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**SENATE BILL 6118**

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**State of Washington 68th Legislature 2024 Regular Session**

**By** Senators Van De Wege, Braun, Keiser, and Stanford

AN ACT Relating to protecting public health and safety by enhancing the regulation of vapor products; adding a new section to chapter 70.345 RCW; and prescribing penalties.

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

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

(1) By August 1, 2024, and annually thereafter, every manufacturer of vapor products that are sold in this state, whether directly or through a distributor, wholesaler, retailer, delivery seller, or similar intermediary or intermediaries, must certify under penalty of perjury on a form and in the manner prescribed by the board, that the manufacturer agrees to comply with this chapter, and that:

(a) The manufacturer has received a marketing authorization or similar order for the vapor product from the United States food and drug administration pursuant to 21 U.S.C. Sec. 387j; or

(b) The vapor product was marketed in the United States as of August 8, 2016, the manufacturer submitted a premarket tobacco product application for the vapor product to the United States food and drug administration pursuant to 21 U.S.C. Sec. 387j on or before September 9, 2020, and the application either remains under review by the United States food and drug administration or a final decision on the application has not otherwise taken effect.

(2) A manufacturer must submit a certification form that separately lists each vapor product that is sold in this state.

(3) Each annual certification form must be accompanied by:

(a) A copy of the marketing authorization or other order for the vapor product issued by the United States food and drug administration pursuant to 21 U.S.C. Sec. 387j, or evidence that the premarket tobacco product application for the vapor product was submitted to the United States food and drug administration, and a final authorization or order has not yet taken effect; and

(b) A payment of $1,000 for each vapor product the first time a vapor product manufacturer submits a certification form for that product and a payment of $250 annually thereafter for each vapor product.

(4) A manufacturer required to submit a certification form pursuant to this section must notify the board within 30 days of any material change to the certification form, including the issuance or denial of a marketing authorization or other order by the United States food and drug administration pursuant to 21 U.S.C. Sec. 387j, or any other order or action by the United States food and drug administration or any court that affects the ability of the vapor product to be introduced or delivered into interstate commerce for commercial distribution in the United States.

(5) The board must maintain and make available on its public website a directory that lists all vapor product manufacturers and vapor products for which certification forms have been submitted.

(a) The board must make the directory available for inspection on its public website by October 1, 2024.

(b) The board must update the directory as necessary in order to correct mistakes, ensure accuracy, and add or remove vapor product manufacturers and vapor products on at least a monthly basis.

(6) The board must provide manufacturers notice and an opportunity to cure deficiencies before removing manufacturers or products from the directory.

(a) The board may not remove the manufacturer or its products from the directory until at least 15 days after the manufacturer has been given notice of an intended action. Notice must be sufficient and be deemed immediately received by a manufacturer if the notice is sent either electronically or by facsimile to an electronic mail address or facsimile number, as the case may be, provided by the manufacturer in its most recent certification, or to the manufacturer's registered agent for service of process in the state.

(b) The vapor product manufacturer must have 15 business days from the date of service of the notice of the board's intended action to establish that the vapor product manufacturer or its products should be included in the directory.

(7) If a product is removed from the directory, each retailer, distributor, and wholesaler must have 21 days from the day such product is removed from the directory to remove the product from its inventory and return the product to the manufacturer for disposal. After 21 days following removal from the directory, the vapor products of a manufacturer identified in the notice of removal are contraband and are subject to seizure, forfeiture, and destruction, and may not be purchased or sold in the state.

(8) Beginning October 1, 2024, or on the date that the board first makes the directory available for inspection on its public website, a person may not sell or offer for sale a vapor product in this state that is not included in the directory, and a vapor product manufacturer may not sell, either directly or through a distributor or wholesaler, retailer, delivery seller, or similar intermediary or intermediaries, a vapor product in this state that is not included in the directory.

(9) The following penalties apply to violations of this section:

(a) In addition to or in lieu of any other civil or criminal remedy provided by law, a retailer, delivery seller, distributor, or wholesaler who sells or offers for sale a vapor product in this state that is not included in the directory must be subject to a civil penalty of $1,000 per day for each product offered for sale in violation of this section until the offending product is removed from the market or until the offending product is properly listed on the directory.

(i) For a second violation within a period of two years, the licensee's license also must be suspended for a period of 30 days.

(ii) For a third violation within a period of two years, the licensee's license also must be suspended for a period of 90 days.

(iii) For a fourth violation within a period of two years, the licensee's license must be revoked.

(b) In addition to or in lieu of any other civil or criminal remedy provided by law, a vapor product manufacturer whose vapor products are not listed in the directory and are sold in this state, whether directly or through a distributor or wholesaler, retailer, or similar intermediary or intermediaries, is subject to a civil penalty of $1,000 per day for each product offered for sale in violation of this section until the offending product is removed from the market, or until the offending product is properly listed on the directory. In addition, a manufacturer that knowingly makes a false representation in any of the information required by the certification forms required under this title is guilty of a misdemeanor for each false representation.

(10) Vapor products offered for sale in violation of this section are considered contraband and may be seized by an enforcement officer of the board.

(11) The attorney general, acting in the name of the state, may seek recovery of the penalty in a civil action in superior court.

(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.

(13) A second or subsequent 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.

(14)(a) In any action brought under this section, the state is entitled to recover, in addition to other relief, the costs of investigation, 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 must 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.

(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.

(16) Each retailer, distributor, and wholesaler that sells or distributes vapor products in this state must be subject to at least two unannounced compliance checks annually for purposes of enforcing this section. Unannounced follow-up compliance checks of all noncompliant retailers, distributors, and wholesalers must be conducted within 30 days after any violation of this section. The board must publish the results of all compliance checks at least annually and must make the results available to the public on request.

(17)(a) Any nonresident or foreign manufacturer that has not registered to do business in the state as a foreign corporation or business entity must, as a condition precedent to having its products included or retained in the directory, appoint and continually engage without interruption the services of an agent in this state to act as agent for the service of process on whom all process, and any action or proceeding against it concerning or arising out of the enforcement of this section, may be served in any manner authorized by law. The service must constitute legal and valid service of process on the manufacturer. The manufacturer must provide the name, address, phone number, and proof of the appointment and availability of the agent to the satisfaction of the board.

(b) The manufacturer must provide notice to the board 30 calendar days prior to termination of the authority of an agent and must further provide proof to the satisfaction of the board of the appointment of a new agent no less than five calendar days prior to the termination of an existing agent appointment. In the event an agent terminates an agency appointment, the manufacturer must notify the board of the termination within five calendar days and include proof to the satisfaction of the board of the appointment of a new agent.

(c) Any manufacturer whose vapor products are sold in this state, who has not appointed and engaged an agent as required in this section, must be deemed to have appointed the secretary of state as the agent and may be proceeded against in courts of this state by service of process upon the secretary of state. However, the appointment of the secretary of state as agent must not satisfy the condition precedent for having the products of the manufacturer included or retained in the directory.

(18) The board may adopt by rule requirements necessary to implement this section.

(19) Starting January 31, 2025, and annually thereafter, the board must provide a report to the legislature regarding the status of the directory, manufacturers and products included in the directory, revenue and expenditures related to administration of this section, and enforcement activities undertaken pursuant to this section.

(20) All fees collected and funds collected by the board from the imposition of monetary penalties pursuant to this section must be used by the board for implementation of this section.

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