
Commerce & Gaming Committee

ESSB 5477

Brief Description: 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.

Sponsors: Senate Committee on Health Care (originally sponsored by Senators Dammeier, Becker, Warnick, Kohl-Welles and Darneille).

Brief Summary of Engrossed Substitute Bill

- Creates a new statutory definition of "vapor products."
- Requires that vapor products be packaged in child-resistant packaging in accordance with federal standards.
- Requires that vapor product labeling and advertising contain health and safety warnings regarding the harmful effects of nicotine.
- Requires that school districts have written policies prohibiting the use of any vapor product on school property.
- Requires that all retail sales of vapor products be vendor-assisted.

Hearing Date: 3/16/15

Staff: Thamas Osborn (786-7129).

Background:

Overview: Vapor Products.

Under state law, the term "vapor product" is defined to mean 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. It does not include any product that is regulated by the federal Food and Drug Administration as a drug or device. "Electronic cigarettes" (e-cigarettes) are a form of vapor

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product, and the terms are often used interchangeably. Vapor product cartridges generally include nicotine extracted from tobacco, glycerol, propylene glycol, and flavorings.

In 2014, the Legislature directed the Washington State Institute for Public Policy (WSIPP) to review research on the prevention of tobacco and vapor product use. Noting that vapor products were a relatively new phenomenon, WSIPP concluded that there were no studies that met its research standards and observed that there was a general lack of scientific information regarding the health effects of vapor products. The WSIPP study also cites surveys indicating that the use of vapor products among adults increased from 1 percent in 2009 to over 6 percent in 2011 and among adolescents use rates increased from 3 percent to 7 percent between 2011 and 2012.

A study conducted by the Centers for Disease Control and Prevention (CDC) reported that in 2013 more than a quarter of a million youth who had never smoked a cigarette had used vapor products. The CDC noted that in 2011 this number was 79,000, which increased to more than 263,000 in 2013, thus reflecting a threefold increase in the number of minors using vapor products during this three year period.

Federal Regulation of Vapor Products.

Vapor products are not currently subject to federal regulation or taxation. However, in April of 2014, the Food and Drug Administration (FDA) issued proposed regulations that would include coverage of vapor products under their authority to regulate tobacco products. The proposed rules include the following:

- prohibiting sales to persons under age 18;
- banning vending machine sales;
- mandating warning labels;
- prohibiting free samples; and
- requiring vapor product companies to register with the FDA to monitor compliance and quality.

The proposed rules have not yet been adopted.

State Regulation and Taxation of Vapor Products.

Washington state neither taxes nor regulates vapor products, except for the imposition of criminal penalties for the sale of vapor or tobacco products to a minor. Pursuant to statute, a person who sells cigars, cigarettes, tobacco, or vapor products to a person under the age of 18 is guilty of a gross misdemeanor. State law does not prohibit the use or possession of vapor products by minors, nor does it require that a retailer be licensed to sell vapor products.

School Policies Regarding Tobacco Products.

All public school districts are required to have a written policy prohibiting the use of all tobacco products on school property. Such policies must ensure that notice of the policy is provided to students and school personnel, require that signs be posted, establish sanctions for violators, and require that school district personnel enforce the prohibition.

Federal Poison Prevention Packaging Act.

Enacted in 1970, the federal Poison Prevention Packaging Act requires specified household substances to be packaged in child-resistant packaging. The packaging required by the federal

act must be designed or constructed to be significantly difficult for children under 5 years of age to open within a reasonable time and not difficult for normal adults to use properly.

Summary of Bill:

The act redefines vapor product to include any of the following:

- device that employs a battery or other mechanism to heat a solution or substance to produce vapor or aerosol intended for inhalation;
- 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
- solution or substance intended for use in a device, including concentrated nicotine.

Vapor products include e-cigarettes, electronic nicotine delivery systems, electronic cigars, electronic cigarillos, electronic pipes, vape pens, or other similar products or devices.

Any substance intended for use in a vapor product and sold at retail in Washington must be packaged in child-resistant packaging in accordance with the federal Poison Prevention Packaging Act. Substances contained in cartridges that are sold, marketed, or intended for use in a vapor product that is prefilled and sealed by the manufacturer are exempt from these packaging requirements. A manufacturer that knowingly sells a substance intended for use in a vapor product that does not satisfy the packaging requirements is guilty of a gross misdemeanor.

A manufacturer that sells or distributes a vapor product must label the product with a warning regarding the harmful effects of nicotine and an instruction to keep the product away from children. A manufacturer that advertises a vapor product must include in any advertisement a warning regarding the harmful effects of nicotine and an instruction to keep the product away from children.

All public school districts are required to have a written policy prohibiting the use of all vapor products on school property. Such policies must ensure that notice of the policy is provided to students and school personnel, require that signs stating the prohibition be posted, establish sanctions for violators, and require that school district personnel enforce the prohibition.

A person who sells vapor products at retail must display a sign concerning the prohibition of vapor product sales to minors. The sign must be clearly visible to customers.

All vapor products at retail must be sold through vendor-assisted sales, and it is unlawful to sell vapor products from a self-service display. Retail stores that prohibit the entrance of minors are exempt from these vendor-assisted sales requirements.

Appropriation: None.

Fiscal Note: Requested on March 11, 2015.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.