
SENATE BILL 5768

State of Washington

67th Legislature

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By Senators Kuderer, Dhingra, Robinson, Saldaña, Stanford, and C. Wilson

Read first time 01/11/22. Referred to Committee on Health & Long Term Care.

1 AN ACT Relating to protecting public health and safety by
2 enhancing the regulation of vapor products; amending RCW 70.345.010
3 and 70.345.075; and adding new sections to chapter 70.345 RCW.

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

5 **Sec. 1.** RCW 70.345.010 and 2021 c 65 s 69 are each amended to
6 read as follows:

7 The definitions in this section apply throughout this chapter
8 unless the context clearly requires otherwise.

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

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

13 (3) "Child care facility" has the same meaning as provided in RCW
14 70A.320.020.

15 (4) "Closed system nicotine container" means a sealed, prefilled,
16 and disposable container of nicotine in a solution or other form in
17 which such container is inserted directly into an electronic
18 cigarette, electronic nicotine delivery system, or other similar
19 product, if the nicotine in the container is inaccessible through
20 customary or reasonably foreseeable handling or use, including
21 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 or any
5 other delivery service, or the internet or other online service; or

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

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

12 (7) "Distributor" has the same meaning as in RCW 82.25.005.

13 (8) "Flavored vapor products" means any vapor product that
14 contains a taste or smell, other than the taste or smell of tobacco,
15 that is distinguishable by an ordinary consumer either prior to or
16 during the consumption of a vapor product including, but not limited
17 to, any taste or smell relating to fruit, menthol, mint, wintergreen,
18 chocolate, cocoa, vanilla, or honey, or any candy, dessert, alcoholic
19 beverage, herb, or spice.

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

25 (~~(9)~~) (10) "Manufacturer" means a person who manufactures and
26 sells vapor products.

27 (~~(10)~~) (11) "Person" means any individual, receiver,
28 administrator, executor, assignee, trustee in bankruptcy, trust,
29 estate, firm, copartnership, joint venture, club, company, joint
30 stock company, business trust, municipal corporation, the state and
31 its departments and institutions, political subdivision of the state
32 of Washington, corporation, limited liability company, association,
33 society, any group of individuals acting as a unit, whether mutual,
34 cooperative, fraternal, nonprofit, or otherwise.

35 (~~(11)~~) (12) "Place of business" means any place where vapor
36 products are sold or where vapor products are manufactured, stored,
37 or kept for the purpose of sale.

38 (~~(12)~~) (13) "Playground" means any public improved area
39 designed, equipped, and set aside for play of six or more children
40 which is not intended for use as an athletic playing field or

1 athletic court, including but not limited to any play equipment,
2 surfacing, fencing, signs, internal pathways, internal land forms,
3 vegetation, and related structures.

4 ~~((13))~~ (14) "Retail outlet" means each place of business from
5 which vapor products are sold to consumers.

6 ~~((14))~~ (15) "Retailer" means any person engaged in the business
7 of selling vapor products to ultimate consumers.

8 ~~((15))~~ (16) (a) "Sale" means any transfer, exchange, or barter,
9 in any manner or by any means whatsoever, for a consideration, and
10 includes and means all sales made by any person.

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

14 ~~((16))~~ (17) "School" has the same meaning as provided in RCW
15 70A.320.020.

16 ~~((17))~~ (18) "Self-service display" means a display that
17 contains vapor products and is located in an area that is openly
18 accessible to customers and from which customers can readily access
19 such products without the assistance of a salesperson. A display case
20 that holds vapor products behind locked doors does not constitute a
21 self-service display.

22 ~~((18))~~ (19) "Vapor product" means any noncombustible product
23 that may contain nicotine and that employs a heating element, power
24 source, electronic circuit, or other electronic, chemical, or
25 mechanical means, regardless of shape or size, that can be used to
26 produce vapor or aerosol from a solution or other substance.

27 (a) "Vapor product" includes any electronic cigarette, electronic
28 cigar, electronic cigarillo, electronic pipe, or similar product or
29 device and any vapor cartridge or other container that may contain
30 nicotine in a solution or other form that is intended to be used with
31 or in an electronic cigarette, electronic cigar, electronic
32 cigarillo, electronic pipe, or similar product or device.

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

36 (c) For purposes of this subsection ~~((18))~~ (19), "marijuana,"
37 "useable marijuana," "marijuana concentrates," and "marijuana-infused
38 products" have the same meaning as provided in RCW 69.50.101.

1 NEW SECTION. **Sec. 2.** A new section is added to chapter 70.345
2 RCW to read as follows:

3 (1) Upon a determination by the secretary of health that a
4 flavored vapor product may be injurious to human health or poses a
5 significant risk to public health, the department of health may
6 restrict the sale of any such flavored vapor product.

7 (2) Nothing in this section requires a person in this state to be
8 actually injured or ill before the secretary of health or department
9 of health may take action authorized under this section.

10 (3) The department of health may adopt any rules necessary to
11 implement this section.

12 NEW SECTION. **Sec. 3.** A new section is added to chapter 70.345
13 RCW to read as follows:

14 (1) The state board of health shall determine in rule the
15 allowable nicotine concentration for any vapor product sold or
16 offered for sale in the state. The state board of health shall
17 consider, among other factors, whether the level of nicotine in the
18 product may be injurious to human health or pose significant risk to
19 public health. Those risks include but are not limited to addiction
20 increase, underage usage, or limited efficacy of nicotine addiction
21 cessation efforts.

22 (2) A vapor product may not be sold or offered for sale if the
23 product has nicotine salts or other ingredients that result in
24 nicotine concentrations that exceed a comparative level of nicotine
25 as determined by the state board of health in rule.

26 **Sec. 4.** RCW 70.345.075 and 2016 sp.s. c 38 s 13 are each amended
27 to read as follows:

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

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

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

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

15 (2) The department of health may adopt any rules necessary to
16 implement this section and revise labeling requirements to: (a) Be
17 consistent with any regulations and labeling requirements issued by
18 the United States food and drug administration or by any other
19 federal agency; and (b) maintain any labeling requirements which are
20 not preempted, or which provided disclosures that are not mandated by
21 federal regulations.

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

24 (1) All manufacturers of nicotine containing vapor products shall
25 disclose to the department of health, using forms and methods to be
26 determined by the department:

27 (a) The concentration and form of nicotine in the product; and

28 (b) All ingredients or product elements which may be inhaled when
29 the product is used by the consumer.

30 (2) The department of health, in collaboration with the
31 University of Washington school of public health, shall publish on
32 the internet:

33 (a) The list of ingredients for each product submitted to the
34 department pursuant to subsection (1) of this section; and

35 (b) A guide summarizing and linking to research on ingredient
36 toxicity, carcinogenicity, or any other potential harm to human
37 health associated with the product and its ingredients.

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