

SSB 6328 - S AMD 763

By Senator Dammeier

ADOPTED 03/28/2016

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

3 "Sec. 1. RCW 26.28.080 and 2013 c 47 s 1 are each amended to  
4 read as follows:

5 (1) Every person who sells or gives, or permits to be sold or  
6 given, to any person under the age of eighteen years any cigar,  
7 cigarette, cigarette paper or wrapper, tobacco in any form, or a  
8 vapor product is guilty of a gross misdemeanor.

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

12 (3) For the purposes of this section, "vapor product" (~~means a~~  
13 ~~noncombustible tobacco derived product containing nicotine that~~  
14 ~~employs a mechanical heating element, battery, or circuit, regardless~~  
15 ~~of shape or size, that can be used to heat a liquid nicotine solution~~  
16 ~~contained in cartridges. Vapor product does not include any product~~  
17 ~~that is regulated by the United States food and drug administration~~  
18 ~~under chapter V of the federal food, drug, and cosmetic)) has the  
19 same meaning as provided in section 4 of this act.~~

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

22 (1) The youth tobacco and vapor products prevention account is  
23 created in the state treasury. All fees collected pursuant to RCW  
24 82.24.520 (~~and~~), 82.24.530, 82.26.160, and 82.26.170 and funds  
25 collected by the liquor (~~control~~) and cannabis board from the  
26 imposition of monetary penalties (~~and samplers' fees~~) shall be  
27 deposited into this account, except that ten percent of all such fees  
28 and penalties shall be deposited in the state general fund.

29 (2) Moneys appropriated from the youth tobacco and vapor products  
30 prevention account to the department of health shall be used by the  
31 department of health for implementation of this chapter, including

1 collection and reporting of data regarding enforcement and the extent  
2 to which access to tobacco products and vapor products by youth has  
3 been reduced.

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

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

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

25 NEW SECTION. **Sec. 3.** PREEMPTION. (1) This chapter preempts  
26 political subdivisions from adopting or enforcing requirements for  
27 the licensure and regulation of vapor product promotions and sales at  
28 retail. No political subdivision may impose fees or license  
29 requirements on retail outlets for possessing or selling vapor  
30 products, other than general business taxes or license fees not  
31 primarily levied on such products.

32 (2) No political subdivision may regulate the use of vapor  
33 products in outdoor public places, unless the public place is an area  
34 where children congregate, such as schools, playgrounds, and parks.

35 (3) Subject to section 21 of this act, political subdivisions may  
36 regulate the use of vapor products in indoor public places.

1        NEW SECTION.        **Sec. 4.**        DEFINITIONS. The definitions in this  
2 section apply throughout this chapter unless the context clearly  
3 requires otherwise.

4        (1) "Board" means the Washington state liquor and cannabis board.

5        (2) "Business" means any trade, occupation, activity, or  
6 enterprise engaged in for the purpose of selling or distributing  
7 vapor products in this state.

8        (3) "Child care facility" has the same meaning as provided in RCW  
9 70.140.020.

10       (4) "Closed system nicotine container" means a sealed, prefilled,  
11 and disposable container of nicotine in a solution or other form in  
12 which such container is inserted directly into an electronic  
13 cigarette, electronic nicotine delivery system, or other similar  
14 product, if the nicotine in the container is inaccessible through  
15 customary or reasonably foreseeable handling or use, including  
16 reasonably foreseeable ingestion or other contact by children.

17       (5) "Delivery sale" means any sale of a vapor product to a  
18 purchaser in this state where either:

19       (a) The purchaser submits the order for such sale by means of a  
20 telephonic or other method of voice transmission, the mails or any  
21 other delivery service, or the internet or other online service; or

22       (b) The vapor product is delivered by use of the mails or of a  
23 delivery service. The foregoing sales of vapor products constitute a  
24 delivery sale regardless of whether the seller is located within or  
25 without this state. "Delivery sale" does not include a sale of any  
26 vapor product not for personal consumption to a retailer.

27       (6) "Delivery seller" means a person who makes delivery sales.

28       (7) "Distributor" means any person who:

29       (a) Sells vapor products to persons other than ultimate  
30 consumers; or

31       (b) Is engaged in the business of selling vapor products in this  
32 state and who brings, or causes to be brought, into this state from  
33 outside of the state any vapor products for sale.

34       (8) "Liquid nicotine container" means a package from which  
35 nicotine in a solution or other form is accessible through normal and  
36 foreseeable use by a consumer and that is used to hold soluble  
37 nicotine in any concentration. "Liquid nicotine container" does not  
38 include closed system nicotine containers.

39       (9) "Manufacturer" means a person who manufactures and sells  
40 vapor products.

1 (10) "Minor" refers to an individual who is less than eighteen  
2 years old.

3 (11) "Person" means any individual, receiver, administrator,  
4 executor, assignee, trustee in bankruptcy, trust, estate, firm,  
5 copartnership, joint venture, club, company, joint stock company,  
6 business trust, municipal corporation, the state and its departments  
7 and institutions, political subdivision of the state of Washington,  
8 corporation, limited liability company, association, society, any  
9 group of individuals acting as a unit, whether mutual, cooperative,  
10 fraternal, nonprofit, or otherwise.

11 (12) "Place of business" means any place where vapor products are  
12 sold or where vapor products are manufactured, stored, or kept for  
13 the purpose of sale.

14 (13) "Playground" means any public improved area designed,  
15 equipped, and set aside for play of six or more children which is not  
16 intended for use as an athletic playing field or athletic court,  
17 including but not limited to any play equipment, surfacing, fencing,  
18 signs, internal pathways, internal land forms, vegetation, and  
19 related structures.

20 (14) "Retail outlet" means each place of business from which  
21 vapor products are sold to consumers.

22 (15) "Retailer" means any person engaged in the business of  
23 selling vapor products to ultimate consumers.

24 (16)(a) "Sale" means any transfer, exchange, or barter, in any  
25 manner or by any means whatsoever, for a consideration, and includes  
26 and means all sales made by any person.

27 (b) The term "sale" includes a gift by a person engaged in the  
28 business of selling vapor products, for advertising, promoting, or as  
29 a means of evading the provisions of this chapter.

30 (17) "School" has the same meaning as provided in RCW 70.140.020.

31 (18) "Self-service display" means a display that contains vapor  
32 products and is located in an area that is openly accessible to  
33 customers and from which customers can readily access such products  
34 without the assistance of a salesperson. A display case that holds  
35 vapor products behind locked doors does not constitute a self-service  
36 display.

37 (19) "Vapor product" means any noncombustible product that may  
38 contain nicotine and that employs a heating element, power source,  
39 electronic circuit, or other electronic, chemical, or mechanical

1 means, regardless of shape or size, that can be used to produce vapor  
2 or aerosol from a solution or other substance.

3 (a) "Vapor product" includes any electronic cigarette, electronic  
4 cigar, electronic cigarillo, electronic pipe, or similar product or  
5 device and any vapor cartridge or other container that may contain  
6 nicotine in a solution or other form that is intended to be used with  
7 or in an electronic cigarette, electronic cigar, electronic  
8 cigarillo, electronic pipe, or similar product or device.

9 (b) "Vapor product" does not include any product that meets the  
10 definition of marijuana, useable marijuana, marijuana concentrates,  
11 marijuana-infused products, cigarette, or tobacco products.

12 (c) For purposes of this subsection (19), "marijuana," "useable  
13 marijuana," "marijuana concentrates," and "marijuana-infused  
14 products" have the same meaning as provided in RCW 69.50.101.

15 NEW SECTION. **Sec. 5.** VAPOR PRODUCTS LICENSES. (1) The licenses  
16 issuable by the board under this chapter are as follows:

17 (a) A vapor product retailer's license;

18 (b) A vapor product distributor's license; and

19 (c) A vapor product delivery sale license.

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

1 distributor's license, and delivery sale license subject to the  
2 provisions of RCW 70.155.100.

3 (3) The application processes for the retailer license and the  
4 distributor license, and any forms used for such processes, must  
5 allow the applicant to simultaneously apply for a delivery sale  
6 license without requiring the applicant to undergo a separate  
7 licensing application process in order to be licensed to conduct  
8 delivery sales. However, a delivery sale license obtained in  
9 conjunction with a retailer or distributor license under this  
10 subsection remains a separate license subject to the delivery sale  
11 licensing fee established under this chapter.

12 (4) No person may qualify for a retailer's license, distributor's  
13 license, or delivery sale license under this section without first  
14 undergoing a criminal background check. The background check must be  
15 performed by the board and must disclose any criminal conduct within  
16 the previous five years in any state, tribal, or federal jurisdiction  
17 in the United States, its territories, or possessions. If the  
18 applicant or licensee also has a license issued under chapter 66.24,  
19 69.50, 82.24, or 82.26 RCW, the background check done under the  
20 authority of chapter 66.24, 69.50, 82.24, or 82.26 RCW satisfies the  
21 requirements of this subsection.

22 (5) Each license issued under this chapter expires on the  
23 business license expiration date. The license must be continued  
24 annually if the licensee has paid the required fee and complied with  
25 all the provisions of this chapter and the rules of the board adopted  
26 pursuant to this chapter.

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

31 NEW SECTION. **Sec. 6.** LICENSING REQUIRED. (1)(a) No person may  
32 engage in or conduct business as a retailer, distributor, or delivery  
33 seller in this state without a valid license issued under this  
34 chapter, except as otherwise provided by law. Any person who sells  
35 vapor products to ultimate consumers by a means other than delivery  
36 sales must obtain a retailer's license under this chapter. Any person  
37 who sells vapor products to persons other than ultimate consumers or  
38 who meets the definition of distributor under this chapter must  
39 obtain a distributor's license under this chapter. Any person who

1 conducts delivery sales of vapor products must obtain a delivery sale  
2 license.

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

5 (2) No person engaged in or conducting business as a retailer,  
6 distributor, or delivery seller in this state may refuse to allow the  
7 enforcement officers of the board, on demand, to make full inspection  
8 of any place of business or vehicle where any of the vapor products  
9 regulated under this chapter are sold, stored, transported, or  
10 handled, or otherwise hinder or prevent such inspection. A person who  
11 violates this subsection is guilty of a gross misdemeanor.

12 (3) Any person licensed under this chapter as a distributor, any  
13 person licensed under this chapter as a retailer, and any person  
14 licensed under this chapter as a delivery seller may not operate in  
15 any other capacity unless the additional appropriate license is first  
16 secured, except as otherwise provided by law. A violation of this  
17 subsection is a misdemeanor.

18 (4) No person engaged in or conducting business as a retailer,  
19 distributor, or delivery seller in this state may sell or give, or  
20 permit to sell or give, a product that contains any amount of any  
21 cannabinoid, synthetic cannabinoid, cathinone, or methcathinone,  
22 unless otherwise provided by law. A violation of this subsection (4)  
23 is punishable according to RCW 69.50.401.

24 (5) The penalties provided in this section are in addition to any  
25 other penalties provided by law for violating the provisions of this  
26 chapter or the rules adopted under this chapter.

27 NEW SECTION. **Sec. 7.** DISTRIBUTOR LICENSING FEE. A fee of one  
28 hundred fifty dollars must accompany each vapor product distributor's  
29 license application or license renewal application under section 5 of  
30 this act. If a distributor sells or intends to sell vapor products at  
31 two or more places of business, whether established or temporary, a  
32 separate license with a license fee of one hundred dollars is  
33 required for each additional place of business.

34 NEW SECTION. **Sec. 8.** RETAILER LICENSING FEE. (1) A fee of one  
35 hundred seventy-five dollars must accompany each vapor product  
36 retailer's license application or license renewal application under  
37 section 5 of this act. A separate license is required for each  
38 separate location at which the retailer operates.

1 (2) A retailer applying for, or renewing, both a vapor products  
2 retailer's license under section 5 of this act and retailer's license  
3 under RCW 82.24.510 may pay a combined application fee of two hundred  
4 fifty dollars for both licenses.

5 **Sec. 9.** RCW 82.24.530 and 2012 2nd sp.s. c 4 s 12 are each  
6 amended to read as follows:

7 (1) A fee of ((~~ninety-three~~)) one hundred seventy-five dollars  
8 must accompany each retailer's license application or license renewal  
9 application. A separate license is required for each separate  
10 location at which the retailer operates. A fee of thirty additional  
11 dollars for each vending machine must accompany each application or  
12 renewal for a license issued to a retail dealer operating a cigarette  
13 vending machine. An additional fee of ninety-three dollars ((~~shall~~))  
14 must accompany each application or renewal for a license issued to a  
15 retail dealer operating a cigarette-making machine.

16 (2) A retailer applying for, or renewing, both a retailer's  
17 license under RCW 82.24.510 and a vapor products retailer's license  
18 under section 5 of this act may pay a combined application fee of two  
19 hundred fifty dollars for both licenses.

20 NEW SECTION. **Sec. 10.** DELIVERY SALE LICENSING FEE. A fee of two  
21 hundred fifty dollars must accompany each vapor product delivery sale  
22 license application or license renewal application under section 5 of  
23 this act.

24 NEW SECTION. **Sec. 11.** ENFORCEMENT—LICENSE SUSPENSION,  
25 REVOCATION. (1) The board, or its enforcement officers, has the  
26 authority to enforce provisions of this chapter.

27 (2) The board may revoke or suspend a retailer's, distributor's,  
28 or delivery seller's license issued under this chapter upon  
29 sufficient cause showing a violation of this chapter.

30 (3) A license may not be suspended or revoked except upon notice  
31 to the licensee and after a hearing as prescribed by the board.

32 (4) Any retailer's licenses issued under chapter 82.24 or 82.26  
33 RCW to a person whose vapor product retailer's license or licenses  
34 have been suspended or revoked for violating RCW 26.28.080 must also  
35 be suspended or revoked during the period of suspension or revocation  
36 under this section.

1 (5) Any person whose license or licenses have been revoked under  
2 this section may reapply to the board at the expiration of two years  
3 of the license or licenses, unless the license was revoked pursuant  
4 to section 22(2)(e) of this act. The license or licenses may be  
5 approved by the board if it appears to the satisfaction of the board  
6 that the licensee will comply with the provisions of this chapter.

7 (6) A person whose license has been suspended or revoked may not  
8 sell vapor products or permit vapor products to be sold during the  
9 period of suspension or revocation on the premises occupied by the  
10 person or upon other premises controlled by the person or others or  
11 in any other manner or form.

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

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

23 NEW SECTION. **Sec. 12.** SIGNAGE. (1) Except as provided in  
24 subsection (2) of this section, a person who holds a retailer's  
25 license issued under this chapter must display a sign concerning the  
26 prohibition of vapor product sales to minors. Such sign must:

27 (a) Be posted so that it is clearly visible to anyone purchasing  
28 vapor products from the licensee;

29 (b) Be designed and produced by the department of health to read:  
30 "The sale of vapor products to persons under age eighteen is strictly  
31 prohibited by state law. If you are under age eighteen, you could be  
32 penalized for purchasing a vapor product; photo id required;" and

33 (c) Be provided free of charge by the department of health.

34 (2) For persons also licensed under RCW 82.24.510 or 82.26.150,  
35 the board may issue a sign to read: "The sale of tobacco or vapor  
36 products to persons under age eighteen is strictly prohibited by  
37 state law. If you are under age eighteen, you could be penalized for  
38 purchasing a tobacco or vapor product; photo id required," provided  
39 free of charge by the board.

1 (3) A person who holds a license issued under this chapter must  
2 display the license or a copy in a prominent location at the outlet  
3 for which the license is issued.

4 NEW SECTION. **Sec. 13.** LABELING REQUIREMENTS. (1) A manufacturer  
5 or distributor that sells, offers for sale, or distributes liquid  
6 nicotine containers shall label the vapor product with a: (a) Warning  
7 regarding the harmful effects of nicotine; (b) warning to keep the  
8 vapor product away from children; (c) warning that vaping is illegal  
9 for those under the legal age to use the product; and (d) except as  
10 provided in subsection (2) of this section, the amount of nicotine in  
11 milligrams per milliliter of liquid along with the total volume of  
12 the liquid contents of the product expressed in milliliters.

13 (2) For closed system nicotine containers as defined in section 4  
14 of this act, a manufacturer that sells, offers for sale, or  
15 distributes vapor products in this state must annually provide the  
16 department of health with a disclosure of the nicotine content of  
17 such vapor product based on measurement standards to be established  
18 by the department of health.

19 (3)(a) This section expires on the effective date of the final  
20 regulations issued by the United States food and drug administration  
21 or by any other federal agency, when such regulations mandate warning  
22 or advertisement requirements for vapor products.

23 (b) The board must provide notice of the expiration date of this  
24 section to affected parties, the chief clerk of the house of  
25 representatives, the secretary of the senate, the office of the code  
26 reviser, and others as deemed appropriate by the board.

27 NEW SECTION. **Sec. 14.** PURCHASING, POSSESSING BY PERSONS UNDER  
28 EIGHTEEN—CIVIL INFRACTION—JURISDICTION. (1) A person under the age  
29 of eighteen who purchases or attempts to purchase, possesses, or  
30 obtains or attempts to obtain vapor products commits a class 3 civil  
31 infraction under chapter 7.80 RCW and is subject to a fine as set out  
32 in chapter 7.80 RCW or participation in up to four hours of community  
33 restitution, or both. The court may also require participation in a  
34 smoking cessation program. This provision does not apply if a person  
35 under the age of eighteen, with parental authorization, is  
36 participating in a controlled purchase as part of a board, law  
37 enforcement, or local health department activity.

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

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

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

30 NEW SECTION. **Sec. 16.** VENDOR-ASSISTED SALES REQUIREMENT. (1) No  
31 person may offer a tobacco product or a vapor product for sale in an  
32 open, unsecured display that is accessible to the public without the  
33 intervention of a store employee.

34 (2) It is unlawful to sell or distribute vapor products from  
35 self-service displays.

36 (3) Retail establishments are exempt from subsections (1) and (2)  
37 of this section if minors are not allowed in the store and such  
38 prohibition is posted clearly on all entrances.

1        NEW SECTION.    **Sec. 17.**    MAIL AND INTERNET SALES. (1) No person  
2 may conduct a delivery sale or otherwise ship or transport, or cause  
3 to be shipped or transported, any vapor product ordered or purchased  
4 by mail or through the internet to any person unless such seller has  
5 a valid delivery sale license as required under this chapter.

6        (2) No person may conduct a delivery sale or otherwise ship or  
7 transport, or cause to be shipped or transported, any vapor product  
8 ordered or purchased by mail or through the internet to any person  
9 under the minimum age required for the legal sale of vapor products  
10 as provided under section 14 of this act.

11        (3) A delivery sale licensee must provide notice on its mail  
12 order or internet sales forms of the minimum age required for the  
13 legal sale of vapor products in Washington state as provided by  
14 section 14 of this act.

15        (4) A delivery sale licensee must not accept a purchase or order  
16 from any person without first obtaining the full name, birth date,  
17 and residential address of that person and verifying this information  
18 through an independently operated third-party database or aggregate  
19 of databases, which includes data from government sources, that are  
20 regularly used by government and businesses for the purpose of age  
21 and identity verification and authentication.

22        (5) A delivery sale licensee must accept payment only through a  
23 credit or debit card issued in the purchaser's own name. The licensee  
24 must verify that the card is issued to the same person identified  
25 through identity and age verification procedures in subsection (4) of  
26 this section.

27        (6) Before a delivery sale licensee delivers an initial purchase  
28 to any person, the licensee must verify the identity and delivery  
29 address of the purchaser by mailing or shipping to the purchaser a  
30 notice of sale and certification form confirming that the addressee  
31 is in fact the person placing the order. The purchaser must return  
32 the signed certification form to the licensee before the initial  
33 shipment of product. Certification forms are not required for repeat  
34 customers. In the alternative, before a seller delivers an initial  
35 purchase to any person, the seller must first obtain from the  
36 prospective customer an electronic certification, such as by email,  
37 that includes a declaration that, at a minimum, the prospective  
38 customer is over the minimum age required for the legal sale of a  
39 vapor product, and the credit or debit card used for payment has been  
40 issued in the purchaser's name.

1 (7) A delivery sale licensee must include on shipping documents a  
2 clear and conspicuous statement which includes, at a minimum, that  
3 the package contains vapor products, Washington law prohibits sales  
4 to those under the minimum age established by this chapter, and  
5 violations may result in sanctions to both the licensee and the  
6 purchaser.

7 (8) A person who knowingly violates this section is guilty of a  
8 class C felony, except that the maximum fine that may be imposed is  
9 five thousand dollars.

10 (9) In addition to or in lieu of any other civil or criminal  
11 remedy provided by law, a person who has violated this section is  
12 subject to a civil penalty of up to five thousand dollars for each  
13 violation. The attorney general, acting in the name of the state, may  
14 seek recovery of the penalty in a civil action in superior court.

15 (10) The attorney general may seek an injunction in superior  
16 court to restrain a threatened or actual violation of this section  
17 and to compel compliance with this section.

18 (11) Any violation of this section is not reasonable in relation  
19 to the development and preservation of business and is an unfair and  
20 deceptive act or practice and an unfair method of competition in the  
21 conduct of trade or commerce in violation of RCW 19.86.020. Standing  
22 to bring an action to enforce RCW 19.86.020 for violation of this  
23 section lies solely with the attorney general. Remedies provided by  
24 chapter 19.86 RCW are cumulative and not exclusive.

25 (12)(a) In any action brought under this section, the state is  
26 entitled to recover, in addition to other relief, the costs of  
27 investigation, expert witness fees, costs of the action, and  
28 reasonable attorneys' fees.

29 (b) If a court determines that a person has violated this  
30 section, the court shall order any profits, gain, gross receipts, or  
31 other benefit from the violation to be disgorged and paid to the  
32 state treasurer for deposit in the general fund.

33 (13) Unless otherwise expressly provided, the penalties or  
34 remedies, or both, under this section are in addition to any other  
35 penalties and remedies available under any other law of this state.

36 (14) A licensee who violates this section is subject to license  
37 suspension or revocation by the board.

38 (15) The board may adopt by rule additional requirements for mail  
39 or internet sales.

40 (16) The board must not adopt rules prohibiting internet sales.

1        NEW SECTION.    **Sec. 18.**    CHILD-RESISTANT PACKAGING REQUIREMENT.

2    (1) Any liquid nicotine container that is sold at retail shall be  
3    packaged in accordance with the child-resistant effectiveness  
4    standards set forth in 16 C.F.R. Sec. 1700.15, as in effect on the  
5    effective date of this section, as determined through testing in  
6    accordance with the method described in 16 C.F.R. Sec. 1700.20, as in  
7    effect on the effective date of this section.

8        (2) Any person that engages in retail sales of liquid nicotine  
9    containers in violation of this section is guilty of a gross  
10    misdemeanor.

11       NEW SECTION.    **Sec. 19.**    TASTINGS. (1) No person may offer a  
12    tasting of vapor products to the general public unless:

13        (a) The person is a licensed retailer under section 5 of this  
14    act;

15        (b) The tastings are offered only within the licensed premises  
16    operated by the licensee and the products tasted are not removed from  
17    within the licensed premises by the customer;

18        (c) Entry into the licensed premises is restricted to persons  
19    eighteen years of age or older;

20        (d) The vapor product being offered for tasting contains zero  
21    milligrams per milliliter of nicotine or the customer explicitly  
22    consents to a tasting of a vapor product that contains nicotine; and

23        (e) If the customer is tasting from a vapor device owned and  
24    maintained by the retailer, a disposable mouthpiece tip is attached  
25    to the vapor product being used by the customer for tasting or the  
26    vapor device is disposed of after each tasting.

27        (2) A violation of this section is a misdemeanor.

28       NEW SECTION.    **Sec. 20.**    COUPONS. (1) No person may give or

29    distribute vapor products to a person free of charge by coupon,  
30    unless the vapor product was provided to the person as a contingency  
31    of prior or the same purchase as part of an in-person transaction or  
32    delivery sale.

33        (2) This section does not prohibit the use of coupons to receive  
34    a discount on a vapor product as part of an in-person transaction or  
35    delivery sale.

36       NEW SECTION.    **Sec. 21.**    USE OF VAPOR PRODUCTS IN CERTAIN PUBLIC  
37    PLACES. (1) Indoor areas.

1 (a) The use of vapor products is prohibited in the following  
2 indoor areas:

3 (i) Inside a child care facility, provided that a child care  
4 facility that is home-based is excluded from this paragraph when  
5 children enrolled in such child care facility are not present;

6 (ii) Schools;

7 (iii) Within five hundred feet of schools;

8 (iv) Schools buses; and

9 (v) Elevators.

10 (b) The use of vapor products is permitted for tasting and  
11 sampling in indoor areas of retail outlets.

12 (2) Outdoor areas. The use of vapor products is prohibited in the  
13 following outdoor areas:

14 (a) Real property that is under the control of a child care  
15 facility and upon which the child care facility is located, provided  
16 that a child care facility that is home-based is excluded from this  
17 paragraph when children enrolled in such child care facility are not  
18 present;

19 (b) Real property that is under the control of a school and upon  
20 which the school is located; and

21 (c) Playgrounds, during the hours between sunrise and sunset,  
22 when one or more persons under twelve years of age are present at  
23 such playground.

24 NEW SECTION. **Sec. 22.** PENALTIES, SANCTIONS, AND ACTIONS AGAINST  
25 LICENSEES. (1) The board may impose a monetary penalty as set forth  
26 in subsection (2) of this section, if the board finds that the  
27 licensee has violated RCW 26.28.080 or any other provision of this  
28 chapter.

29 (2) Subject to subsection (3) of this section, the sanctions that  
30 the board may impose against a person licensed under this chapter  
31 based upon one or more findings under subsection (1) of this section  
32 may not exceed the following:

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

35 (b) A monetary penalty of six hundred dollars for the second  
36 violation within any three-year period;

37 (c) A monetary penalty of two thousand dollars for the third  
38 violation within any three-year period and suspension of the license

1 for a period of six months for the third violation of RCW 26.28.080  
2 within any three-year period;

3 (d) A monetary penalty of three thousand dollars for the fourth  
4 or subsequent violation within any three-year period and suspension  
5 of the license for a period of twelve months for the fourth violation  
6 of RCW 26.28.080 within any three-year period;

7 (e) Revocation of the license with no possibility of  
8 reinstatement for a period of five years for the fifth or more  
9 violation within any three-year period.

10 (3) If the board finds that a person licensed under this chapter  
11 and chapter 82.24 or 82.26 RCW has violated RCW 26.28.080, each  
12 subsequent violation of either of the person's licenses counts as an  
13 additional violation within that three-year period.

14 (4) Any retailer's licenses issued under chapter 82.24 or 82.26  
15 RCW to a person whose vapor product retailer's license or licenses  
16 have been suspended or revoked for violating RCW 26.28.080 must also  
17 be suspended or revoked during the period of suspension or revocation  
18 under this section.

19 (5) The board may impose a monetary penalty upon any person other  
20 than a licensed retailer if the board finds that the person has  
21 violated RCW 26.28.080.

22 (6) The monetary penalty that the board may impose based upon one  
23 or more findings under subsection (5) of this section may not exceed  
24 fifty dollars for the first violation and one hundred dollars for  
25 each subsequent violation.

26 (7) The board may develop and offer a class for retail clerks and  
27 use this class in lieu of a monetary penalty for the clerk's first  
28 violation.

29 (8) The board may issue a cease and desist order to any person  
30 who is found by the board to have violated or intending to violate  
31 the provisions of this chapter or RCW 26.28.080, requiring such  
32 person to cease specified conduct that is in violation. The issuance  
33 of a cease and desist order does not preclude the imposition of other  
34 sanctions authorized by this statute or any other provision of law.

35 (9) The board may seek injunctive relief to enforce the  
36 provisions of RCW 26.28.080 or this chapter. The board may initiate  
37 legal action to collect civil penalties imposed under this chapter if  
38 the same have not been paid within thirty days after imposition of  
39 such penalties. In any action filed by the board under this chapter,

1 the court may, in addition to any other relief, award the board  
2 reasonable attorneys' fees and costs.

3 (10) All proceedings under subsections (1) through (8) of this  
4 section must be conducted in accordance with chapter 34.05 RCW.

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

12 **Sec. 23.** RCW 70.155.100 and 2006 c 14 s 5 are each amended to  
13 read as follows:

14 (1) The liquor (~~(control)~~) and cannabis board may suspend or  
15 revoke a retailer's license issued under RCW 82.24.510(1)(b) or  
16 82.26.150(1)(b) held by a business at any location, or may impose a  
17 monetary penalty as set forth in subsection (~~(2)~~) (3) of this  
18 section, if the liquor (~~(control)~~) and cannabis board finds that the  
19 licensee has violated RCW 26.28.080, 70.155.020, 70.155.030,  
20 70.155.040, 70.155.050, 70.155.070, or 70.155.090.

21 (2) Any retailer's licenses issued under section 5 of this act to  
22 a person whose license or licenses under chapter 82.24 or 82.26 RCW  
23 have been suspended or revoked for violating RCW 26.28.080 must also  
24 be suspended or revoked during the period of suspension or revocation  
25 under this section.

26 (3) The sanctions that the liquor (~~(control)~~) and cannabis board  
27 may impose against a person licensed under RCW 82.24.530 or 82.26.170  
28 based upon one or more findings under subsection (1) of this section  
29 may not exceed the following:

30 (a) For violations of RCW 26.28.080 (~~(or)~~), 70.155.020, or 21  
31 C.F.R. Sec. 1140.14, and for violations of RCW 70.155.040 occurring  
32 on the licensed premises:

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

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

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

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

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

8 (b) If the board finds that a person licensed under chapter 82.24  
9 or 82.26 RCW and section 5 of this act has violated RCW 26.28.080,  
10 each subsequent violation of either of the person's licenses counts  
11 as an additional violation within that three-year period.

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

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

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

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

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

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

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

30 (d) For violations of RCW 70.155.050, a monetary penalty in the  
31 amount of ~~((three))~~ six hundred dollars for each violation;

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

34 ~~((3))~~ (4) The liquor ~~((control))~~ and cannabis board may impose  
35 a monetary penalty upon any person other than a licensed cigarette or  
36 tobacco product retailer if the liquor ~~((control))~~ and cannabis board  
37 finds that the person has violated RCW 26.28.080, 70.155.020,  
38 70.155.030, 70.155.040, 70.155.050, 70.155.070, or 70.155.090.

1       ~~((4))~~ (5) The monetary penalty that the liquor ~~((control))~~ and  
2 cannabis board may impose based upon one or more findings under  
3 subsection ~~((3))~~ (4) of this section may not exceed the following:

4       (a) For violation of RCW 26.28.080 or 70.155.020, ~~((fifty))~~ one  
5 hundred dollars for the first violation and ~~((one))~~ two hundred  
6 dollars for each subsequent violation;

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

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

11       (d) For violations of RCW 70.155.050, ~~((three))~~ six hundred  
12 dollars for each violation;

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

15       ~~((5))~~ (6) The liquor ~~((control))~~ and cannabis board may develop  
16 and offer a class for retail clerks and use this class in lieu of a  
17 monetary penalty for the clerk's first violation.

18       ~~((6))~~ (7) The liquor ~~((control))~~ and cannabis board may issue a  
19 cease and desist order to any person who is found by the liquor  
20 ~~((control))~~ and cannabis board to have violated or intending to  
21 violate the provisions of this chapter, RCW 26.28.080 ~~((or))~~,  
22 82.24.500, or 82.26.190 requiring such person to cease specified  
23 conduct that is in violation. The issuance of a cease and desist  
24 order ~~((shall))~~ does not preclude the imposition of other sanctions  
25 authorized by this statute or any other provision of law.

26       ~~((7))~~ (8) The liquor ~~((control))~~ and cannabis board may seek  
27 injunctive relief to enforce the provisions of RCW 26.28.080 ~~((or))~~,  
28 82.24.500, 82.26.190 or this chapter. The liquor ~~((control))~~ and  
29 cannabis board may initiate legal action to collect civil penalties  
30 imposed under this chapter if the same have not been paid within  
31 thirty days after imposition of such penalties. In any action filed  
32 by the liquor ~~((control))~~ and cannabis board under this chapter, the  
33 court may, in addition to any other relief, award the liquor  
34 ~~((control))~~ and cannabis board reasonable attorneys' fees and costs.

35       ~~((8))~~ (9) All proceedings under subsections (1) through ~~((6))~~  
36 (7) of this section shall be conducted in accordance with chapter  
37 34.05 RCW.

38       ~~((9))~~ (10) The liquor ~~((control))~~ and cannabis board may reduce  
39 or waive either the penalties or the suspension or revocation of a  
40 license, or both, as set forth in this chapter where the elements of

1 proof are inadequate or where there are mitigating circumstances.  
2 Mitigating circumstances may include, but are not limited to, an  
3 exercise of due diligence by a retailer. Further, the board may  
4 exceed penalties set forth in this chapter based on aggravating  
5 circumstances.

6 NEW SECTION. **Sec. 24.** LIQUOR AND CANNABIS BOARD AUTHORITY. (1)

7 The board must have, in addition to the board's other powers and  
8 authorities, the authority to enforce the provisions of this chapter.

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

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

23 (4) The board may work with local county health departments or  
24 districts and local law enforcement agencies to conduct random,  
25 unannounced, inspections to assure compliance.

26 (5) Upon a determination by the secretary of health or a local  
27 health jurisdiction that a vapor product may be injurious to human  
28 health or poses a significant risk to public health:

29 (a) The board, in consultation with the department of health and  
30 local county health jurisdictions, may cause a vapor product  
31 substance or solution sample, purchased or obtained from any vapor  
32 product retailer, distributor, or delivery sale licensee, to be  
33 analyzed by an analyst appointed or designated by the board;

34 (b) If the analyzed vapor product contains an ingredient,  
35 substance, or solution present in quantities injurious to human  
36 health or posing a significant risk to public health, as determined  
37 by the secretary of health or a local health jurisdiction, the board  
38 may suspend the license of the retailer or delivery sale licensee

1 unless the retailer or delivery sale licensee agrees to remove the  
2 product from sales; and

3 (c) If upon a finding from the secretary of health or local  
4 health jurisdiction that the vapor product poses an injurious risk to  
5 public health or significant public health risk, the retailer or  
6 delivery sale licensee does not remove the product from sale, the  
7 secretary of health or local health officer may file for an  
8 injunction in superior court prohibiting the sale or distribution of  
9 that specific vapor product substance or solution.

10 (6) Nothing in subsection (5) of this section permits a total ban  
11 on the sale or use of vapor products.

12 NEW SECTION. **Sec. 25.** SOURCE AND USE OF FUNDS. All license fees  
13 collected and funds collected by the board from the imposition of  
14 monetary penalties pursuant to this chapter must be deposited into  
15 the youth tobacco and vapor products prevention account created in  
16 RCW 70.155.120.

17 NEW SECTION. **Sec. 26.** EXEMPTIONS. This chapter does not apply  
18 to a motor carrier or a freight forwarder as defined in 49 U.S.C.  
19 Sec. 13102 or an air carrier as defined in 49 U.S.C. Sec. 40102.

20 NEW SECTION. **Sec. 27.** SEVERABILITY. If any provision of this  
21 act or its application to any person or circumstance is held invalid,  
22 the remainder of the act or the application of the provision to other  
23 persons or circumstances is not affected.

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

26 (1) A fee of (~~ninety-three~~) one hundred seventy-five dollars  
27 shall accompany each retailer's license application or license  
28 renewal application. A separate license is required for each separate  
29 location at which the retailer operates.

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

35 (3) A retailer applying for, or renewing, both a retailer's  
36 license under RCW 82.26.170 and a vapor products retailer's license

1 under section 5 of this act may pay a combined application fee of two  
2 hundred fifty dollars for both licenses.

3 **Sec. 29.** RCW 66.08.145 and 2007 c 221 s 1 are each amended to  
4 read as follows:

5 (1) The liquor (~~(control)~~) and cannabis board may issue subpoenas  
6 in connection with any investigation, hearing, or proceeding for the  
7 production of books, records, and documents held under this chapter  
8 or chapters 70.155, 70.158, 70.--- (the new chapter created in  
9 section 31 of this act), 82.24, and 82.26 RCW, and books and records  
10 of common carriers as defined in RCW 81.80.010, or vehicle rental  
11 agencies relating to the transportation or possession of cigarettes  
12 or other tobacco products.

13 (2) The liquor (~~(control)~~) and cannabis board may designate  
14 individuals authorized to sign subpoenas.

15 (3) If any person is served a subpoena from the board for the  
16 production of records, documents, and books, and fails or refuses to  
17 obey the subpoena for the production of records, documents, and books  
18 when required to do so, the person is subject to proceedings for  
19 contempt, and the board may institute contempt of court proceedings  
20 in the superior court of Thurston county or in the county in which  
21 the person resides.

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

24 (1) A person who holds a license issued under chapter 82.24 or  
25 82.26 RCW or section 5 of this act must conduct the business and  
26 maintain the premises in compliance with Titles 9 and 9A RCW and  
27 chapter 69.50 RCW.

28 (2) The board may revoke or suspend a license issued under  
29 chapter 82.24 or 82.26 RCW or section 5 of this act upon sufficient  
30 cause showing a violation of this section.

31 NEW SECTION. **Sec. 31.** NEW CHAPTER CREATION. Sections 3 through  
32 8, 10 through 22, and 24 through 26 of this act constitute a new  
33 chapter in Title 70 RCW.

34 NEW SECTION. **Sec. 32.** EFFECTIVE DATE. (1) Sections 5 through 10  
35 and 28 of this act take effect thirty days after the Washington state

1 liquor and cannabis board prescribes the form for an application for  
2 a license required under section 6 of this act.

3 (2) The Washington state liquor and cannabis board must provide  
4 written notice of the effective date of sections 5 through 10 and 28  
5 of this act to affected parties, the chief clerk of the house of  
6 representatives, the secretary of the senate, the office of the code  
7 reviser, and others as deemed appropriate by the department."

**SSB 6328 - S AMD 763**

By Senator Dammeier

**ADOPTED 03/28/2016**

8 On page 1, line 1 of the title, after "Relating to" strike the  
9 remainder of the title and insert "youth vapor product substance use  
10 prevention, and vapor product regulation, without permitting a tax on  
11 the sale or production of vapor products; amending RCW 26.28.080,  
12 70.155.120, 82.24.530, 70.155.100, 82.26.170, and 66.08.145; adding a  
13 new section to chapter 70.155 RCW; adding a new chapter to Title 70  
14 RCW; prescribing penalties; providing a contingent effective date;  
15 and providing a contingent expiration date."

--- END ---