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**HOUSE BILL 1932**

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**State of Washington 66th Legislature 2019 Regular Session**

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

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

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

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

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

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

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

(d) The harmful substances in vapor products include the batteries that power vapor product devices which pose risks to public health and the environment if these products and their components are not disposed of in a responsible manner.

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

NEW SECTION. **Sec.**  DEFINITIONS. 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) "Constituent parts" means a vapor product casing, batteries, electronic or mechanical components, liquid solutions or solid substances capable of being vaporized or aerosolized, and any other components of a vapor product.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) In order for a stewardship organization to satisfy the obligations of a producer under subsection (1) of this section, a stewardship organization must begin implementing its plan within three months after receiving plan approval from the department consistent with section 4 of this act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Solutions and substances containing nicotine, marijuana products intended for vaporization or aerosolization, and other active vapor product ingredients capable of being dispensed by the vapor product must be managed and disposed of as hazardous waste consistent with the requirements of chapter 70.105 RCW or with the requirements of chapter 70.95 RCW, as appropriate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NEW SECTION. **Sec.**  NATIONAL PROGRAM. In lieu of preparing a stewardship plan under this chapter, a producer may participate in a national program for the convenient, safe, and environmentally sound takeback and recycling of vapor products and their components and materials, if the national program is substantially equivalent to the intent of the state program. The department may determine substantial equivalence if it determines that the national program adequately addresses and fulfills each of the elements of a stewardship plan outlined in section 4 of this act and includes an enforcement mechanism reasonably calculated to ensure a producer's compliance with the national program. Upon issuing a determination of substantial equivalence, the department must notify affected stakeholders including the producer. If the national program is discontinued or the department determines the national program is no longer substantially equivalent to the state program in Washington, the department must notify the producer and the producer must provide a stewardship plan as described in section 4 of this act to the department for approval within thirty days of notification.

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

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

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

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

(3) By November 1, 2021, and each November 1st thereafter, the board must set an administrative fee, applicable during the following calendar year, to be paid in addition to the fees in subsections (1) and (2) of this section and, for marijuana retailers licensed by the board under chapter 69.50 RCW that offer or sell any marijuana product intended for vaporization or aerosolization, in addition to fees established under chapter 69.50 RCW for marijuana retailers. The amount of the administrative fee set by the board must be sufficient to cover the anticipated direct and indirect costs to the board and the department of ecology in administering and enforcing the requirements of chapter 70.--- RCW (the new chapter created in section 22 of this act). The board must set the amount of the fee by dividing the total state agency administrative costs by each retail outlet's pro rata share of vapor product sales in the most recent preceding calendar year, based on the information collected in section 7 of this act or the best available information. The board and the department of ecology must enter into a memorandum of agreement to divide the administrative fee required under this subsection to cover each agency's anticipated costs related to administering and enforcing the requirements of chapter 70.--- RCW (the new chapter created in section 22 of this act).

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

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

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

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

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

(a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431, 70.105.080, 70.107.050, section 6 of this act, 76.09.170, 77.55.291, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) For purposes of this section:

(a) "Characterizing flavor" means a distinguishable taste or aroma, or both, other than the taste or aroma of tobacco, imparted by a vapor product. Characterizing flavors include, but are not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, or spice. A tobacco product does not have a characterizing flavor solely because of the use of additives or flavorings or the provision of ingredient information. It is the presence of a distinguishable taste or aroma, or both, that constitutes a characterizing flavor.

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

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

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

(2) For purposes of this section:

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

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

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

A vapor product licensee may not:

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

(2) Use objects such as toys or inflatables, movie or cartoon characters, or any other depiction or image likely to be appealing to youth, where such objects, images, or depictions indicate an intent to cause youth to become interested in the purchase or consumption of vapor products.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**--- END ---**