

# SENATE BILL REPORT

## ESSB 5477

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As Passed Senate, March 3, 2015

**Title:** An act relating to requiring substances intended for use in a vapor product to satisfy child-resistant effectiveness standards, adopting warning standards, and prohibiting the use of vapor products in schools.

**Brief Description:** Requiring substances intended for use in a vapor product to satisfy child-resistant effectiveness standards, adopting warning standards, and prohibiting the use of vapor products in schools.

**Sponsors:** Senate Committee on Health Care (originally sponsored by Senators Dammeier, Becker, Warnick, Kohl-Welles and Darneille).

**Brief History:**

**Committee Activity:** Health Care: 2/16/15, 2/19/15 [DPS].

Passed Senate: 3/03/15, 48-0.

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### SENATE COMMITTEE ON HEALTH CARE

**Majority Report:** That Substitute Senate Bill No. 5477 be substituted therefor, and the substitute bill do pass.

Signed by Senators Becker, Chair; Dammeier, Vice Chair; Frockt, Ranking Minority Member; Angel, Bailey, Brown, Cleveland, Conway, Jayapal, Keiser, Parlette and Rivers.

**Staff:** Evan Klein (786-7483)

**Background:** Electronic cigarettes (e-cigs) are battery-operated inhalers containing nicotine. The battery heats liquid in the cartridge, turning it into vapor that can be inhaled. The process of inhaling e-cig liquid is often called vaping.

In 2014 the Legislature directed the Washington Institute for Public Policy (WSIPP) to research e-cig prevention programs. After an extensive search for rigorous outcome evaluations of e-cig prevention and cessation programs, WSIPP was unable to locate any studies that met WSIPP's research standards. WSIPP found that relatively little research has been conducted on e-cigs as a cessation tool. Surveys suggest that e-cig use grew from 1 percent in 2009 to over 6 percent in 2011 among adults. WSIPP found use rates grew from 3 percent to 7 percent between 2011 and 2012 among adolescents. According to the National Monitoring the Future Project, as of 2014, 16 percent of tenth graders used e-cigs.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

E-cig advertising is currently unregulated at both the state and federal level. The Food and Drug Administration (FDA) proposed regulations in April 2014, that would include coverage of e-cigs under their tobacco authority. The proposed rules include the following:

- setting the federal minimum age of 18 for sales;
- banning vending machine sales;
- mandating warning labels;
- prohibiting free samples; and
- requiring companies to register with the FDA to monitor compliance and quality.

The proposed rules have not yet been adopted.

**Summary of Engrossed Substitute Bill:** A vapor product is defined as any of the following:

- device that employs a battery or other mechanism to heat a solution or substance to produce vapor or aerosol intended for inhalation;
- 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
- solution or substance intended for use in a device, including concentrated nicotine.

Vapor products include e-cigs, electronic nicotine delivery systems, electronic cigars, electronic cigarillos, electronic pipes, vape pens, or other similar products or devices. Vapor products do not include any substance, device, or combination product approved for sale by the United States FDA.

Unless preempted by federal law, any substance intended for use in a vapor product and sold at retail in Washington must be packaged in child-resistant packaging in accordance with the Federal Poison Prevention Packaging Act. Substances contained in cartridges that are sold, marketed, or intended for use in a vapor product that is prefilled and sealed by the manufacturer are exempt from these packaging requirements. A manufacturer that knowingly sells a substance intended for use in a vapor product that does not satisfy the packaging requirements is guilty of a gross misdemeanor.

A manufacturer that sells or distributes a vapor product must label the product with a warning regarding the harmful effects of nicotine and a warning to keep away from children. A manufacturer that advertises a vapor product must include in any advertisement a warning regarding the harmful effects of nicotine and a warning to keep away from children.

All public schools in Washington must have a written policy mandating a prohibition of the use of all vapor products on school property. Students and school personnel must be notified of this prohibition.

A person who sells vapor products at retail must clearly and visibly display a sign concerning the prohibition of vapor product sales to minors.

All vapor products at retail must be sold through vendor-assisted sales and it is unlawful to sell vapor products from a self-service display. Retail stores that prohibit the entrance of minors are exempt from requiring vendor-assisted sales.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Original Bill:** PRO: This bill stems from the vapor product work session held this past fall. The vapor industry is already active in self-regulation and supports regulation of packaging standards. The Washington Poison Control Center supports this bill because children are currently getting into vapor products at increasing rates and these products pose a high poison risk for children, especially those ages one to three. The Washington Vape Association is in favor of licensing, labeling, and child-resistant packaging.

OTHER: The American Vaping Association and NJOY support the child-resistant packaging portion of the bill, but have concern with the labeling language. State-by-state labeling requirements will require manufacturers to market and distribute different labels for their products for every state in which they are sold.

**Persons Testifying:** PRO: Senator Dammeier, prime sponsor; Stuart Halsan, Joe Baba, WA Vape Assn.; Emily Murphy, Kim Thompson, Marc Jarrett, Anti-Smoking Alliance; Alexander Garrard, WA Poison Center, Clinical Managing Director.

OTHER: Gregory Conley, President, American Vaping Assn.; Holly Chisa, NJOY.