotine delivery systems, electronic cigars, electronic
9 cigarillos, electronic pipes, vape pens, or similar products or
10 devices, as well as any parts that can be used to build such products
11 or devices. "Vapor product" does not include any drug, device, or
12 combination product approved for sale by the United States food and
13 drug administration that is marketed and sold for such approved
14 purpose.

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

17 A person who holds a license issued under RCW (~~(82.24.520 or~~
18 ~~82.24.530 shall)~~) 82.24.510, 82.26.150, or section 23 of this act
19 must:

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

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

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

25 (~~(a)~~) (i) Be posted so that it is clearly visible to anyone
26 purchasing tobacco products or vapor products from the licensee;

27 (~~(b)~~) (ii) Be designed and produced by the department of health
28 to read: "THE SALE OF TOBACCO PRODUCTS AND VAPOR PRODUCTS TO PERSONS
29 UNDER AGE 18 IS STRICTLY PROHIBITED BY STATE LAW. IF YOU ARE UNDER
30 18, YOU COULD BE PENALIZED FOR PURCHASING A TOBACCO PRODUCT OR A
31 VAPOR PRODUCT; PHOTO ID REQUIRED"; and

32 (~~(c)~~) (iii) Be provided free of charge by the (~~liquor~~
33 ~~control~~) board.

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

36 A person who holds a license issued under chapter 82.24 or 82.26
37 RCW or section 23 of this act must conduct the business and maintain

1 the premises in compliance with Titles 9 and 9A RCW and chapter 69.50
2 RCW.

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

5 Unless preempted by federal law, no person ((shall)) may sell or
6 permit to be sold any tobacco product or vapor product through any
7 device that mechanically dispenses tobacco products or vapor products
8 unless the device is located fully within premises from which minors
9 are prohibited or in industrial worksites where minors are not
10 employed and not less than ten feet from all entrance or exit ways to
11 and from each premises. The board ((shall)) must adopt rules that
12 allow an exception to the requirement that a device be located not
13 less than ten feet from all entrance or exit ways to and from a
14 premises if it is architecturally impractical for the device to be
15 located not less than ten feet from all entrance and exit ways.

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

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

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

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

24 (b) The tastings are offered only within the licensed premises
25 operated by the licensee and the products tasted are not removed from
26 within the licensed premises by the customer; and

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

29 (3) A violation of this section is a misdemeanor.

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

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

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

3 (1) A person may not:

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

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

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

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

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

19 (c) Receives a waiver from the board.

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

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

31 ~~((3))~~ (4) The attorney general may seek an injunction in
32 superior court to restrain a threatened or actual violation of
33 subsection (1) of this section and to compel compliance with
34 subsection (1) of this section.

35 ~~((4))~~ (5) Any violation of subsection (1) of this section is
36 not reasonable in relation to the development and preservation of
37 business and is an unfair and deceptive act or practice and an unfair
38 method of competition in the conduct of trade or commerce in
39 violation of RCW 19.86.020. Standing to bring an action to enforce
40 RCW 19.86.020 for violation of subsection (1) of this section lies

1 solely with the attorney general. Remedies provided by chapter 19.86
2 RCW are cumulative and not exclusive.

3 ~~((+5))~~ (6)(a) In any action brought under this section, the
4 state is entitled to recover, in addition to other relief, the costs
5 of investigation, expert witness fees, costs of the action, and
6 reasonable attorneys' fees.

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

12 ~~((+6))~~ (7) Unless otherwise expressly provided, the penalties or
13 remedies, or both, under this section are in addition to any other
14 penalties and remedies available under any other law of this state.

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

17 (1) The packaging for a vapor product must have a label
18 disclosing the amount of nicotine in milligrams per milliliter of
19 liquid along with the total volume of the liquid contents of the
20 product in milliliters. The manufacturer and the distributor of a
21 vapor product are each responsible for such labeling and may not
22 market, distribute, or offer for sale a vapor product that does not
23 meet this labeling requirement. The board must specify by rule the
24 uniform testing methodology that must be used by manufacturers and
25 distributors in determining the nicotine content of a vapor product
26 for the purposes of this required disclosure. If the federal
27 government adopts or requires a different testing methodology or
28 standard, the federal methodology or standard preempts board rules
29 adopted under this subsection (1). The board and the department may
30 utilize revenues derived from licensing fees to conduct vapor product
31 testing in order to verify the accuracy of a nicotine content
32 disclosure. The board must adopt rules regarding the penalties to be
33 imposed upon a manufacturer or distributor for a violation of this
34 subsection (1).

35 (2) In addition to the labeling required under subsection (1) of
36 this section, and subject to the provisions of this section, the
37 board, in consultation with the department, must adopt rules
38 regarding vapor product labeling and advertising disclosure
39 requirements. These rules must address requirements regarding product

1 health and safety warnings and the disclosure of the ingredients
2 contained in vapor products that are advertised or offered for sale
3 in this state.

4 (3) Prior to the adoption of the rules required under this
5 section, the board and the department must jointly conduct a study
6 that includes:

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

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

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

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

18 (4) In conducting the study, the board and the department must
19 consult with the following:

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

23 (b) Public health professionals and organizations;

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

25 (d) Governmental representatives; and

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

28 (5) Upon completion of the study, and prior to the adoption of
29 the rules authorized under this section, the board must prepare a
30 written report regarding the results of the study and containing
31 findings and recommendations regarding vapor product labeling and
32 advertising requirements. The report must be submitted to the
33 governor and the appropriate committees of the legislature not later
34 than December 1, 2016.

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

37 (1) Unless preempted by federal law, the board is authorized to
38 promulgate rules regulating the chemical composition of the liquids
39 contained in vapor products, including substances included for

1 flavoring purposes. In developing such rules the board must consult
2 with the department.

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

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

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

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

15 (2) This section does not apply to a person licensed under RCW
16 82.24.520, 82.24.530, 82.26.160, 82.26.170, or section 23 of this act
17 if access to the licensed premises is restricted to individuals who
18 are eighteen years of age or older.

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

21 (1) Unless preempted by federal law, any substance intended for
22 use in a vapor product that is sold at retail in this state must
23 satisfy the child-resistant effectiveness standards under 16 C.F.R.
24 Sec. 1700, the poison prevention packaging act, as it existed on the
25 effective date of this section, or such subsequent date as may be
26 provided by the board by rule, consistent with the purposes of this
27 section.

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

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

35 (4) The provisions of this section are null and void and of no
36 force and effect, upon the effective date of final regulations issued
37 by the United States food and drug administration or from any other

1 federal agency, where such regulations mandate child-resistant
2 effectiveness standards for liquid nicotine containers.

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

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

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

11 (1) A person under the age of eighteen who purchases or attempts
12 to purchase, possesses, or obtains or attempts to obtain cigarettes
13 ~~((~~or~~))~~, tobacco products, or vapor products commits a class 3 civil
14 infraction under chapter 7.80 RCW and is subject to a fine as set out
15 in chapter 7.80 RCW or participation in up to four hours of community
16 restitution, or both. The court may also require participation in a
17 ~~((~~smoking~~))~~ cessation program. This provision does not apply if a
18 person under the age of eighteen, with parental authorization, is
19 participating in a controlled purchase as part of a ~~((~~liquor~~~~
20 ~~control~~)) board, law enforcement, or local health department
21 activity.

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

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

26 (1) Where there may be a question of a person's right to purchase
27 or obtain tobacco products or vapor products by reason of age, the
28 retailer or agent thereof ~~((, shall))~~ must require the purchaser to
29 present any one of the following officially issued identification
30 that shows the purchaser's age and bears his or her signature and
31 photograph: (a) ~~((Liquor control authority card of identification of~~
32 ~~a state or province of Canada; (b))~~) Driver's license, instruction
33 permit, or identification card of a state or province of Canada;
34 ~~((+e))~~ (b) "identocard" issued by the Washington state department of
35 licensing under chapter 46.20 RCW; ~~((+d))~~ (c) United States military
36 identification; ~~((+e))~~ (d) passport; ~~((+f))~~ (e) enrollment card,
37 issued by the governing authority of a federally recognized Indian

1 tribe located in Washington, that incorporates security features
2 comparable to those implemented by the department of licensing for
3 Washington drivers' licenses. At least ninety days prior to
4 implementation of an enrollment card under this subsection, the
5 appropriate tribal authority (~~((shall))~~) must give notice to the board.
6 The board (~~((shall))~~) must publish and communicate to licensees
7 regarding the implementation of each new enrollment card; or (~~((g))~~)
8 (f) merchant marine identification card issued by the United States
9 coast guard.

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

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

19 (1) The (~~((liquor control))~~) board may suspend or revoke a
20 retailer's license issued under RCW 82.24.510(1)(b), 82.26.150(1)(b),
21 or section 23(1)(b) of this act held by a business at any location,
22 or may impose a monetary penalty as set forth in subsection (2) of
23 this section, if the (~~((liquor control))~~) board finds that the licensee
24 has violated RCW 26.28.080, 70.155.020(~~((, 70.155.030, 70.155.040,~~
25 ~~70.155.050, 70.155.070, or 70.155.090))~~) through 70.155.070,
26 70.155.090, sections 6 and 12 through 15 of this act, or 21 C.F.R.
27 Sec. 1140.14 as it exists on the effective date of this section.

28 (2) The sanctions that the (~~((liquor control))~~) board may impose
29 against a person licensed under RCW (~~((82.24.530))~~) 82.24.510(1)(b),
30 82.26.150(1)(b), or section 23(1)(b) of this act based upon one or
31 more findings under subsection (1) of this section may not exceed the
32 following:

33 (a) For violations of RCW 26.28.080 (~~((or))~~), 70.155.020, sections
34 12, 14, and 15 of this act, or 21 C.F.R. Sec. 1140.14, and for
35 violations of RCW 70.155.040 occurring on the licensed premises:

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

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

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

4 (iv) A monetary penalty of ~~((one))~~ three thousand ~~((five~~
5 ~~hundred))~~ dollars and suspension of the license for a period of
6 twelve months for the fourth violation within any ~~((two))~~ three-year
7 period;

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

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

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

16 ~~((c) For violations of RCW 70.155.040 occurring on the licensed~~
17 ~~premises;~~

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

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

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

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

28 ~~(v) Revocation of the license with no possibility of~~
29 ~~reinstatement for a period of five years for the fifth or more~~
30 ~~violation within any two-year period;))~~

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

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

36 (3) The ~~((liquor control))~~ board may impose a monetary penalty
37 upon any person other than a licensed cigarette, tobacco product, or
38 vapor product retailer if the ~~((liquor control))~~ board finds that the
39 person has violated RCW 26.28.080, 70.155.020(~~(, 70.155.030,~~

1 ~~70.155.040, 70.155.050, 70.155.070, or 70.155.090~~) through
2 70.155.070, 70.155.090, or sections 12 through 15 of this act.

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

6 (a) For violations of RCW 26.28.080 (~~or 70.155.020, fifty~~),
7 70.155.020, or sections 12, 14, and 15 of this act, one hundred
8 dollars for the first violation and (~~one~~) two hundred dollars for
9 each subsequent violation;

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

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

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

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

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

21 (6) The (~~liquor control~~) board may issue a cease and desist
22 order to any person who is found by the (~~liquor control~~) board to
23 have violated or intending to violate the provisions of this chapter,
24 RCW 26.28.080 (~~or~~), 82.24.500, 82.26.190, or section 23 of this
25 act, requiring such person to cease specified conduct that is in
26 violation. The issuance of a cease and desist order (~~shall~~) does
27 not preclude the imposition of other sanctions authorized by this
28 statute or any other provision of law.

29 (7) The (~~liquor control~~) board may seek injunctive relief to
30 enforce the provisions of RCW 26.28.080 (~~or~~), 82.24.500, 82.26.190,
31 section 23 of this act, or this chapter. The (~~liquor control~~) board
32 may initiate legal action to collect civil penalties imposed under
33 this chapter if the same have not been paid within thirty days after
34 imposition of such penalties. In any action filed by the (~~liquor~~
35 ~~control~~) board under this chapter, the court may, in addition to any
36 other relief, award the (~~liquor control~~) board reasonable
37 attorneys' fees and costs.

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

1 (9) The (~~liquor control~~) board may reduce or waive either the
2 penalties or the suspension or revocation of a license, or both, as
3 set forth in this chapter where the elements of proof are inadequate
4 or where there are mitigating circumstances. Mitigating circumstances
5 may include, but are not limited to, an exercise of due diligence by
6 a retailer. Further, the board may exceed penalties set forth in this
7 chapter based on aggravating circumstances.

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

10 (1) The (~~liquor control~~) board (~~shall~~) must, in addition to
11 the board's other powers and authorities, have the authority to
12 enforce the provisions of this chapter and RCW 26.28.080(~~(4) and~~),
13 82.24.500, 82.26.190, and section 23 of this act. The (~~liquor~~
14 ~~control~~) board (~~shall have~~) has full power to revoke or suspend
15 the license of any retailer (~~(or)~~), distributor, or wholesaler in
16 accordance with the provisions of RCW 70.155.100.

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

22 (3) For the purpose of enforcing the provisions of this chapter
23 and RCW 26.28.080(~~(4) and~~), 82.24.500, 82.26.190, and section 23 of
24 this act, a peace officer or enforcement officer of the (~~liquor~~
25 ~~control~~) board who has reasonable grounds to believe a person
26 observed by the officer purchasing, attempting to purchase, or in
27 possession of tobacco products or vapor products is under the age of
28 eighteen years of age, may detain such person for a reasonable period
29 of time and in such a reasonable manner as is necessary to determine
30 the person's true identity and date of birth. Further, tobacco
31 products or vapor products possessed by persons under the age of
32 eighteen years of age are considered contraband and may be seized by
33 a peace officer or enforcement officer of the (~~liquor control~~)
34 board.

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

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

3 (1) The youth tobacco and vapor products prevention account is
4 created in the state treasury. All fees collected pursuant to RCW
5 82.24.520 ~~((and)),~~ 82.24.530, 82.26.160, 82.26.170, section 23 of
6 this act, and section 24 of this act and funds collected by the
7 ~~((liquor control))~~ board from the imposition of monetary penalties
8 ~~((and samplers' fees shall))~~ under this chapter must be deposited
9 into this account, except that ten percent of all such fees and
10 penalties ~~((shall))~~ must be deposited in the state general fund.

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

17 (3) The department ~~((of health shall))~~ must enter into
18 interagency agreements with the ~~((liquor control))~~ board to pay the
19 costs incurred, up to thirty percent of available funds, in carrying
20 out its cigarette, tobacco product, and vapor product enforcement
21 responsibilities under this chapter and chapters 82.24 and 82.26 RCW.
22 Such agreements ~~((shall))~~ must set forth standards of enforcement,
23 consistent with the funding available, so as to reduce the extent to
24 which tobacco products and vapor products are available to
25 individuals under the age of eighteen. The agreements ~~((shall))~~ must
26 also set forth requirements for data reporting by the ~~((liquor~~
27 ~~control))~~ board regarding its enforcement activities.

28 (4) The department ~~((of health)),~~ the board, and the department
29 of revenue ~~((shall))~~ must enter into an interagency agreement for
30 payment of the cost of administering the tobacco ~~((retailer))~~ and
31 vapor product licensing system and for the provision of quarterly
32 documentation of tobacco and vapor product wholesaler, retailer, and
33 vending machine names and locations.

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

39 (6) Three percent of available funds must be provided to public
40 institutions of higher education with postgraduate schools of public

1 health and accredited by the council on education for public health,
2 for the purpose of supporting research and graduate fellowships
3 pertaining to prevention, education, and health effects related to
4 the use of nicotine and vapor products by youth and adults.

5 (7) Funds from the account created under this section may be used
6 by the board and department to conduct vapor product content testing
7 authorized under section 11 of this act.

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

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

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

20 ~~((+2))~~ (b) Regulate or prohibit activities covered by RCW
21 70.155.020 through 70.155.080. This chapter does not otherwise
22 preempt political subdivisions from adopting ordinances regulating
23 the sale, purchase, use, or promotion of tobacco products not
24 inconsistent with chapter 507, Laws of 1993.

25 (2) This chapter does not preempt political subdivisions from
26 adopting ordinances regulating the sale, purchase, use, or promotion
27 of vapor products, provided such ordinances are consistent with the
28 provisions of this chapter and the administrative rules adopted by
29 the board, and do not have the effect of prohibiting the sale,
30 purchase, promotion, or reasonable use of vapor products. Any such
31 ordinances must not create regulatory provisions that are more
32 restrictive than those imposed on the commercial sale or personal use
33 of tobacco products.

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

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

1 NEW SECTION. **Sec. 23.** A new section is added to chapter 70.155

2 RCW to read as follows:

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

5 (a) A vapor product distributor's license; and

6 (b) A vapor product retailer's license.

7 (2) Application for the licenses must be made through the
8 business licensing system under chapter 19.02 RCW. The board may
9 adopt rules regarding the regulation of the licenses. The board may
10 refuse to issue any license under this chapter if the board has
11 reasonable cause to believe that the applicant has willfully withheld
12 information requested for the purpose of determining the eligibility
13 of the applicant to receive a license, or if the board has reasonable
14 cause to believe that information submitted in the application is
15 false or misleading or is not made in good faith. In addition, for
16 the purpose of reviewing an application for a distributor's license
17 or retailer's license and for considering the denial, suspension, or
18 revocation of any such license, the board may consider criminal
19 conduct of the applicant, including an administrative violation
20 history record with the board and a criminal history record
21 information check within the previous five years, in any state,
22 tribal, or federal jurisdiction in the United States, its
23 territories, or possessions, and the provisions of RCW 9.95.240 and
24 chapter 9.96A RCW do not apply to such cases. The board may, in its
25 discretion, issue or refuse to issue the distributor's license or
26 retailer's license, subject to the provisions of section 30 of this
27 act.

28 (3) No person may qualify for a distributor's license or a
29 retailer's license under this section without first undergoing a
30 criminal background check. The background check must be performed by
31 the board and must disclose any criminal conduct within the previous
32 five years in any state, tribal, or federal jurisdiction in the
33 United States, its territories, or possessions. If the applicant or
34 licensee also has a license issued under chapter 66.24, 82.24, or
35 82.26 RCW, the background check done under the authority of chapter
36 66.24, 82.24, or 82.26 RCW satisfies the requirements of this
37 subsection.

38 (4) Each license issued under this chapter expires on the
39 business license expiration date. The license must be continued
40 annually if the licensee has paid the required fee and complied with

1 all the provisions of this chapter and the rules of the board adopted
2 pursuant to this chapter.

3 (5) Each license and any other evidence of the license required
4 under this chapter must be exhibited in each place of business for
5 which it is issued and in the manner required for the display of a
6 business license.

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

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

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

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

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

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

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

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

3 A fee of six hundred fifty dollars must accompany each vapor
4 product distributor's license application or license renewal
5 application under section 23 of this act. If a distributor sells or
6 intends to sell vapor products at two or more places of business,
7 whether established or temporary, a separate license with a license
8 fee of one hundred fifteen dollars is required for each additional
9 place of business.

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

12 A fee of two hundred fifty dollars must accompany each vapor
13 product retailer's license application or license renewal application
14 under section 23 of this act. A separate license is required for each
15 separate location at which the retailer operates.

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

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

27 **Sec. 28.** RCW 82.26.170 and 2005 c 180 s 13 are each amended to
28 read as follows:

29 (1) A fee of (~~ninety-three dollars shall~~) two hundred fifty
30 dollars must accompany each retailer's license application or license
31 renewal application. A separate license is required for each separate
32 location at which the retailer operates.

33 (2) The fee imposed under subsection (1) of this section does not
34 apply to any person applying for a retailer's license or for renewal
35 of a retailer's license if the person has a valid retailer's license
36 under RCW 82.24.510 for the place of business associated with the
37 retailer's license application or renewal application.

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

3 (1) Every vapor product retailer licensed under section 23 of
4 this act must procure itemized invoices of all vapor products
5 purchased. The invoices must show the seller's name and address, the
6 date of purchase, and all prices and discounts.

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

11 (3) At any time during usual business hours the department,
12 board, or its duly authorized agents or employees may enter any
13 retail outlet without a search warrant, and inspect the premises for
14 invoices required to be kept under this section and the vapor
15 products contained in the retail outlet, to determine whether or not
16 all the provisions of this chapter are being fully complied with. If
17 the department, board, or any of its agents or employees are denied
18 free access or are hindered or interfered with in making the
19 inspection, the registration certificate issued under RCW 82.32.030
20 of the retailer at the premises is subject to revocation by the
21 department, and any licenses issued under this chapter or chapter
22 82.26 or 82.24 RCW are subject to suspension or revocation by the
23 board.

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

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

28 (2) The department may adopt, amend, and repeal rules necessary
29 to administer this chapter. The board may revoke or suspend the
30 distributor's or retailer's license of any distributor or retailer of
31 vapor products in the state upon sufficient cause showing a violation
32 of this chapter or upon the failure of the licensee to comply with
33 any of the rules adopted under it.

34 (3) A license may not be suspended or revoked except upon notice
35 to the licensee and after a hearing as prescribed by the board. The
36 board, upon finding that the licensee has failed to comply with any
37 provision of this chapter or of any rule adopted under it, must, in
38 the case of the first offense, suspend the license or licenses of the
39 licensee for a period of not less than thirty consecutive business

1 days, and in the case of a second or further offense, suspend the
2 license or licenses for a period of not less than ninety consecutive
3 business days but not more than twelve months, and in the event the
4 board finds the licensee has been guilty of willful and persistent
5 violations, it may revoke the license or licenses.

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

10 (5) Any person whose license or licenses have been revoked under
11 this section may reapply to the board at the expiration of one year
12 of the license or licenses. The license or licenses may be approved
13 by the board if it appears to the satisfaction of the board that the
14 licensee will comply with the provisions of this chapter and the
15 rules adopted under it.

16 (6) A person whose license has been suspended or revoked may not
17 sell vapor products, tobacco products, or cigarettes or permit vapor
18 products, tobacco products, or cigarettes to be sold during the
19 period of suspension or revocation on the premises occupied by the
20 person or upon other premises controlled by the person or others or
21 in any other manner or form.

22 (7) Any determination and order by the board, and any order of
23 suspension or revocation by the board of the license or licenses
24 issued under this chapter, or refusal to reinstate a license or
25 licenses after revocation is reviewable by an appeal to the superior
26 court of Thurston county. The superior court must review the order or
27 ruling of the board and may hear the matter de novo, having due
28 regard to the provisions of this chapter and the duties imposed upon
29 the board.

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

33 NEW SECTION. **Sec. 31.** 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.

37 NEW SECTION. **Sec. 32.** If any part of this act is found to be in
38 conflict with federal requirements that are a prescribed condition to

1 the allocation of federal funds to the state, the conflicting part of
2 this act is inoperative solely to the extent of the conflict and with
3 respect to the agencies directly affected, and this finding does not
4 affect the operation of the remainder of this act in its application
5 to the agencies concerned. Rules adopted under this act must meet
6 federal requirements that are a necessary condition to the receipt of
7 federal funds by the state.

8 NEW SECTION. **Sec. 33.** This act takes effect October 1, 2016."

9 Correct the title.

EFFECT: The striking amendment makes the following changes to the second substitute bill:

(1) Requires school districts to implement policies prohibiting the use of vapor products on school buses and other school-approved vehicles used to transport students;

(2) Clarifies the definition of vapor product "distributor";

(3) Requires that local ordinances regulating vapor products be consistent with state regulations and cannot have the effect of prohibiting the sale, purchase, promotion, or reasonable use of such products. Such ordinances cannot be more restrictive than those imposed on tobacco products;

(4) Adds cross-references to tobacco product licensing statutes so as to make tobacco products subject to the same regulatory provisions as cigarettes and vapor products;

(5) Raises the tobacco product retailer licensing fee from ninety-three dollars to two hundred fifty dollars, so as to be consistent with the licensing fee increase imposed on cigarette retailers;

(6) Requires product labeling that discloses the nicotine content of liquids contained in vapor products and establishes guidelines for nicotine testing standards;

(7) Authorizes fees to be used to test vapor products for the purpose of verifying the accuracy of nicotine content labeling; and

(8) Allocates three percent of available funds from the youth tobacco and vapor products prevention account to specified public health schools for specified research projects.

--- END ---