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**SENATE BILL 5477**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Senators Dammeier, Becker, Warnick, Kohl-Welles, and Darneille

AN ACT Relating to requiring substances intended for use in a vapor product to satisfy child-resistant effectiveness standards, and adopting labeling and advertisement standards; amending RCW 70.155.010; adding new sections to chapter 70.155 RCW; creating a new section; and prescribing penalties.

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

NEW SECTION. **Sec.**  The legislature finds it necessary to protect public health, safety, and welfare by requiring vapor products sold in Washington to employ child-resistant technologies and clear labeling in the packaging of their products for the purpose of preventing nicotine poisonings. Children are particularly vulnerable. When ingested or absorbed through the skin, even small amounts of liquid nicotine may be toxic or even fatal to children. In Washington, poison center calls related to e-cigarettes have increased precipitously over the last several years. Of the calls involving children, the vast majority were one to three years old.

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

The definitions set forth in RCW 82.24.010 shall apply to this chapter. In addition, for the purposes of this chapter, unless otherwise required by the context:

(1) "At retail" means any engagement in the business of selling tobacco products or vapor products to ultimate consumers.

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

((~~(2)~~))(3) "Internet" means any computer network, telephonic network, or other electronic network.

((~~(3)~~))(4) "Manufacturer" means any person, including, but not limited to, a repacker or relabeler, who manufactures, fabricates, assembles, processes, or labels a vapor product or who imports a finished vapor product for sale or distribution into the United States. "Manufacturer" includes any retail establishment that mixes, or permits customers to mix, flavors or solutions.

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

((~~(4)~~))(6) "Sale" means any transfer, exchange, or barter, in any manner or by any means, for consideration, and includes all sales made by any person. "Sale" includes a gift by a person engaged in the business of selling tobacco products or vapor products for advertising, promoting, or as a means of evading the provisions of this chapter.

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

((~~(5)~~))(8) "Sampling" means the distribution of samples to members of the public.

((~~(6)~~))(9) "Tobacco product" means a product that contains tobacco and is intended for human use, including any product defined in RCW 82.24.010(2) or 82.26.010((~~(1)~~))(21), except that for the purposes of RCW 70.155.140 only, "tobacco product" does not include cigars defined in RCW 82.26.010 as to which one thousand units weigh more than three pounds.

(10) "Vapor product" means any: (a) Device that employs a battery or other mechanism to heat a solution or substance to produce a vapor or aerosol intended for inhalation; (b) cartridge or container of a solution or substance intended to be used with or in such a device or to refill such a device; or (c) solution or substance intended for use in such a device, including concentrated nicotine. "Vapor product" includes any electronic cigarettes, electronic nicotine delivery systems, electronic cigars, electronic cigarillos, electronic pipes, vape pens, or similar products or devices. "Vapor product" does not include any substance, device, or combination product approved for sale by the United States food and drug administration that is marketed and sold for such approved purpose.

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

(1) Unless preempted by federal law, any substance intended for use in a vapor product that is sold at retail in this state must be packaged in child resistant packaging in accordance with 16 C.F.R. Part 1700, the poison prevention packaging act, as it existed on the effective date of this section, or such subsequent date as may be provided by the board by rule, consistent with the purposes of this section.

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

(3) A manufacturer that knowingly sells or distributes a substance intended for use in a vapor product that does not satisfy the requirements of this section is guilty of a gross misdemeanor.

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

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

The board shall adopt a rule regulating the labeling and advertisement of vapor products.

(1) The rule must require a manufacturer that sells, offers for sale, or distributes a vapor product to label the vapor product with a: (a) Warning regarding the harmful effects of nicotine; and (b) warning to keep away from children.

(2) In addition, the rule must require a manufacturer that advertises a vapor product to include in any advertisement a: (a) Warning regarding the harmful effects of nicotine; and (b) warning to keep away from children.

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