**6254-S2 AMS KUDE S7631.4 - NOT FOR FLOOR USE**

**2SSB 6254** - S AMD **1363**

By Senator Kuderer

**PULLED 03/11/2020**

Strike everything after the enacting clause and insert the following:

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

(a) Nicotine is a highly addictive substance, particularly for children and youth under twenty-one 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 twenty-seven percent of high school students reported current use of electronic cigarettes and, among electronic cigarette users, about a third reported using electronic cigarettes on twenty or more of the preceding thirty 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 a 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; and

(c) 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 restrict 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 70.345.010 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.

(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~~)) United States postal service or any other delivery service, or the internet or other online service; or

(b) The vapor product is delivered by use of the ((~~mails~~)) United States postal service or ((~~of a~~)) any other 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) "Distributor" ((~~has the same meaning as in RCW 82.25.005~~)) means any person who:

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

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

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

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

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

(15)((~~(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. This includes any transfer, exchange, or barter, in any manner or by any means whatsoever, of vapor products at or below the cost of acquisition or at no cost to a person at retail.

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

(17) "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)(a) "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~~)) product that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device including, but not limited to, an electronic cigarette, e-cigar, e-pipe, vape pen, or e-hookah. "Vapor product" includes any component, part, or accessory of the product and also includes any substance that may be aerosolized or vaporized by such a product, regardless of whether the substance contains nicotine. "Vapor product" does not include drugs, devices, or combination products authorized for sale by the United States food and drug administration as those terms are defined in the federal food, drug, and cosmetic act.

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

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

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

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

(22) "Flavored vapor product" means any vapor product that contains a taste or smell, other than the taste or smell of tobacco or menthol, 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, mint, wintergreen, chocolate, cocoa, vanilla, honey, or any candy, dessert, alcoholic beverage, herb, or spice.

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

**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 delivery sale license~~)) A vapor product manufacturer's 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, or 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, or distributor's license, ((~~and 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, or 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)~~)) (4) Each license issued under this chapter expires on the business license expiration date. The license ((~~must~~)) may 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)~~)) (5) 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.

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

**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, or 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, or 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. The board may conduct such inspections with local law enforcement. A person who violates this subsection is guilty of a gross misdemeanor.

(3) Any person licensed under this chapter as a distributor, and 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 or distributor may only sell vapor products obtained from a person holding a valid manufacturer's license granted by the board under this chapter.

(5) No person engaged in or conducting business as a manufacturer, retailer, or 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.

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

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

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

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

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

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

(1) Except for retailers operating in a retail outlet restricted to persons twenty-one years of age or older, retailers 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) There is a rebuttable presumption that a vapor product is a flavored vapor product if a distributor, manufacturer, or retailer, or any agent or employee of a 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 or menthol 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 or menthol.

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

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

(b) The tax under this section 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.

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

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

(3) The tax imposed in 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) "Flavored vapor product" has the meaning provided in RCW 70.345.010.

(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 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 the seller's direct and indirect costs attributable to the product.

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 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:

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

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

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

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

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

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

**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.~~

~~(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 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.~~

~~(4) A delivery sale licensee must not accept a purchase or order from any person without first obtaining the full name, birthdate, and residential address of that person and verifying 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.~~

~~(5) 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.~~

~~(6) 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.~~

~~(7) 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, 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.~~

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

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

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

(3) 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)~~)) (4) 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)~~)) (5) 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)~~)) (6) 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)~~)) (7)(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 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.

((~~(14)~~)) (8) 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) A licensee who violates this section is subject to license suspension or revocation by the board.~~

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

~~(17) 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~~)) has, 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.

(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.~~)) To the extent permitted by federal law, the board shall, in consultation with the department of health, adopt rules regarding: Inspection of the premises where vapor products are manufactured within Washington state; conditions of sanitation during manufacture, storage, and transport within Washington state; and safe handling requirements for equipment and ingredients within Washington state.

(6) Upon a determination by the secretary of health or a local health jurisdiction that a vapor product, 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.

(7)(a) Nothing in this section permits 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.

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

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

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

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

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

**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, or 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 subsections (3) and (12) 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 this chapter or 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 this chapter or 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 this chapter or 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 by the board for violating this chapter or 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 this chapter or 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 enforcement proceedings by the board under ((~~subsections (1) through (8) of this section~~)) this chapter 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 board may:

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

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

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

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

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

The secretary on his or her own motion or upon the complaint of any interested party, may investigate, examine, sample or inspect any article or condition constituting a threat to the public health including, but not limited to, outbreaks of ((~~communicable~~)) diseases, food poisoning, contaminated water supplies, and all other matters injurious to the public health. When not otherwise available, the department may purchase such samples or specimens as may be necessary to determine whether or not there exists a threat to the public health. In furtherance of any such investigation, examination or inspection, the secretary or the secretary's authorized representative may examine that portion of the ledgers, books, accounts, memorandums, and other documents and other articles and things used in connection with the business of such person relating to the actions involved.

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

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

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

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

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

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

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

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

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

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.**  Within one hundred eighty days of the effective date of sections 3 and 4 of this act, the liquor and cannabis board must adopt rules to implement sections 3 and 4 of this act.

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

NEW SECTION. **Sec.**  Sections 2, 6, 7, 13 through 17, 23, and 24 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately."

**2SSB 6254** - S AMD **1363**

By Senator Kuderer

**PULLED 03/11/2020**

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

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

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

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

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

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

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

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

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

(9) Bans the online sale of vapor products.

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

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

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