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**SENATE BILL 5266**

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**State of Washington 67th Legislature 2021 Regular Session**

**By** Senators Kuderer, Wilson, C., Das, Dhingra, Saldaña, and Stanford

AN ACT Relating to protecting public health and safety by enhancing the regulation of products sold to adults age 21 and over; amending RCW 70.345.020, 70.345.030, 70.345.060, 70.345.090, 70.345.160, 70.345.170, 70.345.180, 70.345.190, 82.25.005, 82.25.010, 82.25.020, 82.25.075, 82.25.060, 82.25.080, 82.25.005, 82.25.065, 82.25.075, and 82.25.090; reenacting and amending RCW 70.155.120 and 70.345.010; adding new sections to chapter 70.345 RCW; adding a new section to chapter 82.04 RCW; adding new sections to chapter 82.25 RCW; adding a new chapter to Title 70 RCW; repealing RCW 70.345.210, 82.25.045, and 82.25.085; prescribing penalties; providing effective dates; providing an expiration date; and declaring an emergency.

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

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

(a) Nicotine is a highly addictive substance, particularly for children and youth under 21 years of age, whose brains are still developing. Currently, there is no limit in the United States on nicotine levels of vapor products. While other nations limit the nicotine content of vapor products to not more than two percent nicotine, vapor products commonly sold in this state and accessed by youth contain five percent nicotine. Vapor products that deliver high levels of nicotine are fueling youth addiction to nicotine and have created an epidemic. The 2019 national youth tobacco survey found that about 27 percent of high school students reported current use of electronic cigarettes and, among electronic cigarette users, about one-third reported using electronic cigarettes on 20 or more of the preceding 30 days.

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

(c) Early research from Stanford University school of medicine indicates that teenagers and young adults that vape are five to seven times more likely to be infected with COVID-19 compared to those who do not use vapor products.

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

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

**Sec.**  RCW 70.155.120 and 2019 c 415 s 979 and 2019 c 15 s 10 are each reenacted and amended to read as follows:

(1) The youth tobacco and vapor products prevention account is created in the state treasury. All fees collected pursuant to RCW 82.24.520, 82.24.530, 82.26.160, and 82.26.170 and funds collected by the liquor and cannabis board from the imposition of monetary penalties shall be deposited into this account, except that ten percent of all such fees and penalties shall be deposited in the state general fund.

(2) Moneys appropriated from the youth tobacco and vapor products prevention account to the department of health shall be used by the department of health for implementation of this chapter, including collection and reporting of data regarding enforcement and the extent to which access to tobacco products and vapor products by youth has been reduced.

(3) The department of health shall enter into interagency agreements with the liquor and cannabis board to pay the costs incurred, up to thirty percent of available funds, in carrying out its enforcement responsibilities under this chapter. Such agreements shall set forth standards of enforcement, consistent with the funding available, so as to reduce the extent to which tobacco products and vapor products are available to individuals under the age of twenty-one. The agreements shall also set forth requirements for data reporting by the liquor and cannabis board regarding its enforcement activities. During the 2019-2021 fiscal biennium, the department of health shall pay the costs incurred, up to twenty-three percent of available funds, in carrying out its enforcement responsibilities.

(4) The department of health, the liquor and cannabis board, and the department of revenue shall enter into an interagency agreement for payment of the cost of administering the tobacco retailer licensing system and for the provision of quarterly documentation of tobacco wholesaler, retailer, and vending machine names and locations.

(5) The department of health shall, within up to seventy percent of available funds, provide grants to local health departments or other local community agencies to develop and implement coordinated tobacco and vapor product intervention strategies to prevent and reduce tobacco and vapor product use by youth. During the 2019-2021 fiscal biennium, the department of health shall, within up to seventy-seven percent of available funds, provide grants to local health departments or other local community agencies to develop and implement coordinated tobacco and vapor product intervention strategies to prevent and reduce tobacco and vapor product use by youth.

(6) Moneys deposited in the youth tobacco and vapor products prevention account from receipts of the additional delivery sales license fee authorized in RCW 70.345.060(2) must be made available to the board to hire staff for enforcement of laws and rules applicable to internet and other delivery sales of vapor products, including with respect to sales to persons under age 21 and collection of the vapor product tax.

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

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

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

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

(3) "Child care facility" has the same meaning as provided in RCW ((~~70.140.020~~)) 70A.320.020.

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

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

(a) The purchaser submits the order for such sale by means of a telephonic or other method of voice transmission, the mails or any other delivery service, or the internet or other online service; or

(b) The vapor product is delivered by use of the mails or of a delivery service. The foregoing sales of vapor products constitute a delivery sale regardless of whether the seller is located within or without this state. "Delivery sale" does not include a sale of any vapor product not for personal consumption to a retailer.

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

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

(8) "Distributor" has the same meaning as in RCW 82.25.005.

((~~(8)~~)) (9) "Flavored vapor product" means any vapor product that contains a taste or smell, other than the taste or smell of tobacco, that is distinguishable by an ordinary consumer either prior to or during the consumption of a vapor product including, but not limited to, any taste or smell relating to fruit, menthol, mint, wintergreen, chocolate, cocoa, vanilla, or honey, or any candy, dessert, alcoholic beverage, herb, or spice.

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

((~~(9)~~)) (11) "Manufacture" means to mix, prepare, create, produce, fabricate, assemble, modify, or label vapor products.

(12) "Manufacturer" means a person who manufactures and sells vapor products.

((~~(10)~~)) (13) "Person" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, the state and its departments and institutions, political subdivision of the state of Washington, corporation, limited liability company, association, society, any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise.

((~~(11)~~)) (14) "Place of business" means any place where vapor products are sold or where vapor products are manufactured, stored, or kept for the purpose of sale.

((~~(12)~~)) (15) "Playground" means any public improved area designed, equipped, and set aside for play of six or more children which is not intended for use as an athletic playing field or athletic court, including but not limited to any play equipment, surfacing, fencing, signs, internal pathways, internal land forms, vegetation, and related structures.

((~~(13)~~)) (16) "Retail outlet" means each place of business from which vapor products are sold to consumers.

((~~(14)~~)) (17) "Retailer" means any person engaged in the business of selling vapor products to ultimate consumers.

((~~(15)~~)) (18)(a) "Sale" means any transfer, exchange, or barter, in any manner or by any means whatsoever, for a consideration, and includes and means all sales made by any person.

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

((~~(16)~~)) (19) "School" has the same meaning as provided in RCW ((~~70.140.020~~)) 70A.320.020.

((~~(17)~~)) (20) "Self-service display" means a display that contains vapor products and is located in an area that is openly accessible to customers and from which customers can readily access such products without the assistance of a salesperson. A display case that holds vapor products behind locked doors does not constitute a self-service display.

((~~(18)~~)) (21) "Vapor product" means any noncombustible product that may contain nicotine and that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, that can be used to produce vapor or aerosol from a solution or other substance.

(a) "Vapor product" includes any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and any vapor cartridge or other container that may contain nicotine in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device.

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

(c) For purposes of this subsection ((~~(18)~~)) (21), "marijuana," "useable marijuana," "marijuana concentrates," and "marijuana-infused products" have the same meaning as provided in RCW 69.50.101.

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

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

(a) A vapor product retailer's license;

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

(c) A vapor product manufacturer's license; and

(d) A vapor product delivery sale license.

(2) Application for the licenses must be made through the business licensing system under chapter 19.02 RCW. The board may adopt rules regarding the regulation of the licenses and licensees. The board may refuse to issue any license under this chapter if the board has reasonable cause to believe that the applicant has willfully withheld information requested for the purpose of determining the eligibility of the applicant to receive a license, or if the board has reasonable cause to believe that information submitted in the application is false or misleading or is not made in good faith. In addition, for the purpose of reviewing an application for a manufacturer's license, distributor's license, retailer's license, or delivery seller's license, and for considering the denial, suspension, or revocation of any such license, the board may consider criminal conduct of the applicant, including an administrative violation history record with the board and a criminal history record information check within the previous five years, in any state, tribal, or federal jurisdiction in the United States, its territories, or possessions, and the provisions of RCW 9.95.240 and chapter 9.96A RCW do not apply to such cases. The board may, in its discretion, issue or refuse to issue ((~~the~~)) a manufacturer's license, retailer's license, distributor's license, ((~~and~~)) or delivery sale license subject to the provisions of RCW 70.155.100.

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

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

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

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

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

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

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

(2) No person engaged in or conducting business as a manufacturer, retailer, distributor, or delivery seller in this state may refuse to allow the enforcement officers of the board, on demand, to make full inspection of any place of business or vehicle where any of the vapor products regulated under this chapter are sold, stored, transported, or handled, or otherwise hinder or prevent such inspection. A person who violates this subsection is guilty of a gross misdemeanor.

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

(4) Any person licensed under this chapter as a retailer, distributor, or delivery seller may only sell vapor products obtained directly from:

(a) A person holding a valid manufacturer's license under this chapter; or

(b) A person holding a valid distributor's license under this chapter if the distributor obtained the vapor products from a person holding a valid manufacturer's license under this chapter.

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

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

**Sec.**  RCW 70.345.060 and 2016 sp.s. c 38 s 10 are each amended to read as follows:

(1) A fee of ((~~two hundred fifty dollars~~)) $250, in addition to any fee that may be applicable under subsection (2) of this section, must accompany each vapor product delivery sale license application or license renewal application under RCW 70.345.020.

(2) The board may establish an additional fee of up to $250 to accompany each vapor product delivery sale license application or license renewal application under RCW 70.345.020. In accordance with RCW 70.155.120, the moneys from this additional fee must be available to the board to hire staff for enforcement of laws and rules applicable to internet and other delivery sales of vapor products, including with respect to sales to persons under age 21 and collection of the vapor product tax.

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

(1) No person may conduct a delivery sale or otherwise ship or transport, or cause to be shipped or transported, any vapor product ordered or purchased by mail or through the internet to any person unless such seller has a valid delivery sale license as required under this chapter and unless the vapor product was manufactured by a person holding a valid manufacturer's license issued by the board under this chapter.

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

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

(b) For delivery sales of vapor products that are closed system nicotine containers, a delivery sale licensee may not sell or deliver more than a total of 16 individual cartridges of vapor product to an individual customer per month.

(4)(a) A delivery sale licensee must not accept a purchase or order from any person without first ((~~obtaining~~)) verifying the person is 21 years of age or older and complying with this section. The licensee shall attempt to match the full name, birthdate, and residential address of that person and ((~~verifying~~)) verify this information through an independently operated third-party database or aggregate of databases, which includes data from government sources, that are regularly used by government and businesses for the purpose of age and identity verification and authentication.

(b) If the licensee is unable to verify the person is 21 years of age or older under (a) of this subsection, the licensee must require the person to submit an age verification kit consisting of an attestation signed by the person that they are 21 years of age or older and a copy of a valid form of government identification. For purposes of this subsection, a valid form of government identification includes the officially issued forms of identification listed in RCW 70.345.120 (1)(a) through (f). If the person submits an age verification kit and the licensee is still unable to verify the person is age 21 years or older, the licensee may not proceed with the transaction and may not allow the person to submit more than one age verification kit.

(5)(a) A delivery sale licensee must accept payment only through a credit or debit card issued in the purchaser's own name. The licensee must verify that the card is issued to the same person identified through identity and age verification procedures in subsection (4) of this section. The licensee shall also verify the billing address on the credit or debit card offered for payment by the person matches the address listed in the database.

(b) The licensee shall submit to each credit card acquiring company with which it has credit card sales identification information in an appropriate form and format so that the words "vapor product" may be printed in the purchaser's credit card statement when a purchase of a vapor product is made by credit card payment.

(6)(a) Before a delivery sale licensee delivers an initial purchase to any person, the licensee must verify the identity and delivery address of the purchaser by mailing or shipping to the purchaser a notice of sale and certification form confirming that the addressee is in fact the person placing the order. The purchaser must return the signed certification form to the licensee before the initial shipment of product. Certification forms are not required for repeat customers. In the alternative, before a seller delivers an initial purchase to any person, the seller must first obtain from the prospective customer an electronic certification, such as by email, that includes a declaration that, at a minimum, the prospective customer is over the minimum age required for the legal sale of a vapor product, and the credit or debit card used for payment has been issued in the purchaser's name.

(b) Upon accepting an order for vapor products, but before shipping the vapor products, a delivery sale licensee must make a telephone call after 5:00 p.m. to the purchaser confirming the order. The telephone call may be a person-to-person call or a recorded message. The licensee is not required to speak directly with a person and may leave a message on an answering machine or by voice mail.

(7)(a) A delivery sale licensee must include on shipping documents a clear and conspicuous statement which includes, at a minimum, that the package contains vapor products manufactured under a license issued by the board, Washington law prohibits sales to those under the minimum age established by this chapter, and violations may result in sanctions to both the licensee and the purchaser. Vapor products must be delivered only in a container that is conspicuously labeled with the words: "CONTAINS VAPOR PRODUCTS: SIGNATURE OF PERSON 21 YEARS OF AGE OR OLDER REQUIRED FOR DELIVERY."

(b) A delivery sale licensee must deliver the vapor products to the purchaser's verified billing address on the credit or debit card used for payment. A delivery of vapor products may not be made to a post office box.

(c) Upon the delivery of the vapor product to the purchaser's address, the licensee must obtain the signature of a person 21 years of age or older before completing the delivery.

(8) For purposes of the enforcement of this section, the acts of the United States postal service or other common carrier when engaged in the business of transporting and delivering packages for others are not unlawful and are not subject to civil or criminal penalties.

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

((~~(9)~~)) (10) A person who knowingly violates this section is guilty of a class C felony, except that the maximum fine that may be imposed is five thousand dollars.

((~~(10)~~)) (11) In addition to or in lieu of any other civil or criminal remedy provided by law, a person who has violated this section is subject to a civil penalty of up to five thousand dollars for each violation. The attorney general, acting in the name of the state, may seek recovery of the penalty in a civil action in superior court.

((~~(11)~~)) (12) The attorney general may seek an injunction in superior court to restrain a threatened or actual violation of this section and to compel compliance with this section.

((~~(12)~~)) (13) Any violation of this section is not reasonable in relation to the development and preservation of business and is an unfair and deceptive act or practice and an unfair method of competition in the conduct of trade or commerce in violation of RCW 19.86.020. Standing to bring an action to enforce RCW 19.86.020 for violation of this section lies solely with the attorney general. Remedies provided by chapter 19.86 RCW are cumulative and not exclusive.

((~~(13)~~)) (14)(a) In any action brought under this section, the state is entitled to recover, in addition to other relief, the costs of investigation, enforcement actions by the board, expert witness fees, costs of the action, and reasonable attorneys' fees.

(b) If a court determines that a person has violated this section, the court shall order any profits, gain, gross receipts, or other benefit from the violation to be disgorged and paid to the state treasurer for deposit in the ((~~general fund~~)) foundational public health services account created in RCW 82.25.015.

(c) Monetary penalties imposed under this section must be deposited in the foundational public health services account created in RCW 82.25.015.

((~~(14)~~)) (15) Unless otherwise expressly provided, the penalties or remedies, or both, under this section are in addition to any other penalties and remedies available under any other law of this state.

((~~(15)~~)) (16) A licensee who violates this section is subject to license suspension or revocation by the board.

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

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

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

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

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

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

(a) Who has reasonable grounds to believe an illegal sale to a person under 21 years of age has occurred, may seize the vapor products believed to be sold illegally to a person under 21 years of age.

(b) Who has reasonable grounds to believe a person observed by the officer purchasing, attempting to purchase, or in possession of vapor products is under 18 years of age, may detain such person for a reasonable period of time and in such a reasonable manner as is necessary to determine the person's true identity and date of birth.

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

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

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

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

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

~~(6) Nothing in subsection (5) of this section permits a total ban on the sale or use of vapor products~~)), vapor product constituent, emitted constituent, or vapor product component may be injurious to human health or poses a significant risk to public health, the board may:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) A monetary penalty of three thousand dollars for the fourth or subsequent violation within any three-year period and suspension of the license for a period of twelve months for the fourth violation of RCW 26.28.080 within any three-year period;

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

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

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

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

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

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

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

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

(10) All proceedings under subsections (1) through (8) of this section must be conducted in accordance with chapter 34.05 RCW.

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

(12) The attorney general has primary jurisdiction over the board's actions under this section and may seek recovery of penalties in a civil or criminal action in superior court before a local prosecutor decline to file an action.

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

((~~All~~)) Except as provided in RCW 70.345.090 and 70.345.180, all license fees collected and funds collected by the board from the imposition of monetary penalties pursuant to this chapter must be deposited into the youth tobacco and vapor products prevention account created in RCW 70.155.120.

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

A fee of $250 must accompany each vapor product manufacturer's license application and license renewal application under RCW 70.345.020.

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

A vapor product may not be sold or offered for sale if the product has nicotine salts or other ingredients that result in nicotine concentrations that exceed any of the following comparative levels of nicotine:

(1) Twenty milligrams of nicotine per milliliter of liquid;

(2) Nicotine that is equivalent to two percent of the total volume of the liquid; or

(3) Twenty thousand parts per million of nicotine in the liquid.

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

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

(a) Additives;

(b) Thickening agents;

(c) Preservatives;

(d) Compounds;

(e) Nicotine content; and

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

(2) Disclosures must be completed for every vapor product constituent substance, regardless of whether such a constituent substance is an original constituent present in each vapor product, emitted during the use of the vapor product, or it is reasonably foreseeable that it will be present in the vapor product during the product's expected presale shelf life, or will develop in a vapor product after purchase without any action taken by the consumer. All disclosures must include the amounts and sources of each constituent substance. Constituent substance disclosures must be accompanied by a signed declaration under penalty of perjury certifying the completeness and accuracy of the information provided.

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

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

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

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

(1) A retailer, manufacturer, delivery seller, or distributor licensed under this chapter may not sell, offer for sale, or possess with the intent to sell or offer for sale flavored vapor products, or any product that he or she knows or reasonably should know will be used with or in a vapor product to create a flavored vapor product.

(2) This section applies to all persons who sell vapor products in this state including, but not limited to, cigarette and tobacco product retailers, vapor product retailers, manufacturers, delivery sellers, and distributors licensed under this chapter.

(3) There is a rebuttable presumption that a vapor product is a flavored vapor product if a delivery seller, distributor, manufacturer, or retailer, or any agent or employee of a delivery seller, distributor, manufacturer, or retailer, in the course of their agency or employment, has made a statement or claim directed to consumers or to the public that the vapor product has or produces a taste or smell other than tobacco including, but not limited to, text, color, or images, or any combination thereof, on the product's labeling or packaging used to explicitly or implicitly communicate that the vapor product has a taste or smell other than tobacco.

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

A city, town, county, or local health jurisdiction may limit the location of licensed vapor product retailers within a certain perimeter of schools and youth-orientated programs and activities if the city, town, county, or local health jurisdiction determines that such restriction may reduce underage access and addiction.

NEW SECTION. **Sec.**  (1) A person may not sell, offer for sale, or possess with the intent to sell or offer for sale any menthol-flavored tobacco product. This section applies to all persons who sell tobacco products in this state including, but not limited to, cigarette and tobacco product retailers, wholesalers, and distributors licensed under chapter 82.24 or 82.26 RCW.

(2) There is a rebuttable presumption that a tobacco product is a menthol-flavored tobacco product if a manufacturer or any of the manufacturer's agents or employees, in the course of their agency or employment, has made a statement or claim directed to consumers or to the public that the tobacco product has or produces a characterizing flavor including, but not limited to, text, color, or images, or any combination thereof, on the product's labeling or packaging used to explicitly or implicitly communicate that the tobacco product has a characterizing flavor.

(3) For the purposes of this section and section 18 of this act:

(a) "Tobacco product" means:

(i) Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, bidis, or snuf; and

(ii) Any device or component, part, or accessory that delivers nicotine alone or combined with other substances to the person using the device including, but not limited to, electronic cigarettes, cigars, or pipes, whether or not the device or component is sold separately.

(b) "Tobacco product" does not include any product approved by the United States food and drug administration for sale as a tobacco cessation product, medical device, or for other therapeutic purposes when such product is marketed and sold solely for such an approved purpose.

NEW SECTION. **Sec.**  (1) The liquor and cannabis board shall enforce this chapter and may suspend or revoke the license of a cigarette or tobacco retailer, wholesaler, or distributor licensed under chapter 82.24 or 82.26 RCW for a violation or violations of section 17 of this act. If the board makes an initial decision to suspend or revoke a license, the licensee may request a hearing subject to chapter 34.05 RCW.

(2) The liquor and cannabis board may conduct random and unannounced inspections of a cigarette or tobacco retailer, wholesaler, or distributor licensed under chapter 82.24 or 82.26 RCW to ensure compliance with this chapter. The board may conduct such inspections with local law enforcement.

(3) Menthol-flavored tobacco products sold, offered for sale, or possessed in violation of this chapter are subject to seizure and forfeiture by the liquor and cannabis board.

NEW SECTION. **Sec.**  A new section is added to chapter 82.04 RCW to read as follows:

(1) Beginning with business activities occurring on or after July 1, 2021, a vapor products surcharge is imposed as follows:

(a) Upon every person engaging within this state in business as a manufacturer of vapor products, in addition to the tax imposed under RCW 82.04.240, a surcharge equal to the value of the manufactured vapor products, including by-products, multiplied by the rate of 4.4 percent;

(b) Upon every person engaging within this state in business as a vapor product distributor licensed under RCW 70.345.020, in addition to the tax imposed under RCW 82.04.240, a surcharge equal to the value of the manufactured vapor products, including by-products, multiplied by the rate of 4.4 percent.

(2) Beginning with business activities occurring on or after July 1, 2021, a tobacco products surcharge is imposed as follows:

(a) Upon every person engaging within this state in business as a manufacturer of tobacco products, in addition to the tax imposed under RCW 82.04.240, a surcharge equal to the value of the manufactured tobacco products, including by-products, multiplied by the rate of 4.4 percent;

(b) Upon every person engaging within this state in business as a tobacco product distributor licensed under RCW 82.26.190, in addition to the tax imposed under RCW 82.04.240, a surcharge equal to the value of the manufactured tobacco products, including by-products, multiplied by the rate of 4.4 percent.

**Sec.**  RCW 82.25.005 and 2019 c 445 s 101 are each amended to read as follows:

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

(1) ((~~"Accessible container" means a container that is intended to be opened. The term does not mean a closed cartridge or closed container that is not intended to be opened such as a disposable e-cigarette.~~

~~(2)~~)) "Affiliated" means related in any way by virtue of any form or amount of common ownership, control, operation, or management.

((~~(3)~~)) (2) "Board" means the Washington state liquor and cannabis board.

((~~(4)~~)) (3) "Business" means any trade, occupation, activity, or enterprise engaged in selling or distributing vapor products in this state.

((~~(5)~~)) (4) "Distributor" ((~~mean[s]~~)) means any person:

(a) Engaged in the business of selling vapor products in this state who brings, or causes to be brought, into this state from outside the state any vapor products for sale;

(b) Who makes, manufactures, fabricates, or stores vapor products in this state for sale in this state;

(c) Engaged in the business of selling vapor products outside this state who ships or transports vapor products to retailers or consumers in this state; or

(d) Engaged in the business of selling vapor products in this state who handles for sale any vapor products that are within this state but upon which tax has not been imposed.

((~~(6)~~)) (5) "Indian country" has the same meaning as provided in RCW 82.24.010.

((~~(7)~~)) (6) "Manufacturer" has the same meaning as provided in RCW 70.345.010.

((~~(8) "Manufacturer's representative" means a person hired by a manufacturer to sell or distribute the manufacturer's vapor products and includes employees and independent contractors.~~

~~(9)~~)) (7) "Person" means: Any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, corporation, limited liability company, association, or society; the state and its departments and institutions; any political subdivision of the state of Washington; and any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise. Except as provided otherwise in this chapter, "person" does not include any person immune from state taxation, including the United States or its instrumentalities, and federally recognized Indian tribes and enrolled tribal members, conducting business within Indian country.

((~~(10)~~)) (8) "Place of business" means any place where vapor products are sold or where vapor products are manufactured, stored, or kept for the purpose of sale, including any vessel, vehicle, airplane, or train.

((~~(11)~~)) (9) "Retail outlet" has the same meaning as provided in RCW 70.345.010.

((~~(12)~~)) (10) "Retailer" has the same meaning as provided in RCW 70.345.010.

((~~(13)~~)) (11) "Sale" has the same meaning as provided in RCW 70.345.010.

((~~(14)~~)) (12) "Taxpayer" means a person liable for the tax imposed by this chapter.

((~~(15)~~)) (13) "Vapor product" means any noncombustible product containing a solution or other consumable substance, regardless of whether it contains nicotine, which employs a mechanical heating element, battery, or electronic circuit regardless of shape or size that can be used to produce vapor from the solution or other substance, including an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. The term also includes any cartridge or other container of liquid nicotine, solution, or other consumable substance, regardless of whether it contains nicotine, that is intended to be used with or in a device that can be used to deliver aerosolized or vaporized nicotine to a person inhaling from the device and is sold for such purpose.

(a) The term does not include:

(i) Any product approved by the United States food and drug administration for sale as a tobacco cessation product, medical device, or for other therapeutic purposes when such product is marketed and sold solely for such an approved purpose;

(ii) Any product that will become an ingredient or component in a vapor product manufactured by a distributor; or

(iii) Any product that meets the definition of marijuana, useable marijuana, marijuana concentrates, marijuana-infused products, cigarette, or tobacco products.

(b) For purposes of this subsection ((~~(15)~~)) (13):

(i) "Cigarette" has the same meaning as provided in RCW 82.24.010; and

(ii) "Marijuana," "useable marijuana," "marijuana concentrates," and "marijuana-infused products" have the same meaning as provided in RCW 69.50.101.

**Sec.**  RCW 82.25.010 and 2019 c 445 s 102 are each amended to read as follows:

(1)(a) There is levied and collected a ((~~tax upon the sale, use, consumption, handling, possession, or distribution of all vapor products in this state as follows:~~

~~(i) All vapor products other than those taxed under (a)(ii) of this subsection are taxed at a rate equal to twenty-seven cents per milliliter of solution, regardless of whether it contains nicotine, and a proportionate tax at the like rate on all fractional parts of a milliliter thereof.~~

~~(ii) Any accessible container of solution, regardless of whether it contains nicotine, that is greater than five milliliters, is taxed at a rate equal to nine cents per milliliter of solution and a proportionate tax at the like rate on all fractional parts of a milliliter thereof.~~

~~(b) The tax in this section must be imposed based on the volume of the solution as listed by the manufacturer.~~

~~(2)(a) The tax under this section must be collected at the time the distributor: (i) Brings, or causes to be brought, into this state from without the state vapor products for sale; (ii) makes, manufactures, fabricates, or stores vapor products in this state for sale in this state; (iii) ships or transports vapor products to retailers or consumers in this state; or (iv) handles for sale any vapor products that are within this state but upon which tax has not been imposed.~~

~~(b) The tax imposed under this section must also be collected by the department from the consumer of vapor products where the tax imposed under this section was not paid by the distributor on such vapor products.~~

~~(3)(a)~~)) vapor product excise tax equal to 45 percent of the selling price on each retail sale in this state of vapor products. This tax is separate and in addition to general state and local sales and use taxes that apply to retail sales of tangible personal property, and is not part of the total retail price to which general state and local sales and use taxes apply. The tax must be separately itemized from the state and local retail sales tax on the sales receipt provided to the buyer.

(b) The tax levied in this section must be reflected in the price list or quoted shelf price in the vapor products retail store, on the website or sales platform of a delivery seller, and in any advertising of vapor products that includes prices for vapor products.

(2)(a) The moneys collected under this section must be deposited as follows:

(i) Fifty percent into the Andy Hill cancer research endowment fund match transfer account created in RCW 43.348.080; and

(ii) Fifty percent into the foundational public health services account created in RCW 82.25.015.

(b) The funding provided under this subsection is intended to supplement and not supplant general fund investments in cancer research and foundational public health services.

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

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

(a) "Product" means vapor products.

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

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

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

**Sec.**  RCW 82.25.020 and 2019 c 445 s 104 are each amended to read as follows:

It is the intent and purpose of this chapter to levy a tax on all vapor products sold((~~,~~)) or used((~~, consumed, handled, possessed, or distributed~~)) within this state. It is the further intent and purpose of this chapter to impose the tax only once on all vapor products in this state. Nothing in this chapter may be construed to exempt any person taxable under any other law or under any other tax imposed under this title.

**Sec.**  RCW 82.25.075 and 2019 c 445 s 115 are each amended to read as follows:

(1) No person engaged in or conducting business as a distributor or retailer in this state may:

(a) Make, use, or present or exhibit to the department or the board any invoice for any of the vapor products taxed under this chapter that bears an untrue date or falsely states the nature or quantity of the goods invoiced; or

(b) Fail to produce on demand of the department or the board all invoices of all the vapor products taxed under this chapter within five years prior to such demand unless the person can show by satisfactory proof that the nonproduction of the invoices was due to causes beyond the person's control.

(2)((~~(a) No person, other than a licensed distributor, retailer or delivery sales licensee, or manufacturer's representative, may transport vapor products for sale in this state for which the taxes imposed under this chapter have not been paid unless:~~

~~(i) Notice of the transportation has been given as required under RCW 82.25.065;~~

~~(ii) The person transporting the vapor products actually possesses invoices or delivery tickets showing the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity and brands of vapor products being transported; and~~

~~(iii) The vapor products are consigned to or purchased by a person in this state who is licensed under chapter 70.345 RCW.~~

~~(b) A violation of this subsection (2) is a gross misdemeanor.~~

~~(3)~~)) Any person licensed under chapter 70.345 RCW as a distributor, and any person licensed under chapter 70.345 RCW as a retailer, may not operate in any other capacity unless the additional appropriate license is first secured, except as otherwise provided by law. A violation of this subsection ((~~(3)~~)) is a misdemeanor.

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

((~~(5) This section does not apply to a motor carrier or freight forwarder as defined in Title 49 U.S.C. Sec. 13102 or an air carrier as defined in Title 49 U.S.C. Sec. 40102.~~))

**Sec.**  RCW 82.25.060 and 2019 c 445 s 112 are each amended to read as follows:

((~~(1)~~)) The department may by rule establish the invoice detail required under RCW 82.25.030 for a distributor and for those invoices required to be provided to retailers under RCW 82.25.040.

((~~(2) If a retailer fails to keep invoices as required under RCW 82.25.040, the retailer is liable for the tax owed on any uninvoiced vapor products but not penalties and interest, except as provided in subsection (3) of this section.~~

~~(3) If the department finds that the nonpayment of tax by the retailer was willful or if in the case of a second or plural nonpayment of tax by the retailer, penalties and interest must be assessed in accordance with chapter 82.32 RCW.~~))

**Sec.**  RCW 82.25.080 and 2019 c 445 s 116 are each amended to read as follows:

(1) A retailer that obtains vapor products from an unlicensed distributor or any other person that is not licensed under chapter 70.345 RCW must be licensed both as a retailer and a distributor ((~~and is liable for the tax imposed under RCW 82.25.010 with respect to the vapor products acquired from the unlicensed person that are held for sale, handling, or distribution in this state~~)). For the purposes of this subsection, "person" includes both persons defined in chapter 445, Laws of 2019 and any person immune from state taxation, such as the United States or its instrumentalities, and federally recognized Indian tribes and enrolled tribal members, conducting business within Indian country.

(2) Every distributor licensed under chapter 70.345 RCW may sell vapor products to retailers located in Washington only if the retailer has a current retailer's license under chapter 70.345 RCW.

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

(1) The legislature intends to create a tax credit so that vapor products taxed at the wholesale level under the law as it existed immediately before the effective date of this section are not also taxed in a retail sale under the provisions of this act.

(2) Except as provided in subsection (3) of this section, a tax credit is established and available to distributors with respect to vapor products:

(a) In their possession on the effective date of this section on which tax was paid to the state by the distributor pursuant to the law as it existed immediately before the effective date of this section; or

(b) Returned to the distributor by a retailer, other purchaser, or consignee, on or after the effective date of this section, if tax on the vapor products was previously paid by the distributor to the state pursuant to the law as it existed immediately before the effective date of this section.

(3) Nothing in this section authorizes a tax credit for vapor products that are expired, destroyed, unsellable, or that are not held for sale by the distributor and intended to ultimately be sold by a licensee at retail.

(4) Credit allowed under this section must be determined based on the tax rate in effect for the period for which the tax imposed by this chapter, for which a credit is sought, was paid.

(5) To be eligible for a tax credit under this section, a distributor shall apply for the credit to the department on a form and in a manner required by the department. The department may establish requirements related to distributors documenting and claiming a tax credit pursuant to this section in order to determine eligibility.

**Sec.**  RCW 82.25.005 and 2019 c 445 s 101 are each amended to read as follows:

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

(1) "Accessible container" means a container that is intended to be opened. The term does not mean a closed cartridge or closed container that is not intended to be opened such as a disposable e-cigarette.

(2) "Affiliated" means related in any way by virtue of any form or amount of common ownership, control, operation, or management.

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

(4) "Business" means any trade, occupation, activity, or enterprise engaged in selling or distributing vapor products in this state.

(5) "Distributor" ((~~mean[s]~~)) means any person:

(a) Engaged in the business of selling vapor products in this state who brings, or causes to be brought, into this state from outside the state any vapor products for sale;

(b) Who makes, manufactures, fabricates, or stores vapor products in this state for sale in this state;

(c) Engaged in the business of selling vapor products outside this state who ships or transports vapor products to retailers or consumers in this state; or

(d) Engaged in the business of selling vapor products in this state who handles for sale any vapor products that are within this state but upon which tax has not been imposed.

(6) "Indian country" has the same meaning as provided in RCW 82.24.010.

(7) "Manufacturer" has the same meaning as provided in RCW 70.345.010.

(8) ((~~"Manufacturer's representative" means a person hired by a manufacturer to sell or distribute the manufacturer's vapor products and includes employees and independent contractors.~~

~~(9)~~)) "Person" means: Any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, corporation, limited liability company, association, or society; the state and its departments and institutions; any political subdivision of the state of Washington; and any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise. Except as provided otherwise in this chapter, "person" does not include any person immune from state taxation, including the United States or its instrumentalities, and federally recognized Indian tribes and enrolled tribal members, conducting business within Indian country.

((~~(10)~~)) (9) "Place of business" means any place where vapor products are sold or where vapor products are manufactured, stored, or kept for the purpose of sale, including any vessel, vehicle, airplane, or train.

((~~(11)~~)) (10) "Retail outlet" has the same meaning as provided in RCW 70.345.010.

((~~(12)~~)) (11) "Retailer" has the same meaning as provided in RCW 70.345.010.

((~~(13)~~)) (12) "Sale" has the same meaning as provided in RCW 70.345.010.

((~~(14)~~)) (13) "Taxpayer" means a person liable for the tax imposed by this chapter.

((~~(15)~~)) (14) "Vapor product" means any noncombustible product containing a solution or other consumable substance, regardless of whether it contains nicotine, which employs a mechanical heating element, battery, or electronic circuit regardless of shape or size that can be used to produce vapor from the solution or other substance, including an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. The term also includes any cartridge or other container of liquid nicotine, solution, or other consumable substance, regardless of whether it contains nicotine, that is intended to be used with or in a device that can be used to deliver aerosolized or vaporized nicotine to a person inhaling from the device and is sold for such purpose.

(a) The term does not include:

(i) Any product approved by the United States food and drug administration for sale as a tobacco cessation product, medical device, or for other therapeutic purposes when such product is marketed and sold solely for such an approved purpose;

(ii) Any product that will become an ingredient or component in a vapor product manufactured by a distributor; or

(iii) Any product that meets the definition of marijuana, useable marijuana, marijuana concentrates, marijuana-infused products, cigarette, or tobacco products.

(b) For purposes of this subsection ((~~(15)~~)) (14):

(i) "Cigarette" has the same meaning as provided in RCW 82.24.010; and

(ii) "Marijuana," "useable marijuana," "marijuana concentrates," and "marijuana-infused products" have the same meaning as provided in RCW 69.50.101.

**Sec.**  RCW 82.25.065 and 2019 c 445 s 113 are each amended to read as follows:

(1) No person may transport or cause to be transported in this state vapor products for sale other than: (a) A licensed distributor under chapter 70.345 RCW((~~, or a manufacturer's representative authorized to sell or distribute vapor products in this state~~)); (b) a licensed manufacturer under chapter 70.345 RCW; ((~~(b)~~)) (c) a licensed retailer under chapter 70.345 RCW; ((~~(c)~~)) (d) a seller with a valid delivery sale license under chapter 70.345 RCW; or ((~~(d)~~)) (e) a person who has given notice to the board in advance of the commencement of transportation.

(2) When transporting vapor products for sale, the person must have in his or her actual possession, or cause to have in the actual possession of those persons transporting such vapor products on his or her behalf, invoices or delivery tickets for the vapor products, which must show the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity and brands of the vapor products being transported.

(3) In any case where the department or the board, or any peace officer of the state, has knowledge or reasonable grounds to believe that any vehicle is transporting vapor products in violation of this section, the department, board, or peace officer is authorized to stop the vehicle and to inspect it for contraband vapor products.

(4) This section does not apply to a motor carrier or freight forwarder as defined in Title 49 U.S.C. Sec. 13102 or an air carrier as defined in Title 49 U.S.C. Sec. 40102.

**Sec.**  RCW 82.25.075 and 2019 c 445 s 115 are each amended to read as follows:

(1) No person engaged in or conducting business as a distributor or retailer in this state may:

(a) Make, use, or present or exhibit to the department or the board any invoice for any of the vapor products taxed under this chapter that bears an untrue date or falsely states the nature or quantity of the goods invoiced; or

(b) Fail to produce on demand of the department or the board all invoices of all the vapor products taxed under this chapter within five years prior to such demand unless the person can show by satisfactory proof that the nonproduction of the invoices was due to causes beyond the person's control.

(2)(a) No person, other than a licensed distributor, retailer or delivery sales licensee, or ((~~manufacturer's representative~~)) licensed manufacturer, may transport vapor products for sale in this state for which the taxes imposed under this chapter have not been paid unless:

(i) Notice of the transportation has been given as required under RCW 82.25.065;

(ii) The person transporting the vapor products actually possesses invoices or delivery tickets showing the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity and brands of vapor products being transported; and

(iii) The vapor products are consigned to or purchased by a person in this state who is licensed under chapter 70.345 RCW.

(b) A violation of this subsection (2) is a gross misdemeanor.

(3) Any person licensed under chapter 70.345 RCW as a distributor, and any person licensed under chapter 70.345 RCW as a retailer, may not operate in any other capacity unless the additional appropriate license is first secured, except as otherwise provided by law. A violation of this subsection (3) is a misdemeanor.

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

(5) This section does not apply to a motor carrier or freight forwarder as defined in Title 49 U.S.C. Sec. 13102 or an air carrier as defined in Title 49 U.S.C. Sec. 40102.

**Sec.**  RCW 82.25.090 and 2019 c 445 s 118 are each amended to read as follows:

(1) Any vapor products in the possession of a person selling vapor products in this state acting as a distributor or retailer and who is not licensed as required under chapter 70.345 RCW, or a person who is selling vapor products in violation of RCW 82.24.550(6), may be seized without a warrant by any agent of the department, agent of the board, or law enforcement officer of this state. Any vapor products seized under this subsection are deemed forfeited.

(2) Any vapor products in the possession of a person who is not a licensed distributor, delivery seller, ((~~manufacturer's representative~~)) manufacturer, or retailer and who transports vapor products for sale without having provided notice to the board required under RCW 82.25.065, or without invoices or delivery tickets showing the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity and brands of vapor products being transported may be seized and are subject to forfeiture.

(3) All conveyances, including aircraft, vehicles, or vessels that are used, or intended for use to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of vapor products under subsection (2) of this section, may be seized and are subject to forfeiture except:

(a) A conveyance used by any person as a common or contract carrier having in actual possession invoices or delivery tickets showing the true name and address of the consignor or seller, the true name of the consignee or purchaser, and the quantity and brands of the vapor products transported, unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;

(b) A conveyance subject to forfeiture under this section by reason of any act or omission of which the owner establishes to have been committed or omitted without his or her knowledge or consent; or

(c) A conveyance encumbered by a bona fide security interest if the secured party neither had knowledge of nor consented to the act or omission.

(4) Property subject to forfeiture under subsections (2) and (3) of this section may be seized by any agent of the department, the board, or law enforcement officer of this state upon process issued by any superior court or district court having jurisdiction over the property. Seizure without process may be made if:

(a) The seizure is incident to an arrest or a search warrant or an inspection under an administrative inspection warrant; or

(b) The department, board, or law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter and exigent circumstances exist making procurement of a search warrant impracticable.

(5) This section may not be construed to require the seizure of vapor products if the department's agent, board's agent, or law enforcement officer reasonably believes that the vapor products are possessed for personal consumption by the person in possession of the vapor products.

(6) Any vapor products seized by a law enforcement officer must be turned over to the board as soon as practicable.

(7) This section does not apply to a motor carrier or freight forwarder as defined in Title 49 U.S.C. Sec. 13102 or an air carrier as defined in Title 49 U.S.C. Sec. 40102.

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

(1) A bundled transaction that includes a vapor product is subject to the tax imposed under this chapter on the entire selling price of the bundled transaction.

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

(a) "Bundled transaction" means:

(i) The sale of two or more products where the products are otherwise distinct and identifiable, are sold for one nonitemized price, and at least one product is a vapor product subject to the tax under this chapter; and

(ii) A vapor product provided free of charge with the required purchase of another product. A vapor product is provided free of charge if the sales price of the product purchased does not vary depending on the inclusion of the vapor product provided free of charge.

(b) "Distinct and identifiable products" does not include packaging such as containers, boxes, sacks, bags, and bottles, or materials such as wrapping, labels, tags, and instruction guides, that accompany the sale of the products and are incidental or immaterial to the sale thereof.

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

(1) The taxes imposed by this chapter do not apply to the sale of vapor products by an Indian retailer during the effective date of a vapor product tax contract subject to RCW 43.06.510 or a vapor product tax agreement under RCW 43.06.515.

(2) The definitions in RCW 43.06.505 apply to this section.

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

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

NEW SECTION. **Sec.**  The following acts or parts of acts are each repealed:

(1)RCW 70.345.210 (State preemption—Exceptions) and 2016 sp.s. c 38 s 3;

(2)RCW 82.25.045 (Shipped or transported outside state—Tax credit) and 2019 c 445 s 109; and

(3)RCW 82.25.085 (Manufacturer's representatives) and 2019 c 445 s 117.

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

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

NEW SECTION. **Sec.**  Sections 17 and 18 of this act constitute a new chapter in Title 70 RCW.

NEW SECTION. **Sec.**  Sections 20 through 26 of this act take effect January 1, 2022.

NEW SECTION. **Sec.**  Sections 27 and 29 of this act expire January 1, 2022.

NEW SECTION. **Sec.**  Section 19 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2021.

**--- END ---**