
HOUSE BILL 1932

State of Washington

66th Legislature

2019 Regular Session

By Representatives Pollet, Jinkins, Tarleton, Stanford, Appleton, and Valdez

Read first time 02/06/19. Referred to Committee on Commerce & Gaming.

1 AN ACT Relating to the regulation of vapor products; amending RCW
2 70.345.050, 70.345.190, 43.21B.110, and 70.345.160; adding new
3 sections to chapter 70.345 RCW; adding a new section to chapter 69.50
4 RCW; adding a new chapter to Title 70 RCW; creating a new section;
5 and prescribing penalties.

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

7 NEW SECTION. **Sec. 1.** INTENT. (1) The legislature makes the
8 following findings:

9 (a) Nicotine is one of the most powerfully addictive substances
10 for individuals under twenty-one years of age whose brains are still
11 developing;

12 (b) Flavored vapor products and flavored marijuana products
13 appeal to youth. Further, the presence of some flavors, such as
14 menthol, might make it more difficult for adults addicted to nicotine
15 to quit use of tobacco or vapor products and may increase the
16 absorption of nicotine or hazardous substances into the body;

17 (c) Vapor products may include a number of harmful substances
18 that are known to impair neurological or other development or cause
19 lung damage or cancer; and

20 (d) The harmful substances in vapor products include the
21 batteries that power vapor product devices which pose risks to public

1 health and the environment if these products and their components are
2 not disposed of in a responsible manner.

3 (2) Therefore, the legislature intends to ban the sale of
4 flavored vapor products and flavored marijuana products, and to
5 require producers and retailers of vapor products to promote the
6 responsible recycling and end-of-life management of vapor products.

7 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this
8 section apply throughout this chapter unless the context clearly
9 requires otherwise.

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

11 (2) "Constituent parts" means a vapor product casing, batteries,
12 electronic or mechanical components, liquid solutions or solid
13 substances capable of being vaporized or aerosolized, and any other
14 components of a vapor product.

15 (3) "Department" means the department of ecology.

16 (4) "Director" means the director of the department of ecology.

17 (5) "Marijuana product" has the meaning provided in RCW
18 69.50.101.

19 (6) "Producer" means a person that meets one of the criteria in
20 (a) through (f) of this subsection:

21 (a) (i) The person manufactures or has manufactured, or assembles
22 or has assembled, a vapor product for sale in or into this state; or

23 (ii) The person is a marijuana processor licensed by the board
24 under chapter 69.50 RCW who processes marijuana into marijuana
25 products intended for consumption through vaporization or
26 aerosolization;

27 (b) The person has or had legal ownership of the brand, brand
28 name, or cobrand of a vapor product that is sold in, into, or
29 distributed for use in Washington state;

30 (c) The person sells or has sold at retail vapor products in,
31 into, or distributes or has distributed for use in Washington state
32 under its own brand names vapor products produced by other suppliers,
33 including retail outlets that sell vapor products under their own
34 brand names;

35 (d) The person manufactures, assembles, or has manufactured or
36 assembled a cobranded vapor product for sale in, into, or distributed
37 for use in Washington state that carries the name of both the
38 manufacturer and a retail outlet;

1 (e) The person imports or has imported vapor products by a
2 producer that meets the requirements of (a) of this subsection and if
3 the producer has no physical presence in the United States;

4 (f) The person sells at retail vapor products acquired from an
5 importer that is the producer and elects to register as the producer
6 for that vapor product; or

7 (g) Elects to assume the responsibility and register in lieu of a
8 producer as defined under (a) through (f) of this subsection.

9 (7) "Retail outlet" means each place of business from which vapor
10 products are sold to consumers.

11 (8) "Retailer" means a person who offers covered vapor products
12 for sale at retail through any means including, but not limited to,
13 remote offerings such as sales outlets, catalogs, or the internet,
14 but does not include a sale that is either reused products or a
15 wholesale transaction with a distributor or retailer. "Retailer"
16 includes a marijuana retailer licensed by the board under chapter
17 69.50 RCW that offers or sells any marijuana product intended for
18 consumption through vaporization or aerosolization.

19 (9) "Vapor product" means any noncombustible product including,
20 but not limited to, vapor products as defined in RCW 70.345.010 that
21 employ a heating element, power source, electronic circuit, or other
22 electronic, chemical, or mechanical means, regardless of shape or
23 size, to produce vapor or aerosol from a solution or other substance
24 including, but not limited to, solutions or other substances that may
25 contain nicotine or marijuana products.

26 (10) "Vapor product casing" means all nonbattery materials used
27 to contain or protect solid or liquid nicotine, marijuana products
28 intended for vaporization or aerosolization, or other products
29 intended for vaporization or aerosolization, and its associated
30 electronic delivery system, including containers and cartridges of
31 nicotine or any marijuana products intended for vaporization or
32 aerosolization.

33 NEW SECTION. **Sec. 3.** PROGRAM PARTICIPATION REQUIREMENT. (1)
34 Beginning January 1, 2022, a producer may not sell, offer for sale,
35 or distribute for use, vapor products in Washington unless the
36 producer is participating in a stewardship organization with a plan
37 approved by the department.

38 (2) In order for a stewardship organization to satisfy the
39 obligations of a producer under subsection (1) of this section, a

1 stewardship organization must begin implementing its plan within
2 three months after receiving plan approval from the department
3 consistent with section 4 of this act.

4 (3) A producer in violation of this chapter is subject to the
5 penalties provided in section 6 of this act.

6 NEW SECTION. **Sec. 4.** STEWARDSHIP PLAN. (1) In order to satisfy
7 the obligations of a producer under section 3 of this act, a
8 stewardship organization must submit a plan to the department for
9 approval. The plan must provide for the collection, transportation,
10 recycling, and disposal of vapor products and their component parts.

11 (2) The department may only approve a stewardship organization
12 plan that contains the following elements:

13 (a) Contact information and a list of participating brands and
14 producers under the program;

15 (b) A description of how producers will fully finance the
16 collection, transportation, recycling, and disposal of vapor products
17 sold for use in Washington. Producer financing of the program must be
18 structured to establish higher program financing charges for
19 production of vapor products without reusable or recyclable batteries
20 or vapor product casings that are capable of being separated or
21 deconstructed as described in section 5(3)(a) of this act. No fee may
22 be charged to consumers at the point of sale or collection of vapor
23 products, and the stewardship organization must provide all
24 collection, transportation, recycling, and disposal services free of
25 charge to consumers;

26 (c) Consistent with section 8 of this act, provision for the
27 collection of vapor products at each retail outlet operated by a
28 person who has obtained:

29 (i) A retailer's license under chapter 70.345 RCW; or

30 (ii) A marijuana retailer's license under chapter 69.50 RCW who
31 offers or sells marijuana products intended for vaporization or
32 aerosolization;

33 (d) A description of the methods used to collect, transport, and
34 recycle or dispose of all vapor products and their constituent parts
35 collected by the stewardship organization, including the
36 identification of all reclamation, recycling, or disposal facilities
37 to be used through final disposition of vapor products;

1 (e) A plan for education and outreach by the stewardship
2 organization to retail license holders under chapter 70.345 RCW
3 regarding their obligations under this chapter;

4 (f) A plan for education and outreach by the stewardship
5 organization to vapor product consumers regarding the opportunities
6 provided by the stewardship organization for the end-of-life
7 management of vapor products;

8 (g) Performance goals for the collection and recycling of vapor
9 products and their constituent parts, and a plan for measuring the
10 operations of the program relative to those performance goals; and

11 (h) A description of how the stewardship organization will comply
12 with the requirements of section 5 of this act.

13 (3) Before implementing an education or outreach activity under a
14 plan required in subsection (2)(e) and (f) of this section, the
15 stewardship organization must submit for approval to the department
16 the relevant materials and contracts. The department, in consultation
17 with the department of health, may not approve education or outreach
18 materials that the department has reason to believe could encourage
19 use of vapor products by minors.

20 NEW SECTION. **Sec. 5.** DISPOSAL REQUIREMENTS FOR VAPOR PRODUCT
21 PARTS. Beginning at the point of collection for transport from a
22 retail outlet that served as a collection location specified in
23 section 4(2)(c) of this act, the stewardship organization must manage
24 and dispose of the constituent components of vapor products as
25 follows:

26 (1)(a) Reclamation of battery constituents must occur at lawfully
27 permitted facilities.

28 (b) All battery constituents that are capable of being reused or
29 recycled, regardless of economic consideration, must be reused or
30 recycled. Each stewardship organization may petition the department
31 for approval to dispose of types or components of batteries that are
32 not capable of being reused or recycled. The department must approve
33 a stewardship organization's petition upon a determination that reuse
34 or recycling is infeasible.

35 (2) Solutions and substances containing nicotine, marijuana
36 products intended for vaporization or aerosolization, and other
37 active vapor product ingredients capable of being dispensed by the
38 vapor product must be managed and disposed of as hazardous waste

1 consistent with the requirements of chapter 70.105 RCW or with the
2 requirements of chapter 70.95 RCW, as appropriate.

3 (3) (a) For vapor product casings whose constituent parts are
4 capable of being deconstructed or separated, in total or in part,
5 into uniform plastic or metal pieces, the stewardship organization
6 must arrange for the reuse or recycling of those constituent parts.

7 (b) For vapor product casings that are not capable of being
8 deconstructed or separated into constituent parts, the stewardship
9 organization must manage and dispose of vapor product casings as
10 hazardous waste consistent with the requirements of chapter 70.105
11 RCW or with the requirements of chapter 70.95 RCW, as appropriate.

12 NEW SECTION. **Sec. 6.** RULE-MAKING AUTHORITY. (1) The department
13 may adopt rules necessary to implement, administer, and enforce this
14 chapter and RCW 70.345.050(3). The board must enforce section 8 of
15 this act as a condition of retailer's licenses issued under chapter
16 70.345 RCW.

17 (2) The department must adopt rules to specify the information
18 that must be reported to the department by each stewardship
19 organization consistent with section 7 of this act.

20 (3) Except as provided in section 8(2) of this act:

21 (a) The department may impose a civil penalty on any person who
22 violates this chapter in an amount of up to one thousand dollars per
23 violation per day;

24 (b) The department may assess a civil penalty of up to ten
25 thousand dollars per violation per day on any person who
26 intentionally, knowingly, or negligently violates this chapter; and

27 (c) Any person who incurs a penalty under this section may appeal
28 the penalty to the pollution control hearings board established by
29 chapter 43.21B RCW.

30 NEW SECTION. **Sec. 7.** ANNUAL REPORTING. Beginning April 1, 2021,
31 each approved stewardship organization must submit an annual report
32 to the department and the department of health that includes, at
33 minimum:

34 (1) The number of vapor products sold at each retail outlet
35 during the previous calendar year;

36 (2) The number of vapor products collected at each retail outlet
37 during the previous calendar year;

1 (3) The names and amounts of vapor products handled by each
2 entity involved in the transport, recycling, or disposal of collected
3 vapor products during the previous calendar year; and

4 (4) Documentation of the stewardship organization's compliance
5 with the plan approved by the department and with the requirements of
6 this chapter.

7 NEW SECTION. **Sec. 8.** RETAIL OUTLET REQUIREMENTS. (1) Each
8 retail outlet operating under a license issued under chapter 70.345
9 RCW, and each retail outlet operating under a marijuana retailer
10 license issued under chapter 69.50 RCW that offers or sells marijuana
11 products intended for vaporization or aerosolization, must provide,
12 at no charge, reasonable accommodation to each stewardship
13 organization implementing an approved plan under this chapter for the
14 collection of vapor products. Each retail outlet must make
15 opportunities available for the collection of unwanted vapor products
16 available to the general public during all hours the retail outlet is
17 open for business.

18 (2) A person operating a retail outlet in violation of this
19 section is subject to the penalties:

20 (a) As provided for in RCW 70.345.030(1), for retail outlets
21 regulated under chapter 70.345 RCW; and

22 (b) For retail outlets licensed as marijuana retailers by the
23 board under chapter 69.50 RCW, for penalties established under rules
24 adopted by the board.

25 NEW SECTION. **Sec. 9.** VAPOR PRODUCT STEWARDSHIP ACCOUNT. The
26 vapor product stewardship account is created in the custody of the
27 state treasurer. All fees collected from retail outlets under this
28 chapter must be deposited in the account. Expenditures from the
29 account may be used only for administering this chapter. Only the
30 director of the department or the director's designee may authorize
31 expenditures from the account. The account is subject to the
32 allotment procedures under chapter 43.88 RCW, but an appropriation is
33 not required for expenditures. Funds in the account may not be
34 diverted for any purpose or activity other than those specified in
35 this section.

36 NEW SECTION. **Sec. 10.** NATIONAL PROGRAM. In lieu of preparing a
37 stewardship plan under this chapter, a producer may participate in a

1 national program for the convenient, safe, and environmentally sound
2 takeback and recycling of vapor products and their components and
3 materials, if the national program is substantially equivalent to the
4 intent of the state program. The department may determine substantial
5 equivalence if it determines that the national program adequately
6 addresses and fulfills each of the elements of a stewardship plan
7 outlined in section 4 of this act and includes an enforcement
8 mechanism reasonably calculated to ensure a producer's compliance
9 with the national program. Upon issuing a determination of
10 substantial equivalence, the department must notify affected
11 stakeholders including the producer. If the national program is
12 discontinued or the department determines the national program is no
13 longer substantially equivalent to the state program in Washington,
14 the department must notify the producer and the producer must provide
15 a stewardship plan as described in section 4 of this act to the
16 department for approval within thirty days of notification.

17 NEW SECTION. **Sec. 11.** UTILITIES AND TRANSPORTATION COMMISSION
18 AUTHORITY. Nothing in this chapter alters or limits the authority of
19 the utilities and transportation commission to regulate collection of
20 solid waste, including curbside collection of residential recyclable
21 materials, nor does this chapter alter or limit the authority of a
22 city or town to provide such services itself or by contract under RCW
23 81.77.020.

24 **Sec. 12.** RCW 70.345.050 and 2016 sp.s. c 38 s 8 are each amended
25 to read as follows:

26 (1) A fee of one hundred seventy-five dollars must accompany each
27 vapor product retailer's license application or license renewal
28 application under RCW 70.345.020. A separate license is required for
29 each separate location at which the retailer operates.

30 (2) A retailer applying for, or renewing, both a vapor products
31 retailer's license under RCW 70.345.020 and retailer's license under
32 RCW 82.24.510 may pay a combined application fee of two hundred fifty
33 dollars for both licenses.

34 (3) By November 1, 2021, and each November 1st thereafter, the
35 board must set an administrative fee, applicable during the following
36 calendar year, to be paid in addition to the fees in subsections (1)
37 and (2) of this section and, for marijuana retailers licensed by the
38 board under chapter 69.50 RCW that offer or sell any marijuana

1 product intended for vaporization or aerosolization, in addition to
2 fees established under chapter 69.50 RCW for marijuana retailers. The
3 amount of the administrative fee set by the board must be sufficient
4 to cover the anticipated direct and indirect costs to the board and
5 the department of ecology in administering and enforcing the
6 requirements of chapter 70.--- RCW (the new chapter created in
7 section 22 of this act). The board must set the amount of the fee by
8 dividing the total state agency administrative costs by each retail
9 outlet's pro rata share of vapor product sales in the most recent
10 preceding calendar year, based on the information collected in
11 section 7 of this act or the best available information. The board
12 and the department of ecology must enter into a memorandum of
13 agreement to divide the administrative fee required under this
14 subsection to cover each agency's anticipated costs related to
15 administering and enforcing the requirements of chapter 70.--- RCW
16 (the new chapter created in section 22 of this act).

17 **Sec. 13.** RCW 70.345.190 and 2016 sp.s. c 38 s 25 are each
18 amended to read as follows:

19 (1) Except as provided in subsection (2) of this section, all
20 license fees collected and funds collected by the board from the
21 imposition of monetary penalties pursuant to this chapter must be
22 deposited into the youth tobacco and vapor products prevention
23 account created in RCW 70.155.120.

24 (2) All fees imposed under RCW 70.345.050(3) must be deposited in
25 the vapor product stewardship account created in section 9 of this
26 act.

27 **Sec. 14.** RCW 43.21B.110 and 2013 c 291 s 34 are each amended to
28 read as follows:

29 (1) The hearings board shall only have jurisdiction to hear and
30 decide appeals from the following decisions of the department, the
31 director, local conservation districts, the air pollution control
32 boards or authorities as established pursuant to chapter 70.94 RCW,
33 local health departments, the department of natural resources, the
34 department of fish and wildlife, the parks and recreation commission,
35 and authorized public entities described in chapter 79.100 RCW:

36 (a) Civil penalties imposed pursuant to RCW 18.104.155,
37 70.94.431, 70.105.080, 70.107.050, section 6 of this act, 76.09.170,

1 77.55.291, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144,
2 90.56.310, 90.56.330, and 90.64.102.

3 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
4 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
5 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

6 (c) Except as provided in RCW 90.03.210(2), the issuance,
7 modification, or termination of any permit, certificate, or license
8 by the department or any air authority in the exercise of its
9 jurisdiction, including the issuance or termination of a waste
10 disposal permit, the denial of an application for a waste disposal
11 permit, the modification of the conditions or the terms of a waste
12 disposal permit, or a decision to approve or deny an application for
13 a solid waste permit exemption under RCW 70.95.300.

14 (d) Decisions of local health departments regarding the grant or
15 denial of solid waste permits pursuant to chapter 70.95 RCW.

16 (e) Decisions of local health departments regarding the issuance
17 and enforcement of permits to use or dispose of biosolids under RCW
18 70.95J.080.

19 (f) Decisions of the department regarding waste-derived
20 fertilizer or micronutrient fertilizer under RCW 15.54.820, and
21 decisions of the department regarding waste-derived soil amendments
22 under RCW 70.95.205.

23 (g) Decisions of local conservation districts related to the
24 denial of approval or denial of certification of a dairy nutrient
25 management plan; conditions contained in a plan; application of any
26 dairy nutrient management practices, standards, methods, and
27 technologies to a particular dairy farm; and failure to adhere to the
28 plan review and approval timelines in RCW 90.64.026.

29 (h) Any other decision by the department or an air authority
30 which pursuant to law must be decided as an adjudicative proceeding
31 under chapter 34.05 RCW.

32 (i) Decisions of the department of natural resources, the
33 department of fish and wildlife, and the department that are
34 reviewable under chapter 76.09 RCW, and the department of natural
35 resources' appeals of county, city, or town objections under RCW
36 76.09.050(7).

37 (j) Forest health hazard orders issued by the commissioner of
38 public lands under RCW 76.06.180.

1 (k) Decisions of the department of fish and wildlife to issue,
2 deny, condition, or modify a hydraulic project approval permit under
3 chapter 77.55 RCW.

4 (l) Decisions of the department of natural resources that are
5 reviewable under RCW 78.44.270.

6 (m) Decisions of an authorized public entity under RCW 79.100.010
7 to take temporary possession or custody of a vessel or to contest the
8 amount of reimbursement owed that are reviewable by the hearings
9 board under RCW 79.100.120.

10 (2) The following hearings shall not be conducted by the hearings
11 board:

12 (a) Hearings required by law to be conducted by the shorelines
13 hearings board pursuant to chapter 90.58 RCW.

14 (b) Hearings conducted by the department pursuant to RCW
15 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and
16 90.44.180.

17 (c) Appeals of decisions by the department under RCW 90.03.110
18 and 90.44.220.

19 (d) Hearings conducted by the department to adopt, modify, or
20 repeal rules.

21 (3) Review of rules and regulations adopted by the hearings board
22 shall be subject to review in accordance with the provisions of the
23 administrative procedure act, chapter 34.05 RCW.

24 NEW SECTION. **Sec. 15.** A new section is added to chapter 70.345
25 RCW to read as follows:

26 (1) Beginning January 1, 2020, a retailer or distributor licensed
27 under this chapter may not sell, offer for sale, or possess with the
28 intent to sell or offer for sale flavored vapor products.

29 (2) If the federal government expressly preempts a ban on
30 flavored vapor products or if a court of competent jurisdiction finds
31 that the federal government occupies the field in this area of
32 regulation, this section is inoperative to the extent that the
33 federal government has acted.

34 (3) For purposes of this section:

35 (a) "Characterizing flavor" means a distinguishable taste or
36 aroma, or both, other than the taste or aroma of tobacco, imparted by
37 a vapor product. Characterizing flavors include, but are not limited
38 to, tastes or aromas relating to any fruit, chocolate, vanilla,
39 honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint,

1 wintergreen, herb, or spice. A tobacco product does not have a
2 characterizing flavor solely because of the use of additives or
3 flavorings or the provision of ingredient information. It is the
4 presence of a distinguishable taste or aroma, or both, that
5 constitutes a characterizing flavor.

6 (b) "Flavored vapor product" means any vapor product that imparts
7 a characterizing flavor other than a tobacco flavor.

8 NEW SECTION. **Sec. 16.** A new section is added to chapter 69.50
9 RCW to read as follows:

10 (1) Beginning January 1, 2020, a marijuana retailer licensed
11 under this chapter may not sell, offer for sale, or possess with the
12 intent to sell or offer for sale any flavored marijuana product
13 intended for consumption through vaporization or aerosolization.

14 (2) For purposes of this section:

15 (a) "Characterizing flavor" means a distinguishable taste or
16 aroma, or both, other than the taste or aroma of marijuana, imparted
17 by a marijuana product. Characterizing flavors include, but are not
18 limited to, tastes or aromas relating to any fruit, chocolate,
19 vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol,
20 mint, wintergreen, herb, or spice. A marijuana product does not have
21 a characterizing flavor solely because of the use of additives or
22 flavorings or the provision of ingredient information. Rather, it is
23 the presence of a distinguishable taste or aroma, or both, that
24 constitutes a characterizing flavor.

25 (b) "Flavored marijuana product" means any marijuana product
26 intended for consumption through vaporization or aerosolization that
27 imparts a characterizing flavor other than a marijuana flavor.

28 NEW SECTION. **Sec. 17.** A new section is added to chapter 70.345
29 RCW to read as follows:

30 A vapor product licensee may not:

31 (1) Take any action, directly or indirectly, to target youth in
32 the advertising, promotion, or marketing of vapor products, or take
33 any action the primary purpose of which is to initiate, maintain, or
34 increase the incidence of youth use of vapor products, including
35 third-party product placement in any media aimed at youth; or

36 (2) Use objects such as toys or inflatables, movie or cartoon
37 characters, or any other depiction or image likely to be appealing to
38 youth, where such objects, images, or depictions indicate an intent

1 to cause youth to become interested in the purchase or consumption of
2 vapor products.

3 NEW SECTION. **Sec. 18.** A new section is added to chapter 70.345
4 RCW to read as follows:

5 The department of health may adopt rules regarding labels on
6 vapor products including, but not limited to, identifying potential
7 harmful effects, indicating the legal age to use the product, warning
8 to keep the product away from children, and disclosure of ingredients
9 in vapor products.

10 **Sec. 19.** RCW 70.345.160 and 2016 sp.s. c 38 s 24 are each
11 amended to read as follows:

12 (1) The board must have, in addition to the board's other powers
13 and authorities, the authority to enforce the provisions of this
14 chapter.

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

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

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

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

35 (a) The board, in consultation with the department of health and
36 local county health jurisdictions, may cause a vapor product
37 substance or solution sample, purchased or obtained from any vapor

1 product retailer, distributor, or delivery sale licensee, to be
2 analyzed by an analyst appointed or designated by the board;

3 (b) If the analyzed vapor product contains an ingredient,
4 substance, or solution present in quantities injurious to human
5 health or posing a significant risk to public health, as determined
6 by the secretary of health or a local health jurisdiction, the board
7 may suspend the license of the retailer or delivery sale licensee
8 unless the retailer or delivery sale licensee agrees to remove the
9 product from sales; and

10 (c) If upon a finding from the secretary of health or local
11 health jurisdiction that the vapor product poses an injurious risk to
12 public health or significant public health risk, the retailer or
13 delivery sale licensee does not remove the product from sale, the
14 secretary of health or local health officer may file for an
15 injunction in superior court prohibiting the sale or distribution of
16 that specific vapor product substance or solution.

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

19 (7) The board may, in conjunction with local law enforcement
20 agencies, conduct random and unannounced inspections of a retailer to
21 investigate whether flavored vapor products are sold or offered for
22 sale. The board may seize any flavored vapor products found during
23 such inspection.

24 NEW SECTION. Sec. 20. If any provision of this act or its
25 application to any person or circumstance is held invalid, the
26 remainder of the act or the application of the provision to other
27 persons or circumstances is not affected.

28 NEW SECTION. Sec. 21. If any part of this act is found to be in
29 conflict with federal requirements that are a prescribed condition to
30 the allocation of federal funds to the state, the conflicting part of
31 this act is inoperative solely to the extent of the conflict and with
32 respect to the agencies directly affected, and this finding does not
33 affect the operation of the remainder of this act in its application
34 to the agencies concerned. Rules adopted under this act must meet
35 federal requirements that are a necessary condition to the receipt of
36 federal funds by the state.

1 NEW SECTION. **Sec. 22.** Sections 1 through 11 of this act
2 constitute a new chapter in Title 70 RCW.

--- **END** ---