

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 6328

Chapter 38, Laws of 2016

64th Legislature
2016 1st Special Session

VAPOR PRODUCTS

EFFECTIVE DATE: 6/28/2016 - Except sections 5 through 10 and 28,
which are contingent.

Passed by the Senate March 28, 2016
Yeas 37 Nays 6

PAM ROACH

President of the Senate

Passed by the House March 29, 2016
Yeas 74 Nays 20

FRANK CHOPP

Speaker of the House of Representatives

Approved April 19, 2016 4:24 PM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Hunter G. Goodman, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 6328** as passed by Senate and the House of Representatives on the dates hereon set forth.

HUNTER G. GOODMAN

Secretary

FILED

April 20, 2016

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 6328

Passed Legislature - 2016 1st Special Session

State of Washington

64th Legislature

2016 Regular Session

By Senate Health Care (originally sponsored by Senators Dammeier, Hasegawa, Conway, O'Ban, Becker, and Carlyle)

READ FIRST TIME 02/05/16.

1 AN ACT Relating to youth vapor product substance use prevention,
2 and vapor product regulation, without permitting a tax on the sale or
3 production of vapor products; amending RCW 26.28.080, 70.155.120,
4 82.24.530, 70.155.100, 82.26.170, and 66.08.145; adding a new section
5 to chapter 70.155 RCW; adding a new chapter to Title 70 RCW;
6 prescribing penalties; providing a contingent effective date; and
7 providing a contingent expiration date.

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

9 **Sec. 1.** RCW 26.28.080 and 2013 c 47 s 1 are each amended to read
10 as follows:

11 (1) Every person who sells or gives, or permits to be sold or
12 given, to any person under the age of eighteen years any cigar,
13 cigarette, cigarette paper or wrapper, tobacco in any form, or a
14 vapor product is guilty of a gross misdemeanor.

15 (2) It (~~shall be no~~) is not a defense to a prosecution for a
16 violation of this section that the person acted, or was believed by
17 the defendant to act, as agent or representative of another.

18 (3) For the purposes of this section, "vapor product" (~~means a~~
19 ~~noncombustible tobacco-derived product containing nicotine that~~
20 ~~employs a mechanical heating element, battery, or circuit, regardless~~
21 ~~of shape or size, that can be used to heat a liquid nicotine solution~~

1 ~~contained in cartridges. Vapor product does not include any product~~
2 ~~that is regulated by the United States food and drug administration~~
3 ~~under chapter V of the federal food, drug, and cosmetic)) has the~~
4 ~~same meaning as provided in section 4 of this act.~~

5 **Sec. 2.** RCW 70.155.120 and 1993 c 507 s 13 are each amended to
6 read as follows:

7 (1) The youth tobacco and vapor products prevention account is
8 created in the state treasury. All fees collected pursuant to RCW
9 82.24.520 ~~((and))~~, 82.24.530, 82.26.160, and 82.26.170 and funds
10 collected by the liquor ~~((control))~~ and cannabis board from the
11 imposition of monetary penalties ~~((and samplers' fees))~~ shall be
12 deposited into this account, except that ten percent of all such fees
13 and penalties shall be deposited in the state general fund.

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

20 (3) The department of health shall enter into interagency
21 agreements with the liquor ~~((control))~~ and cannabis board to pay the
22 costs incurred, up to thirty percent of available funds, in carrying
23 out its enforcement responsibilities under this chapter. Such
24 agreements shall set forth standards of enforcement, consistent with
25 the funding available, so as to reduce the extent to which tobacco
26 products and vapor products are available to individuals under the
27 age of eighteen. The agreements shall also set forth requirements for
28 data reporting by the liquor ~~((control))~~ and cannabis board regarding
29 its enforcement activities.

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

36 (5) The department of health shall, within up to seventy percent
37 of available funds, provide grants to local health departments or
38 other local community agencies to develop and implement coordinated

1 tobacco and vapor product intervention strategies to prevent and
2 reduce tobacco and vapor product use by youth.

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

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

13 (3) Subject to section 21 of this act, political subdivisions may
14 regulate the use of vapor products in indoor public places.

15 NEW SECTION. **Sec. 4.** DEFINITIONS. The definitions in this
16 section apply throughout this chapter unless the context clearly
17 requires otherwise.

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

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

22 (3) "Child care facility" has the same meaning as provided in RCW
23 70.140.020.

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

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

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

36 (b) The vapor product is delivered by use of the mails or of a
37 delivery service. The foregoing sales of vapor products constitute a
38 delivery sale regardless of whether the seller is located within or

1 without this state. "Delivery sale" does not include a sale of any
2 vapor product not for personal consumption to a retailer.

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

4 (7) "Distributor" means any person who:

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

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

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

15 (9) "Manufacturer" means a person who manufactures and sells
16 vapor products.

17 (10) "Minor" refers to an individual who is less than eighteen
18 years old.

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

27 (12) "Place of business" means any place where vapor products are
28 sold or where vapor products are manufactured, stored, or kept for
29 the purpose of sale.

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

36 (14) "Retail outlet" means each place of business from which
37 vapor products are sold to consumers.

38 (15) "Retailer" means any person engaged in the business of
39 selling vapor products to ultimate consumers.

1 (16)(a) "Sale" means any transfer, exchange, or barter, in any
2 manner or by any means whatsoever, for a consideration, and includes
3 and means all sales made by any person.

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

7 (17) "School" has the same meaning as provided in RCW 70.140.020.

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

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

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

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

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

31 NEW SECTION. **Sec. 5.** VAPOR PRODUCTS LICENSES. (1) The licenses
32 issuable by the board under this chapter are as follows:

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

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

35 (c) A vapor product delivery sale license.

36 (2) Application for the licenses must be made through the
37 business licensing system under chapter 19.02 RCW. The board may
38 adopt rules regarding the regulation of the licenses. The board may
39 refuse to issue any license under this chapter if the board has

1 reasonable cause to believe that the applicant has willfully withheld
2 information requested for the purpose of determining the eligibility
3 of the applicant to receive a license, or if the board has reasonable
4 cause to believe that information submitted in the application is
5 false or misleading or is not made in good faith. In addition, for
6 the purpose of reviewing an application for a distributor's license,
7 retailer's license, or delivery seller's license, and for considering
8 the denial, suspension, or revocation of any such license, the board
9 may consider criminal conduct of the applicant, including an
10 administrative violation history record with the board and a criminal
11 history record information check within the previous five years, in
12 any state, tribal, or federal jurisdiction in the United States, its
13 territories, or possessions, and the provisions of RCW 9.95.240 and
14 chapter 9.96A RCW do not apply to such cases. The board may, in its
15 discretion, issue or refuse to issue the retailer's license,
16 distributor's license, and delivery sale license subject to the
17 provisions of RCW 70.155.100.

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

27 (4) No person may qualify for a retailer's license, distributor's
28 license, or delivery sale license under this section without first
29 undergoing a criminal background check. The background check must be
30 performed by the board and must disclose any criminal conduct within
31 the previous five years in any state, tribal, or federal jurisdiction
32 in the United States, its territories, or possessions. If the
33 applicant or licensee also has a license issued under chapter 66.24,
34 69.50, 82.24, or 82.26 RCW, the background check done under the
35 authority of chapter 66.24, 69.50, 82.24, or 82.26 RCW satisfies the
36 requirements of this subsection.

37 (5) Each license issued under this chapter expires on the
38 business license expiration date. The license must be continued
39 annually if the licensee has paid the required fee and complied with

1 all the provisions of this chapter and the rules of the board adopted
2 pursuant to this chapter.

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

7 NEW SECTION. **Sec. 6.** LICENSING REQUIRED. (1)(a) No person may
8 engage in or conduct business as a retailer, distributor, or delivery
9 seller in this state without a valid license issued under this
10 chapter, except as otherwise provided by law. Any person who sells
11 vapor products to ultimate consumers by a means other than delivery
12 sales must obtain a retailer's license under this chapter. Any person
13 who sells vapor products to persons other than ultimate consumers or
14 who meets the definition of distributor under this chapter must
15 obtain a distributor's license under this chapter. Any person who
16 conducts delivery sales of vapor products must obtain a delivery sale
17 license.

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

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

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

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

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

4 NEW SECTION. Sec. 7. DISTRIBUTOR LICENSING FEE. A fee of one
5 hundred fifty dollars must accompany each vapor product distributor's
6 license application or license renewal application under section 5 of
7 this act. If a distributor sells or intends to sell vapor products at
8 two or more places of business, whether established or temporary, a
9 separate license with a license fee of one hundred dollars is
10 required for each additional place of business.

11 NEW SECTION. Sec. 8. RETAILER LICENSING FEE. (1) A fee of one
12 hundred seventy-five dollars must accompany each vapor product
13 retailer's license application or license renewal application under
14 section 5 of this act. A separate license is required for each
15 separate location at which the retailer operates.

16 (2) A retailer applying for, or renewing, both a vapor products
17 retailer's license under section 5 of this act and retailer's license
18 under RCW 82.24.510 may pay a combined application fee of two hundred
19 fifty dollars for both licenses.

20 **Sec. 9.** RCW 82.24.530 and 2012 2nd sp.s. c 4 s 12 are each
21 amended to read as follows:

22 (1) A fee of ((ninety-three)) one hundred seventy-five dollars
23 must accompany each retailer's license application or license renewal
24 application. A separate license is required for each separate
25 location at which the retailer operates. A fee of thirty additional
26 dollars for each vending machine must accompany each application or
27 renewal for a license issued to a retail dealer operating a cigarette
28 vending machine. An additional fee of ninety-three dollars ((shall))
29 must accompany each application or renewal for a license issued to a
30 retail dealer operating a cigarette-making machine.

31 (2) A retailer applying for, or renewing, both a retailer's
32 license under RCW 82.24.510 and a vapor products retailer's license
33 under section 5 of this act may pay a combined application fee of two
34 hundred fifty dollars for both licenses.

35 NEW SECTION. Sec. 10. DELIVERY SALE LICENSING FEE. A fee of two
36 hundred fifty dollars must accompany each vapor product delivery sale

1 license application or license renewal application under section 5 of
2 this act.

3 NEW SECTION. **Sec. 11.** ENFORCEMENT—LICENSE SUSPENSION,
4 REVOCATION. (1) The board, or its enforcement officers, has the
5 authority to enforce provisions of this chapter.

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

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

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 for violating RCW 26.28.080 must also
14 be suspended or revoked during the period of suspension or revocation
15 under this section.

16 (5) Any person whose license or licenses have been revoked under
17 this section may reapply to the board at the expiration of two years
18 of the license or licenses, unless the license was revoked pursuant
19 to section 22(2)(e) of this act. The license or licenses may be
20 approved by the board if it appears to the satisfaction of the board
21 that the licensee will comply with the provisions of this chapter.

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

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

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

1 NEW SECTION. **Sec. 12.** SIGNAGE. (1) Except as provided in
2 subsection (2) of this section, a person who holds a retailer's
3 license issued under this chapter must display a sign concerning the
4 prohibition of vapor product sales to minors. Such sign must:

5 (a) Be posted so that it is clearly visible to anyone purchasing
6 vapor products from the licensee;

7 (b) Be designed and produced by the department of health to read:
8 "The sale of vapor products to persons under age eighteen is strictly
9 prohibited by state law. If you are under age eighteen, you could be
10 penalized for purchasing a vapor product; photo id required;" and

11 (c) Be provided free of charge by the department of health.

12 (2) For persons also licensed under RCW 82.24.510 or 82.26.150,
13 the board may issue a sign to read: "The sale of tobacco or vapor
14 products to persons under age eighteen is strictly prohibited by
15 state law. If you are under age eighteen, you could be penalized for
16 purchasing a tobacco or vapor product; photo id required," provided
17 free of charge by the board.

18 (3) A person who holds a license issued under this chapter must
19 display the license or a copy in a prominent location at the outlet
20 for which the license is issued.

21 NEW SECTION. **Sec. 13.** LABELING REQUIREMENTS. (1) A manufacturer
22 or distributor that sells, offers for sale, or distributes liquid
23 nicotine containers shall label the vapor product with a: (a) Warning
24 regarding the harmful effects of nicotine; (b) warning to keep the
25 vapor product away from children; (c) warning that vaping is illegal
26 for those under the legal age to use the product; and (d) except as
27 provided in subsection (2) of this section, the amount of nicotine in
28 milligrams per milliliter of liquid along with the total volume of
29 the liquid contents of the product expressed in milliliters.

30 (2) For closed system nicotine containers as defined in section 4
31 of this act, a manufacturer that sells, offers for sale, or
32 distributes vapor products in this state must annually provide the
33 department of health with a disclosure of the nicotine content of
34 such vapor product based on measurement standards to be established
35 by the department of health.

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

1 (b) The board must provide notice of the expiration date of this
2 section to affected parties, the chief clerk of the house of
3 representatives, the secretary of the senate, the office of the code
4 reviser, and others as deemed appropriate by the board.

5 NEW SECTION. **Sec. 14.** PURCHASING, POSSESSING BY PERSONS UNDER
6 EIGHTEEN—CIVIL INFRACTION—JURISDICTION. (1) A person under the age
7 of eighteen who purchases or attempts to purchase, possesses, or
8 obtains or attempts to obtain vapor products commits a class 3 civil
9 infraction under chapter 7.80 RCW and is subject to a fine as set out
10 in chapter 7.80 RCW or participation in up to four hours of community
11 restitution, or both. The court may also require participation in a
12 smoking cessation program. This provision does not apply if a person
13 under the age of eighteen, with parental authorization, is
14 participating in a controlled purchase as part of a board, law
15 enforcement, or local health department activity.

16 (2) Municipal and district courts within the state have
17 jurisdiction for enforcement of this section.

18 NEW SECTION. **Sec. 15.** AGE IDENTIFICATION REQUIREMENT. (1) When
19 there may be a question of a person's right to purchase or obtain
20 vapor products by reason of age, the retailer or agent thereof, must
21 require the purchaser to present any one of the following officially
22 issued forms of identification that shows the purchaser's age and
23 bears his or her signature and photograph: (a) Liquor control
24 authority card of identification of a state or province of Canada;
25 (b) driver's license, instruction permit, or identification card of a
26 state or province of Canada; (c) "identocard" issued by the
27 Washington state department of licensing under chapter 46.20 RCW; (d)
28 United States military identification; (e) passport; (f) enrollment
29 card, issued by the governing authority of a federally recognized
30 Indian tribe located in Washington, that incorporates security
31 features comparable to those implemented by the department of
32 licensing for Washington drivers' licenses. At least ninety days
33 prior to implementation of an enrollment card under this subsection,
34 the appropriate tribal authority must give notice to the board. The
35 board must publish and communicate to licensees regarding the
36 implementation of each new enrollment card; or (g) merchant marine
37 identification card issued by the United States coast guard.

1 (2) It is a defense to a prosecution under RCW 26.28.080 that the
2 person making a sale reasonably relied on any of the officially
3 issued identification as defined in subsection (1) of this section.
4 The board must waive the suspension or revocation of a license if the
5 licensee clearly establishes that he or she acted in good faith to
6 prevent violations and a violation occurred despite the licensee's
7 exercise of due diligence.

8 NEW SECTION. **Sec. 16.** VENDOR-ASSISTED SALES REQUIREMENT. (1) No
9 person may offer a tobacco product or a vapor product for sale in an
10 open, unsecured display that is accessible to the public without the
11 intervention of a store employee.

12 (2) It is unlawful to sell or distribute vapor products from
13 self-service displays.

14 (3) Retail establishments are exempt from subsections (1) and (2)
15 of this section if minors are not allowed in the store and such
16 prohibition is posted clearly on all entrances.

17 NEW SECTION. **Sec. 17.** MAIL AND INTERNET SALES. (1) No person
18 may conduct a delivery sale or otherwise ship or transport, or cause
19 to be shipped or transported, any vapor product ordered or purchased
20 by mail or through the internet to any person unless such seller has
21 a valid delivery sale license as required under this chapter.

22 (2) No person may conduct a delivery sale or otherwise ship or
23 transport, or cause to be shipped or transported, any vapor product
24 ordered or purchased by mail or through the internet to any person
25 under the minimum age required for the legal sale of vapor products
26 as provided under section 14 of this act.

27 (3) A delivery sale licensee must provide notice on its mail
28 order or internet sales forms of the minimum age required for the
29 legal sale of vapor products in Washington state as provided by
30 section 14 of this act.

31 (4) A delivery sale licensee must not accept a purchase or order
32 from any person without first obtaining the full name, birth date,
33 and residential address of that person and verifying this information
34 through an independently operated third-party database or aggregate
35 of databases, which includes data from government sources, that are
36 regularly used by government and businesses for the purpose of age
37 and identity verification and authentication.

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

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

20 (7) A delivery sale licensee must include on shipping documents a
21 clear and conspicuous statement which includes, at a minimum, that
22 the package contains vapor products, Washington law prohibits sales
23 to those under the minimum age established by this chapter, and
24 violations may result in sanctions to both the licensee and the
25 purchaser.

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

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

34 (10) The attorney general may seek an injunction in superior
35 court to restrain a threatened or actual violation of this section
36 and to compel compliance with this section.

37 (11) Any violation of this section is not reasonable in relation
38 to the development and preservation of business and is an unfair and
39 deceptive act or practice and an unfair method of competition in the
40 conduct of trade or commerce in violation of RCW 19.86.020. Standing

1 to bring an action to enforce RCW 19.86.020 for violation of this
2 section lies solely with the attorney general. Remedies provided by
3 chapter 19.86 RCW are cumulative and not exclusive.

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

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

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

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

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

19 (16) The board must not adopt rules prohibiting internet sales.

20 NEW SECTION. **Sec. 18.** CHILD-RESISTANT PACKAGING REQUIREMENT.

21 (1) Any liquid nicotine container that is sold at retail shall be
22 packaged in accordance with the child-resistant effectiveness
23 standards set forth in 16 C.F.R. Sec. 1700.15, as in effect on the
24 effective date of this section, as determined through testing in
25 accordance with the method described in 16 C.F.R. Sec. 1700.20, as in
26 effect on the effective date of this section.

27 (2) Any person that engages in retail sales of liquid nicotine
28 containers in violation of this section is guilty of a gross
29 misdemeanor.

30 NEW SECTION. **Sec. 19.** TASTINGS. (1) No person may offer a
31 tasting of vapor products to the general public unless:

32 (a) The person is a licensed retailer under section 5 of this
33 act;

34 (b) The tastings are offered only within the licensed premises
35 operated by the licensee and the products tasted are not removed from
36 within the licensed premises by the customer;

37 (c) Entry into the licensed premises is restricted to persons
38 eighteen years of age or older;

1 (d) The vapor product being offered for tasting contains zero
2 milligrams per milliliter of nicotine or the customer explicitly
3 consents to a tasting of a vapor product that contains nicotine; and

4 (e) If the customer is tasting from a vapor device owned and
5 maintained by the retailer, a disposable mouthpiece tip is attached
6 to the vapor product being used by the customer for tasting or the
7 vapor device is disposed of after each tasting.

8 (2) A violation of this section is a misdemeanor.

9 NEW SECTION. **Sec. 20.** COUPONS. (1) No person may give or
10 distribute vapor products to a person free of charge by coupon,
11 unless the vapor product was provided to the person as a contingency
12 of prior or the same purchase as part of an in-person transaction or
13 delivery sale.

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

17 NEW SECTION. **Sec. 21.** USE OF VAPOR PRODUCTS IN CERTAIN PUBLIC
18 PLACES. (1) Indoor areas.

19 (a) The use of vapor products is prohibited in the following
20 indoor areas:

21 (i) Inside a child care facility, provided that a child care
22 facility that is home-based is excluded from this paragraph when
23 children enrolled in such child care facility are not present;

24 (ii) Schools;

25 (iii) Within five hundred feet of schools;

26 (iv) Schools buses; and

27 (v) Elevators.

28 (b) The use of vapor products is permitted for tasting and
29 sampling in indoor areas of retail outlets.

30 (2) Outdoor areas. The use of vapor products is prohibited in the
31 following outdoor areas:

32 (a) Real property that is under the control of a child care
33 facility and upon which the child care facility is located, provided
34 that a child care facility that is home-based is excluded from this
35 paragraph when children enrolled in such child care facility are not
36 present;

37 (b) Real property that is under the control of a school and upon
38 which the school is located; and

1 (c) Playgrounds, during the hours between sunrise and sunset,
2 when one or more persons under twelve years of age are present at
3 such playground.

4 NEW SECTION. **Sec. 22.** PENALTIES, SANCTIONS, AND ACTIONS AGAINST
5 LICENSEES. (1) The board may impose a monetary penalty as set forth
6 in subsection (2) of this section, if the board finds that the
7 licensee has violated RCW 26.28.080 or any other provision of this
8 chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 **Sec. 23.** RCW 70.155.100 and 2006 c 14 s 5 are each amended to
31 read as follows:

32 (1) The liquor (~~control~~) and cannabis board may suspend or
33 revoke a retailer's license issued under RCW 82.24.510(1)(b) or
34 82.26.150(1)(b) held by a business at any location, or may impose a
35 monetary penalty as set forth in subsection (~~(2)~~) (3) of this
36 section, if the liquor (~~control~~) and cannabis board finds that the
37 licensee has violated RCW 26.28.080, 70.155.020, 70.155.030,
38 70.155.040, 70.155.050, 70.155.070, or 70.155.090.

1 (2) Any retailer's licenses issued under section 5 of this act to
2 a person whose license or licenses under chapter 82.24 or 82.26 RCW
3 have been suspended or revoked for violating RCW 26.28.080 must also
4 be suspended or revoked during the period of suspension or revocation
5 under this section.

6 (3) The sanctions that the liquor (~~control~~) and cannabis board
7 may impose against a person licensed under RCW 82.24.530 or 82.26.170
8 based upon one or more findings under subsection (1) of this section
9 may not exceed the following:

10 (a) For violations of RCW 26.28.080 (~~or~~), 70.155.020, or 21
11 C.F.R. Sec. 1140.14, and for violations of RCW 70.155.040 occurring
12 on the licensed premises:

13 (i) A monetary penalty of (~~one~~) two hundred dollars for the
14 first violation within any (~~two-year~~) three-year period;

15 (ii) A monetary penalty of (~~three~~) six hundred dollars for the
16 second violation within any (~~two-year~~) three-year period;

17 (iii) A monetary penalty of (~~one~~) two thousand dollars and
18 suspension of the license for a period of six months for the third
19 violation within any (~~two-year~~) three-year period;

20 (iv) A monetary penalty of (~~one~~) three thousand (~~five~~
21 ~~hundred~~) dollars and suspension of the license for a period of
22 twelve months for the fourth violation within any (~~two-year~~) three-
23 year period;

24 (v) Revocation of the license with no possibility of
25 reinstatement for a period of five years for the fifth or more
26 violation within any (~~two-year~~) three-year period;

27 (b) If the board finds that a person licensed under chapter 82.24
28 or 82.26 RCW and section 5 of this act has violated RCW 26.28.080,
29 each subsequent violation of either of the person's licenses counts
30 as an additional violation within that three-year period.

31 (c) For violations of RCW 70.155.030, a monetary penalty in the
32 amount of one hundred dollars for each day upon which such violation
33 occurred;

34 (~~(c) For violations of RCW 70.155.040 occurring on the licensed~~
35 ~~premises:~~

36 (~~i) A monetary penalty of one hundred dollars for the first~~
37 ~~violation within any two-year period;~~

38 (~~ii) A monetary penalty of three hundred dollars for the second~~
39 ~~violation within any two-year period;~~

1 ~~(iii) A monetary penalty of one thousand dollars and suspension~~
2 ~~of the license for a period of six months for the third violation~~
3 ~~within any two-year period;~~

4 ~~(iv) A monetary penalty of one thousand five hundred dollars and~~
5 ~~suspension of the license for a period of twelve months for the~~
6 ~~fourth violation within any two-year period;~~

7 ~~(v) Revocation of the license with no possibility of~~
8 ~~reinstatement for a period of five years for the fifth or more~~
9 ~~violation within any two-year period;))~~

10 (d) For violations of RCW 70.155.050, a monetary penalty in the
11 amount of ~~((three))~~ six hundred dollars for each violation;

12 (e) For violations of RCW 70.155.070, a monetary penalty in the
13 amount of ~~((one))~~ two thousand dollars for each violation.

14 ~~((3))~~ (4) The liquor ~~((control))~~ and cannabis board may impose
15 a monetary penalty upon any person other than a licensed cigarette or
16 tobacco product retailer if the liquor ~~((control))~~ and cannabis board
17 finds that the person has violated RCW 26.28.080, 70.155.020,
18 70.155.030, 70.155.040, 70.155.050, 70.155.070, or 70.155.090.

19 ~~((4))~~ (5) The monetary penalty that the liquor ~~((control))~~ and
20 cannabis board may impose based upon one or more findings under
21 subsection ~~((3))~~ (4) of this section may not exceed the following:

22 (a) For violation of RCW 26.28.080 or 70.155.020, ~~((fifty))~~ one
23 hundred dollars for the first violation and ~~((one))~~ two hundred
24 dollars for each subsequent violation;

25 (b) For violations of RCW 70.155.030, ~~((one))~~ two hundred dollars
26 for each day upon which such violation occurred;

27 (c) For violations of RCW 70.155.040, ~~((one))~~ two hundred dollars
28 for each violation;

29 (d) For violations of RCW 70.155.050, ~~((three))~~ six hundred
30 dollars for each violation;

31 (e) For violations of RCW 70.155.070, ~~((one))~~ two thousand
32 dollars for each violation.

33 ~~((5))~~ (6) The liquor ~~((control))~~ and cannabis board may develop
34 and offer a class for retail clerks and use this class in lieu of a
35 monetary penalty for the clerk's first violation.

36 ~~((6))~~ (7) The liquor ~~((control))~~ and cannabis board may issue a
37 cease and desist order to any person who is found by the liquor
38 ~~((control))~~ and cannabis board to have violated or intending to
39 violate the provisions of this chapter, RCW 26.28.080 ~~((or))~~,
40 82.24.500, or 82.26.190 requiring such person to cease specified

1 conduct that is in violation. The issuance of a cease and desist
2 order (~~(shall)~~) does not preclude the imposition of other sanctions
3 authorized by this statute or any other provision of law.

4 (~~(7)~~) (8) The liquor (~~(control)~~) and cannabis board may seek
5 injunctive relief to enforce the provisions of RCW 26.28.080 (~~(or)~~),
6 82.24.500, 82.26.190 or this chapter. The liquor (~~(control)~~) and
7 cannabis board may initiate legal action to collect civil penalties
8 imposed under this chapter if the same have not been paid within
9 thirty days after imposition of such penalties. In any action filed
10 by the liquor (~~(control)~~) and cannabis board under this chapter, the
11 court may, in addition to any other relief, award the liquor
12 (~~(control)~~) and cannabis board reasonable attorneys' fees and costs.

13 (~~(8)~~) (9) All proceedings under subsections (1) through (~~(6)~~)
14 (7) of this section shall be conducted in accordance with chapter
15 34.05 RCW.

16 (~~(9)~~) (10) The liquor (~~(control)~~) and cannabis board may reduce
17 or waive either the penalties or the suspension or revocation of a
18 license, or both, as set forth in this chapter where the elements of
19 proof are inadequate or where there are mitigating circumstances.
20 Mitigating circumstances may include, but are not limited to, an
21 exercise of due diligence by a retailer. Further, the board may
22 exceed penalties set forth in this chapter based on aggravating
23 circumstances.

24 NEW SECTION. **Sec. 24.** LIQUOR AND CANNABIS BOARD AUTHORITY. (1)

25 The board must have, in addition to the board's other powers and
26 authorities, the authority to enforce the provisions of this chapter.

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

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

1 age are considered contraband and may be seized by a peace officer or
2 enforcement officer of the board.

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

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

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

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

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

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

30 NEW SECTION. **Sec. 25.** SOURCE AND USE OF FUNDS. All license fees
31 collected and funds collected by the board from the imposition of
32 monetary penalties pursuant to this chapter must be deposited into
33 the youth tobacco and vapor products prevention account created in
34 RCW 70.155.120.

35 NEW SECTION. **Sec. 26.** EXEMPTIONS. This chapter does not apply
36 to a motor carrier or a freight forwarder as defined in 49 U.S.C.
37 Sec. 13102 or an air carrier as defined in 49 U.S.C. Sec. 40102.

1 NEW SECTION. **Sec. 27.** SEVERABILITY. If any provision of this
2 act or its application to any person or circumstance is held invalid,
3 the remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

5 **Sec. 28.** RCW 82.26.170 and 2005 c 180 s 13 are each amended to
6 read as follows:

7 (1) A fee of (~~ninety-three~~) one hundred seventy-five dollars
8 shall accompany each retailer's license application or license
9 renewal application. A separate license is required for each separate
10 location at which the retailer operates.

11 (2) The fee imposed under subsection (1) of this section does not
12 apply to any person applying for a retailer's license or for renewal
13 of a retailer's license if the person has a valid retailer's license
14 under RCW 82.24.510 for the place of business associated with the
15 retailer's license application or renewal application.

16 (3) A retailer applying for, or renewing, both a retailer's
17 license under RCW 82.26.170 and a vapor products retailer's license
18 under section 5 of this act may pay a combined application fee of two
19 hundred fifty dollars for both licenses.

20 **Sec. 29.** RCW 66.08.145 and 2007 c 221 s 1 are each amended to
21 read as follows:

22 (1) The liquor (~~control~~) and cannabis board may issue subpoenas
23 in connection with any investigation, hearing, or proceeding for the
24 production of books, records, and documents held under this chapter
25 or chapters 70.155, 70.158, 70.--- (the new chapter created in
26 section 31 of this act), 82.24, and 82.26 RCW, and books and records
27 of common carriers as defined in RCW 81.80.010, or vehicle rental
28 agencies relating to the transportation or possession of cigarettes
29 or other tobacco products.

30 (2) The liquor (~~control~~) and cannabis board may designate
31 individuals authorized to sign subpoenas.

32 (3) If any person is served a subpoena from the board for the
33 production of records, documents, and books, and fails or refuses to
34 obey the subpoena for the production of records, documents, and books
35 when required to do so, the person is subject to proceedings for
36 contempt, and the board may institute contempt of court proceedings
37 in the superior court of Thurston county or in the county in which
38 the person resides.

1 NEW SECTION. **Sec. 30.** A new section is added to chapter 70.155
2 RCW to read as follows:

3 (1) A person who holds a license issued under chapter 82.24 or
4 82.26 RCW or section 5 of this act must conduct the business and
5 maintain the premises in compliance with Titles 9 and 9A RCW and
6 chapter 69.50 RCW.

7 (2) The board may revoke or suspend a license issued under
8 chapter 82.24 or 82.26 RCW or section 5 of this act upon sufficient
9 cause showing a violation of this section.

10 NEW SECTION. **Sec. 31.** NEW CHAPTER CREATION. Sections 3 through
11 8, 10 through 22, and 24 through 26 of this act constitute a new
12 chapter in Title 70 RCW.

13 NEW SECTION. **Sec. 32.** EFFECTIVE DATE. (1) Sections 5 through 10
14 and 28 of this act take effect thirty days after the Washington state
15 liquor and cannabis board prescribes the form for an application for
16 a license required under section 6 of this act.

17 (2) The Washington state liquor and cannabis board must provide
18 written notice of the effective date of sections 5 through 10 and 28
19 of this act to affected parties, the chief clerk of the house of
20 representatives, the secretary of the senate, the office of the code
21 reviser, and others as deemed appropriate by the department.

Passed by the Senate March 28, 2016.

Passed by the House March 29, 2016.

Approved by the Governor April 19, 2016.

Filed in Office of Secretary of State April 20, 2016.

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