
ENGROSSED SECOND SUBSTITUTE SENATE BILL 6254

State of Washington

66th Legislature

2020 Regular Session

By Senate Ways & Means (originally sponsored by Senators Kuderer, Cleveland, Wilson, C., Carlyle, Das, and Darneille; by request of Office of the Governor)

READ FIRST TIME 03/02/20.

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, 70.345.090, 70.345.110, 70.345.160, and 70.345.170;
4 reenacting and amending RCW 70.345.010; adding new sections to
5 chapter 70.345 RCW; adding a new section to chapter 82.25 RCW;
6 creating new sections; repealing RCW 70.345.060; prescribing
7 penalties; and providing an effective date.

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. Vapor products that deliver high levels of nicotine
14 are fueling youth addiction to nicotine and have created an epidemic.
15 The 2019 national youth tobacco survey found that about twenty-seven
16 percent of high school students reported current use of electronic
17 cigarettes and, among electronic cigarette users, about a third
18 reported using electronic cigarettes on twenty or more of the
19 preceding thirty days;

20 (b) Research consistently shows that flavors and associated
21 advertising contribute to the appeal, initiation, and use of tobacco

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

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

20 (2) Therefore, the legislature intends to enact additional
21 regulatory protections to protect the health of youth and young
22 adults in Washington state.

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

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

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

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

31 (3) "Child care facility" has the same meaning as provided in RCW
32 70.140.020.

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

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

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

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

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

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

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

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

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

26 (9) "Manufacturer" means a person who manufactures and sells
27 vapor products to a licensed distributor.

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

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

39 (12) "Playground" means any public improved area designed,
40 equipped, and set aside for play of six or more children which is not

1 intended for use as an athletic playing field or athletic court,
2 including but not limited to any play equipment, surfacing, fencing,
3 signs, internal pathways, internal land forms, vegetation, and
4 related structures.

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

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

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

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

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

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

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

30 ~~(a) "Vapor product" includes any electronic cigarette, electronic~~
31 ~~eigar, electronic cigarillo, electronic pipe, or similar product or~~
32 ~~device and any vapor cartridge or other container that may contain~~
33 ~~nicotine in a solution or other form that is intended to be used with~~
34 ~~or in an electronic cigarette, electronic cigar, electronic~~
35 ~~eigarillo, electronic pipe, or similar product or device))~~ product
36 that may be used to deliver any aerosolized or vaporized substance to
37 the person inhaling from the device including, but not limited to, an
38 electronic cigarette, e-cigar, e-pipe, vape pen, or e-hookah. "Vapor
39 product" includes any component, part, or accessory of the product
40 and also includes any substance that may be aerosolized or vaporized

1 by such a product, regardless of whether the substance contains
2 nicotine. "Vapor product" does not include drugs, devices, or
3 combination products authorized for sale by the United States food
4 and drug administration as those terms are defined in the federal
5 food, drug, and cosmetic act.

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

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

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

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

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

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

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

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

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

38 (a) A vapor product retailer's license; and

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

1 ~~(c) A vapor product delivery sale license)).~~

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

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

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

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

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

12 (6) 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 retailer~~((r))~~ or distributor~~((r 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 sells vapor products to
20 ultimate consumers ~~((by a means other than delivery sales))~~ must
21 obtain a retailer's license under this chapter. Any person who meets
22 the definition of distributor under this chapter must obtain a
23 distributor's license under this chapter. ~~((Any person who conducts~~
24 ~~delivery sales of vapor products must obtain a delivery sale~~
25 ~~license.))~~

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

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

37 (3) Any person licensed under this chapter as a distributor, and
38 any person licensed under this chapter as a retailer, ~~((and any~~
39 ~~person licensed under this chapter as a delivery seller))~~ may not

1 operate in any other capacity unless the additional appropriate
2 license is first secured, except as otherwise provided by law. A
3 violation of this subsection is a misdemeanor.

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

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

13 NEW SECTION. **Sec. 5.** A new section is added to chapter 70.345
14 RCW to read as follows:

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

18 (2) Upon an individual entering the retail outlet, the retailer
19 must examine the individual's government-issued photographic
20 identification and verify the individual is twenty-one years old or
21 older.

22 NEW SECTION. **Sec. 6.** A new section is added to chapter 82.25
23 RCW to read as follows:

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

28 (b) The tax under this section is separate and in addition to
29 general state and local sales and use taxes that apply to retail
30 sales of tangible personal property, and is not part of the total
31 retail price to which general state and local sales and use taxes
32 apply. The tax must be separately itemized from the state and local
33 retail sales tax on the sales receipt provided to the buyer.

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

1 (2) All revenues collected from the tax imposed under this
2 section must be deposited as follows: (a) Sixty-seven percent in the
3 foundational public health services account provided in RCW
4 82.25.015; and (b) thirty-three percent in the tobacco prevention and
5 control account provided in RCW 43.79.480. Funds deposited into the
6 tobacco prevention and control account shall be used solely by the
7 department to fund tobacco and vapor product prevention and education
8 campaigns targeted to youth and enforcement by the state liquor and
9 cannabis board under this act.

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

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

22 (a) "Flavored vapor product" has the meaning provided in RCW
23 70.345.010.

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

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

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

36 **Sec. 7.** RCW 70.345.090 and 2019 c 445 s 212 are each amended to
37 read as follows:

38 (1) No person may conduct a delivery sale or otherwise ship or
39 transport, or cause to be shipped or transported, any vapor product

1 ordered or purchased by mail or through the internet to any person
2 (~~unless such seller has a valid delivery sale license as required~~
3 ~~under this chapter.~~

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

9 ~~(3) A delivery sale licensee must provide notice on its mail~~
10 ~~order or internet sales forms of the minimum age required for the~~
11 ~~legal sale of vapor products in Washington state as provided by RCW~~
12 ~~70.345.140.~~

13 ~~(4) A delivery sale licensee must not accept a purchase or order~~
14 ~~from any person without first obtaining the full name, birthdate, and~~
15 ~~residential address of that person and verifying this information~~
16 ~~through an independently operated third-party database or aggregate~~
17 ~~of databases, which includes data from government sources, that are~~
18 ~~regularly used by government and businesses for the purpose of age~~
19 ~~and identity verification and authentication.~~

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

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

39 ~~(7) A delivery sale licensee must include on shipping documents a~~
40 ~~clear and conspicuous statement which includes, at a minimum, that~~

1 ~~the package contains vapor products, Washington law prohibits sales~~
2 ~~to those under the minimum age established by this chapter, and~~
3 ~~violations may result in sanctions to both the licensee and the~~
4 ~~purchaser.~~

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

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

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

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

13 ~~((10))~~ (4) In addition to or in lieu of any other civil or
14 criminal remedy provided by law, a person who has violated this
15 section is subject to a civil penalty of up to five thousand dollars
16 for each violation. The attorney general, acting in the name of the
17 state, may seek recovery of the penalty in a civil action in superior
18 court.

19 ~~((11))~~ (5) The attorney general may seek an injunction in
20 superior court to restrain a threatened or actual violation of this
21 section and to compel compliance with this section.

22 ~~((12))~~ (6) Any violation of this section is not reasonable in
23 relation to the development and preservation of business and is an
24 unfair and deceptive act or practice and an unfair method of
25 competition in the conduct of trade or commerce in violation of RCW
26 19.86.020. Standing to bring an action to enforce RCW 19.86.020 for
27 violation of this section lies solely with the attorney general.
28 Remedies provided by chapter 19.86 RCW are cumulative and not
29 exclusive.

30 ~~((13))~~ (7)(a) In any action brought under this section, the
31 state is entitled to recover, in addition to other relief, the costs
32 of investigation, expert witness fees, costs of the action, and
33 reasonable attorneys' fees.

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

38 ~~((14))~~ (8) Unless otherwise expressly provided, the penalties
39 or remedies, or both, under this section are in addition to any other
40 penalties and remedies available under any other law of this state.

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

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

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

6 **Sec. 8.** RCW 70.345.110 and 2016 sp.s. c 38 s 20 are each amended
7 to read as follows:

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

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

15 **Sec. 9.** RCW 70.345.160 and 2016 sp.s. c 38 s 24 are each amended
16 to read as follows:

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

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

24 (3) For the purpose of enforcing the provisions of this chapter,
25 a peace officer or enforcement officer of the board who has
26 reasonable grounds to believe a person observed by the officer
27 purchasing, attempting to purchase, or in possession of vapor
28 products is under eighteen years of age, may detain such person for a
29 reasonable period of time and in such a reasonable manner as is
30 necessary to determine the person's true identity and date of birth.
31 Further, vapor products possessed by persons under eighteen years of
32 age are considered contraband and may be seized by a peace officer or
33 enforcement officer of the board.

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

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

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

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

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

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

25 **Sec. 10.** RCW 70.345.170 and 2016 sp.s. c 38 s 11 are each
26 amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

31 NEW SECTION. **Sec. 13.** Section 6 of this act takes effect
32 October 1, 2020.

33 NEW SECTION. **Sec. 14.** RCW 70.345.060 (Licensing fee—Delivery
34 sales) and 2016 sp.s. c 38 s 10 are each repealed.

1 NEW SECTION. **Sec. 15.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

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

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