

FINAL BILL REPORT

ESSB 6328

C 38 L 16 E 1

Synopsis as Enacted

Brief Description: Concerning youth vapor product substance use prevention, and vapor product regulation, without permitting a tax on the sale or production of vapor products.

Sponsors: Senate Committee on Health Care (originally sponsored by Senators Dammeier, Hasegawa, Conway, O'Ban, Becker and Carlyle).

Senate Committee on Health Care **Senate Committee on Ways & Means**

Background: Electronic cigarettes 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-cigarette liquid is often called "vaping."

State Law. Washington currently defines a "vapor product" as: a noncombustible tobacco-derived product containing nicotine that employs a mechanical heating element, battery, or circuit, regardless of shape or size, that can be used to heat a liquid nicotine solution contained in cartridges. "Vapor product" does not include any product that is regulated by the United States Food and Drug Administration under chapter V of the federal food, drug, and cosmetic act.

Vapor products may not be sold or given to any person under the age of 18.

WSIPP Study. In 2014 the Legislature directed the Washington Institute for Public Policy (WSIPP) to research e-cigarette prevention programs. After an extensive search for rigorous outcome evaluations of e-cigarette 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-cigarettes as a cessation tool. Surveys suggest that e-cigarette 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.

FDA Regulations. The Food and Drug Administration (FDA) proposed regulations in April 2014, that would include coverage of e-cigarettes under their tobacco authority. The proposed rules include the following:

- setting the federal minimum age of 18 for sales;

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- 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 were delivered to the White House Office of Management and Budget in October 2015, for final review.

Summary: Vapor Products. "Vapor products" are defined as any noncombustible product that may contain nicotine and that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, that can be used to produce vapor or aerosol from a solution or other substance. "Vapor product" includes any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and any vapor cartridge or other container that may contain nicotine in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. "Vapor product" does not include any product that meets the definition of marijuana, useable marijuana, marijuana concentrates, marijuana-infused products, cigarette, or tobacco products.

Preemption. Political subdivisions are preempted from adopting or enforcing requirements for licensure and regulations of promotions and sales. Political subdivisions are also preempted from imposing fees on retail outlets other than general business taxes or license fees. Political subdivisions may regulate the use of vapor products only in outdoor public places where children congregate, such as schools, playgrounds and parks. Political subdivisions may regulate the use of VPs in all indoor public places, except that tasting in vapor products retail outlets is specifically permitted, and vapor products use in and around schools, child care centers, elevators and school buses is specifically prohibited.

Licensing and Fees. Vapor Product retailers, distributors and delivery sellers must obtain a license from the Washington State Liquor and Cannabis Board (Board) in order to conduct business in Washington. Applications for licensing must be made through the business licensing system, on a form prescribed by the Board. Fees are set for all vapor product licenses, raised for certain tobacco retailers, and set for retailers with both vapor product and Tobacco licenses.

- Vapor product Retailers - \$175
- Vapor product Distributors - \$150
- Vapor product Delivery Sellers - \$250
- Tobacco & Other Tobacco Product Retailers - \$175
- Vapor product Retailer & Tobacco Product or Other Tobacco Product Retailer Combo Fee - \$250

Licenses must be renewed annually. Licenses must be exhibited in the retailer's place of business. The Board is given authorities, enumerated in the language of the bill, to enforce vapor product retailer licenses.

Enforcement. The Board may impose penalties, sanctions and other actions against licensees, and is given other powers and authorities as necessary to enforce the provisions of

this act. Monetary penalties for vapor product licensees are set, and monetary penalties for tobacco product retailers are changed to:

- \$200 for 1st offense w/in 3 years;
- \$600 for 2nd offense w/in 3 years;
- \$2000 for 3rd offense w/in 3 years, and if the violation is for selling to minors, suspension of the license for 6 months;
- \$3000 for 4th offense w/in 3 years and if the violation is for selling to minors, suspension of the license for 12 months; and
- revocation of license with no possibility of reinstatement for 5th offense w/in 3 years.

For persons holding dual vapor product and tobacco or other tobacco product licenses who are caught selling to minors, each subsequent offense counts as an additional violation during that 3 year period.

Signage. A person who holds a vapor product retailer license must display a sign concerning the prohibition of vapor product sales to minors, including specific language enumerated in the language of the bill. The signs must be provided, free of charge, by the Department of Health (DOH). DOH may issue a single tobacco and vapor product sign to cigarette retailers and wholesalers who are also vapor product retailers.

Sales Requirements. It is a class 3 civil infraction for any person under the age of 18 to purchase or attempt to purchase, possess, or obtain vapor products. Whenever there is a question as to whether someone is old enough to purchase vapor products, the retailer or their agent must require the purchaser to present an official form of photo identification. Vapor product retailers may not sell products containing cannabinoid, synthetic cannabinoid, cathinone, or methcathinone.

It is unlawful to sell or distribute vapor products at a retail store unless the customer has no direct access to the product except through assistance of the seller. It is also unlawful to sell vapor products from a self-service display. Retail establishments are exempt from both restrictions if they do not allow minors into the store.

No person may mail, ship or otherwise deliver any vapor products unless the purchase is made using a credit or debit card in the purchaser's name, and the name, birthdate and address of the purchaser is verified by a third party database.

Labeling Requirements. A manufacturer of an open system liquid nicotine container must label products with warnings about nicotine, keeping away from children, that vapor products are illegal for use by minors, and the milligrams per milliliter of nicotine and total volume of the e-liquid. Manufactures of closed system containers must provide DOH with disclosures of nicotine content in their products.

Child Resistant Packaging. Liquid nicotine containers that are sold in Washington must satisfy the child-resistant effectiveness standards, established by the poison prevention packaging act of 1970, and enforced by the federal Consumer Product Safety Commission.

Use Restrictions. The use of vapor products is prohibited, with certain exemptions enumerated in the bill, in the following areas:

- child care facilities;
- schools;
- within 500 feet of schools;
- school buses;
- elevators; and,
- playgrounds.

Vapor product use is specifically permitted in the indoor areas of vapor product retail outlets, for purposes of tasting.

Tasting. Tastings may be offered in the indoor areas of licensed retail outlets. The vapor product liquids used for tasting must contain zero milligrams of nicotine unless the customer explicitly consents to tasting a product that contains nicotine. Disposable mouthpieces must be used, or the vapor device must be disposed of after each tasting.

Coupons. Coupons are allowed to be used for discounted vapor product sales. Coupons for free vapor products are only allowed as part of a contingency of a prior or the same purchase.

Youth Tobacco Prevention Account. The youth tobacco prevention account name is changed to the youth tobacco and vapor product prevention account. All licensing fees and fees collected by the Board for imposition of monetary penalties must be deposited into the youth tobacco prevention account.

Exemption. Motor carriers, freight forwarders and air carriers are exempted from the vapor product provisions in the bill.

Votes on Final Passage:

First Special Session

Senate	37	6
House	74	20

Effective: June 28, 2016
Contingent (Sections 5-10 and 28)