

# SENATE BILL REPORT

## SB 6254

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As of February 24, 2020

**Title:** An act relating to protecting public health and safety by enhancing the regulation of vapor products.

**Brief Description:** Protecting public health and safety by enhancing the regulation of vapor products.

**Sponsors:** Senators Kuderer, Cleveland, Wilson, C., Carlyle, Das and Darneille; by request of Office of the Governor.

**Brief History:**

**Committee Activity:** Health & Long Term Care: 1/22/20, 2/03/20 [DPS-WM, w/oRec, DNP].

Ways & Means: 2/20/20.

### Brief Summary of First Substitute Bill

- Requires that all vapor product manufacturers be licensed by the Liquor and Cannabis Board (LCB) and requires manufacturers and distributors to submit a list of product ingredients to the Department of Health (DOH).
- Permits LCB to restrict the sale of vapor products if DOH has determined the product may be injurious to human health.
- Bans the sale of vapor products containing vitamin E acetate and limits the sale of flavored vapor products, other than tobacco flavored products, to retail outlets restricted to individuals 21 years old or older.
- Limits nicotine concentrations in vapor products.

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### SENATE COMMITTEE ON HEALTH & LONG TERM CARE

**Majority Report:** That Substitute Senate Bill No. 6254 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Cleveland, Chair; O'Ban, Ranking Member; Conway, Dhingra, Frockt, Keiser and Van De Wege.

**Minority Report:** That it be referred without recommendation.

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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.*

Signed by Senators Randall, Vice Chair; Muzzall and Rivers.

**Minority Report:** Do not pass.  
Signed by Senator Becker.

**Staff:** Greg Attanasio (786-7410)

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## SENATE COMMITTEE ON WAYS & MEANS

**Staff:** Travis Sugarman (786-7446)

**Background:** No person may conduct business as a retailer, distributor, or delivery seller of vapor products in the state without a valid license issued by LCB. A licensee must allow LCB enforcement officers to make full inspection of any place of business or vehicle where any vapor products are sold, stored, transported, or handled.

A manufacturer or distributor selling or distributing liquid nicotine containers must label the vapor product with a warning regarding the harmful effects of nicotine; a warning to keep the vapor product away from children; a warning that vaping is illegal for those under the legal age to use the product; and a statement about the amount of nicotine contained in the container. Manufacturers and distributors of closed system nicotine containers must disclose the nicotine content annually to DOH. These regulations expire if the federal Food and Drug Administration issues rules pertaining to warning requirements.

No person may conduct delivery sales of vapor product by mail or through the Internet without first obtaining a delivery sales license from LCB. No person may offer a tasting of vapor products unless they are a licensed retailer, the tasting is offered in a licensed premises that is restricted to those 21 years old or older, and the product contains no nicotine unless the customer otherwise consents.

No person may offer a coupon for a free vapor product unless it is an incentive to purchase multiple products. Coupons may be offered for discounts on vapor products.

If the secretary of health or a local health jurisdiction determine a vapor product may be injurious to human health or poses a significant risk to public health, LCB may analyze a product sample, and if the sample is determined to be harmful, LCB may suspend the license of the retailer or delivery sale licensee unless they agree to remove the product from sale.

Political subdivisions are preempted from adopting or enforcing requirements for the licensure and regulation of vapor product promotions and retail sales. Political subdivisions cannot regulate the use of vapor products in outdoor public places, unless the public place is an area where children congregate.

DOH may investigate, examine, sample, or inspect any article or condition constituting a threat to public health including, but not limited to, outbreaks of communicable diseases, food poisoning, and contaminated water supplies. Pending the results of that investigation, the secretary of health may issue an order prohibiting the sale of any food or other item

involved in the investigation. The order may not last more than 15 days without proper legal authority.

On October 9, 2019, the State Board of Health (BOH) adopted emergency rules banning the sale of flavored vapor products and requiring retailers to display a sign warning of the risk of lung disease associated with the use of vapor products. This rule expires on February 7, 2020. On November 18, 2019, BOH adopted emergency rules banning the sale of vapor products containing vitamin E acetate. This rule expires on March 19, 2020.

**Summary of Bill (First Substitute):** A vapor product manufacturer must be licensed by LCB. The place of business for any type of licensee may not be a domicile. Retailers, delivery sellers, and distributors may only sell vapor products they obtained from a licensed manufacturer.

LCB must adopt rules for the safe handling and sanitation practices for manufacturers, distributors, delivery sellers, and retailers and for the inspection of manufacturer premises.

LCB may, after determination by DOH that a vapor product or component may be injurious to human health, restrict sale or require point-of-sale warnings. LCB is not permitted to institute a permanent ban. LCB may suspend the license of a retailer or delivery seller violating a sale restriction or warning requirement and may revoke the license for a violation after the licensee has received a written warning.

The sale of flavored vapor products, other than tobacco and menthol flavor, or any product that the seller knows, or reasonably should know will be used with or in a vapor product to create a flavored vapor product, is prohibited except in retail outlets restricted to persons 21 years old or older. The sale of vapor products containing vitamin E acetate is banned.

A 37 percent excise tax is imposed on flavored vapor products and the money collected pursuant to the tax is directed to the Foundational Public Health Services Accounts.

Nicotine concentrations in vapor products are limited to:

- 20 milligrams of nicotine per milliliter of liquid;
- 2 percent of the total volume of the liquid; or
- 20,000 parts per million of nicotine in the liquid.

Vapor product liquid containing nicotine may only be sold in:

- a dedicated refill container not to exceed 10 milliliters in volume; or
- a disposable vapor product, single use cartridge, or tank not to exceed 2 milliliters in volume.

The capacity of the tank in a refillable vapor product may not exceed 2 milliliters.

All licensed manufacturers and distributors must submit under oath to DOH a list of ingredients and their sources for each vapor product offered for sale in the state. LCB and DOH may use the disclosures for enforcement, investigation, research, or any other matter intended to protect public health.

Rules regarding warnings on vapor products are made permanent regardless of future federal rule making and the prohibition on LCB adopting rules to permanently ban Internet sales is repealed.

No person may offer a tasting of vapor products to the general public. However, a retailer may offer demonstration or consumer training as long as the vapor product liquid is not provided to the consumer at below cost to the retailer. No person may give a vapor product to another person free of charge or sell a vapor product at or below the cost of acquisition.

DOH may conduct public health investigations including, but not limited to, outbreaks of diseases, food poisoning, and contaminated water supplies. During or upon completion of a public health investigation the secretary may adopt rules; issue orders; or take other actions to regulate, control, prohibit, prevent, or otherwise address the threat.

Provisions prohibiting political subdivisions from adopting vapor product licensing requirements or prohibiting their use in public are repealed.

The provisions restricting the sale of flavored vapor products and banning the sale products containing vitamin E acetate, setting nicotine limits and container sizes, directing LCB to to adopt manufacturer inspection rules, and allowing LCB to restrict the sale of vapor products and suspend licenses for a violation take effect immediately.

**EFFECT OF CHANGES MADE BY HEALTH & LONG TERM CARE COMMITTEE (First Substitute):**

- Change the definition of flavored vapor products to exclude tobacco and menthol flavors.
- Allow the sale of flavored vapor products only in retail outlets restricted to persons 21 or older.
- Impose a 37 percent excise tax on flavored vapor products and direct the money to the Foundational Public Health Services Accounts.
- Strike the prohibition on a manufacturer also holding a retailer license.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** The bill contains several effective dates. Please refer to the bill.

**Staff Summary of Public Testimony on Original Bill (Health & Long Term Care):** *The committee recommended a different version of the bill than what was heard.* PRO: Tobacco 21 was only a step to address the youth vaping crisis. Flavored vaping products hook youth on tobacco and can drive them toward cigarettes. The evidence is very strong that flavored products lead to increased vaping and smoking among youth. Evidence also strongly suggests that using vapor products to quit smoking is not an effective cessation strategy and actually makes quitting more difficult. For every adult that uses vapor products as a smoking

cessation method, 80 youth start vaping. Vaping cessation is a priority for pediatricians. The nicotine in half a Juul pod is enough to addict a teen. Students understand that cigarettes are dangerous, but there is a lack of understanding on the dangers of vaping. Schools should not be spending time fighting this epidemic, but it is necessary and takes away from educational priorities. The future health impacts are unknown.

CON: The bill will force all vaping stores in the state to close. 650 jobs have already been lost since the temporary ban went into effect. Attraction to flavors is only the third most common reason why youth start vaping and grandstanding on the issue might be driving more to try it. There should be stronger penalties for illegal possession by youth. Both youth and adult smoking rates have decreased since the vaping rates have increased. Vaping products help adults quit smoking and they want flavors so it does not remind them of what they are trying to quit. This bill will force 90 percent of adults who vape to stop. During the temporary ban, customers have gone online or to other states to buy products. Some are attempting to make their own flavors, which can be dangerous. The tank size limitations have no safety benefit and just makes it more inconvenient to vape, decreasing the chances of quitting smoking. The 2 percent cap on nicotine concentration will also hinder the ability for adults to use vapor products to quit smoking. There has already been a big reduction in tax revenue, which will continue. The bill will have disastrous effects on public health. Vitamin E acetate has never been found in commercially available nicotine products.

OTHER: The Health Impact Review found strong evidence that a flavor ban would decrease initiation of vapor products and other tobacco products by youth and result in better health outcomes. There is not enough evidence to determine how different segments of the population would be affected. Partial flavor bans have been found to be less effective.

**Persons Testifying (Health & Long Term Care):** PRO: Senator Patty Kuderer, Prime Sponsor; Kyle Nelson, citizen; Marty Reid, Assistant Principal, Tumwater High School; Crystal Shen, King County Public Health; Sophie Harrison, citizen; Shelley Prosis, President, Eckstein Middle School PTA; Lauren Baba, Seattle Cancer Care Alliance; Annie Tegan, Tobacco Free Kids; Molly Voris, Governor's Policy Advisor; Kathy Lofy, State Health Officer, Washington State Department of Health; Representative Gerry Pollet.

CON: Shaun D'Sylva, Vape store owner; Kayla Pleasant, Store owner; Margo Ross, Store owner; Clint Pettee, Manufacturer; Jacob Johnson, Store owner; Greg Conley, American Vaping Association.

OTHER: Cait Lang-Perez, State Board of Health.

**Persons Signed In To Testify But Not Testifying (Health & Long Term Care):** PRO: Olive Smith, citizen.

CON: Kimberly Chambers, citizen.

**Staff Summary of Public Testimony (Ways & Means):** PRO: The youth vaping epidemic is up to 21 percent of those responding to surveys. While the hope was to get a full ban on flavored products, this is a step in the right direction. Menthol should be considered a flavor. We know that price is a factor in youth using tobacco products so the tax will help.

CON: This is not a step forward, menthol is still a flavor and kids are using it. There must be a ban on all flavors or this bill does not do anything. Kids will still get the products. All this bill will do is force users to the black market and the internet which is dangerous. Vaping is 95 percent safer than smoking cigarettes. During the temporary ban, customers have gone online or to other states to buy products. Some are attempting to make their own flavors, which can be dangerous. The tank size limitations have no safety benefit and just makes it more inconvenient to vape, decreasing the chances of quitting smoking. The 2 percent cap on nicotine concentration will also hinder the ability for adults to use vapor products to quit smoking.

**Persons Testifying (Ways & Means):** PRO: Molly Voris, Governor's Office; John Wiesman, Secretary, Department of Health; Jaime Bodden, Washington State Association of Local Public Health Officials; Amy Brackenbury, Public Health Roundtable.

CON: Mark Johnson, Washington Retail Association; Natalie Raflowski, Concerned Youth; Annie Tegan, Campaign for Tobacco Free Kids; Lelach Rave, MD, Washington Chapter of the American Academy of Pediatrics; Julie Anderson, Washington State Smoke Free Association; Kayla Pleasant, Sky Vapor; Margo Ross, Washington State Smoke Free Association/Cloud 509; Clint Pettee, River Reserve Manufacturing; Jacob Johnson, Washington State Smoke Free Association/Granite Vapor; Shaun D'Sylva, Washington State Smoke Free Association/Fatboy Vapors/River Reserve; Catherine Holm, Washington Food Industry Association; Daniel Angell, Omak Vapor Shop/Essex E-Liquid; Andrew Diamond, The Vape Shop.

**Persons Signed In To Testify But Not Testifying (Ways & Means):** No one.