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**SUBSTITUTE SENATE BILL 5477**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Senate Health Care (originally sponsored by Senators Dammeier, Becker, Warnick, Kohl-Welles, and Darneille)

AN ACT Relating to requiring substances intended for use in a vapor product to satisfy child-resistant effectiveness standards, adopting warning standards, and prohibiting the use of vapor products in schools; amending RCW 70.155.010, 26.28.080, 28A.210.310, and 70.155.020; adding new sections to chapter 70.155 RCW; creating a new section; and prescribing penalties.

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

NEW SECTION. **Sec.**  (1) The legislature finds it necessary to protect public health, safety, and welfare by requiring vapor products sold in Washington to employ child-resistant technologies and clear labeling in the packaging of their products for the purpose of preventing nicotine poisonings. Children are particularly vulnerable. When ingested or absorbed through the skin, even small amounts of liquid nicotine may be toxic or even fatal to children. In Washington, poison center calls related to e-cigarettes have increased precipitously over the last several years. Of the calls involving children, the vast majority were one to three years old.

(2) The legislature also finds that teenagers are using vapor products at an increasing rate, including while at school. Therefore it is necessary to protect children from exposure to vapor products in the public schools of this state, and to provide adequate warning that vapor products should not be used by minors.

**Sec.**  RCW 70.155.010 and 2009 c 278 s 1 are each amended to read as follows:

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

(1) "At retail" means any engagement in the business of selling tobacco products or vapor products to ultimate consumers.

(2) "Board" means the Washington state liquor control board.

((~~(2)~~)) (3) "Internet" means any computer network, telephonic network, or other electronic network.

((~~(3)~~)) (4) "Manufacturer" means any person, including, but not limited to, a repacker or relabeler, who manufactures, fabricates, assembles, processes, or labels a vapor product or who imports a finished vapor product for sale or distribution into the United States. "Manufacturer" includes any retail establishment that mixes, or permits customers to mix, flavors or solutions.

(5) "Minor" refers to an individual who is less than eighteen years old.

((~~(4)~~)) (6) "Sale" means any transfer, exchange, or barter, in any manner or by any means, for consideration, and includes all sales made by any person. "Sale" includes a gift by a person engaged in the business of selling tobacco products or vapor products for advertising, promoting, or as a means of evading the provisions of this chapter.

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

((~~(5)~~)) (8) "Sampling" means the distribution of samples to members of the public.

((~~(6)~~)) (9) "Tobacco product" means 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((~~(1)~~)) (21), 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 units weigh more than three pounds.

(10) "Vapor product" means any: (a) Device that employs a battery or other mechanism to heat a solution or substance to produce a vapor or aerosol intended for inhalation; (b) cartridge or container of a solution or substance intended to be used with or in such a device or to refill such a device; or (c) solution or substance intended for use in such a device, including concentrated nicotine. "Vapor product" includes any electronic cigarettes, electronic nicotine delivery systems, electronic cigars, electronic cigarillos, electronic pipes, vape pens, or similar products or devices. "Vapor product" does not include any substance, device, or combination product approved for sale by the United States food and drug administration that is marketed and sold for such approved purpose.

NEW SECTION. **Sec.**  A new section is added to chapter 70.155 RCW to read as follows:

(1) Unless preempted by federal law, any substance intended for use in a vapor product that is sold at retail in this state must be packaged in child resistant packaging in accordance with 16 C.F.R. Part 1700, the poison prevention packaging act, as it existed on the effective date of this section, or such subsequent date as may be provided by the board by rule, consistent with the purposes of this section.

(2) A substance contained in a cartridge sold, marketed, or intended for use in a vapor product that is prefilled and sealed by the manufacturer, and not intended to be opened by the consumer, is exempt from subsection (1) of this section.

(3) A manufacturer that knowingly sells or distributes a substance intended for use in a vapor product that does not satisfy the requirements of this section is guilty of a gross misdemeanor.

(4) The provisions of this section are null and void and of no force and effect, upon the effective date of the final regulations issued by the United States food and drug administration or from any other federal agency, where such regulations mandate child-resistant effectiveness standards for liquid nicotine containers.

NEW SECTION. **Sec.**  A new section is added to chapter 70.155 RCW to read as follows:

(1) A manufacturer that sells, offers for sale, or distributes a vapor product shall label the vapor product with a: (a) Warning regarding the harmful effects of nicotine; and (b) warning to keep away from children.

(2) A manufacturer that advertises a vapor product shall include in any advertisement a: (a) Warning regarding the harmful effects of nicotine; and (b) warning to keep away from children.

NEW SECTION. **Sec.**  A new section is added to chapter 70.155 RCW to read as follows:

All vapor products at retail must be kept behind a counter where the public is not permitted or be in a locked display case so that a customer wanting access must ask an employee of the merchant for assistance.

**Sec.**  RCW 26.28.080 and 2013 c 47 s 1 are each amended to read as follows:

(1) Every person who sells or gives, or permits to be sold or given, to any person under the age of eighteen years any cigar, cigarette, cigarette paper or wrapper, tobacco in any form, or a vapor product is guilty of a gross misdemeanor.

(2) It shall be no 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" means ((~~a noncombustible tobacco-derived product containing nicotine that employs a mechanical heating element, battery, or circuit, regardless of shape or size, that can be used to heat a liquid nicotine solution contained in cartridges. Vapor product does not include any product that is regulated by the United States food and drug administration under chapter V of the federal food, drug, and cosmetic act~~)) any: (a) Device that employs a battery or other mechanism to heat a solution or substance to produce a vapor or aerosol intended for inhalation; (b) cartridge or container of a solution or substance intended to be used with or in such a device or to refill such a device; or (c) solution or substance intended for use in such a device, including concentrated nicotine. "Vapor product" includes any electronic cigarettes, electronic nicotine delivery systems, electronic cigars, electronic cigarillos, electronic pipes, vape pens, or similar products or devices. "Vapor product" does not include any substance, device, or combination product approved for sale by the United States food and drug administration that is marketed and sold for such approved purpose.

**Sec.**  RCW 28A.210.310 and 1997 c 9 s 1 are each amended to read as follows:

(1) To protect children in the public schools of this state from exposure to the addictive substance of nicotine, each school district board of directors shall have a written policy mandating a prohibition on the use of all tobacco products and vapor products on public school property.

(2) The policy in subsection (1) of this section ((~~shall~~)) must include, but not be limited to, a requirement that students and school personnel be notified of the prohibition, the posting of signs prohibiting the use of tobacco products and vapor products, sanctions for students and school personnel who violate the policy, and a requirement that school district personnel enforce the prohibition. Enforcement policies adopted in the school board policy ((~~shall be~~)) are in addition to the enforcement provisions in RCW 70.160.070.

(3) For the purposes of this section, "vapor product" means any: (a) Device that employs a battery or other mechanism to heat a solution or substance to produce a vapor or aerosol intended for inhalation; (b) cartridge or container of a solution or substance intended to be used with or in such a device or to refill such a device; or (c) solution or substance intended for use in such a device, including concentrated nicotine. "Vapor product" includes any electronic cigarettes, electronic nicotine delivery systems, electronic cigars, electronic cigarillos, electronic pipes, vape pens, or similar products or devices. "Vapor product" does not include any substance, device, or combination product approved for sale by the United States food and drug administration that is marketed and sold for such approved purpose.

**Sec.**  RCW 70.155.020 and 1993 c 507 s 3 are each amended to read as follows:

A person who holds a license issued under RCW 82.24.520 or 82.24.530, or who sells vapor products at retail shall:

(1) Display the license or a copy in a prominent location at the outlet for which the license is issued; and

(2)(a) Display a sign concerning the prohibition of tobacco product and vapor product sales to minors.

(b) Such sign ((~~shall~~)) must:

((~~(a)~~)) (i) Be posted so that it is clearly visible to anyone purchasing tobacco products or vapor products from the licensee;

((~~(b)~~)) (ii) Be designed and produced by the department of health to read: "THE SALE OF TOBACCO PRODUCTS AND VAPOR PRODUCTS TO PERSONS UNDER AGE 18 IS STRICTLY PROHIBITED BY STATE LAW. IF YOU ARE UNDER 18, YOU COULD BE PENALIZED FOR PURCHASING A TOBACCO PRODUCT OR VAPOR PRODUCT; PHOTO ID REQUIRED"; and

((~~(c)~~)) (iii) Be provided free of charge by the liquor control board.

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