
SUBSTITUTE SENATE BILL 6254

State of Washington

66th Legislature

2020 Regular Session

By Senate Health & Long Term Care (originally sponsored by Senators Kuderer, Cleveland, Wilson, C., Carlyle, Das, and Darneille; by request of Office of the Governor)

READ FIRST TIME 02/05/20.

1 AN ACT Relating to protecting public health and safety by
2 enhancing the regulation of vapor products; amending RCW 70.345.020,
3 70.345.030, 70.345.075, 70.345.090, 70.345.100, 70.345.110,
4 70.345.160, 70.345.170, 70.345.180, 43.70.170, 43.70.180, and
5 43.70.190; reenacting and amending RCW 70.345.010; adding new
6 sections to chapter 70.345 RCW; adding a new section to chapter 82.25
7 RCW; creating new sections; repealing RCW 70.345.210; prescribing
8 penalties; providing an effective date; and declaring an emergency.

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

10 NEW SECTION. **Sec. 1.** (1) The legislature makes the following
11 findings:

12 (a) Nicotine is a highly addictive substance, particularly for
13 children and youth under twenty-one years of age, whose brains are
14 still developing. Currently, there is no limit in the United States
15 on nicotine levels of vapor products. While other nations limit the
16 nicotine content of vapor products to not more than two percent
17 nicotine, vapor products commonly sold in this state and accessed by
18 youth contain five percent nicotine. Vapor products that deliver high
19 levels of nicotine are fueling youth addiction to nicotine and have
20 created an epidemic. The 2019 national youth tobacco survey found
21 that about twenty-seven percent of high school students reported

1 current use of electronic cigarettes and, among electronic cigarette
2 users, about a third reported using electronic cigarettes on twenty
3 or more of the preceding thirty days;

4 (b) Research consistently shows that flavors and associated
5 advertising contribute to the appeal, initiation, and use of tobacco
6 products, including vapor products, particularly among adolescents
7 and young adults. Evidence also suggests that the 2009 flavored
8 cigarette ban did achieve its objective of reducing adolescent
9 tobacco use, but effects were likely diminished by the continued
10 availability of menthol cigarettes and other flavored tobacco
11 products. Preliminary data from the national youth tobacco survey
12 show that more than a quarter of high school students were current
13 electronic cigarette users in 2019 and the overwhelming majority of
14 youth electronic cigarette users cited the use of popular fruit and
15 menthol or mint flavors. A health impact review performed by the
16 state board of health in 2019 concluded that eliminating flavored
17 vapor products would likely decrease initiation and use of vapor
18 products and other tobacco products among youth and young adults,
19 thereby improving health outcomes; and

20 (c) While the long-term health effects of vapor products are
21 unknown, current data suggests they are harmful to human health.
22 Vapor products have been shown to impair lung function in several
23 ways, such as by inhibiting ciliary beating, impairing immune
24 function, and causing toxicity to epithelial cells.

25 (2) Therefore, the legislature intends to ban the sale of
26 flavored vapor products and enact additional regulatory protections
27 to protect the health of youth and young adults in Washington state.

28 **Sec. 2.** RCW 70.345.010 and 2019 c 445 s 210 and 2019 c 15 s 4
29 are each reenacted and amended to read as follows:

30 The definitions in this section apply throughout this chapter
31 unless the context clearly requires otherwise.

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

33 (2) "Business" means any trade, occupation, activity, or
34 enterprise engaged in for the purpose of selling or distributing
35 vapor products in this state.

36 (3) "Child care facility" has the same meaning as provided in RCW
37 70.140.020.

38 (4) "Closed system nicotine container" means a sealed, prefilled,
39 and disposable container of nicotine in a solution or other form in

1 which such container is inserted directly into an electronic
2 cigarette, electronic nicotine delivery system, or other similar
3 product, if the nicotine in the container is inaccessible through
4 customary or reasonably foreseeable handling or use, including
5 reasonably foreseeable ingestion or other contact by children.

6 (5) "Delivery sale" means any sale of a vapor product to a
7 purchaser in this state where either:

8 (a) The purchaser submits the order for such sale by means of a
9 telephonic or other method of voice transmission, the ~~((mails))~~
10 United States postal service or any other delivery service, or the
11 internet or other online service; or

12 (b) The vapor product is delivered by use of the ~~((mails))~~ United
13 States postal service or ~~((of a))~~ any other delivery service. The
14 foregoing sales of vapor products constitute a delivery sale
15 regardless of whether the seller is located within ~~((or without))~~
16 this state. "Delivery sale" does not include a sale of any vapor
17 product not for personal consumption to a retailer.

18 (6) "Delivery seller" means a person who makes delivery sales.

19 (7) "Distributor" ~~((has the same meaning as in RCW 82.25.005))~~
20 means any person who:

21 (a) Sells vapor products to persons other than ultimate
22 consumers; or

23 (b) Is engaged in the business of selling vapor products in this
24 state and who brings, or causes to be brought, into this state from
25 outside of the state any vapor products for sale.

26 (8) "Liquid nicotine container" means a package from which
27 nicotine in a solution or other form is accessible through normal and
28 foreseeable use by a consumer and that is used to hold soluble
29 nicotine in any concentration. "Liquid nicotine container" does not
30 include closed system nicotine containers.

31 (9) "Manufacturer" means a person who manufactures and sells
32 vapor products to a licensed distributor or licensed manufacturer.

33 (10) "Person" means any individual, receiver, administrator,
34 executor, assignee, trustee in bankruptcy, trust, estate, firm,
35 copartnership, joint venture, club, company, joint stock company,
36 business trust, municipal corporation, the state and its departments
37 and institutions, political subdivision of the state of Washington,
38 corporation, limited liability company, association, society, any
39 group of individuals acting as a unit, whether mutual, cooperative,
40 fraternal, nonprofit, or otherwise.

1 (11) "Place of business" means any place where vapor products are
2 sold or where vapor products are manufactured, stored, or kept for
3 the purpose of sale.

4 (12) "Playground" means any public improved area designed,
5 equipped, and set aside for play of six or more children which is not
6 intended for use as an athletic playing field or athletic court,
7 including but not limited to any play equipment, surfacing, fencing,
8 signs, internal pathways, internal land forms, vegetation, and
9 related structures.

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

12 (14) "Retailer" means any person engaged in the business of
13 selling vapor products to ultimate consumers.

14 (15) ~~((a))~~ "Sale" means any transfer, exchange, or barter, in
15 any manner or by any means whatsoever, for a consideration, and
16 includes and means all sales made by any person. This includes any
17 transfer, exchange, or barter, in any manner or by any means
18 whatsoever, of vapor products at or below the cost of acquisition or
19 at no cost to a person at retail.

20 ~~((b) The term "sale" includes a gift by a person engaged in the~~
21 ~~business of selling vapor products, for advertising, promoting, or as~~
22 ~~a means of evading the provisions of this chapter.))~~

23 (16) "School" has the same meaning as provided in RCW 70.140.020.

24 (17) "Self-service display" means a display that contains vapor
25 products and is located in an area that is openly accessible to
26 customers and from which customers can readily access such products
27 without the assistance of a salesperson. A display case that holds
28 vapor products behind locked doors does not constitute a self-service
29 display.

30 (18) (a) "Vapor product" means any ~~((noncombustible product that~~
31 ~~may contain nicotine and that employs a heating element, power~~
32 ~~source, electronic circuit, or other electronic, chemical, or~~
33 ~~mechanical means, regardless of shape or size, that can be used to~~
34 ~~produce vapor or aerosol from a solution or other substance.~~

35 ~~(a) "Vapor product" includes any electronic cigarette, electronic~~
36 ~~eigar, electronic cigarillo, electronic pipe, or similar product or~~
37 ~~device and any vapor cartridge or other container that may contain~~
38 ~~nicotine in a solution or other form that is intended to be used with~~
39 ~~or in an electronic cigarette, electronic cigar, electronic~~
40 ~~eigarillo, electronic pipe, or similar product or device)) product~~

1 that may be used to deliver any aerosolized or vaporized substance to
2 the person inhaling from the device including, but not limited to, an
3 electronic cigarette, e-cigar, e-pipe, vape pen, or e-hookah. "Vapor
4 product" includes any component, part, or accessory of the product
5 and also includes any substance that may be aerosolized or vaporized
6 by such a product, regardless of whether the substance contains
7 nicotine. "Vapor product" does not include drugs, devices, or
8 combination products authorized for sale by the United States food
9 and drug administration as those terms are defined in the federal
10 food, drug, and cosmetic act.

11 (b) "Vapor product" does not include any product that meets the
12 definition of marijuana, useable marijuana, marijuana concentrates,
13 marijuana-infused products, cigarette, or tobacco products.

14 (c) For purposes of this subsection (18), "marijuana," "useable
15 marijuana," "marijuana concentrates," and "marijuana-infused
16 products" have the same meaning as provided in RCW 69.50.101.

17 (19) "Distinguishable" means perceivable by an ordinary consumer
18 by either the sense of smell or taste.

19 (20) "Domicile" means a person's true, fixed, primary permanent
20 home and place of habitation and the tax parcel on which it is
21 located.

22 (21) "Flavored vapor product" means any vapor product that
23 contains a taste or smell, other than the taste or smell of tobacco
24 or menthol, that is distinguishable by an ordinary consumer either
25 prior to or during the consumption of a vapor product, including, but
26 not limited to, any taste or smell relating to fruit, mint,
27 wintergreen, chocolate, cocoa, vanilla, honey, or any candy, dessert,
28 alcoholic beverage, herb, or spice.

29 (22) "Manufacture" means to mix, prepare, create, produce,
30 fabricate, assemble, modify, or label vapor products.

31 **Sec. 3.** RCW 70.345.020 and 2016 sp.s. c 38 s 5 are each amended
32 to read as follows:

33 (1) The licenses issuable by the board under this chapter are as
34 follows:

35 (a) A vapor product retailer's license;

36 (b) A vapor product distributor's license; ~~((and))~~

37 (c) A vapor product manufacturer's license; and

38 (d) A vapor product delivery sale license.

1 (2) Application for the licenses must be made through the
2 business licensing system under chapter 19.02 RCW. The board may
3 adopt rules regarding the regulation of the licenses and licensees.
4 The board may refuse to issue any license under this chapter if the
5 board has reasonable cause to believe that the applicant has
6 willfully withheld information requested for the purpose of
7 determining the eligibility of the applicant to receive a license, or
8 if the board has reasonable cause to believe that information
9 submitted in the application is false or misleading or is not made in
10 good faith. In addition, for the purpose of reviewing an application
11 for a manufacturer's license, distributor's license, retailer's
12 license, or delivery seller's license, and for considering the
13 denial, suspension, or revocation of any such license, the board may
14 consider criminal conduct of the applicant, including an
15 administrative violation history record with the board and a criminal
16 history record information check within the previous five years, in
17 any state, tribal, or federal jurisdiction in the United States, its
18 territories, or possessions, and the provisions of RCW 9.95.240 and
19 chapter 9.96A RCW do not apply to such cases. The board may, in its
20 discretion, issue or refuse to issue ~~((the))~~ a manufacturer's
21 license, retailer's license, distributor's license, ~~((and))~~ or
22 delivery sale license subject to the provisions of RCW 70.155.100.

23 (3) The application processes for the retailer license and the
24 distributor license, and any forms used for such processes, must
25 allow the applicant to simultaneously apply for a delivery sale
26 license without requiring the applicant to undergo a separate
27 licensing application process in order to be licensed to conduct
28 delivery sales. However, a delivery sale license obtained in
29 conjunction with a retailer or distributor license under this
30 subsection remains a separate license subject to the delivery sale
31 licensing fee established under this chapter.

32 (4) No person may qualify for a manufacturer's license,
33 retailer's license, distributor's license, or delivery sale license
34 under this section without first undergoing a criminal background
35 check. The background check must be performed by the board and must
36 disclose any criminal conduct within the previous five years in any
37 state, tribal, or federal jurisdiction in the United States, its
38 territories, or possessions. If the applicant or licensee also has a
39 license issued under chapter 66.24, 69.50, 82.24, or 82.26 RCW, the

1 background check done under the authority of chapter 66.24, 69.50,
2 82.24, or 82.26 RCW satisfies the requirements of this subsection.

3 (5) Each license issued under this chapter expires on the
4 business license expiration date. The license (~~(must)~~) may be
5 continued annually if the licensee has paid the required fee and
6 complied with all the provisions of this chapter and the rules of the
7 board adopted pursuant to this chapter.

8 (6) Each license and any other evidence of the license required
9 under this chapter must be exhibited in each place of business for
10 which it is issued and in the manner required for the display of a
11 business license.

12 (7) A place of business for any holder of a license issued under
13 this chapter must not be located in a domicile.

14 **Sec. 4.** RCW 70.345.030 and 2019 c 445 s 211 are each amended to
15 read as follows:

16 (1)(a) No person may engage in or conduct business as a
17 manufacturer, retailer, distributor, or delivery seller in this state
18 without a valid license issued under this chapter, except as
19 otherwise provided by law. Any person who meets the definition of
20 manufacturer under this chapter must obtain a manufacturer's license
21 under this chapter. Any person who sells vapor products to ultimate
22 consumers by a means other than delivery sales must obtain a
23 retailer's license under this chapter. Any person who meets the
24 definition of distributor under this chapter must obtain a
25 distributor's license under this chapter. Any person who conducts
26 delivery sales of vapor products must obtain a delivery sale license.

27 (b) A violation of this subsection is punishable as a class C
28 felony according to chapter 9A.20 RCW.

29 (2) No person engaged in or conducting business as a
30 manufacturer, retailer, distributor, or delivery seller in this state
31 may refuse to allow the enforcement officers of the board, on demand,
32 to make full inspection of any place of business or vehicle where any
33 of the vapor products regulated under this chapter are sold, stored,
34 transported, or handled, or otherwise hinder or prevent such
35 inspection. The board may conduct such inspections with local law
36 enforcement. A person who violates this subsection is guilty of a
37 gross misdemeanor.

38 (3) Any person licensed under this chapter as a distributor, any
39 person licensed under this chapter as a retailer, and any person

1 licensed under this chapter as a delivery seller may not operate in
2 any other capacity unless the additional appropriate license is first
3 secured, except as otherwise provided by law. A violation of this
4 subsection is a misdemeanor.

5 (4) Any person licensed under this chapter as a retailer,
6 distributor, or delivery seller may only sell vapor products obtained
7 from a person holding a valid manufacturer's license granted by the
8 board under this chapter.

9 (5) No person engaged in or conducting business as a
10 manufacturer, retailer, distributor, or delivery seller in this state
11 may sell or give, or permit to sell or give, a product that contains
12 any amount of any cannabinoid, synthetic cannabinoid, cathinone, or
13 methcathinone, unless otherwise provided by law. A violation of this
14 subsection ((+4)) is punishable according to RCW 69.50.401.

15 ((+5)) (6) The penalties provided in this section are in
16 addition to any other penalties provided by law for violating the
17 provisions of this chapter or the rules adopted under this chapter.

18 NEW SECTION. Sec. 5. A new section is added to chapter 70.345
19 RCW to read as follows:

20 To the extent permitted by federal law, the board shall, in
21 consultation with the department of health, adopt rules for safe
22 handling and sanitation practices for manufacturers, distributors,
23 delivery sellers, and retailers, or any combination thereof, who
24 manufacture, produce, or mix liquids for use in vapor products to the
25 extent permitted under federal law.

26 NEW SECTION. Sec. 6. A new section is added to chapter 70.345
27 RCW to read as follows:

28 (1) Except for retailers operating in a retail outlet restricted
29 to persons twenty-one years of age or older, retailers licensed under
30 this chapter may not sell, offer for sale, or possess with the intent
31 to sell or offer for sale flavored vapor products, or any product
32 that he or she knows or reasonably should know will be used with or
33 in a vapor product to create a flavored vapor product.

34 (2) There is a rebuttable presumption that a vapor product is a
35 flavored vapor product if a delivery seller, distributor,
36 manufacturer, or retailer, or any agent or employee of a delivery
37 seller, distributor, manufacturer, or retailer, in the course of
38 their agency or employment, has made a statement or claim directed to

1 consumers or to the public that the vapor product has or produces a
2 taste or smell other than tobacco or menthol including, but not
3 limited to, text, color, or images, or any combination thereof, on
4 the product's labeling or packaging used to explicitly or implicitly
5 communicate that the vapor product has a taste or smell other than
6 tobacco or menthol.

7 NEW SECTION. **Sec. 7.** A new section is added to chapter 82.25
8 RCW to read as follows:

9 (1) (a) In addition to the tax imposed under RCW 82.25.010, there
10 is levied and collected a special excise tax equal to thirty-seven
11 percent of the selling price on each retail sale in this state of
12 flavored vapor products.

13 (b) The tax under this section is separate and in addition to
14 general state and local sales and use taxes that apply to retail
15 sales of tangible personal property, and is not part of the total
16 retail price to which general state and local sales and use taxes
17 apply. The tax must be separately itemized from the state and local
18 retail sales tax on the sales receipt provided to the buyer.

19 (c) The tax levied in this section must be reflected in the price
20 list or quoted shelf price by retailers operating in a retail outlet
21 that is restricted to individuals twenty-one years of age and older
22 and in any advertising that includes prices for all flavored vapor
23 products.

24 (2) All revenues collected from the tax imposed under this
25 section must be deposited in the foundational public health services
26 account provided in RCW 82.25.015.

27 (3) The tax imposed in this section must be paid by the buyer to
28 the seller. Each seller must collect from the buyer the full amount
29 of the tax payable on each taxable sale. The tax collected as
30 required by this section is deemed to be held in trust by the seller
31 until paid to the board. If any seller fails to collect the tax
32 imposed in this section or, having collected the tax, fails to pay it
33 as prescribed by the department, whether such failure is the result
34 of the seller's own acts or the result of acts or conditions beyond
35 the seller's control, the seller is, nevertheless, personally liable
36 to the state for the amount of the tax.

37 (4) The definitions in this subsection apply throughout this
38 section unless the context clearly requires otherwise.

1 (a) "Flavored vapor product" has the meaning provided in RCW
2 70.345.010.

3 (b) "Retail sale" has the meaning provided in RCW 82.08.010.

4 (c) "Selling price" has the meaning provided in RCW 82.08.010,
5 except that when product is sold under circumstances where the total
6 amount of consideration paid for the product is not indicative of its
7 true value, "selling price" means the true value of the product sold.

8 (d) "True value" means market value based on sales at comparable
9 locations in this state of the same or similar product of like
10 quality and character sold under comparable conditions of sale to
11 comparable purchasers. However, in the absence of such sales of the
12 same or similar product, true value means the value of the product
13 sold as determined by all the seller's direct and indirect costs
14 attributable to the product.

15 NEW SECTION. **Sec. 8.** A new section is added to chapter 70.345
16 RCW to read as follows:

17 A vapor product may not be sold or offered for sale if the
18 product has nicotine salts or other ingredients that result in
19 nicotine concentrations that exceed any of the following comparative
20 levels of nicotine:

21 (1) Twenty milligrams of nicotine per milliliter of liquid;

22 (2) Nicotine that is equivalent to two percent of the total
23 volume of the liquid; or

24 (3) Twenty thousand parts per million of nicotine in the liquid.

25 NEW SECTION. **Sec. 9.** A new section is added to chapter 70.345
26 RCW to read as follows:

27 (1) Vapor product liquid containing nicotine may be sold and
28 offered for sale at retail only in:

29 (a) A dedicated refill container in a volume not exceeding ten
30 milliliters; or

31 (b) A disposable vapor product, a single use cartridge, or a
32 tank, in a volume not exceeding two milliliters.

33 (2) The capacity of the tank of a refillable vapor product may
34 not exceed two milliliters.

35 NEW SECTION. **Sec. 10.** A new section is added to chapter 70.345
36 RCW to read as follows:

1 (1) Licensed vapor product distributors and manufacturers who
2 sell vapor products in this state must submit under oath to the
3 department of health a complete list of all constituent substances
4 and the amounts and sources thereof in each vapor product offered for
5 sale, distributed, or manufactured in the state, including all:

6 (a) Additives;

7 (b) Thickening agents;

8 (c) Preservatives;

9 (d) Compounds;

10 (e) Nicotine content; and

11 (f) Any other substance used in the production and processing of
12 each vapor product.

13 (2) Disclosures must be completed for every vapor product
14 constituent substance, regardless of whether such a constituent
15 substance is an original constituent present in each vapor product,
16 emitted during the use of the vapor product, or it is reasonably
17 foreseeable that it will be present in the vapor product during the
18 product's expected presale shelf life, or will develop in a vapor
19 product after purchase without any action taken by the consumer. All
20 disclosures must include the amounts and sources of each constituent
21 substance. Constituent substance disclosures must be accompanied by a
22 signed declaration under penalty of perjury certifying the
23 completeness and accuracy of the information provided.

24 (3) No vapor product shall be sold, offered for sale,
25 distributed, or manufactured in this state unless a constituent
26 disclosure has been submitted to the department of health in a manner
27 determined by the department.

28 (4) The board and department of health may use constituent
29 disclosures for the purposes of enforcement, investigation, research,
30 and for any other matter intended to protect the public health.

31 (5) The department of health may adopt rules to implement the
32 provisions of this section.

33 NEW SECTION. **Sec. 11.** A new section is added to chapter 70.345
34 RCW to read as follows:

35 A fee of two hundred fifty dollars must accompany each vapor
36 product manufacturer's license application and license renewal
37 application under RCW 70.345.020.

1 **Sec. 12.** RCW 70.345.075 and 2016 sp.s. c 38 s 13 are each
2 amended to read as follows:

3 (1) A manufacturer or distributor that sells, offers for sale, or
4 distributes liquid nicotine containers shall label the vapor product
5 with a: (a) Warning regarding the harmful effects of nicotine; (b)
6 warning to keep the vapor product away from children; (c) warning
7 that vaping is illegal for those under the legal age to use the
8 product; and (d) except as provided in subsection (2) of this
9 section, the amount of nicotine in milligrams per milliliter of
10 liquid along with the total volume of the liquid contents of the
11 product expressed in milliliters.

12 (2) For closed system nicotine containers as defined in RCW
13 70.345.010, a manufacturer that sells, offers for sale, or
14 distributes vapor products in this state must annually provide the
15 department of health with a disclosure of the nicotine content of
16 such vapor product based on measurement standards to be established
17 by the department of health.

18 ~~((3) (a) This section expires on the effective date of the final
19 regulations issued by the United States food and drug administration
20 or by any other federal agency, when such regulations mandate warning
21 or advertisement requirements for vapor products.~~

22 ~~(b) The board must provide notice of the expiration date of this
23 section to affected parties, the chief clerk of the house of
24 representatives, the secretary of the senate, the office of the code
25 reviser, and others as deemed appropriate by the board.))~~

26 **Sec. 13.** RCW 70.345.090 and 2019 c 445 s 212 are each amended to
27 read as follows:

28 (1) No person may conduct a delivery sale or otherwise ship or
29 transport, or cause to be shipped or transported, any vapor product
30 ordered or purchased by mail or through the internet to any person
31 unless such seller has a valid delivery sale license as required
32 under this chapter and unless the vapor product was manufactured by a
33 person holding a valid manufacturer's license issued by the board
34 under this chapter.

35 (2) No person may conduct a delivery sale or otherwise ship or
36 transport, or cause to be shipped or transported, any vapor product
37 ordered or purchased by mail or through the internet to any person
38 under the minimum age required for the legal sale of vapor products
39 as provided under RCW 70.345.140.

1 (3) A delivery sale licensee must provide notice on its mail
2 order or internet sales forms of the minimum age required for the
3 legal sale of vapor products in Washington state as provided by RCW
4 70.345.140.

5 (4) A delivery sale licensee must not accept a purchase or order
6 from any person without first obtaining the full name, birthdate, and
7 residential address of that person and verifying this information
8 through an independently operated third-party database or aggregate
9 of databases, which includes data from government sources, that are
10 regularly used by government and businesses for the purpose of age
11 and identity verification and authentication.

12 (5) A delivery sale licensee must accept payment only through a
13 credit or debit card issued in the purchaser's own name. The licensee
14 must verify that the card is issued to the same person identified
15 through identity and age verification procedures in subsection (4) of
16 this section.

17 (6) Before a delivery sale licensee delivers an initial purchase
18 to any person, the licensee must verify the identity and delivery
19 address of the purchaser by mailing or shipping to the purchaser a
20 notice of sale and certification form confirming that the addressee
21 is in fact the person placing the order. The purchaser must return
22 the signed certification form to the licensee before the initial
23 shipment of product. Certification forms are not required for repeat
24 customers. In the alternative, before a seller delivers an initial
25 purchase to any person, the seller must first obtain from the
26 prospective customer an electronic certification, such as by email,
27 that includes a declaration that, at a minimum, the prospective
28 customer is over the minimum age required for the legal sale of a
29 vapor product, and the credit or debit card used for payment has been
30 issued in the purchaser's name.

31 (7) A delivery sale licensee must include on shipping documents a
32 clear and conspicuous statement which includes, at a minimum, that
33 the package contains vapor products manufactured under a license
34 issued by the board, Washington law prohibits sales to those under
35 the minimum age established by this chapter, and violations may
36 result in sanctions to both the licensee and the purchaser.

37 (8) ~~((For purposes of this subsection (8) [this section], "vapor~~
38 ~~products" has the same meaning as provided in RCW 82.25.005.~~

1 ~~(9))~~) A person who knowingly violates this section is guilty of a
2 class C felony, except that the maximum fine that may be imposed is
3 five thousand dollars.

4 ~~((10))~~) (9) In addition to or in lieu of any other civil or
5 criminal remedy provided by law, a person who has violated this
6 section is subject to a civil penalty of up to five thousand dollars
7 for each violation. The attorney general, acting in the name of the
8 state, may seek recovery of the penalty in a civil action in superior
9 court.

10 ~~((11))~~) (10) The attorney general may seek an injunction in
11 superior court to restrain a threatened or actual violation of this
12 section and to compel compliance with this section.

13 ~~((12))~~) (11) Any violation of this section is not reasonable in
14 relation to the development and preservation of business and is an
15 unfair and deceptive act or practice and an unfair method of
16 competition in the conduct of trade or commerce in violation of RCW
17 19.86.020. Standing to bring an action to enforce RCW 19.86.020 for
18 violation of this section lies solely with the attorney general.
19 Remedies provided by chapter 19.86 RCW are cumulative and not
20 exclusive.

21 ~~((13))~~) (12)(a) In any action brought under this section, the
22 state is entitled to recover, in addition to other relief, the costs
23 of investigation, expert witness fees, costs of the action, and
24 reasonable attorneys' fees.

25 (b) If a court determines that a person has violated this
26 section, the court shall order any profits, gain, gross receipts, or
27 other benefit from the violation to be disgorged and paid to the
28 state treasurer for deposit in the general fund.

29 ~~((14))~~) (13) Unless otherwise expressly provided, the penalties
30 or remedies, or both, under this section are in addition to any other
31 penalties and remedies available under any other law of this state.

32 ~~((15))~~) (14) A licensee who violates this section is subject to
33 license suspension or revocation by the board.

34 ~~((16))~~) (15) The board may adopt by rule additional requirements
35 for mail or internet sales.

36 ~~((17) The board must not adopt rules prohibiting internet
37 sales.))~~

38 **Sec. 14.** RCW 70.345.100 and 2019 c 15 s 7 are each amended to
39 read as follows:

1 (1) No person may offer a tasting of vapor products to the
2 general public (~~((unless:~~

3 ~~(a) The person is a licensed retailer under RCW 70.345.020;~~

4 ~~(b) The tastings are offered only within the licensed premises
5 operated by the licensee and the products tasted are not removed from
6 within the licensed premises by the customer;~~

7 ~~(c) Entry into the licensed premises is restricted to persons
8 twenty-one years of age or older;~~

9 ~~(d) The vapor product being offered for tasting contains zero
10 milligrams per milliliter of nicotine or the customer explicitly
11 consents to a tasting of a vapor product that contains nicotine; and~~

12 ~~(e) If the customer is tasting from a vapor device owned and
13 maintained by the retailer, a disposable mouthpiece tip is attached
14 to the vapor product being used by the customer for tasting or the
15 vapor device is disposed of after each tasting)).~~

16 (2) Nothing in this section prohibits a retailer from offering or
17 performing demonstrations or consumer training on proper use of a
18 vapor product device as long as liquid constituents are not provided
19 by the retailer to the consumer at or below cost to the retailer.

20 (3) A violation of this section is a misdemeanor.

21 **Sec. 15.** RCW 70.345.110 and 2016 sp.s. c 38 s 20 are each
22 amended to read as follows:

23 (~~((1))~~) No person may give or distribute vapor products to a
24 person free of charge (~~((by coupon, unless the vapor product was
25 provided to the person as a contingency of prior or the same purchase
26 as part of an in-person transaction or delivery sale.~~

27 ~~(2) This section does not prohibit the use of coupons to receive
28 a discount on a vapor product as part of an in-person transaction or
29 delivery sale)).~~ No person may sell or furnish vapor products at or
30 below the cost of acquisition to the seller.

31 **Sec. 16.** RCW 70.345.160 and 2016 sp.s. c 38 s 24 are each
32 amended to read as follows:

33 (1) The board (~~((must have))~~) has, in addition to the board's other
34 powers and authorities, the authority to enforce the provisions of
35 this chapter.

36 (2) The board and the board's authorized agents or employees have
37 full power and authority to enter any place of business where vapor

1 products are sold or manufactured for the purpose of enforcing the
2 provisions of this chapter.

3 (3) For the purpose of enforcing the provisions of this chapter,
4 a peace officer or enforcement officer of the board who has
5 reasonable grounds to believe a person observed by the officer
6 purchasing, attempting to purchase, or in possession of vapor
7 products is under eighteen years of age, may detain such person for a
8 reasonable period of time and in such a reasonable manner as is
9 necessary to determine the person's true identity and date of birth.
10 Further, vapor products possessed by persons under eighteen years of
11 age are considered contraband and may be seized by a peace officer or
12 enforcement officer of the board.

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

16 (5) ~~((Upon a determination by the secretary of health or a local
17 health jurisdiction that a vapor product may be injurious to human
18 health or poses a significant risk to public health:~~

19 ~~(a) The board, in consultation with the department of health and
20 local county health jurisdictions, may cause a vapor product
21 substance or solution sample, purchased or obtained from any vapor
22 product retailer, distributor, or delivery sale licensee, to be
23 analyzed by an analyst appointed or designated by the board;~~

24 ~~(b) If the analyzed vapor product contains an ingredient,
25 substance, or solution present in quantities injurious to human
26 health or posing a significant risk to public health, as determined
27 by the secretary of health or a local health jurisdiction, the board
28 may suspend the license of the retailer or delivery sale licensee
29 unless the retailer or delivery sale licensee agrees to remove the
30 product from sales; and~~

31 ~~(c) If upon a finding from the secretary of health or local
32 health jurisdiction that the vapor product poses an injurious risk to
33 public health or significant public health risk, the retailer or
34 delivery sale licensee does not remove the product from sale, the
35 secretary of health or local health officer may file for an
36 injunction in superior court prohibiting the sale or distribution of
37 that specific vapor product substance or solution.~~

38 ~~(6) Nothing in subsection (5) of this section permits a total ban
39 on the sale or use of vapor products.)) To the extent permitted by
40 federal law, the board shall, in consultation with the department of~~

1 health, adopt rules regarding: Inspection of the premises where vapor
2 products are manufactured within Washington state; conditions of
3 sanitation during manufacture, storage, and transport within
4 Washington state; and safe handling requirements for equipment and
5 ingredients within Washington state.

6 (6) Upon a determination by the secretary of health or a local
7 health jurisdiction that a vapor product, vapor product constituent,
8 emitted constituent, or vapor product component may be injurious to
9 human health or poses a significant risk to public health, the board
10 may:

11 (a) Restrict the sale of any such vapor product or any vapor
12 product containing such a constituent or component; or

13 (b) Require vapor product retailers to make a written point-of-
14 sale warning disclosure to consumers with respect to such a vapor
15 product, a type of vapor product, or such a vapor constituent or
16 component, in a format, style, and manner determined by the secretary
17 of health.

18 (7) (a) Nothing in this section permits permanent ban on the sale
19 or use of all vapor products.

20 (b) Nothing in this section requires a person in this state to be
21 actually injured or ill before the secretary of health may take
22 action authorized under this section.

23 (8) The board may seize any vapor products sold, offered for
24 sale, or possessed in violation of this chapter.

25 NEW SECTION. Sec. 17. A new section is added to chapter 70.345
26 RCW to read as follows:

27 No vapor product containing vitamin E acetate may be sold or
28 offered for sale within this state.

29 **Sec. 18.** RCW 70.345.170 and 2016 sp.s. c 38 s 11 are each
30 amended to read as follows:

31 (1) The board, or its enforcement officers, has the authority to
32 enforce provisions of this chapter.

33 (2) The board may revoke or suspend a manufacturer's, retailer's,
34 distributor's, or delivery seller's license issued under this chapter
35 upon sufficient cause showing a violation of this chapter.

36 (3) A license may not be suspended or revoked except upon notice
37 to the licensee (~~and after a hearing as prescribed by the board~~).

1 (4) Any retailer's licenses issued under chapter 82.24 or 82.26
2 RCW to a person whose vapor product retailer's license or licenses
3 have been suspended or revoked for violating RCW 26.28.080 must also
4 be suspended or revoked during the period of suspension or revocation
5 under this section.

6 (5) Any person whose license or licenses have been revoked under
7 this section may reapply to the board at the expiration of two years
8 of the license or licenses, unless the license was revoked pursuant
9 to RCW 70.345.180(2)(e). The license or licenses may be approved by
10 the board if it appears to the satisfaction of the board that the
11 licensee will comply with the provisions of this chapter.

12 (6) A person whose license has been suspended or revoked may not
13 sell vapor products or permit vapor products to be sold during the
14 period of suspension or revocation on the premises occupied by the
15 person or upon other premises controlled by the person or others or
16 in any other manner or form.

17 ~~(7) ((Any determination and order by the board, and any order of
18 suspension or revocation by the board of the license or licenses
19 issued under this chapter, or refusal to reinstate a license or
20 licenses after revocation is reviewable by an appeal to the superior
21 court of Thurston county. The superior court must review the order or
22 ruling of the board and may hear the matter de novo, having due
23 regard to the provisions of this chapter and the duties imposed upon
24 the board.~~

25 ~~(8))~~ If the board makes an initial decision to deny a license or
26 renewal, or suspend or revoke a license, the applicant may request a
27 hearing subject to the applicable provisions under Title 34 RCW.

28 **Sec. 19.** RCW 70.345.180 and 2016 sp.s. c 38 s 22 are each
29 amended to read as follows:

30 (1) The board may impose a monetary penalty as set forth in
31 subsection (2) of this section, if the board finds that the licensee
32 has violated RCW 26.28.080 or any other provision of this chapter.

33 (2) Subject to subsections (3) and (12) of this section, the
34 sanctions that the board may impose against a person licensed under
35 this chapter based upon one or more findings under subsection (1) of
36 this section may not exceed the following:

37 (a) A monetary penalty of two hundred dollars for the first
38 violation within any three-year period;

1 (b) A monetary penalty of six hundred dollars for the second
2 violation within any three-year period;

3 (c) A monetary penalty of two thousand dollars for the third
4 violation within any three-year period and suspension of the license
5 for a period of six months for the third violation of this chapter or
6 RCW 26.28.080 within any three-year period;

7 (d) A monetary penalty of three thousand dollars for the fourth
8 or subsequent violation within any three-year period and suspension
9 of the license for a period of twelve months for the fourth violation
10 of this chapter or RCW 26.28.080 within any three-year period;

11 (e) Revocation of the license with no possibility of
12 reinstatement for a period of five years for the fifth or more
13 violation within any three-year period.

14 (3) If the board finds that a person licensed under this chapter
15 and chapter 82.24 or 82.26 RCW has violated this chapter or RCW
16 26.28.080, each subsequent violation of either of the person's
17 licenses counts as an additional violation within that three-year
18 period.

19 (4) Any retailer's licenses issued under chapter 82.24 or 82.26
20 RCW to a person whose vapor product retailer's license or licenses
21 have been suspended or revoked by the board for violating this
22 chapter or RCW 26.28.080 must also be suspended or revoked during the
23 period of suspension or revocation under this section.

24 (5) The board may impose a monetary penalty upon any person other
25 than a licensed retailer if the board finds that the person has
26 violated this chapter or RCW 26.28.080.

27 (6) The monetary penalty that the board may impose based upon one
28 or more findings under subsection (5) of this section may not exceed
29 fifty dollars for the first violation and one hundred dollars for
30 each subsequent violation.

31 (7) The board may develop and offer a class for retail clerks and
32 use this class in lieu of a monetary penalty for the clerk's first
33 violation.

34 (8) The board may issue a cease and desist order to any person
35 who is found by the board to have violated or (~~intending~~ [intends])
36 intends to violate the provisions of this chapter or RCW 26.28.080,
37 requiring such person to cease specified conduct that is in
38 violation. The issuance of a cease and desist order does not preclude
39 the imposition of other sanctions authorized by this statute or any
40 other provision of law.

1 (9) The board may seek injunctive relief to enforce the
2 provisions of RCW 26.28.080 or this chapter. The board may initiate
3 legal action to collect civil penalties imposed under this chapter if
4 the same have not been paid within thirty days after imposition of
5 such penalties. In any action filed by the board under this chapter,
6 the court may, in addition to any other relief, award the board
7 reasonable attorneys' fees and costs.

8 (10) All enforcement proceedings by the board under (~~subsections~~
9 ~~(1) through (8) of this section~~) this chapter must be conducted in
10 accordance with chapter 34.05 RCW.

11 (11) The board may reduce or waive either the penalties or the
12 suspension or revocation of a license, or both, as set forth in this
13 chapter where the elements of proof are inadequate or where there are
14 mitigating circumstances. Mitigating circumstances may include, but
15 are not limited to, an exercise of due diligence by a retailer.
16 Further, the board may exceed penalties set forth in this chapter
17 based on aggravating circumstances.

18 (12) The board may:

19 (a) Suspend the license of a retailer or delivery seller that
20 violates a sales restriction imposed under RCW 70.345.160 or fails to
21 post a written point-of-sale warning disclosure required under RCW
22 70.345.160; and

23 (b) Revoke the license of a retailer or delivery seller that
24 violates a sales restriction imposed under RCW 70.345.160 or fails to
25 post a written point-of-sale warning disclosure required under RCW
26 70.345.160, when the retailer or delivery seller has been sent a
27 written notification warning the retailer or delivery seller that
28 they are selling vapor products in violation of this chapter and
29 describing how compliance may be achieved.

30 NEW SECTION. Sec. 20. A new section is added to chapter 70.345
31 RCW to read as follows:

32 For the purpose of carrying into effect the provisions of this
33 chapter according to their true intent or of supplying any deficiency
34 therein, the board may adopt those rules as are deemed necessary or
35 advisable.

36 **Sec. 21.** RCW 43.70.170 and 1989 1st ex.s. c 9 s 256 are each
37 amended to read as follows:

1 The secretary on his or her own motion or upon the complaint of
2 any interested party, may investigate, examine, sample or inspect any
3 article or condition constituting a threat to the public health
4 including, but not limited to, outbreaks of (~~communicable~~)
5 diseases, food poisoning, contaminated water supplies, and all other
6 matters injurious to the public health. When not otherwise available,
7 the department may purchase such samples or specimens as may be
8 necessary to determine whether or not there exists a threat to the
9 public health. In furtherance of any such investigation, examination
10 or inspection, the secretary or the secretary's authorized
11 representative may examine that portion of the ledgers, books,
12 accounts, memorandums, and other documents and other articles and
13 things used in connection with the business of such person relating
14 to the actions involved.

15 For purposes of such investigation, the secretary or the
16 secretary's representative shall at all times have free and unimpeded
17 access to all buildings, yards, warehouses, storage and
18 transportation facilities or any other place. The secretary may also,
19 for the purposes of such investigation, issue subpoenas to compel the
20 attendance of witnesses, as provided for in RCW 43.70.090 or the
21 production of books and documents anywhere in the state.

22 **Sec. 22.** RCW 43.70.180 and 1989 1st ex.s. c 9 s 257 are each
23 amended to read as follows:

24 (~~(Pending the results)~~) During or upon completion of an
25 investigation provided for under RCW 43.70.170, the secretary may
26 (~~(issue an order prohibiting the disposition or sale of any food or~~
27 ~~other item involved in the investigation. The order of the secretary~~
28 ~~shall not be effective for more than fifteen days without the~~
29 ~~commencement of a legal action as provided for under RCW 43.70.190))~~
30 adopt rules, issue orders, or take any other action the secretary
31 deems necessary in order to regulate, control, prohibit, prevent, or
32 otherwise address any article or condition constituting a threat to
33 the public health.

34 **Sec. 23.** RCW 43.70.190 and 1990 c 133 s 3 are each amended to
35 read as follows:

36 The secretary of health or local health officer may bring an
37 action to enjoin a violation or the threatened violation of any of
38 the provisions of the public health laws of this state or any rules

1 or regulation made or orders issued by the state board of health, the
2 secretary of health, or the department of health pursuant to said
3 laws, or may bring any legal proceeding authorized by law((~~r~~))
4 including, but not limited to, the special proceedings authorized in
5 Title 7 RCW, in the superior court in the county in which such
6 violation occurs or is about to occur, or in the superior court of
7 Thurston county. Upon the filing of any action, the court may, upon a
8 showing of an immediate and serious danger to residents constituting
9 an emergency, issue a temporary injunctive order ex parte.

10 NEW SECTION. **Sec. 24.** RCW 70.345.210 (State preemption—
11 Exceptions) and 2016 sp.s. c 38 s 3 are each repealed.

12 NEW SECTION. **Sec. 25.** If any provision of this act or its
13 application to any person or circumstance is held invalid, the
14 remainder of the act or the application of the provision to other
15 persons or circumstances is not affected.

16 NEW SECTION. **Sec. 26.** If any part of this act is found to be in
17 conflict with federal requirements that are a prescribed condition to
18 the allocation of federal funds to the state, the conflicting part of
19 this act is inoperative solely to the extent of the conflict and with
20 respect to the agencies directly affected, and this finding does not
21 affect the operation of the remainder of this act in its application
22 to the agencies concerned. Rules adopted under this act must meet
23 federal requirements that are a necessary condition to the receipt of
24 federal funds by the state.

25 NEW SECTION. **Sec. 27.** Within one hundred eighty days of the
26 effective date of sections 3 and 4 of this act, the liquor and
27 cannabis board must adopt rules to implement sections 3 and 4 of this
28 act.

29 NEW SECTION. **Sec. 28.** Section 7 of this act takes effect
30 October 1, 2020.

31 NEW SECTION. **Sec. 29.** Sections 2, 6, 8, 9, 16 through 19, 25,
32 and 26 of this act are necessary for the immediate preservation of
33 the public peace, health, or safety, or support of the state

1 government and its existing public institutions, and take effect
2 immediately.

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