

2SSB 6254 - S AMD 1363

By Senator Kuderer

PULLED 03/11/2020

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

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

5 (a) Nicotine is a highly addictive substance, particularly for
6 children and youth under twenty-one years of age, whose brains are
7 still developing. Currently, there is no limit in the United States
8 on nicotine levels of vapor products. While other nations limit the
9 nicotine content of vapor products to not more than two percent
10 nicotine, vapor products commonly sold in this state and accessed by
11 youth contain five percent nicotine. Vapor products that deliver high
12 levels of nicotine are fueling youth addiction to nicotine and have
13 created an epidemic. The 2019 national youth tobacco survey found
14 that about twenty-seven percent of high school students reported
15 current use of electronic cigarettes and, among electronic cigarette
16 users, about a third reported using electronic cigarettes on twenty
17 or more of the preceding thirty days;

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

1 products and other tobacco products among youth and young adults,
2 thereby improving health outcomes; and

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

8 (2) Therefore, the legislature intends to restrict the sale of
9 flavored vapor products and enact additional regulatory protections
10 to protect the health of youth and young adults in Washington state.

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

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

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

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

19 (3) "Child care facility" has the same meaning as provided in RCW
20 70.140.020.

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

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

30 (a) The purchaser submits the order for such sale by means of a
31 telephonic or other method of voice transmission, the ~~((mails))~~
32 United States postal service or any other delivery service, or the
33 internet or other online service; or

34 (b) The vapor product is delivered by use of the ~~((mails))~~ United
35 States postal service or ~~((of-a))~~ any other delivery service. The
36 foregoing sales of vapor products constitute a delivery sale
37 regardless of whether the seller is located within ~~((or-without))~~
38 this state. "Delivery sale" does not include a sale of any vapor
39 product not for personal consumption to a retailer.

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

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

4 (a) Sells vapor products to persons other than ultimate
5 consumers; or

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

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

14 (9) "Manufacturer" means a person who manufactures and sells
15 vapor products to a licensed distributor or licensed manufacturer.

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

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

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

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

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

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

1 whatsoever, of vapor products at or below the cost of acquisition or
2 at no cost to a person at retail.

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

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

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

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

18 ~~(a) "Vapor product" includes any electronic cigarette, electronic~~
19 ~~eigar, electronic cigarillo, electronic pipe, or similar product or~~
20 ~~device and any vapor cartridge or other container that may contain~~
21 ~~nicotine in a solution or other form that is intended to be used with~~
22 ~~or in an electronic cigarette, electronic cigar, electronic~~
23 ~~eigarillo, electronic pipe, or similar product or device))~~ product
24 that may be used to deliver any aerosolized or vaporized substance to
25 the person inhaling from the device including, but not limited to, an
26 electronic cigarette, e-cigar, e-pipe, vape pen, or e-hookah. "Vapor
27 product" includes any component, part, or accessory of the product
28 and also includes any substance that may be aerosolized or vaporized
29 by such a product, regardless of whether the substance contains
30 nicotine. "Vapor product" does not include drugs, devices, or
31 combination products authorized for sale by the United States food
32 and drug administration as those terms are defined in the federal
33 food, drug, and cosmetic act.

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

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

1 (19) "Disposable vapor product" means a closed system vapor
2 product that contains a sealed, prefilled container of nicotine,
3 flavorings, or both, in addition to other ingredients in a solution
4 or other form. The container within the vapor product is not intended
5 to be refilled or accessed by the user and the vapor product is
6 intended to be disposed of when the battery no longer carries
7 sufficient charge to heat the substance inside the prefilled
8 container.

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

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

14 (22) "Flavored vapor product" means any vapor product that
15 contains a taste or smell, other than the taste or smell of tobacco
16 or menthol, that is distinguishable by an ordinary consumer either
17 prior to or during the consumption of a vapor product, including, but
18 not limited to, any taste or smell relating to fruit, mint,
19 wintergreen, chocolate, cocoa, vanilla, honey, or any candy, dessert,
20 alcoholic beverage, herb, or spice.

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

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

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

27 (a) A vapor product retailer's license;

28 (b) A vapor product distributor's license; and

29 (c) (~~A vapor product delivery sale license~~) A vapor product
30 manufacturer's license.

31 (2) Application for the licenses must be made through the
32 business licensing system under chapter 19.02 RCW. The board may
33 adopt rules regarding the regulation of the licenses and licensees.
34 The board may refuse to issue any license under this chapter if the
35 board has reasonable cause to believe that the applicant has
36 willfully withheld information requested for the purpose of
37 determining the eligibility of the applicant to receive a license, or
38 if the board has reasonable cause to believe that information
39 submitted in the application is false or misleading or is not made in

1 good faith. In addition, for the purpose of reviewing an application
2 for a manufacturer's license, distributor's license, or retailer's
3 license, (~~(or delivery seller's license,)~~) and for considering the
4 denial, suspension, or revocation of any such license, the board may
5 consider criminal conduct of the applicant, including an
6 administrative violation history record with the board and a criminal
7 history record information check within the previous five years, in
8 any state, tribal, or federal jurisdiction in the United States, its
9 territories, or possessions, and the provisions of RCW 9.95.240 and
10 chapter 9.96A RCW do not apply to such cases. The board may, in its
11 discretion, issue or refuse to issue (~~the~~) a manufacturer's
12 license, retailer's license, or distributor's license, (~~and delivery~~
13 ~~sale license~~) subject to the provisions of RCW 70.155.100.

14 ~~(3) ((The application processes for the retailer license and the~~
15 ~~distributor license, and any forms used for such processes, must~~
16 ~~allow the applicant to simultaneously apply for a delivery sale~~
17 ~~license without requiring the applicant to undergo a separate~~
18 ~~licensing application process in order to be licensed to conduct~~
19 ~~delivery sales. However, a delivery sale license obtained in~~
20 ~~conjunction with a retailer or distributor license under this~~
21 ~~subsection remains a separate license subject to the delivery sale~~
22 ~~licensing fee established under this chapter.~~

23 ~~(4))~~ No person may qualify for a manufacturer's license,
24 retailer's license, or distributor's license (~~(, or delivery sale~~
25 ~~license~~) under this section without first undergoing a criminal
26 background check. The background check must be performed by the board
27 and must disclose any criminal conduct within the previous five years
28 in any state, tribal, or federal jurisdiction in the United States,
29 its territories, or possessions. If the applicant or licensee also
30 has a license issued under chapter 66.24, 69.50, 82.24, or 82.26 RCW,
31 the background check done under the authority of chapter 66.24,
32 69.50, 82.24, or 82.26 RCW satisfies the requirements of this
33 subsection.

34 ~~((5))~~ (4) Each license issued under this chapter expires on the
35 business license expiration date. The license (~~must~~) may be
36 continued annually if the licensee has paid the required fee and
37 complied with all the provisions of this chapter and the rules of the
38 board adopted pursuant to this chapter.

39 ~~((6))~~ (5) Each license and any other evidence of the license
40 required under this chapter must be exhibited in each place of

1 business for which it is issued and in the manner required for the
2 display of a business license.

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

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

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

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

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

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

36 (4) Any person licensed under this chapter as a retailer or
37 distributor may only sell vapor products obtained from a person
38 holding a valid manufacturer's license granted by the board under
39 this chapter.

1 (5) No person engaged in or conducting business as a
2 manufacturer, retailer, or distributor(~~(, or delivery seller)~~) in
3 this state may sell or give, or permit to sell or give, a product
4 that contains any amount of any cannabinoid, synthetic cannabinoid,
5 cathinone, or methcathinone, unless otherwise provided by law. A
6 violation of this subsection (~~(+4)~~) is punishable according to RCW
7 69.50.401.

8 (~~(+5)~~) (6) The penalties provided in this section are in
9 addition to any other penalties provided by law for violating the
10 provisions of this chapter or the rules adopted under this chapter.

11 NEW SECTION. **Sec. 5.** A new section is added to chapter 70.345
12 RCW to read as follows:

13 To the extent permitted by federal law, the board shall, in
14 consultation with the department of health, adopt rules for safe
15 handling and sanitation practices for manufacturers, distributors,
16 and retailers, or any combination thereof, who manufacture, produce,
17 or mix liquids for use in vapor products to the extent permitted
18 under federal law.

19 NEW SECTION. **Sec. 6.** A new section is added to chapter 70.345
20 RCW to read as follows:

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

24 (2) Upon entry, a retailer must examine an individual's
25 government-issued photographic identification and verify the
26 individual is twenty-one years old or older.

27 NEW SECTION. **Sec. 7.** A new section is added to chapter 70.345
28 RCW to read as follows:

29 (1) Except for retailers operating in a retail outlet restricted
30 to persons twenty-one years of age or older, retailers licensed under
31 this chapter may not sell, offer for sale, or possess with the intent
32 to sell or offer for sale flavored vapor products, or any product
33 that he or she knows or reasonably should know will be used with or
34 in a vapor product to create a flavored vapor product.

35 (2) There is a rebuttable presumption that a vapor product is a
36 flavored vapor product if a distributor, manufacturer, or retailer,
37 or any agent or employee of a distributor, manufacturer, or retailer,

1 in the course of their agency or employment, has made a statement or
2 claim directed to consumers or to the public that the vapor product
3 has or produces a taste or smell other than tobacco or menthol
4 including, but not limited to, text, color, or images, or any
5 combination thereof, on the product's labeling or packaging used to
6 explicitly or implicitly communicate that the vapor product has a
7 taste or smell other than tobacco or menthol.

8 NEW SECTION. **Sec. 8.** A new section is added to chapter 82.25
9 RCW to read as follows:

10 (1)(a) In addition to the tax imposed under RCW 82.25.010, there
11 is levied and collected a special excise tax equal to eighteen and
12 one-half percent of the selling price on each retail sale in this
13 state of flavored vapor products.

14 (b) The tax under this section is separate and in addition to
15 general state and local sales and use taxes that apply to retail
16 sales of tangible personal property, and is not part of the total
17 retail price to which general state and local sales and use taxes
18 apply. The tax must be separately itemized from the state and local
19 retail sales tax on the sales receipt provided to the buyer.

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

25 (2) All revenues collected from the tax imposed under this
26 section must be deposited as follows: (a) Sixty-seven percent in the
27 foundational public health services account provided in RCW
28 82.25.015; and (b) thirty-three percent in the tobacco prevention and
29 control account provided in RCW 43.79.480. Funds deposited into the
30 tobacco prevention and control account shall be used solely by the
31 department to fund tobacco and vapor product prevention and education
32 campaigns targeted to youth and enforcement by the state liquor and
33 cannabis board under this act.

34 (3) The tax imposed in this section must be paid by the buyer to
35 the seller. Each seller must collect from the buyer the full amount
36 of the tax payable on each taxable sale. The tax collected as
37 required by this section is deemed to be held in trust by the seller
38 until paid to the department. If any seller fails to collect the tax
39 imposed in this section or, having collected the tax, fails to pay it

1 as prescribed by the department, whether such failure is the result
2 of the seller's own acts or the result of acts or conditions beyond
3 the seller's control, the seller is, nevertheless, personally liable
4 to the state for the amount of the tax.

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

7 (a) "Flavored vapor product" has the meaning provided in RCW
8 70.345.010.

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

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

14 (d) "True value" means market value based on sales at comparable
15 locations in this state of the same or similar product of like
16 quality and character sold under comparable conditions of sale to
17 comparable purchasers. However, in the absence of such sales of the
18 same or similar product, true value means the value of the product
19 sold as determined by all the seller's direct and indirect costs
20 attributable to the product.

21 NEW SECTION. **Sec. 9.** A new section is added to chapter 70.345
22 RCW to read as follows:

23 (1) Licensed vapor product distributors and manufacturers who
24 sell vapor products in this state must submit under oath to the
25 department of health a complete list of all constituent substances
26 and the amounts and sources thereof in each vapor product offered for
27 sale, distributed, or manufactured in the state, including all:

28 (a) Additives;

29 (b) Thickening agents;

30 (c) Preservatives;

31 (d) Compounds;

32 (e) Nicotine content; and

33 (f) Any other substance used in the production and processing of
34 each vapor product.

35 (2) Disclosures must be completed for every vapor product
36 constituent substance, regardless of whether such a constituent
37 substance is an original constituent present in each vapor product,
38 emitted during the use of the vapor product, or it is reasonably
39 foreseeable that it will be present in the vapor product during the

1 product's expected presale shelf life, or will develop in a vapor
2 product after purchase without any action taken by the consumer. All
3 disclosures must include the amounts and sources of each constituent
4 substance. Constituent substance disclosures must be accompanied by a
5 signed declaration under penalty of perjury certifying the
6 completeness and accuracy of the information provided.

7 (3) No vapor product shall be sold, offered for sale,
8 distributed, or manufactured in this state unless a constituent
9 disclosure has been submitted to the department of health in a manner
10 determined by the department.

11 (4) The board and department of health may use constituent
12 disclosures for the purposes of enforcement, investigation, research,
13 and for any other matter intended to protect the public health.

14 (5) The department of health may adopt rules to implement the
15 provisions of this section.

16 NEW SECTION. **Sec. 10.** A new section is added to chapter 70.345
17 RCW to read as follows:

18 A fee of two hundred fifty dollars must accompany each vapor
19 product manufacturer's license application and license renewal
20 application under RCW 70.345.020.

21 **Sec. 11.** RCW 70.345.075 and 2016 sp.s. c 38 s 13 are each
22 amended to read as follows:

23 (1) A manufacturer or distributor that sells, offers for sale, or
24 distributes liquid nicotine containers shall label the vapor product
25 with a: (a) Warning regarding the harmful effects of nicotine; (b)
26 warning to keep the vapor product away from children; (c) warning
27 that vaping is illegal for those under the legal age to use the
28 product; and (d) except as provided in subsection (2) of this
29 section, the amount of nicotine in milligrams per milliliter of
30 liquid along with the total volume of the liquid contents of the
31 product expressed in milliliters.

32 (2) For closed system nicotine containers as defined in RCW
33 70.345.010, a manufacturer that sells, offers for sale, or
34 distributes vapor products in this state must annually provide the
35 department of health with a disclosure of the nicotine content of
36 such vapor product based on measurement standards to be established
37 by the department of health.

1 ~~((3) (a) This section expires on the effective date of the final~~
2 ~~regulations issued by the United States food and drug administration~~
3 ~~or by any other federal agency, when such regulations mandate warning~~
4 ~~or advertisement requirements for vapor products.~~

5 ~~(b) The board must provide notice of the expiration date of this~~
6 ~~section to affected parties, the chief clerk of the house of~~
7 ~~representatives, the secretary of the senate, the office of the code~~
8 ~~reviser, and others as deemed appropriate by the board.))~~

9 **Sec. 12.** RCW 70.345.090 and 2019 c 445 s 212 are each amended to
10 read as follows:

11 (1) 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 ~~((unless such seller has a valid delivery sale license as required~~
15 ~~under this chapter.~~

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

21 ~~(3) A delivery sale licensee must provide notice on its mail~~
22 ~~order or internet sales forms of the minimum age required for the~~
23 ~~legal sale of vapor products in Washington state as provided by RCW~~
24 ~~70.345.140.~~

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

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

37 ~~(6) Before a delivery sale licensee delivers an initial purchase~~
38 ~~to any person, the licensee must verify the identity and delivery~~
39 ~~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 been
11 issued in the purchaser's name.

12 ~~(7) A delivery sale licensee must include on shipping documents a~~
13 ~~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 superior
31 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.

35 ~~((12))~~ (6) Any violation of this section is not reasonable in
36 relation to the development and preservation of business and is an
37 unfair and deceptive act or practice and an unfair method of
38 competition in the conduct of trade or commerce in violation of RCW
39 19.86.020. Standing to bring an action to enforce RCW 19.86.020 for
40 violation of this section lies solely with the attorney general.

1 Remedies provided by chapter 19.86 RCW are cumulative and not
2 exclusive.

3 ~~((13))~~ (7)(a) In any action brought under this section, the
4 state is entitled to recover, in addition to other relief, the costs
5 of investigation, expert witness fees, costs of the action, and
6 reasonable attorneys' fees.

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

11 ~~((14))~~ (8) Unless otherwise expressly provided, the penalties
12 or remedies, or both, under this section are in addition to any other
13 penalties and remedies available under any other law of this state.

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

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

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

19 **Sec. 13.** RCW 70.345.160 and 2016 sp.s. c 38 s 24 are each
20 amended to read as follows:

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

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

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

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

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

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

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

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

26 ~~(6) Nothing in subsection (5) of this section permits a total ban~~
27 ~~on the sale or use of vapor products.) To the extent permitted by~~
28 ~~federal law, the board shall, in consultation with the department of~~
29 ~~health, adopt rules regarding: Inspection of the premises where vapor~~
30 ~~products are manufactured within Washington state; conditions of~~
31 ~~sanitation during manufacture, storage, and transport within~~
32 ~~Washington state; and safe handling requirements for equipment and~~
33 ~~ingredients within Washington state.~~

34 (6) Upon a determination by the secretary of health or a local
35 health jurisdiction that a vapor product, vapor product constituent,
36 emitted constituent, or vapor product component may be injurious to
37 human health or poses a significant risk to public health, the board
38 may:

39 (a) Restrict the sale of any such vapor product or any vapor
40 product containing such a constituent or component; or

1 (b) Require vapor product retailers to make a written point-of-
2 sale warning disclosure to consumers with respect to such a vapor
3 product, a type of vapor product, or such a vapor constituent or
4 component, in a format, style, and manner determined by the secretary
5 of health.

6 (7)(a) Nothing in this section permits permanent ban on the sale
7 or use of all vapor products.

8 (b) Nothing in this section requires a person in this state to be
9 actually injured or ill before the secretary of health may take
10 action authorized under this section.

11 (8) The board may seize any vapor products sold, offered for
12 sale, or possessed in violation of this chapter.

13 NEW SECTION. Sec. 14. A new section is added to chapter 70.345
14 RCW to read as follows:

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

17 NEW SECTION. Sec. 15. A new section is added to chapter 70.345
18 RCW to read as follows:

19 No disposable vapor product may be sold or offered for sale
20 within the state.

21 **Sec. 16.** 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 manufacturer's, retailer's,
26 or 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 revocation
34 under this section.

35 (5) Any person whose license or licenses have been revoked under
36 this section may reapply to the board at the expiration of two years
37 of the license or licenses, unless the license was revoked pursuant

1 to RCW 70.345.180(2)(e). The license or licenses may be approved by
2 the board if it appears to the satisfaction of the board that the
3 licensee will comply with the provisions of this chapter.

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

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

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

20 **Sec. 17.** RCW 70.345.180 and 2016 sp.s. c 38 s 22 are each
21 amended to read as follows:

22 (1) The board may impose a monetary penalty as set forth in
23 subsection (2) of this section, if the board finds that the licensee
24 has violated RCW 26.28.080 or any other provision of this chapter.

25 (2) Subject to subsections (3) and (12) of this section, the
26 sanctions that the board may impose against a person licensed under
27 this chapter based upon one or more findings under subsection (1) of
28 this section may not exceed the following:

29 (a) A monetary penalty of two hundred dollars for the first
30 violation within any three-year period;

31 (b) A monetary penalty of six hundred dollars for the second
32 violation within any three-year period;

33 (c) A monetary penalty of two thousand dollars for the third
34 violation within any three-year period and suspension of the license
35 for a period of six months for the third violation of this chapter or
36 RCW 26.28.080 within any three-year period;

37 (d) A monetary penalty of three thousand dollars for the fourth
38 or subsequent violation within any three-year period and suspension

1 of the license for a period of twelve months for the fourth violation
2 of this chapter or RCW 26.28.080 within any three-year period;

3 (e) Revocation of the license with no possibility of
4 reinstatement for a period of five years for the fifth or more
5 violation within any three-year period.

6 (3) If the board finds that a person licensed under this chapter
7 and chapter 82.24 or 82.26 RCW has violated this chapter or RCW
8 26.28.080, each subsequent violation of either of the person's
9 licenses counts as an additional violation within that three-year
10 period.

11 (4) Any retailer's licenses issued under chapter 82.24 or 82.26
12 RCW to a person whose vapor product retailer's license or licenses
13 have been suspended or revoked by the board for violating this
14 chapter or RCW 26.28.080 must also be suspended or revoked during the
15 period of suspension or revocation under this section.

16 (5) The board may impose a monetary penalty upon any person other
17 than a licensed retailer if the board finds that the person has
18 violated this chapter or RCW 26.28.080.

19 (6) The monetary penalty that the board may impose based upon one
20 or more findings under subsection (5) of this section may not exceed
21 fifty dollars for the first violation and one hundred dollars for
22 each subsequent violation.

23 (7) The board may develop and offer a class for retail clerks and
24 use this class in lieu of a monetary penalty for the clerk's first
25 violation.

26 (8) The board may issue a cease and desist order to any person
27 who is found by the board to have violated or (~~intending~~ [~~intends~~])
28 intends to violate the provisions of this chapter or RCW 26.28.080,
29 requiring such person to cease specified conduct that is in
30 violation. The issuance of a cease and desist order does not preclude
31 the imposition of other sanctions authorized by this statute or any
32 other provision of law.

33 (9) The board may seek injunctive relief to enforce the
34 provisions of RCW 26.28.080 or this chapter. The board may initiate
35 legal action to collect civil penalties imposed under this chapter if
36 the same have not been paid within thirty days after imposition of
37 such penalties. In any action filed by the board under this chapter,
38 the court may, in addition to any other relief, award the board
39 reasonable attorneys' fees and costs.

1 (10) All enforcement proceedings by the board under (~~subsections~~
2 ~~(1) through (8) of this section~~) this chapter must be conducted in
3 accordance with chapter 34.05 RCW.

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

11 (12) The board may:

12 (a) Suspend the license of a retailer that violates a sales
13 restriction imposed under RCW 70.345.160 or fails to post a written
14 point-of-sale warning disclosure required under RCW 70.345.160; and

15 (b) Revoke the license of a retailer that violates a sales
16 restriction imposed under RCW 70.345.160 or fails to post a written
17 point-of-sale warning disclosure required under RCW 70.345.160, when
18 the retailer has been sent a written notification warning the
19 retailer that they are selling vapor products in violation of this
20 chapter and describing how compliance may be achieved.

21 NEW SECTION. Sec. 18. A new section is added to chapter 70.345
22 RCW to read as follows:

23 For the purpose of carrying into effect the provisions of this
24 chapter according to their true intent or of supplying any deficiency
25 therein, the board may adopt those rules as are deemed necessary or
26 advisable.

27 **Sec. 19.** RCW 43.70.170 and 1989 1st ex.s. c 9 s 256 are each
28 amended to read as follows:

29 The secretary on his or her own motion or upon the complaint of
30 any interested party, may investigate, examine, sample or inspect any
31 article or condition constituting a threat to the public health
32 including, but not limited to, outbreaks of (~~communicable~~)
33 diseases, food poisoning, contaminated water supplies, and all other
34 matters injurious to the public health. When not otherwise available,
35 the department may purchase such samples or specimens as may be
36 necessary to determine whether or not there exists a threat to the
37 public health. In furtherance of any such investigation, examination
38 or inspection, the secretary or the secretary's authorized

1 representative may examine that portion of the ledgers, books,
2 accounts, memorandums, and other documents and other articles and
3 things used in connection with the business of such person relating
4 to the actions involved.

5 For purposes of such investigation, the secretary or the
6 secretary's representative shall at all times have free and unimpeded
7 access to all buildings, yards, warehouses, storage and
8 transportation facilities or any other place. The secretary may also,
9 for the purposes of such investigation, issue subpoenas to compel the
10 attendance of witnesses, as provided for in RCW 43.70.090 or the
11 production of books and documents anywhere in the state.

12 **Sec. 20.** RCW 43.70.180 and 1989 1st ex.s. c 9 s 257 are each
13 amended to read as follows:

14 ~~((Pending the results))~~ During or upon completion of an
15 investigation provided for under RCW 43.70.170, the secretary may
16 ~~((issue an order prohibiting the disposition or sale of any food or
17 other item involved in the investigation. The order of the secretary
18 shall not be effective for more than fifteen days without the
19 commencement of a legal action as provided for under RCW 43.70.190))~~
20 adopt rules, issue orders, or take any other action the secretary
21 deems necessary in order to regulate, control, prohibit, prevent, or
22 otherwise address any article or condition constituting a threat to
23 the public health.

24 **Sec. 21.** RCW 43.70.190 and 1990 c 133 s 3 are each amended to
25 read as follows:

26 The secretary of health or local health officer may bring an
27 action to enjoin a violation or the threatened violation of any of
28 the provisions of the public health laws of this state or any rules
29 or regulation made or orders issued by the state board of health, the
30 secretary of health, or the department of health pursuant to said
31 laws, or may bring any legal proceeding authorized by law~~((7))~~
32 including, but not limited to, the special proceedings authorized in
33 Title 7 RCW, in the superior court in the county in which such
34 violation occurs or is about to occur, or in the superior court of
35 Thurston county. Upon the filing of any action, the court may, upon a
36 showing of an immediate and serious danger to residents constituting
37 an emergency, issue a temporary injunctive order ex parte.

1 **Sec. 22.** RCW 70.345.210 and 2016 sp.s. c 38 s 3 are each amended
2 to read as follows:

3 (1) This chapter preempts political subdivisions from adopting or
4 enforcing requirements for the licensure and regulation of vapor
5 product promotions and sales at retail. No political subdivision may
6 impose fees or license requirements on retail outlets for possessing
7 or selling vapor products, other than general business taxes or
8 license fees not primarily levied on such products.

9 (2) ~~((No political subdivision may regulate the use of vapor
10 products in outdoor public places, unless the public place is an area
11 where children congregate, such as schools, playgrounds, and parks.~~

12 (3)) Subject to RCW 70.345.150, political subdivisions may
13 regulate the use of vapor products in indoor public places.

14 NEW SECTION. **Sec. 23.** If any provision of this act or its
15 application to any person or circumstance is held invalid, the
16 remainder of the act or the application of the provision to other
17 persons or circumstances is not affected.

18 NEW SECTION. **Sec. 24.** If any part of this act is found to be in
19 conflict with federal requirements that are a prescribed condition to
20 the allocation of federal funds to the state, the conflicting part of
21 this act is inoperative solely to the extent of the conflict and with
22 respect to the agencies directly affected, and this finding does not
23 affect the operation of the remainder of this act in its application
24 to the agencies concerned. Rules adopted under this act must meet
25 federal requirements that are a necessary condition to the receipt of
26 federal funds by the state.

27 NEW SECTION. **Sec. 25.** Within one hundred eighty days of the
28 effective date of sections 3 and 4 of this act, the liquor and
29 cannabis board must adopt rules to implement sections 3 and 4 of this
30 act.

31 NEW SECTION. **Sec. 26.** Section 8 of this act takes effect
32 October 1, 2020.

33 NEW SECTION. **Sec. 27.** Sections 2, 6, 7, 13 through 17, 23, and
34 24 of this act are necessary for the immediate preservation of the

1 public peace, health, or safety, or support of the state government
2 and its existing public institutions, and take effect immediately."

2SSB 6254 - S AMD 1363

By Senator Kuderer

PULLED 03/11/2020

3 On page 1, line 2 of the title, after "products;" strike the
4 remainder of the title and insert "amending RCW 70.345.020,
5 70.345.030, 70.345.075, 70.345.090, 70.345.160, 70.345.170,
6 70.345.180, 43.70.170, 43.70.180, 43.70.190, and 70.345.210;
7 reenacting and amending RCW 70.345.010; adding new sections to
8 chapter 70.345 RCW; adding a new section to chapter 82.25 RCW;
9 creating new sections; prescribing penalties; providing an effective
10 date; and declaring an emergency."

EFFECT: (1) Requires vapor product manufacturers to be licensed by LCB.

(2) Requires LCB to adopt rules on the safe handling and sanitation practices for vapor manufacturers, retailers, and distributors.

(3) Allows LCB to restrict sales or require point-of-sale warnings for a vapor product or component if it is determined that it is injurious to human health.

(4) Bans the sale of vapor products with vitamin E acetate.

(5) Adds an 18.5% excise tax on flavored vapor products with 2/3rds of the funds to go to foundational public health and 1/3rd to go to enforcement.

(6) Requires manufacturers and distributors to submit to DOH under oath a list of ingredients and their sources.

(7) Allows local jurisdictions to prohibit the use of vapor products in public places.

(8) Bans the sale of all disposable vapor products.

(9) Bans the online sale of vapor products.

(10) Restricts the sale of flavored vapor products to stores restricted to persons 21 years old or older.

(11) Removes menthol from the definition of flavored vapor product.

(12) Removes the 2% nicotine concentration limit and removes restrictions on container size for vapor product liquid.

--- END ---