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**SENATE BILL 5526**

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**State of Washington 69th Legislature 2025 Regular Session**

**By** Senators Liias, Braun, Saldaña, Chapman, King, C. Wilson, Gildon, Stanford, Schoesler, Boehnke, Conway, Cortes, Harris, Krishnadasan, Nobles, Pedersen, and Valdez

AN ACT Relating to protecting public health and safety by enhancing the regulation of tobacco products, alternative nicotine products, and vapor products; amending RCW 26.28.080, 70.155.010, 70.155.090, 70.155.100, 70.345.010, 70.345.030, 82.25.030, 82.25.095, 82.26.010, 82.26.020, 82.26.060, 82.26.190, 82.26.200, and 82.26.240; adding new sections to chapter 70.345 RCW; and prescribing penalties.

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

**Sec.**  RCW 26.28.080 and 2019 c 15 s 1 are each amended to read as follows:

(1) A person who sells or gives, or permits to be sold or given, to any person under the age of ((~~twenty-one~~)) 21 years any cigar, cigarette, cigarette paper or wrapper, tobacco in any form, alternative nicotine product, or a vapor product is guilty of a gross misdemeanor and is liable for a fine of up to $5,000.

(2) It is not a defense to a prosecution for a violation of this section that the person acted, or was believed by the defendant to act, as agent or representative of another.

(3) For the purposes of this section, "vapor product" has the same meaning as provided in RCW 70.345.010.

(4) For the purposes of this section, "alternative nicotine product" has the same meaning as provided in RCW 82.26.010.

**Sec.**  RCW 70.155.010 and 2019 c 15 s 3 are each amended to read as follows:

The definitions set forth in RCW 82.24.010 apply to this chapter. In addition, for the purposes of this chapter, unless otherwise required by the context:

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

(2) "Internet" means any computer network, telephonic network, or other electronic network.

(3) "Sample" means a tobacco product distributed to members of the general public at no cost or at nominal cost for product promotion purposes.

(4) "Sampling" means the distribution of samples to members of the public.

(5) "Tobacco product" means an alternative nicotine product as defined in RCW 82.26.010(3) or a product that contains tobacco and is intended for human use, including any product defined in RCW 82.24.010(2) or 82.26.010((~~(21)~~)) (22), except that for the purposes of RCW 70.155.140 only, "tobacco product" does not include cigars defined in RCW 82.26.010 as to which ((~~one thousand~~)) 1,000 units weigh more than three pounds.

(6) "Vapor product" has the same meaning as defined in RCW 70.345.010.

**Sec.**  RCW 70.155.090 and 2006 c 14 s 4 are each amended to read as follows:

((~~(1) Where there may be a question of a person's right to purchase or obtain tobacco products by reason of age, the~~)) A retailer or agent ((~~thereof,~~)) shall require the purchaser of a tobacco product or vapor product to present any one of the following officially issued identification that shows the purchaser's age and bears his or her signature and photograph: (a) Liquor control authority card of identification of a state or province of Canada; (b) driver's license, instruction permit, or identification card of a state or province of Canada; (c) "identicard" issued by the Washington state department of licensing under chapter 46.20 RCW; (d) United States military identification; (e) passport; (f) enrollment card, issued by the governing authority of a federally recognized Indian tribe located in Washington, that incorporates security features comparable to those implemented by the department of licensing for Washington drivers' licenses. At least ((~~ninety~~)) 90 days prior to implementation of an enrollment card under this subsection, the appropriate tribal authority shall give notice to the board. The board shall publish and communicate to licensees regarding the implementation of each new enrollment card; or (g) merchant marine identification card issued by the United States coast guard.

(2) It is a defense to a prosecution under RCW 26.28.080 that the person making a sale reasonably relied on any of the officially issued identification as defined in subsection (1) of this section. The liquor ((~~control~~)) and cannabis board shall waive the suspension or revocation of a license if the licensee clearly establishes that he or she acted in good faith to prevent violations and a violation occurred despite the licensee's exercise of due diligence.

**Sec.**  RCW 70.155.100 and 2023 c 398 s 4 are each amended to read as follows:

(1) The liquor and cannabis board may suspend or revoke a retailer's license issued under RCW 82.24.510(1)(b) or 82.26.150(1)(b) held by a business at any location, or may impose a monetary penalty as set forth in subsection (3) of this section, if the liquor and cannabis board finds that the licensee has violated RCW 26.28.080, 70.155.020, 70.155.030, 70.155.040, 70.155.050, 70.155.070, or 70.155.090.

(2) Any retailer's licenses issued under RCW 70.345.020 to a person whose license or licenses under chapter 82.24 or 82.26 RCW have been suspended or revoked for violating RCW 26.28.080 must also be suspended or revoked during the period of suspension or revocation under this section.

(3) The sanctions that the liquor and cannabis board may impose against a person licensed under RCW 82.24.530 or 82.26.170 based upon one or more findings under subsection (1) of this section may not exceed the following:

(a) For violations of RCW 70.155.020 or 21 C.F.R. Sec. 1140.14, and for violations of RCW 70.155.040 occurring on the licensed premises:

(i) A monetary penalty of $200 for the first violation within any ((~~three-year~~)) two-year period;

(ii) A monetary penalty of $600 for the second violation within any ((~~three-year~~)) two-year period;

(iii) A monetary penalty of $2,000 and suspension of the license for a period of six months for the third violation within any ((~~three-year~~)) two-year period;

(iv) A monetary penalty of $3,000 and suspension of the license for a period of 12 months for the fourth violation within any ((~~three-year~~)) two-year period;

(v) ((~~Revocation~~)) A monetary penalty of $5,000 and revocation of the license with no possibility of reinstatement for a period of five years for the fifth or more violation within any ((~~three-year~~)) two-year period;

(b) For violations of RCW 26.28.080:

(i) A monetary penalty of ((~~$1,000~~)) $1,500 for the first violation within any ((~~three-year~~)) two-year period;

(ii) A monetary penalty of ((~~$2,500~~)) $3,000 for the second violation within any ((~~three-year~~)) two-year period;

(iii) A monetary penalty of ((~~$5,000~~)) $6,000 and suspension of the license for a period of six months for the third violation within any ((~~three-year~~)) two-year period;

(iv) A monetary penalty of ((~~$10,000~~)) $12,000 and suspension of the license for a period of 12 months for the fourth violation within any ((~~three-year~~)) two-year period;

(v) ((~~Revocation~~)) A monetary penalty of $15,000 and revocation of the license with no possibility of reinstatement for a period of five years for the fifth or more violation within any ((~~three-year~~)) two-year period;

(c) If the board finds that a person licensed under chapter 82.24 or 82.26 RCW and RCW 70.345.020 has violated RCW 26.28.080, each subsequent violation of either of the person's licenses counts as an additional violation within that ((~~three-year~~)) two-year period;

(d) For violations of RCW 70.155.030, a monetary penalty in the amount of $100 for each day upon which such violation occurred;

(e) For violations of RCW 70.155.050, a monetary penalty in the amount of $600 for each violation;

(f) For violations of RCW 70.155.070, a monetary penalty in the amount of $2,000 for each violation.

(4) The liquor and cannabis board may impose a monetary penalty upon any person other than a licensed cigarette or tobacco product retailer if the liquor and cannabis board finds that the person has violated RCW 26.28.080, 70.155.020, 70.155.030, 70.155.040, 70.155.050, 70.155.070, or 70.155.090.

(5) The monetary penalty that the liquor and cannabis board may impose based upon one or more findings under subsection (4) of this section may not exceed the following:

(a) For violation of RCW 26.28.080 or 70.155.020, $100 for the first violation and $200 for each subsequent violation;

(b) For violations of RCW 70.155.030, $200 for each day upon which such violation occurred;

(c) For violations of RCW 70.155.040, $200 for each violation;

(d) For violations of RCW 70.155.050, $600 for each violation;

(e) For violations of RCW 70.155.070, $2,000 for each violation.

(6) The liquor and cannabis board may develop and offer a class for retail clerks and use this class in lieu of a monetary penalty for the clerk's first violation.

(7) The liquor and cannabis board may issue a cease and desist order to any person who is found by the liquor and cannabis board to have violated or intending to violate the provisions of this chapter, RCW 26.28.080, 82.24.500, or 82.26.190 requiring such person to cease specified conduct that is in violation. The issuance of a cease and desist order does not preclude the imposition of other sanctions authorized by this statute or any other provision of law.

(8) The liquor and cannabis board may seek injunctive relief to enforce the provisions of RCW 26.28.080, 82.24.500, 82.26.190 or this chapter. The liquor and cannabis board may initiate legal action to collect civil penalties imposed under this chapter if the same have not been paid within ((~~thirty~~)) 30 days after imposition of such penalties. In any action filed by the liquor and cannabis board under this chapter, the court may, in addition to any other relief, award the liquor and cannabis board reasonable attorneys' fees and costs.

(9) All proceedings under subsections (1) through (7) of this section shall be conducted in accordance with chapter 34.05 RCW.

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

**Sec.**  RCW 70.345.010 and 2022 c 16 s 135 are each amended to read as follows:

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

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

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

(3) "Child care facility" has the same meaning as provided in RCW 70A.320.020.

(4) "Closed system nicotine container" means a sealed, prefilled, and disposable container of nicotine in a solution or other form in which such container is inserted directly into an electronic cigarette, electronic nicotine delivery system, or other similar product, if the nicotine in the container is inaccessible through customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion or other contact by children.

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

(a) The purchaser submits the order for such sale by means of a telephonic or other method of voice transmission, the mails or any other delivery service, or the internet or other online service; or

(b) The vapor product is delivered by use of the mails or of a delivery service. The foregoing sales of vapor products constitute a delivery sale regardless of whether the seller is located within or without this state. "Delivery sale" does not include a sale of any vapor product not for personal consumption to a retailer.

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

(7) "Distributor" has the same meaning as in RCW 82.25.005.

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

(9) "Manufacturer" means a person who manufactures and sells vapor products.

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

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

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

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

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

(15)(a) "Sale" means any transfer, exchange, or barter, in any manner or by any means whatsoever, for a consideration, and includes and means all sales made by any person.

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

(16) "School" has the same meaning as provided in RCW 70A.320.020.

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

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

(a) "Vapor product" includes any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and any vapor cartridge or other container that may contain nicotine in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device.

(b) "Vapor product" does not include any product that meets the definition of cannabis, useable cannabis, cannabis concentrates, cannabis-infused products, cigarette, alternative nicotine products, or tobacco products.

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

(22) "Alternative nicotine product" has the same meaning as provided in RCW 82.26.010.

(23) "FDA" means the United States food and drug administration.

(24) "Timely filed premarket tobacco product application" means an application pursuant to 21 U.S.C. Sec. 387j for a vapor product containing nicotine derived from tobacco marketed in the United States as of August 8, 2016, that was submitted to the United States food and drug administration on or before September 9, 2020, and accepted for filing.

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

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

(b) A retailer may obtain vapor products only from a licensed distributor. A retailer that obtains vapor products from any person that is not licensed under this chapter, including directly from a manufacturer, must be licensed both as a retailer and a distributor under this chapter and is liable for the tax imposed under RCW 82.25.010 with respect to the vapor products acquired from the unlicensed person that are held for sale, handling, or distribution in this state.

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

(d) Products offered for sale in violation of this subsection are contraband and subject to seizure. The provisions of RCW 82.25.095 apply to seized products.

(2) No person engaged in or conducting business as a retailer, distributor, or delivery seller in this state may refuse to allow the enforcement officers of the board, on demand, to make full inspection of any place of business or vehicle where any of the vapor products regulated under this chapter are sold, stored, transported, or handled, or otherwise hinder or prevent such inspection. A person who violates this subsection is guilty of a gross misdemeanor.

(3) Any person licensed under this chapter as a distributor, any person licensed under this chapter as a retailer, and any person licensed under this chapter as a delivery seller may not operate in any other capacity unless the additional appropriate license is first secured, except as otherwise provided by law. A violation of this subsection is a misdemeanor.

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

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

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

(1) By October 1, 2025, and annually thereafter, every manufacturer of a vapor product that contains nicotine that is sold for retail sale in this state or to a consumer in this state, whether directly or through a distributor, wholesaler, retailer, delivery seller, or similar intermediary or intermediaries, shall execute and deliver to the board a certification, under penalty of perjury on a form and in a manner prescribed by the board, that the manufacturer is compliant with this chapter and that, for each vapor product sold for retail sale in this state or to a consumer in this state:

(a) The manufacturer has received a marketing granted order for the vapor product from the FDA pursuant to 21 U.S.C. Sec. 387j;

(b) The manufacturer submitted a timely filed premarket tobacco product application for the vapor product to the FDA pursuant to 21 U.S.C. Sec. 387j, and the application either remains under review by the FDA or has received a denial order that has been and remains stayed by the FDA or court order, rescinded by the FDA, or vacated by a court; or

(c) The manufacturer is not required to submit an additional marketing granted order or premarket tobacco product application for the vapor product because the vapor product merely reflects changes to the name, brand style, or packaging of a vapor product that is covered under (a) or (b) of this subsection.

(2) The certification form must separately list each brand name, product name, category (e.g., disposable vapor product, power unit, device, e-liquid cartridge, e-liquid pod), and flavor for each vapor product containing nicotine that is sold in this state.

(3) Each annual certification form must be accompanied by:

(a) A copy of (i) the marketing granted order issued by the FDA pursuant to 21 U.S.C. Sec. 387j, (ii) a copy of the acceptance letter issued by the FDA pursuant to 21 U.S.C. Sec. 387j for a timely filed premarket tobacco product application, or (iii) a document issued by the FDA or by a court confirming that the premarket tobacco product application has received a denial order that has been and remains stayed by the FDA or court order, rescinded by the FDA, or vacated by a court; and

(b) A payment of $1,000 for each vapor product containing nicotine the first time a manufacturer submits an annual certification form for that vapor product. A payment of $500 for each vapor product containing nicotine each subsequent time a manufacturer submits an annual certification form for that vapor product.

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

The information submitted by the manufacturer pursuant to section 7(3)(a) of this act is confidential and exempt from disclosure under the public records act, chapter 42.56 RCW. The manufacturer may redact certain confidential commercial or financial information provided under such section.

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

A manufacturer required to submit a certification form pursuant to section 7 of this act shall notify the board within 30 days of any material change to the certification form, including the issuance or denial of a marketing authorization or other order by the FDA pursuant to 21 U.S.C. Sec. 387j, or any other order or action by the FDA or any court that affects the ability of the vapor product containing nicotine to be introduced or delivered into interstate commerce for commercial distribution in the United States.

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

(1) Starting January 1, 2026, the board shall maintain and make publicly available on its official website a directory that lists all manufacturers and all vapor products containing nicotine, including brand names, product names, categories (e.g., disposable vapor product, e-liquid, e-liquid cartridge, e-liquid pod, power unit), and flavors, for which certification forms have been submitted and as approved by the board.

(2) The board shall update the directory at least monthly to ensure accuracy, and shall establish a process to provide licensed retailers, distributors, and other relevant parties notice of the initial publication of the directory and changes made to the directory in the prior month.

(3) No manufacturer or the manufacturer's vapor products containing nicotine may be included or retained in the directory if the board determines that any of the following apply:

(a) The manufacturer failed to provide a complete and accurate certification as required by section 7(1) of this act;

(b) The manufacturer submitted a certification that does not comply with the requirements of section 7 (2) and (3) of this act;

(c) The manufacturer failed to include with its certification the payment required by section 7(3)(b) of this act;

(d) The manufacturer sold vapor products containing nicotine in this state required to be certified under this act during a period when either the manufacturer or the vapor product had not been certified and listed on the directory; or

(e) The information provided by the manufacturer in its certification is determined by the board to contain false information or contain material misrepresentations or omissions.

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

(1) The board shall provide manufacturers notice and an opportunity to cure deficiencies before removing manufacturers or vapor products containing nicotine from the directory.

(2) The board may not remove the manufacturer or its vapor products containing nicotine from the directory until at least 30 days after the manufacturer has been given notice of an intended action setting forth the reasons therefor. Notice shall be sufficient and be deemed immediately received by a manufacturer if the notice is sent either electronically or by facsimile to an electronic mail address or facsimile number, as the case may be, provided by the manufacturer in its most recent certification filed under section 7 (2) and (3) of this act.

(3) The manufacturer has 15 days from the date of service of the notice of the board's intended action to cure the deficiencies or otherwise establish that the manufacturer or its vapor products containing nicotine should be included in the directory.

(4) Retailers have 30 days following the removal of a manufacturer or its vapor products containing nicotine from the directory to sell such vapor products that were in the retailer's inventory as of the date of removal.

(5) After 30 days following removal from the directory, the vapor product containing nicotine of a manufacturer identified in the notice of removal and intended for retail sale in this state or to a consumer in this state are subject to seizure from distributors and retailers, forfeiture from distributors and retailers, and destruction or disposal, and may not be purchased or sold for retail sale in this state or to a consumer in this state. The person from whom the vapor products are confiscated bears the cost of such seizure, forfeiture, and destruction or disposal. The provisions of RCW 82.25.095 shall apply to seized vapor products.

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

(1) Except as provided in subsections (2) and (3) of this section, beginning January 1, 2026, or on the date that the board first makes the directory available for public inspection on its official website, whichever is later, vapor products containing nicotine not included in the directory may not be sold for retail sale in this state, either directly or through an importer, distributor, wholesaler, retailer, or similar intermediary or intermediaries.

(2) Each retailer has 60 days from the date that the board first makes the directory available for inspection on its public website to sell vapor products containing nicotine that were in its inventory and not included in the directory or remove those vapor products from inventory.

(3) Each distributor or wholesaler has 60 days from the date that the board first makes the directory available for inspection on its public website to remove those vapor products containing nicotine intended for retail sale in the state and not included in the directory from its inventory.

(4) After 60 days following publication of the directory, vapor products containing nicotine not listed in the directory and intended for retail sale in this state or to a consumer in this state are subject to seizure, forfeiture, and destruction or disposal, and may not be purchased or sold for retail sale in this state or to a consumer in this state except as provided in subsections (2) and (3) of this section. The person from whom the vapor products are confiscated bears the cost of such seizure, forfeiture, and destruction or disposal.

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

(1) The following penalties apply to violations of Sections 7 through 17 of this act:

(a) In addition to or in lieu of any other civil or criminal remedy provided by law, a retailer, distributor, wholesaler, or importer who sells or offers for sale a vapor product containing nicotine for retail sale in this state or to a consumer in this state that is not included in the directory is subject to a civil penalty of $500 for each individual vapor product containing nicotine offered for sale in violation of sections 7 through 17 of this act.

(b) For a second violation of this type within a 12-month period, the civil penalty must be at least $750 but not more than $1,000 for each vapor product containing nicotine and the licensee's license shall be suspended for 30 days.

(c) For a third violation of this type within a 12-month period, the civil penalty must be at least $1,000 but not more than $1,500 for each vapor product containing nicotine and the licensee's license shall be revoked.

(2) A manufacturer whose vapor products containing nicotine are not listed in the directory and who causes the vapor products containing nicotine that are not listed to be sold for retail sale in this state, whether directly or through an importer, distributor, wholesaler, retailer, or similar intermediary or intermediaries, is subject to a civil penalty of $10,000 for each individual vapor product offered for sale in violation of this section. In addition, any manufacturer that falsely represents any information required by a certification form shall be guilty of a class C misdemeanor for each false representation.

(3) In an action to enforce this act, the state is entitled to recover costs, including the costs of investigation, expert witness fees, and reasonable attorneys' fees and costs.

(4) Vapor products containing nicotine offered for sale in violation of sections 7 through 17 of this act are considered contraband and may be seized and disposed of or destroyed by an enforcement officer of the board. The person from whom the vapor products are confiscated bears the cost of such seizure and disposal or destruction, not the board.

(5) The board, acting in the name of the state, may seek recovery of the penalty in a civil action in superior court.

(6) The board may seek an injunction in superior court to restrain a threatened or actual violation of this section and to compel compliance with this section.

(7) A second or subsequent violation of sections 7 through 17 of this act is not reasonable in relation to the development and preservation of business and is an unfair and deceptive act or practice and an unfair method of competition in the conduct of trade or commerce in violation of RCW 19.86.020. Standing to bring an action to enforce RCW 19.86.020 for violation of this section lies solely with the attorney general. Remedies provided by chapter 19.86 RCW are cumulative and not exclusive.

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

(1) Each retailer, distributor, and wholesaler that sells or distributes vapor products containing nicotine in this state must be subject to at least two unannounced compliance checks annually for purposes of enforcing this section. Unannounced follow-up compliance checks of all noncompliant retailers, distributors, and wholesalers must be conducted within 30 days after any violation of sections 7 through 17 of this act.

(2) The board must publish the results of all compliance checks at least annually and must make the results available to the public on request.

(3) The requirements of this section do not apply to an Indian tribal organization, Indian retailer, or Indian distributor, as those terms are defined in RCW 82.25.105.

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

(1)(a) Any nonresident or foreign manufacturer that has not registered to do business in the state as a foreign corporation or business entity must, as a condition precedent to having its vapor products containing nicotine included or retained in the directory, appoint and continually engage without interruption the services of an agent in this state to act as agent for the service of process on whom all process, and any action or proceeding against it concerning or arising out of the enforcement of sections 7 through 17 of this act, may be served in any manner authorized by law. The service must constitute legal and valid service of process on the manufacturer. The manufacturer must provide the name, address, phone number, and proof of the appointment and availability of the agent to the satisfaction of the board.

(b) The manufacturer must provide notice to the board 30 days prior to termination of the authority of an agent and must further provide proof to the satisfaction of the board of the appointment of a new agent no fewer than five days prior to the termination of an existing agent appointment. In the event an agent terminates an agency appointment, the manufacturer must notify the board of the termination within five days and include proof to the satisfaction of the board of the appointment of a new agent.

(c) Any manufacturer whose vapor products containing nicotine are sold in this state, who has not appointed and engaged an agent as required in this section, must be deemed to have appointed the secretary of state as the agent and may be proceeded against in courts of this state by service of process upon the secretary of state. However, the appointment of the secretary of state as agent must not satisfy the condition precedent for having the vapor products containing nicotine of the manufacturer included or retained in the directory.

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

(1) Any nonresident or foreign manufacturer that has not registered to do business in the state as a foreign corporation or business entity shall, as a condition precedent to having its name or its vapor products containing nicotine listed and retained in the directory, submit to the board a surety bond or other cash security payable to the state of Washington in the amount of $25,000. The bond must be posted by a corporate surety located within the United States.

(2) The bond must be conditioned on the performance by the manufacturer of all requirements and obligations imposed by this section. A surety on a manufacturer's bond is liable up to the amount of the bond, and the state may execute on such surety bond, for the payment of fines and penalties imposed on the manufacturer under section 13 of this act and for the costs of seizure and destruction of products sold in violation of sections 7 through 17 of this act. If the state executes on the surety bond, it may require the manufacturer to provide an additional bond as a condition precedent for retaining the manufacturer or its vapor products containing nicotine in the directory.

(3) A surety on a bond furnished by a manufacturer as provided in this section must be released and discharged from liability to the state accruing on the bond after expiration of 60 days from the date upon which such surety lodges with the board a written request to be released and discharged. This provision does not relieve, release, or discharge the surety from liability already accrued or which will accrue before the expiration of the 60-day period. The board shall, upon receiving any such request, notify the manufacturer who furnished the bond. Unless the manufacturer, on or before the expiration of the 60-day period, files with the board a new bond, with the surety approved by and acceptable to the board, the board shall remove the manufacturer and its vapor products containing nicotine from the directory.

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

(1) The board may adopt by rule requirements necessary to implement this chapter.

(2) By July 31, 2026, and annually thereafter, the board must provide a report to the legislature regarding the status of the directory, manufacturers and vapor products containing nicotine included in the directory, revenue and expenditures related to administration of this section, and enforcement activities undertaken pursuant to this section.

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

The vapor product enforcement account is created in the custody of the state treasurer. All receipts from fees and penalties collected pursuant to sections 7 through 17 of this act must be deposited into the account. Expenditures from the account may be used only for administration and enforcement of this chapter. Only the director of the liquor and cannabis board or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

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

(1) It is unlawful for any person to sell, give, deliver, or furnish to a person in this state a product that contains a nicotine analogue.

(2) Violations of this section are subject to the following penalties:

(a) A monetary penalty of $1,500 for the first violation within any 12-month period;

(b) A monetary penalty of $3,000 for the second violation within any 12-month period;

(c) A monetary penalty of $6,000 and suspension of the license for a period of six months for the third violation within any 12-month period;

(d) A monetary penalty of $12,000 and suspension of the license for a period of 12 months for the fourth violation within any 12-month period;

(e) A monetary penalty of $15,000 and revocation of the license with no possibility of reinstatement for a period of five years for the fifth or more violation within any three-year period.

(3) For the purposes of this section, "nicotine analogue" means a substance:

(a)(i) The chemical structure of which is substantially similar to the chemical structure of nicotine; or

(ii) Which has, purports to have, or is represented to have, an effect on the central nervous system that is similar to or greater than the effect on the central nervous system of nicotine.

(b) Factors relevant to determining whether a substance is a nicotine analogue include, but are not limited to, the marketing, advertising and labeling of the substance, and whether the substance has been manufactured, formulated, sold, distributed, or marketed with the intent to avoid the provisions of this act and other applicable provisions of law.

**Sec.**  RCW 82.25.030 and 2019 c 445 s 106 are each amended to read as follows:

(1) Every distributor must keep at each place of business complete and accurate records for that place of business, including itemized invoices, of vapor products held, purchased, manufactured, brought in or caused to be brought in from without the state, or shipped or transported to retailers in this state, and of all sales of vapor products made.

(2) These records must show the names and addresses of purchasers, the inventory of all vapor products including quantity of vapor products by brand, and other pertinent papers and documents relating to the purchase, sale, or disposition of vapor products. All invoices and other records required by this section to be kept must be preserved for a period of five years from the date of the invoices or other documents or the date of the entries appearing in the records.

(3) At any time during usual business hours the department, board, or its duly authorized agents or employees may enter any place of business of a distributor, without a search warrant, and inspect the premises, the records required to be kept under this chapter, and the vapor products contained therein, to determine whether or not all the provisions of this chapter are being fully complied with. If the department, board, or any of its agents or employees are denied free access or are hindered or interfered with in making such examination, the registration certificate issued under RCW 82.32.030 of the distributor at such premises are subject to revocation by the department, and any licenses issued under chapter 70.345, 82.26, or 82.24 RCW are subject to suspension or revocation by the board.

(4) The department may share information obtained pursuant to this section that is deemed relevant to the potential violation of the laws of other jurisdictions with the duly appointed agents of those jurisdictions.

**Sec.**  RCW 82.25.095 and 2019 c 445 s 119 are each amended to read as follows:

(1) In all cases of seizure of any vapor products made subject to forfeiture under this chapter, the department or board must proceed as provided in RCW 82.24.135.

(2) When vapor products are forfeited under this chapter, the department or board may:

(a) Retain the property for official use or upon application by any law enforcement agency of this state, another state, or the District of Columbia, or of the United States for the exclusive use of enforcing this chapter or the laws of any other state or the District of Columbia or of the United States; ((~~or~~))

(b) Destroy the vapor products; or

(c) Sell the vapor products at public auction to the highest bidder after due advertisement. Before delivering any of the goods to the successful bidder, the department or board must require the purchaser to pay the proper amount of any tax due. The proceeds of the sale must be first applied to the payment of all proper expenses of any investigation leading to the seizure and of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs. The balance of the proceeds and all money must be deposited in the general fund of the state. Proper expenses of investigation include costs incurred by any law enforcement agency or any federal, state, or local agency.

(3) The department or the board may return any property seized under the provisions of this chapter when it is shown that there was no intention to violate the provisions of this chapter. When any property is returned under this section, the department or the board may return the property to the parties from whom they were seized if and when such parties have paid the proper amount of tax due under this chapter.

**Sec.**  RCW 82.26.010 and 2020 c 139 s 31 are each amended to read as follows:

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

(1) "Actual price" means the total amount of consideration for which tobacco products are sold, valued in money, whether received in money or otherwise, including any charges by the seller necessary to complete the sale such as charges for delivery, freight, transportation, or handling.

(2) "Affiliated" means related in any way by virtue of any form or amount of common ownership, control, operation, or management.

(3)(a) "Alternative nicotine product" means any noncombustible product containing nicotine derived from tobacco that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means.

(b) The term does not include a tobacco product, a vapor product, or a product regulated as a drug or device by the United States food and drug administration under chapter V of the federal food, drug, and cosmetic act.

(4) "Board" means the liquor and cannabis board.

((~~(4)~~)) (5) "Business" means any trade, occupation, activity, or enterprise engaged in for the purpose of selling or distributing tobacco products in this state.

((~~(5)~~)) (6) "Cigar" means a roll for smoking that is of any size or shape and that is made wholly or in part of tobacco, irrespective of whether the tobacco is pure or flavored, adulterated or mixed with any other ingredient, if the roll has a wrapper made wholly or in greater part of tobacco. "Cigar" does not include a cigarette.

((~~(6)~~)) (7) "Cigarette" has the same meaning as in RCW 82.24.010.

((~~(7)~~)) (8) "Department" means the department of revenue.

((~~(8)~~)) (9) "Distributor" means (a) any person engaged in the business of selling tobacco products in this state who brings, or causes to be brought, into this state from without the state any tobacco products for sale, (b) any person who makes, manufactures, fabricates, or stores tobacco products in this state for sale in this state, (c) any person engaged in the business of selling tobacco products without this state who ships or transports tobacco products to retailers in this state, to be sold by those retailers, (d) any person engaged in the business of selling tobacco products in this state who handles for sale any tobacco products that are within this state but upon which tax has not been imposed.

((~~(9)~~)) (10) "Indian country" means the same as defined in chapter 82.24 RCW.

((~~(10)~~)) (11) "Little cigar" means a cigar that has a cellulose acetate integrated filter.

((~~(11)~~)) (12) "Manufacturer" means a person who manufactures and sells tobacco products.

((~~(12)~~)) (13) "Manufacturer's representative" means a person hired by a manufacturer to sell or distribute the manufacturer's tobacco products, and includes employees and independent contractors.

((~~(13)~~)) (14) "Moist snuff" means tobacco that is finely cut, ground, or powdered; is not for smoking; and is intended to be placed in the oral, but not the nasal, cavity.

((~~(14)~~)) (15) "Person" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, the state and its departments and institutions, political subdivision of the state of Washington, corporation, limited liability company, association, society, any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise. The term excludes any person immune from state taxation, including the United States or its instrumentalities, and federally recognized Indian tribes and enrolled tribal members, conducting business within Indian country.

((~~(15)~~)) (16) "Place of business" means any place where tobacco products are sold or where tobacco products are manufactured, stored, or kept for the purpose of sale, including any vessel, vehicle, airplane, train, or vending machine.

((~~(16)~~)) (17) "Retail outlet" means each place of business from which tobacco products are sold to consumers.

((~~(17)~~)) (18) "Retailer" means any person engaged in the business of selling tobacco products to ultimate consumers.

((~~(18)~~)) (19)(a) "Sale" means any transfer, exchange, or barter, in any manner or by any means whatsoever, for a consideration, and includes and means all sales made by any person.

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

((~~(19)~~)) (20)(a) "Taxable sales price" means:

(i) In the case of a taxpayer that is not affiliated with the manufacturer, distributor, or other person from whom the taxpayer purchased tobacco products, the actual price for which the taxpayer purchased the tobacco products;

(ii) In the case of a taxpayer that purchases tobacco products from an affiliated manufacturer, affiliated distributor, or other affiliated person, and that sells those tobacco products to unaffiliated distributors, unaffiliated retailers, or ultimate consumers, the actual price for which that taxpayer sells those tobacco products to unaffiliated distributors, unaffiliated retailers, or ultimate consumers;

(iii) In the case of a taxpayer that sells tobacco products only to affiliated distributors or affiliated retailers, the price, determined as nearly as possible according to the actual price, that other distributors sell similar tobacco products of like quality and character to unaffiliated distributors, unaffiliated retailers, or ultimate consumers;

(iv) In the case of a taxpayer that is a manufacturer selling tobacco products directly to ultimate consumers, the actual price for which the taxpayer sells those tobacco products to ultimate consumers;

(v) In the case of a taxpayer that has acquired tobacco products under a sale as defined in subsection ((~~(18)~~)) (19)(b) of this section, the price, determined as nearly as possible according to the actual price, that the taxpayer or other distributors sell the same tobacco products or similar tobacco products of like quality and character to unaffiliated distributors, unaffiliated retailers, or ultimate consumers; or

(vi) In any case where (a)(i) through (v) of this subsection do not apply, the price, determined as nearly as possible according to the actual price, that the taxpayer or other distributors sell the same tobacco products or similar tobacco products of like quality and character to unaffiliated distributors, unaffiliated retailers, or ultimate consumers.

(b) For purposes of (a)(i) and (ii) of this subsection only, "person" includes both persons as defined in subsection ((~~(14)~~)) (15) of this section and any person immune from state taxation, including the United States or its instrumentalities, and federally recognized Indian tribes and enrolled tribal members, conducting business within Indian country.

(c) The department may adopt rules regarding the determination of taxable sales price under this subsection.

((~~(20)~~)) (21) "Taxpayer" means a person liable for the tax imposed by this chapter.

((~~(21)~~)) (22) "Tobacco products" means alternative nicotine products, cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking, and any other product, regardless of form, that contains tobacco and is intended for human consumption or placement in the oral or nasal cavity or absorption into the human body by any other means, but does not include cigarettes as defined in RCW 82.24.010.

((~~(22)~~)) (23) "Unaffiliated distributor" means a distributor that is not affiliated with the manufacturer, distributor, or other person from whom the distributor has purchased tobacco products.

((~~(23)~~)) (24) "Unaffiliated retailer" means a retailer that is not affiliated with the manufacturer, distributor, or other person from whom the retailer has purchased tobacco products.

**Sec.**  RCW 82.26.020 and 2019 c 445 s 404 are each amended to read as follows:

(1) There is levied and collected a tax upon the sale, handling, or distribution of all tobacco products except alternative nicotine products in this state at the following rate:

(a) For cigars except little cigars, ((~~ninety-five~~)) 95 percent of the taxable sales price of cigars, not to exceed ((~~sixty-five~~)) 65 cents per cigar;

(b) For all tobacco products except those covered under separate provisions of this subsection and alternative nicotine products, ((~~ninety-five~~)) 95 percent of the taxable sales price. The tax imposed on a product under this subsection must be reduced by ((~~fifty~~)) 50 percent if that same product is issued a modified risk tobacco product order by the secretary of the United States department of health and human services pursuant to Title 21 U.S.C. Sec. 387k(g)(1), or by ((~~twenty-five~~)) 25 percent if that same product is issued a modified risk tobacco product order by the secretary of the United States department of health and human services pursuant to Title 21 U.S.C. Sec. 387k(g)(2). The tax reduction applies during the period the modified risk tobacco product order is in effect;

(c) For moist snuff, as established in this subsection (1)(c) and computed on the net weight listed by the manufacturer:

(i) On each single unit consumer-sized can or package whose net weight is one and two-tenths ounces or less, a rate per single unit that is equal to the greater of 2.526 dollars or ((~~eighty-three and one-half~~)) 83.5 percent of the cigarette tax under chapter 82.24 RCW multiplied by ((~~twenty~~)) 20; or

(ii) On each single unit consumer-sized can or package whose net weight is more than one and two-tenths ounces, a proportionate tax at the rate established in (c)(i) of this subsection (1) on each ounce or fractional part of an ounce; and

(d) For little cigars, an amount per cigar equal to the cigarette tax under chapter 82.24 RCW.

(2) Taxes under this section must be imposed at the time the distributor (a) brings, or causes to be brought, into this state from without the state tobacco products for sale, (b) makes, manufactures, fabricates, or stores tobacco products in this state for sale in this state, (c) ships or transports tobacco products to retailers in this state, to be sold by those retailers, or (d) handles for sale any tobacco products that are within this state but upon which tax has not been imposed.

(3) The moneys collected under this section must be deposited into the state general fund.

**Sec.**  RCW 82.26.060 and 2019 c 445 s 205 are each amended to read as follows:

(1) Every distributor must keep at each place of business complete and accurate records for that place of business, including itemized invoices, of tobacco products held, purchased, manufactured, brought in or caused to be brought in from without the state, or shipped or transported to retailers in this state, and of all sales of tobacco products made.

(2) These records must show the names and addresses of purchasers, the inventory of all tobacco products including quantity of tobacco products by brand, and other pertinent papers and documents relating to the purchase, sale, or disposition of tobacco products. All invoices and other records required by this section to be kept must be preserved for a period of five years from the date of the invoices or other documents or the date of the entries appearing in the records.

(3) At any time during usual business hours the department, board, or its duly authorized agents or employees, may enter any place of business of a distributor, without a search warrant, and inspect the premises, the records required to be kept under this chapter, and the tobacco products contained therein, to determine whether or not all the provisions of this chapter are being fully complied with. If the department, board, or any of its agents or employees, are denied free access or are hindered or interfered with in making such examination, the registration certificate issued under RCW 82.32.030 of the distributor at such premises is subject to revocation, and any licenses issued under this chapter or chapter 82.24 or 70.345 RCW are subject to suspension or revocation, by the department or board.

(4) The department may share information obtained pursuant to this section that is deemed relevant to the potential violation of the laws of other jurisdictions with the duly appointed agents of those jurisdictions.

**Sec.**  RCW 82.26.190 and 2020 c 139 s 34 are each amended to read as follows:

(1)(a) No person may engage in or conduct business as a distributor or retailer in this state after September 30, 2005, without a valid license issued under this chapter. Any person who sells tobacco products to persons other than ultimate consumers or who meets the definition of distributor under RCW 82.26.010((~~(8)~~)) (9)(d) must obtain a distributor's license under this chapter. Any person who sells tobacco products to ultimate consumers must obtain a retailer's license under this chapter.

(b) A violation of this subsection (1) is punishable as a class C felony according to chapter 9A.20 RCW. Products offered for sale in violation of this subsection are contraband and subject to seizure. The provisions of RCW 82.26.240 shall apply to seized products.

(2)(a) No person engaged in or conducting business as a distributor or retailer in this state may:

(i) Refuse to allow the department or the board, on demand, to make a full inspection of any place of business where any of the tobacco products taxed under this chapter are sold, stored, or handled, or otherwise hinder or prevent such inspection;

(ii) Make, use, or present or exhibit to the department or the board any invoice for any of the tobacco products taxed under this chapter that bears an untrue date or falsely states the nature or quantity of the goods invoiced; or

(iii) Fail to produce on demand of the department or the board all invoices of all the tobacco products taxed under this chapter within five years prior to such demand unless the person can show by satisfactory proof that the nonproduction of the invoices was due to causes beyond the person's control.

(b) No person, other than a licensed distributor or retailer, may transport tobacco products for sale in this state for which the taxes imposed under this chapter have not been paid unless:

(i) Notice of the transportation has been given as required under RCW 82.26.140;

(ii) The person transporting the tobacco products actually possesses invoices or delivery tickets showing the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity and brands of tobacco products being transported; and

(iii) The tobacco products are consigned to or purchased by a person in this state who is licensed under this chapter.

(c) A violation of this subsection (2) is a gross misdemeanor.

(3) Any person licensed under this chapter as a distributor, and any person licensed under this chapter as a retailer, may not operate in any other capacity unless the additional appropriate license is first secured. A violation of this subsection (3) is a misdemeanor.

(4) The penalties provided in this section are in addition to any other penalties provided by law for violating the provisions of this chapter or the rules adopted under this chapter.

**Sec.**  RCW 82.26.200 and 2020 c 139 s 35 are each amended to read as follows:

(1) A retailer may obtain tobacco products only from a licensed distributor. A retailer that obtains tobacco products from ((~~an unlicensed distributor or~~)) any ((~~other~~)) person that is not licensed under this chapter, including directly from a manufacturer, must be licensed both as a retailer and a distributor under this chapter and is liable for the tax imposed under RCW 82.26.020 with respect to the tobacco products acquired from the unlicensed person that are held for sale, handling, or distribution in this state. For the purposes of this subsection, "person" includes both persons defined in RCW 82.26.010((~~(14)~~)) (15) and any person immune from state taxation, such as the United States or its instrumentalities, and federally recognized Indian tribes and enrolled tribal members, conducting business within Indian country.

(2) Every distributor licensed under this chapter must sell tobacco products to retailers located in Washington only if the retailer has a current retailer's license under this chapter.

**Sec.**  RCW 82.26.240 and 2005 c 180 s 21 are each amended to read as follows:

(1) In all cases of seizure of any tobacco products made subject to forfeiture under this chapter, the department or board shall proceed as provided in RCW 82.24.135.

(2) When tobacco products are forfeited under this chapter, the department or board may:

(a) Retain the property for official use or upon application by any law enforcement agency of this state, another state, or the District of Columbia, or of the United States for the exclusive use of enforcing this chapter or the laws of any other state or the District of Columbia or of the United States; ((~~or~~))

(b) Destroy the tobacco products; or

(c) Sell the tobacco products at public auction to the highest bidder after due advertisement. Before delivering any of the goods to the successful bidder, the department or board shall require the purchaser to pay the proper amount of any tax due. The proceeds of the sale shall be first applied to the payment of all proper expenses of any investigation leading to the seizure and of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs. The balance of the proceeds and all money shall be deposited in the general fund of the state. Proper expenses of investigation include costs incurred by any law enforcement agency or any federal, state, or local agency.

(3) The department or the board may return any property seized under the provisions of this chapter when it is shown that there was no intention to violate the provisions of this chapter. When any property is returned under this section, the department or the board may return the property to the parties from whom they were seized if and when such parties have paid the proper amount of tax due under this chapter.

**--- END ---**