

SENATE BILL REPORT

SB 6118

As Reported by Senate Committee On:
Labor & Commerce, January 30, 2024

Title: An act relating to protecting public health and safety by enhancing the regulation of vapor products.

Brief Description: Regarding a vapor directory. [**Revised for 1st Substitute:** Concerning a directory for closed system nicotine containers and disposable nicotine vapor products.]

Sponsors: Senators Van De Wege, Braun, Keiser and Stanford.

Brief History:

Committee Activity: Labor & Commerce: 1/22/24, 1/30/24 [DPS-WM, w/oRec].

Brief Summary of First Substitute Bill

- Requires closed system nicotine containers or disposable nicotine vapor product manufacturers to submit a certification form to the Liquor and Cannabis Board (LCB) regarding their products.
- Requires LCB to create and maintain a directory for closed system nicotine containers and disposable nicotine vapor products.
- Establishes penalties for violators that sell or offer closed system nicotine containers or disposable nicotine vapor products not listed on the directory.
- Requires LCB to conduct biannual compliance checks for closed system nicotine containers or disposable nicotine vapor product retailers, distributors, and wholesalers.
- Directs LCB to submit annual reports to the Legislature.

SENATE COMMITTEE ON LABOR & COMMERCE

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: That Substitute Senate Bill No. 6118 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Keiser, Chair; Conway, Vice Chair; Saldaña, Vice Chair; King, Ranking Member; Braun, Hansen, Schoesler and Stanford.

Minority Report: That it be referred without recommendation.

Signed by Senator MacEwen.

Staff: Madeline Ralstin (786-7356)

Background: Washington State law requires tobacco manufacturers to provide certain information to the Attorney General's Office (AGO). The AGO maintains and publishes a tobacco product manufacturers directory. Affixing stamps to or selling products not included in the directory is prohibited. Penalties for violations are provided in the law.

There is no nicotine vapor products directory required by Washington State law. The Liquor and Cannabis Board (LCB) issues three types of licenses for vapor products. These licenses include: a vapor product retailer's license, a vapor product distributor's license, and a vapor product delivery sale license. No one may engage in or conduct business as a retailer, distributor, or delivery seller in Washington without a valid license issued by LCB.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (First Substitute): Requirements for Closed System Nicotine Containers or Disposable Nicotine Vapor Product Manufacturers. Manufacturers must submit an annual certification form that separately lists each closed system nicotine containers or disposable nicotine vapor product sold in Washington to LCB by August 1, 2024, and thereafter. The certification form must include:

- a copy of the marketing authorization from the United States Food and Drug Administration (US FDA) for the vapor products or evidence of premarket tobacco product application; and
- a fee of \$1,000 initially and \$250 thereafter for each vapor product.

A manufacturer must submit an updated certification form notifying LCB of any material change affecting the ability of the product to be introduced or delivered into interstate commerce. A manufacturer knowingly making false representations on a certification form is guilty of a misdemeanor.

Directory for Closed System Nicotine Containers and Disposable Nicotine Vapor Products. LCB must maintain, publish, and update a directory for closed system nicotine containers and disposable nicotine vapor products on its public website. The directory must be available by October 1, 2024. When certification forms are submitted to LCB, LCB adds to and removes from the directory manufacturers and the products.

LCB must provide notice and a 15 day right to cure to manufacturers before removal from

the directory. LCB must submit a report to the Legislature that includes the status of the directory, manufacturers and products, revenue and expenditures related to administration, and enforcement activities. LCB must also send monthly notifications to each licensed retailer, distributor, and wholesaler regarding a list of changes made to the directory in the previous month.

Requirements for Retailers, Distributors, and Wholesalers. If a product is removed by LCB from the directory, a retailer, distributor, and wholesaler has 30 days from the day such product is removed from the directory to remove the product from its inventory and return the product to the manufacturer for disposal.

Sixty days after the directory is published, a product not listed on the directory and intended for retail sale is subject to seizure, forfeiture, and destruction, and may not be sold for retail in the state. The cost of seizure, forfeiture, and destruction will be borne by the person who the products are being confiscated from, with the exception that no products can be seized from a consumer who made a bona fide purchase of the products. LCB may store and dispose seized products.

Sell-Through Window. Each retailer, distributor, and wholesaler have until November 30, 2024, or 60 days, from when LCB makes the directory available to sell or remove products not included in the directory from its inventory.

Penalties. It is unlawful to sell or offer closed system nicotine containers or disposable nicotine vapor products not listed on the directory. The following penalties:

- a retailer, delivery seller, distributor, or wholesaler who sells or offers for sale a closed system nicotine containers or disposable nicotine vapor product not included in the directory is subject to:
 1. a civil penalty of \$1,000 per day for each product offered until the product is removed from the market or properly listed on the directory;
 2. license suspension for 30 days for a second violation in two years and for 90 days for a third violation in two years, and license revocation for a fourth violation in two years; and
 3. a manufacturer whose nicotine vapor products are not listed in the directory and sold in the state, whether directly or indirectly is subject to a civil penalty of \$1,000 per day for each product offered until the product is removed from the market or properly listed on the directory; and
- the offending products may be seized by LCB enforcement officers.

The AGO may bring a civil action for the penalties, injunctive relief, disgorgement of profits, attorneys fees, costs and relief under the Consumer Protection Act.

The fees and funds collected by LCB from the penalties must be deposited into the general fund and be used for the implementation of this act.

Biannual Compliance Checks. Retailers, distributors, and wholesalers are subject to unannounced biannual compliance checks and an unannounced follow-up compliance check for violators within 30 days after any violation. LCB must publish the results of all compliance checks at least annually and make them available to the public on request. Indian tribal organizations, Indian retailers, and Indian distributors are exempt from this requirement.

Foreign Manufacturers. Any nonresident or foreign manufacturers not registered to do business in Washington State, must appoint an agent in this state for service of process on the manufacturer.

Annual Report. Beginning January 31, 2025, LCB must submit a report to the Legislature, including the status of the directory, the manufacturers and products included in the directory, the revenue and expenditures related to administration, and the enforcement activities.

EFFECT OF CHANGES MADE BY LABOR & COMMERCE COMMITTEE (First Substitute):

- Specifies that the directory is for closed system nicotine containers and disposable nicotine vapor products sold for retail in this state.
- Adds that LCB must send monthly notifications to each licensed retailer, distributor, and wholesaler regarding a list of changes made to the directory in the previous month.
- Changes the number of days that retailers, distributors, and wholesalers must remove a product that is taken off the directory from its inventory from 21 days to 30 days.
- Adds that each retailer, distributor, and wholesaler have until November 30, 2024, or 60 days, from when LCB makes the directory available to sell or remove products not included in the directory from its inventory.
- Adds that 60 days after the directory is published, a product not listed on the directory and intended for retail sale is subject to seizure, forfeiture, and destruction, and may not be sold for retail in the state; adds that the cost of seizure, forfeiture, and destruction will be borne by the person who the products are being confiscated from, with the exception that no products can be seized from a consumer who made a bona fide purchase of the products; adds that LCB may store and dispose seized products.
- Adds a definition to current law for disposable nicotine vapor products.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Proposed Substitute: *The committee recommended a different version of the bill than what was heard.* PRO: This directory for nicotine vapor products would promote safety by listing all the products that have been reviewed and approved by the United States Food and Drug Administration (FDA). There are thousands of vapor products on the market, making it difficult for retailers to know what products are in compliance with FDA regulations. The creation of a directory is a valuable tool that protects retailers and customers and will remove illicit products from Washington shelves. A directory will provide clarity and allow businesses to know which products are in compliance with FDA regulations and legal to sell. Vapor products are also impacting our youth. As these illegal products flood the market, thousands of illicit products now flood the schools. A directory may help restrict youth access to vapor products. There is a concern surrounding the bill not including a sell-through window. There should be a window of time established for retailers to sell-through their products when the registry becomes active.

CON: There was 23 million products submitted for the pre-marketing authorization to the FDA, and of those products, the FDA has only approved 23. The bill would only warrant FDA approved products to be on the directory. Of the 23 products approved by the FDA, only 6 are available to consumers. There is no pending list available. Most people have received a marketing denial order from the FDA. 99.9 percent of vapor products would be removed from the shelves in Washington State. The products available that have been FDA approved are from big tobacco companies. This bill would harm small businesses in the state. Additionally, this bill would negatively impact the excise tax revenue that funds cancer research because people would resort to selling products not listed on the directory illegally.

Persons Testifying: PRO: Senator Kevin Van De Wege, Prime Sponsor; Kerry Schulz, Creekside Market; Crystal Leatherman, Washington Retail Association; Chong Sullivan, Korean American Grocers Association; John Haberman, Wentachee Valley Truck Stop; Gloria Grylls, United Pacific; Mike Palelek, CoreMark; Stefan Bjes, Blue Line Spectrum Safety Law Enforcement Consulting; Dave Dobbins, Altria Client Services.

CON: James Hoy; Gregory Conley, Director of External Affairs American Vapor Manufacturers; Sara Stewart, WA Smoke Free Association; Shaun D'Sylva, WA Smoke Free Association.

Persons Signed In To Testify But Not Testifying: No one.