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**HOUSE BILL 2454**

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**State of Washington****66th Legislature****2020 Regular Session**

**By** Representatives Pollet, Harris, Cody, Gregerson, Stonier, Ryu, Riccelli, and Wylie; by request of Governor Inslee

Read first time 01/14/20. Referred to Committee on Health Care & Wellness.

1 AN ACT Relating to protecting public health and safety by  
2 enhancing the regulation of vapor products; amending RCW 70.345.020,  
3 70.345.030, 70.345.075, 70.345.090, 70.345.100, 70.345.110,  
4 70.345.160, 70.345.170, 70.345.180, 43.70.170, 43.70.180, and  
5 43.70.190; reenacting and amending RCW 70.345.010; adding new  
6 sections to chapter 70.345 RCW; creating new sections; repealing RCW  
7 70.345.210; prescribing penalties; and declaring an emergency.

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

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

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

1 users, about a third reported using electronic cigarettes on twenty  
2 or more of the preceding thirty days;

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

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

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

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

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

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

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

35 (3) "Child care facility" has the same meaning as provided in RCW  
36 70.140.020.

37 (4) "Closed system nicotine container" means a sealed, prefilled,  
38 and disposable container of nicotine in a solution or other form in  
39 which such container is inserted directly into an electronic

1 cigarette, electronic nicotine delivery system, or other similar  
2 product, if the nicotine in the container is inaccessible through  
3 customary or reasonably foreseeable handling or use, including  
4 reasonably foreseeable ingestion or other contact by children.

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

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

11 (b) The vapor product is delivered by use of the ~~((mails))~~ United  
12 States postal service or ~~((of a))~~ any other delivery service. The  
13 foregoing sales of vapor products constitute a delivery sale  
14 regardless of whether the seller is located within ~~((or without))~~  
15 this state. "Delivery sale" does not include a sale of any vapor  
16 product not for personal consumption to a retailer.

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

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

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

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

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

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

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

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

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

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

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

14 (15) ~~((a))~~ "Sale" means any transfer, exchange, or barter, in  
15 any manner or by any means whatsoever, for a consideration, and  
16 includes and means all sales made by any person. This includes any  
17 transfer, exchange, or barter, in any manner or by any means  
18 whatsoever, of vapor products at or below the cost of acquisition or  
19 at no cost to a person at retail.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 35 (a) A vapor product retailer's license;  
36 (b) A vapor product distributor's license; ~~((and))~~  
37 (c) A vapor product manufacturer's license; and  
38 (d) A vapor product delivery sale license.

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

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

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

1 background check done under the authority of chapter 66.24, 69.50,  
2 82.24, or 82.26 RCW satisfies the requirements of this subsection.

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

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

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

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

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

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

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

38 (3) Any person licensed under this chapter as a distributor, any  
39 person licensed under this chapter as a retailer, and any person

1 licensed under this chapter as a delivery seller may not operate in  
2 any other capacity unless the additional appropriate license is first  
3 secured, except as otherwise provided by law. Any person issued or  
4 holding a manufacturer's license under this chapter may not be issued  
5 or hold a retailer's license or a delivery sale license. A violation  
6 of this subsection is a misdemeanor.

7 (4) Any person licensed under this chapter as a retailer,  
8 distributor, or delivery seller may only sell vapor products obtained  
9 from a person holding a valid manufacturer's license granted by the  
10 board under this chapter.

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

17 (~~((5))~~) (6) The penalties provided in this section are in  
18 addition to any other penalties provided by law for violating the  
19 provisions of this chapter or the rules adopted under this chapter.

20 NEW SECTION. Sec. 5. A new section is added to chapter 70.345  
21 RCW to read as follows:

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

28 NEW SECTION. Sec. 6. A new section is added to chapter 70.345  
29 RCW to read as follows:

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

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



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

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

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

- 17 (1) Twenty milligrams of nicotine per milliliter of liquid;  
18 (2) Nicotine that is equivalent to two percent of the total  
19 volume of the liquid; or  
20 (3) Twenty thousand parts per million of nicotine in the liquid.

21 NEW SECTION. **Sec. 8.** A new section is added to chapter 70.345  
22 RCW to read as follows:

23 (1) Vapor product liquid containing nicotine may be sold and  
24 offered for sale at retail only in:

25 (a) A dedicated refill container in a volume not exceeding ten  
26 milliliters; or

27 (b) A disposable vapor product, a single use cartridge, or a  
28 tank, in a volume not exceeding two milliliters.

29 (2) The capacity of the tank of a refillable vapor product may  
30 not exceed two milliliters.

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

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

- 1 (a) Additives;
- 2 (b) Thickening agents;
- 3 (c) Preservatives;
- 4 (d) Compounds;
- 5 (e) Nicotine content; and
- 6 (f) Any other substance used in the production and processing of
- 7 each vapor product.

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

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

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

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

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

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

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

35 (1) A manufacturer or distributor that sells, offers for sale, or  
36 distributes liquid nicotine containers shall label the vapor product  
37 with a: (a) Warning regarding the harmful effects of nicotine; (b)  
38 warning to keep the vapor product away from children; (c) warning

1 that vaping is illegal for those under the legal age to use the  
2 product; and (d) except as provided in subsection (2) of this  
3 section, the amount of nicotine in milligrams per milliliter of  
4 liquid along with the total volume of the liquid contents of the  
5 product expressed in milliliters.

6 (2) For closed system nicotine containers as defined in RCW  
7 70.345.010, a manufacturer that sells, offers for sale, or  
8 distributes vapor products in this state must annually provide the  
9 department of health with a disclosure of the nicotine content of  
10 such vapor product based on measurement standards to be established  
11 by the department of health.

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

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

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

22 (1) 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 unless such seller has a valid delivery sale license as required  
26 under this chapter and unless the vapor product was manufactured by a  
27 person holding a valid manufacturer's license issued by the board  
28 under this chapter.

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

34 (3) A delivery sale licensee must provide notice on its mail  
35 order or internet sales forms of the minimum age required for the  
36 legal sale of vapor products in Washington state as provided by RCW  
37 70.345.140.

38 (4) A delivery sale licensee must not accept a purchase or order  
39 from any person without first obtaining the full name, birthdate, and

1 residential address of that person and verifying this information  
2 through an independently operated third-party database or aggregate  
3 of databases, which includes data from government sources, that are  
4 regularly used by government and businesses for the purpose of age  
5 and identity verification and authentication.

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

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

25 (7) A delivery sale licensee must include on shipping documents a  
26 clear and conspicuous statement which includes, at a minimum, that  
27 the package contains vapor products manufactured under a license  
28 issued by the board, Washington law prohibits sales to those under  
29 the minimum age established by this chapter, and violations may  
30 result in sanctions to both the licensee and the purchaser.

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

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

36 ~~((10))~~ (9) In addition to or in lieu of any other civil or  
37 criminal remedy provided by law, a person who has violated this  
38 section is subject to a civil penalty of up to five thousand dollars  
39 for each violation. The attorney general, acting in the name of the

1 state, may seek recovery of the penalty in a civil action in superior  
2 court.

3 ~~((11))~~ (10) The attorney general may seek an injunction in  
4 superior court to restrain a threatened or actual violation of this  
5 section and to compel compliance with this section.

6 ~~((12))~~ (11) Any violation of this section is not reasonable in  
7 relation to the development and preservation of business and is an  
8 unfair and deceptive act or practice and an unfair method of  
9 competition in the conduct of trade or commerce in violation of RCW  
10 19.86.020. Standing to bring an action to enforce RCW 19.86.020 for  
11 violation of this section lies solely with the attorney general.  
12 Remedies provided by chapter 19.86 RCW are cumulative and not  
13 exclusive.

14 ~~((13))~~ (12)(a) In any action brought under this section, the  
15 state is entitled to recover, in addition to other relief, the costs  
16 of investigation, expert witness fees, costs of the action, and  
17 reasonable attorneys' fees.

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

22 ~~((14))~~ (13) Unless otherwise expressly provided, the penalties  
23 or remedies, or both, under this section are in addition to any other  
24 penalties and remedies available under any other law of this state.

25 ~~((15))~~ (14) A licensee who violates this section is subject to  
26 license suspension or revocation by the board.

27 ~~((16))~~ (15) The board may adopt by rule additional requirements  
28 for mail or internet sales.

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

31 **Sec. 13.** RCW 70.345.100 and 2019 c 15 s 7 are each amended to  
32 read as follows:

33 (1) No person may offer a tasting of vapor products to the  
34 general public ~~((unless:~~

35 ~~(a) The person is a licensed retailer under RCW 70.345.020;~~

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

1 ~~(c) Entry into the licensed premises is restricted to persons~~  
2 ~~twenty-one years of age or older;~~

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

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

10 (2) Nothing in this section prohibits a retailer from offering or  
11 performing demonstrations or consumer training on proper use of a  
12 vapor product device as long as liquid constituents are not provided  
13 by the retailer to the consumer at or below cost to the retailer.

14 (3) A violation of this section is a misdemeanor.

15 **Sec. 14.** RCW 70.345.110 and 2016 sp.s. c 38 s 20 are each  
16 amended to read as follows:

17 ~~((1))~~ No person may give or distribute vapor products to a  
18 person free of charge ~~((by coupon, unless the vapor product was~~  
19 ~~provided to the person as a contingency of prior or the same purchase~~  
20 ~~as part of an in-person transaction or delivery sale.~~

21 ~~(2) This section does not prohibit the use of coupons to receive~~  
22 ~~a discount on a vapor product as part of an in-person transaction or~~  
23 ~~delivery sale)). No person may sell or furnish vapor products at or~~

25 **Sec. 15.** RCW 70.345.160 and 2016 sp.s. c 38 s 24 are each  
26 amended to read as follows:

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

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

34 (3) For the purpose of enforcing the provisions of this chapter,  
35 a peace officer or enforcement officer of the board who has  
36 reasonable grounds to believe a person observed by the officer  
37 purchasing, attempting to purchase, or in possession of vapor  
38 products is under eighteen years of age, may detain such person for a

1 reasonable period of time and in such a reasonable manner as is  
2 necessary to determine the person's true identity and date of birth.  
3 Further, vapor products possessed by persons under eighteen years of  
4 age are considered contraband and may be seized by a peace officer or  
5 enforcement officer of the board.

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

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

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

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

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

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

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

1 emitted constituent, or vapor product component may be injurious to  
2 human health or poses a significant risk to public health, the board  
3 may:

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

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

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

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

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

18 NEW SECTION. Sec. 16. A new section is added to chapter 70.345  
19 RCW to read as follows:

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

22 **Sec. 17.** RCW 70.345.170 and 2016 sp.s. c 38 s 11 are each  
23 amended to read as follows:

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

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

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

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

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



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

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

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

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

20 **Sec. 18.** RCW 70.345.180 and 2016 sp.s. c 38 s 22 are each  
21 amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (12) The board may:

12 (a) Suspend the license of a retailer or delivery seller that  
13 violates a sales restriction imposed under RCW 70.345.160 or fails to  
14 post a written point-of-sale warning disclosure required under RCW  
15 70.345.160; and

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

23 NEW SECTION. Sec. 19. A new section is added to chapter 70.345  
24 RCW to read as follows:

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

29 **Sec. 20.** RCW 43.70.170 and 1989 1st ex.s. c 9 s 256 are each  
30 amended to read as follows:

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

1 public health. In furtherance of any such investigation, examination  
2 or inspection, the secretary or the secretary's authorized  
3 representative may examine that portion of the ledgers, books,  
4 accounts, memorandums, and other documents and other articles and  
5 things used in connection with the business of such person relating  
6 to the actions involved.

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

14 **Sec. 21.** RCW 43.70.180 and 1989 1st ex.s. c 9 s 257 are each  
15 amended to read as follows:

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

26 **Sec. 22.** RCW 43.70.190 and 1990 c 133 s 3 are each amended to  
27 read as follows:

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

1 showing of an immediate and serious danger to residents constituting  
2 an emergency, issue a temporary injunctive order ex parte.

3 NEW SECTION. **Sec. 23.** RCW 70.345.210 (State preemption—  
4 Exceptions) and 2016 sp.s. c 38 s 3 are each repealed.

5 NEW SECTION. **Sec. 24.** If any provision of this act or its  
6 application to any person or circumstance is held invalid, the  
7 remainder of the act or the application of the provision to other  
8 persons or circumstances is not affected.

9 NEW SECTION. **Sec. 25.** If any part of this act is found to be in  
10 conflict with federal requirements that are a prescribed condition to  
11 the allocation of federal funds to the state, the conflicting part of  
12 this act is inoperative solely to the extent of the conflict and with  
13 respect to the agencies directly affected, and this finding does not  
14 affect the operation of the remainder of this act in its application  
15 to the agencies concerned. Rules adopted under this act must meet  
16 federal requirements that are a necessary condition to the receipt of  
17 federal funds by the state.

18 NEW SECTION. **Sec. 26.** Within one hundred eighty days of the  
19 effective date of sections 3 and 4 of this act, the liquor and  
20 cannabis board must adopt rules to implement sections 3 and 4 of this  
21 act.

22 NEW SECTION. **Sec. 27.** Sections 2, 6 through 8, 15 through 18,  
23 24, and 25 of this act are necessary for the immediate preservation  
24 of the public peace, health, or safety, or support of the state  
25 government and its existing public institutions, and take effect  
26 immediately.

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