

2SSB 6254 - S AMD 1376

By Senator Kuderer

ADOPTED 03/12/2020

1 Strike everything after the enacting clause and insert the
2 following:

3

4 "NEW SECTION. **Sec. 1.** (1) The legislature makes the following
5 findings:

6 (a) Nicotine is a highly addictive substance, particularly for
7 children and youth under twenty-one years of age, whose brains are
8 still developing. Vapor products that deliver high levels of
9 nicotine are fueling youth addiction to nicotine and have created an
10 epidemic. The 2019 national youth tobacco survey found that about
11 twenty-seven percent of high school students reported current use of
12 electronic cigarettes and, among electronic cigarette users, about a
13 third reported using electronic cigarettes on twenty or more of the
14 preceding thirty days;

15 (b) Research consistently shows that flavors and associated
16 advertising contribute to the appeal, initiation, and use of tobacco
17 products, including vapor products, particularly among adolescents
18 and young adults. Evidence also suggests that the 2009 flavored
19 cigarette ban did achieve its objective of reducing adolescent
20 tobacco use, but effects were likely diminished by the continued
21 availability of menthol cigarettes and other flavored tobacco
22 products. Preliminary data from the national youth tobacco survey
23 show that more than a quarter of high school students were current
24 electronic cigarette users in 2019 and the overwhelming majority of
25 youth electronic cigarette users cited the use of popular fruit and
26 menthol or mint flavors. A health impact review performed by the
27 state board of health in 2019 concluded that eliminating flavored

1 vapor products would likely decrease initiation and use of vapor
2 products and other tobacco products among youth and young adults,
3 thereby improving health outcomes; and

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

9 (2) Therefore, the legislature intends to enact additional
10 regulatory protections to protect the health of youth and young
11 adults in Washington state.

12

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

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

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

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

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

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

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

33 (a) The purchaser submits the order for such sale by means of a
34 telephonic or other method of voice transmission, the ((mails))

1 United States postal service or any other delivery service, or the
2 internet or other online service; or

3 (b) The vapor product is delivered by use of the ~~((mails))~~
4 United States postal service or ~~((of a))~~ any other delivery service.

5 The foregoing sales of vapor products constitute a delivery sale
6 regardless of whether the seller is located within ~~((or without))~~
7 this state. "Delivery sale" does not include a sale of any vapor
8 product not for personal consumption to a retailer.

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

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

12 (a) Sells vapor products to persons other than ultimate
13 consumers; or

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

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

22 (9) "Manufacturer" means a person who manufactures and sells
23 vapor products to a licensed distributor.

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

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

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

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

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

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

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

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

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

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

32 ~~(a) "Vapor product" includes any electronic cigarette,~~
33 ~~electronic cigar, electronic cigarillo, electronic pipe, or similar~~
34 ~~product or device and any vapor cartridge or other container that~~

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

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

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

21 (19) "Disposable flavored vapor product" means a flavored vapor
22 product that is also closed system vapor product that contains a
23 sealed, prefilled container of nicotine, flavorings, or both, in
24 addition to other ingredients in a solution or other form. The
25 container within the vapor product is not intended to be refilled or
26 accessed by the user and the vapor product is intended to be
27 disposed of when the battery no longer carries sufficient charge to
28 heat the substance inside the prefilled container.

29 (20) "Distinguishable" means perceivable by an ordinary consumer
30 by either the sense of smell or taste.

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

33 (22) "Flavored vapor product" means any vapor product that
34 contains a taste or smell, other than the taste or smell of tobacco

1 or menthol, that is distinguishable by an ordinary consumer either
2 prior to or during the consumption of a vapor product, including,
3 but not limited to, any taste or smell relating to fruit, mint,
4 wintergreen, chocolate, cocoa, vanilla, honey, or any candy,
5 dessert, alcoholic beverage, herb, or spice.

6 (23) "Manufacture" means to mix, prepare, create, produce,
7 fabricate, assemble, modify, or label vapor products.

8
9 **Sec. 3.** RCW 70.345.020 and 2016 sp.s. c 38 s 5 are each amended
10 to read as follows:

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

13 (a) A vapor product retailer's license; and

14 (b) A vapor product distributor's license(~~(+and~~

15 ~~(c) A vapor product delivery sale license~~)).

16 (2) Application for the licenses must be made through the
17 business licensing system under chapter 19.02 RCW. The board may
18 adopt rules regarding the regulation of the licenses and licensees.
19 The board may refuse to issue any license under this chapter if the
20 board has reasonable cause to believe that the applicant has
21 willfully withheld information requested for the purpose of
22 determining the eligibility of the applicant to receive a license,
23 or if the board has reasonable cause to believe that information
24 submitted in the application is false or misleading or is not made
25 in good faith. In addition, for the purpose of reviewing an
26 application for a distributor's license(~~(+)~~) or a retailer's
27 license, (~~(or delivery seller's license,~~)) and for considering the
28 denial, suspension, or revocation of any such license, the board may
29 consider criminal conduct of the applicant, including an
30 administrative violation history record with the board and a
31 criminal history record information check within the previous five
32 years, in any state, tribal, or federal jurisdiction in the United
33 States, its territories, or possessions, and the provisions of RCW
34 9.95.240 and chapter 9.96A RCW do not apply to such cases. The board

1 may, in its discretion, issue or refuse to issue (~~the~~) a
2 retailer's license(~~(7)~~) or distributor's license, (~~and delivery~~
3 ~~sale license~~) subject to the provisions of RCW 70.155.100.

4 (~~3~~) (~~The application processes for the retailer license and the~~
5 ~~distributor license, and any forms used for such processes, must~~
6 ~~allow the applicant to simultaneously apply for a delivery sale~~
7 ~~license without requiring the applicant to undergo a separate~~
8 ~~licensing application process in order to be licensed to conduct~~
9 ~~delivery sales. However, a delivery sale license obtained in~~
10 ~~conjunction with a retailer or distributor license under this~~
11 ~~subsection remains a separate license subject to the delivery sale~~
12 ~~licensing fee established under this chapter.~~

13 (~~4~~) No person may qualify for a retailer's license(~~(7)~~) or
14 distributor's license(~~(7, or delivery sale license)~~) under this
15 section without first undergoing a criminal background check. The
16 background check must be performed by the board and must disclose
17 any criminal conduct within the previous five years in any state,
18 tribal, or federal jurisdiction in the United States, its
19 territories, or possessions. If the applicant or licensee also has a
20 license issued under chapter 66.24, 69.50, 82.24, or 82.26 RCW, the
21 background check done under the authority of chapter 66.24, 69.50,
22 82.24, or 82.26 RCW satisfies the requirements of this subsection.

23 (~~(5)~~) (4) Each license issued under this chapter expires on
24 the business license expiration date. The license (~~must~~) may be
25 continued annually if the licensee has paid the required fee and
26 complied with all the provisions of this chapter and the rules of
27 the board adopted pursuant to this chapter.

28 (~~(6)~~) (5) Each license and any other evidence of the license
29 required under this chapter must be exhibited in each place of
30 business for which it is issued and in the manner required for the
31 display of a business license.

32 (6) A place of business for any holder of a license issued under
33 this chapter must not be located in a domicile.

34

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

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

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

15 (2) No person engaged in or conducting business as a
16 retailer(~~(,)~~) or distributor(~~(, or delivery seller)~~) in this state
17 may refuse to allow the enforcement officers of the board, on
18 demand, to make full inspection of any place of business or vehicle
19 where any of the vapor products regulated under this chapter are
20 sold, stored, transported, or handled, or otherwise hinder or
21 prevent such inspection. The board may conduct such inspections with
22 local law enforcement. A person who violates this subsection is
23 guilty of a gross misdemeanor.

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

30 (4) No person engaged in or conducting business as a
31 retailer(~~(,)~~) or distributor(~~(, or delivery seller)~~) in this state
32 may sell or give, or permit to sell or give, a product that contains
33 any amount of any cannabinoid, synthetic cannabinoid, cathinone, or
34

1 methcathinone, unless otherwise provided by law. A violation of this
2 subsection (~~(4)~~) is punishable according to RCW 69.50.401.

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

6
7 NEW SECTION. **Sec. 5.** A new section is added to chapter 70.345
8 RCW to read as follows:

9 (1) A retailer operating a retail outlet restricted to persons
10 twenty-one years or older may not allow persons under twenty-one
11 years of age to enter or remain on the premises of the retail outlet.

12 (2) Upon an individual entering the retail outlet, the retailer
13 must examine the individual's government-issued photographic
14 identification and verify the individual is twenty-one years old or
15 older.

16
17
18 NEW SECTION. **Sec. 6.** A new section is added to chapter 82.25
19 RCW to read as follows:

20 (1)(a) In addition to the tax imposed under RCW 82.25.010, there
21 is levied and collected a special excise tax equal to five percent
22 of the selling price on each retail sale in this state of flavored
23 vapor products.

24 (b) The tax under this section is separate and in addition to
25 general state and local sales and use taxes that apply to retail
26 sales of tangible personal property, and is not part of the total
27 retail price to which general state and local sales and use taxes
28 apply. The tax must be separately itemized from the state and local
29 retail sales tax on the sales receipt provided to the buyer.

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

1 (2) All revenues collected from the tax imposed under this
2 section must be deposited as follows: (a) Sixty-seven percent in the
3 foundational public health services account provided in RCW
4 82.25.015; and (b) thirty-three percent in the tobacco prevention
5 and control account provided in RCW 43.79.480. Funds deposited into
6 the tobacco prevention and control account shall be used solely by
7 the department to fund tobacco and vapor product prevention and
8 education campaigns targeted to youth and enforcement by the state
9 liquor and cannabis board under this act.

10 (3) The tax imposed in this section must be paid by the buyer to
11 the seller. Each seller must collect from the buyer the full amount
12 of the tax payable on each taxable sale. The tax collected as
13 required by this section is deemed to be held in trust by the seller
14 until paid to the department. If any seller fails to collect the tax
15 imposed in this section or, having collected the tax, fails to pay
16 it as prescribed by the department, whether such failure is the
17 result of the seller's own acts or the result of acts or conditions
18 beyond the seller's control, the seller is, nevertheless, personally
19 liable to the state for the amount of the tax.

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

22 (a) "Flavored vapor product" has the meaning provided in RCW
23 70.345.010.

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

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

30 (d) "True value" means market value based on sales at comparable
31 locations in this state of the same or similar product of like
32 quality and character sold under comparable conditions of sale to
33 comparable purchasers. However, in the absence of such sales of the
34 same or similar product, true value means the value of the product

1 sold as determined by all the seller's direct and indirect costs
2 attributable to the product.

3
4 **Sec. 7.** RCW 70.345.090 and 2019 c 445 s 212 are each amended to
5 read as follows:

6 (1) No person may conduct a delivery sale or otherwise ship or
7 transport, or cause to be shipped or transported, any vapor product
8 ordered or purchased by mail or through the internet to any person
9 ~~((unless such seller has a valid delivery sale license as required~~
10 ~~under this chapter.~~

11 ~~(2) No person may conduct a delivery sale or otherwise ship or~~
12 ~~transport, or cause to be shipped or transported, any vapor product~~
13 ~~ordered or purchased by mail or through the internet to any person~~
14 ~~under the minimum age required for the legal sale of vapor products~~
15 ~~as provided under RCW 70.345.140.~~

16 ~~(3) A delivery sale licensee must provide notice on its mail~~
17 ~~order or internet sales forms of the minimum age required for the~~
18 ~~legal sale of vapor products in Washington state as provided by RCW~~
19 ~~70.345.140.~~

20 ~~(4) A delivery sale licensee must not accept a purchase or order~~
21 ~~from any person without first obtaining the full name, birthdate,~~
22 ~~and residential address of that person and verifying this~~
23 ~~information through an independently operated third party database~~
24 ~~or aggregate of databases, which includes data from government~~
25 ~~sources, that are regularly used by government and businesses for~~
26 ~~the purpose of age and identity verification and authentication.~~

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

32 ~~(6) Before a delivery sale licensee delivers an initial purchase~~
33 ~~to any person, the licensee must verify the identity and delivery~~
34 ~~address of the purchaser by mailing or shipping to the purchaser a~~

1 ~~notice of sale and certification form confirming that the addressee~~
2 ~~is in fact the person placing the order. The purchaser must return~~
3 ~~the signed certification form to the licensee before the initial~~
4 ~~shipment of product. Certification forms are not required for repeat~~
5 ~~customers. In the alternative, before a seller delivers an initial~~
6 ~~purchase to any person, the seller must first obtain from the~~
7 ~~prospective customer an electronic certification, such as by email,~~
8 ~~that includes a declaration that, at a minimum, the prospective~~
9 ~~customer is over the minimum age required for the legal sale of a~~
10 ~~vapor product, and the credit or debit card used for payment has~~
11 ~~been issued in the purchaser's name.~~

12 ~~(7) A delivery sale licensee must include on shipping documents~~
13 ~~a clear and conspicuous statement which includes, at a minimum, that~~
14 ~~the package contains vapor products, Washington law prohibits sales~~
15 ~~to those under the minimum age established by this chapter, and~~
16 ~~violations may result in sanctions to both the licensee and the~~
17 ~~purchaser.~~

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

20 ~~(9))~~ in this state.

21 (2) Delivery sale licenses active on the effective date of this
22 section become inactive on July 1, 2020.

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

26 ~~((+10))~~ (4) In addition to or in lieu of any other civil or
27 criminal remedy provided by law, a person who has violated this
28 section is subject to a civil penalty of up to five thousand dollars
29 for each violation. The attorney general, acting in the name of the
30 state, may seek recovery of the penalty in a civil action in
31 superior court.

32 ~~((+11))~~ (5) The attorney general may seek an injunction in
33 superior court to restrain a threatened or actual violation of this
34 section and to compel compliance with this section.

1 ~~((+12+))~~ (6) Any violation of this section is not reasonable in
2 relation to the development and preservation of business and is an
3 unfair and deceptive act or practice and an unfair method of
4 competition in the conduct of trade or commerce in violation of RCW
5 19.86.020. Standing to bring an action to enforce RCW 19.86.020 for
6 violation of this section lies solely with the attorney general.
7 Remedies provided by chapter 19.86 RCW are cumulative and not
8 exclusive.

9 ~~((+13+))~~ (7)(a) In any action brought under this section, the
10 state is entitled to recover, in addition to other relief, the costs
11 of investigation, expert witness fees, costs of the action, and
12 reasonable attorneys' fees.

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

17 ~~((+14+))~~ (8) Unless otherwise expressly provided, the penalties
18 or remedies, or both, under this section are in addition to any
19 other penalties and remedies available under any other law of this
20 state.

21 ~~((+15+)) A licensee who violates this section is subject to~~
22 ~~license suspension or revocation by the board.~~

23 ~~(16) The board may adopt by rule additional requirements for~~
24 ~~mail or internet sales.~~

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

26
27

28 **Sec. 8.** RCW 70.345.110 and 2016 sp.s. c 38 s 20 are each
29 amended to read as follows:

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

34

1 (2) This section does not prohibit the use of coupons to receive
2 a discount on a vapor product as part of an in-person transaction
3 (~~or delivery sale~~).

4

5

6 **Sec. 9.** RCW 70.345.160 and 2016 sp.s. c 38 s 24 are each
7 amended to read as follows:

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

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

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

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

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

31 (a) The board, in consultation with the department of health and
32 local county health jurisdictions, may cause a vapor product
33 substance or solution sample, purchased or obtained from any vapor
34 product retailer(~~(,)~~) or distributor(~~(, or delivery sale~~

1 ~~licensee,~~) to be analyzed by an analyst appointed or designated by
2 the board;

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

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

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

19
20

21 **Sec. 10.** RCW 70.345.170 and 2016 sp.s. c 38 s 11 are each
22 amended to read as follows:

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

25 (2) The board may revoke or suspend a retailer's(~~(r)~~) or
26 distributor's, (~~or delivery seller's license~~) issued under this
27 chapter upon sufficient cause showing a violation of this chapter.

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

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

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

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

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

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

23
24 NEW SECTION. **Sec. 11.** A new section is added to chapter 70.345
25 RCW to read as follows:

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

28
29 NEW SECTION. **Sec. 12.** A new section is added to chapter 70.345
30 RCW to read as follows:

31 No disposable flavored vapor product may be sold or offered for
32 sale within the state.

33
34

1 NEW SECTION. **Sec. 13.** Section 6 of this act takes effect
2 October 1, 2020.

3

4 NEW SECTION. **Sec. 14.** RCW 70.345.060 (Licensing fee—Delivery
5 sales) and 2016 sp.s. c 38 s 10 are each repealed.

6

7 NEW SECTION. **Sec. 15.** If any provision of this act or its
8 application to any person or circumstance is held invalid, the
9 remainder of the act or the application of the provision to other
10 persons or circumstances is not affected.

11

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

21

22 Correct the technical portions of the title.

??

- EFFECT: (1) Bans the online sale of vapor products.
(2) Requires stores restricted to persons 21 years old or older to
verify the age of an individual at the point of entry.
(3) Changes the excise tax on flavored vapor products from 18.5% to
5% with 2/3rds of the funds to go to foundational public health and
1/3rd to go to enforcement.
(4) Bans the sale of disposable flavored vapor products.
(5) Bans the sale of vapor products containing vitamin E acetate.

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