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**SUBSTITUTE SENATE BILL 6118**

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**State of Washington**

**68th Legislature**

**2024 Regular Session**

**By** Senate Labor & Commerce (originally sponsored by Senators Van De Wege, Braun, Keiser, and Stanford)

READ FIRST TIME 01/31/24.

1 AN ACT Relating to a directory for closed system nicotine  
2 containers and disposable nicotine vapor products; amending RCW  
3 70.345.010; adding a new section to chapter 70.345 RCW; and  
4 prescribing penalties.

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

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

8 (1) By August 1, 2024, and annually thereafter, every  
9 manufacturer of closed system nicotine containers or disposable  
10 nicotine vapor products that are sold for retail sale in this state,  
11 whether directly or through a distributor, wholesaler, retailer,  
12 delivery seller, or similar intermediary or intermediaries, must  
13 certify under penalty of perjury on a form and in the manner  
14 prescribed by the board, that the manufacturer agrees to comply with  
15 this chapter, and that:

16 (a) The manufacturer has received a marketing authorization or  
17 similar order for the closed system nicotine container or disposable  
18 nicotine vapor product from the United States food and drug  
19 administration pursuant to 21 U.S.C. Sec. 387j; or

20 (b) The closed system nicotine container or disposable nicotine  
21 vapor product was marketed in the United States as of August 8, 2016,

1 the manufacturer submitted a premarket tobacco product application  
2 for the closed system nicotine container or disposable nicotine vapor  
3 product to the United States food and drug administration pursuant to  
4 21 U.S.C. Sec. 387j on or before September 9, 2020, and the  
5 application either remains under review by the United States food and  
6 drug administration or a final decision on the application has not  
7 otherwise taken effect.

8 (2) A manufacturer must submit a certification form that  
9 separately lists each closed system nicotine container and disposable  
10 nicotine vapor product that is sold in this state.

11 (3) Each annual certification form must be accompanied by:

12 (a) A copy of the marketing authorization or other order for the  
13 closed system nicotine container or disposable nicotine vapor product  
14 issued by the United States food and drug administration pursuant to  
15 21 U.S.C. Sec. 387j, or evidence that the premarket tobacco product  
16 application for the closed system nicotine container or disposable  
17 nicotine vapor product was submitted to the United States food and  
18 drug administration, and a final authorization or order has not yet  
19 taken effect; and

20 (b) A payment of \$1,000 for each closed system nicotine container  
21 or disposable nicotine vapor product the first time a manufacturer  
22 submits a certification form for the product and a payment of \$250  
23 annually thereafter for each product.

24 (4) A manufacturer required to submit a certification form  
25 pursuant to this section must notify the board within 30 days of any  
26 material change to the certification form, including the issuance or  
27 denial of a marketing authorization or other order by the United  
28 States food and drug administration pursuant to 21 U.S.C. Sec. 387j,  
29 or any other order or action by the United States food and drug  
30 administration or any court that affects the ability of the closed  
31 system nicotine container or disposable nicotine vapor product to be  
32 introduced or delivered into interstate commerce for commercial  
33 distribution in the United States.

34 (5) The board must maintain and make available on its public  
35 website a directory that lists all closed system nicotine container  
36 or disposable nicotine vapor product manufacturers and closed system  
37 nicotine containers and disposable nicotine vapor products for which  
38 certification forms have been submitted.

39 (a) The board must make the directory available for inspection on  
40 its public website by October 1, 2024.

1 (b) The board must update the directory as necessary in order to  
2 correct mistakes, ensure accuracy, and add or remove closed system  
3 nicotine container or disposable nicotine vapor product manufacturers  
4 and closed system nicotine containers and disposable nicotine vapor  
5 products on at least a monthly basis.

6 (c) The board must send monthly notifications to each licensed  
7 retailer, distributor, and wholesaler, by electronic communication,  
8 containing a list of all changes that have been made to the directory  
9 in the previous month.

10 (6) The board must provide manufacturers notice and an  
11 opportunity to cure deficiencies before removing manufacturers or  
12 products from the directory.

13 (a) The board may not remove the manufacturer or its products  
14 from the directory until at least 15 days after the manufacturer has  
15 been given notice of an intended action. Notice must be sufficient  
16 and be deemed immediately received by a manufacturer if the notice is  
17 sent either electronically or by facsimile to an electronic mail  
18 address or facsimile number, as the case may be, provided by the  
19 manufacturer in its most recent certification, or to the  
20 manufacturer's registered agent for service of process in the state.

21 (b) The closed system nicotine container or disposable nicotine  
22 vapor product manufacturer must have 15 business days from the date  
23 of service of the notice of the board's intended action to  
24 demonstrate to the board that the nicotine vapor product manufacturer  
25 or its closed system nicotine containers or disposable nicotine vapor  
26 products should be included in the directory. No separate  
27 administrative appeal process is available.

28 (7) If a product is removed from the directory, each retailer,  
29 distributor, and wholesaler must have 30 days from the day such  
30 product is removed from the directory to sell the product or remove  
31 the product from its inventory and return the product to the  
32 manufacturer for disposal. After 30 days following removal from the  
33 directory, the closed system nicotine containers or disposable  
34 nicotine vapor products of a manufacturer identified in the notice of  
35 removal are contraband and are subject to seizure, forfeiture, and  
36 destruction, and may not be purchased or sold in the state.

37 (8) (a) Except as provided in (b) of this subsection, beginning  
38 October 1, 2024, or on the date that the board first makes the  
39 directory available for inspection on its public website, whichever  
40 is later, a person may not sell or offer for retail sale a closed

1 system nicotine container or disposable nicotine vapor product in  
2 this state that is not included in the directory, and a closed system  
3 nicotine container or disposable nicotine vapor product manufacturer  
4 may not sell, either directly or through a distributor or wholesaler,  
5 retailer, delivery seller, or similar intermediary or intermediaries,  
6 a closed system nicotine container or disposable nicotine vapor  
7 product in this state that is not included in the directory.

8 (b) Each retailer, distributor, and wholesaler shall sell or  
9 remove closed system nicotine containers and disposable nicotine  
10 vapor products not included in the directory from its inventory by  
11 November 30, 2024, or 60 days from the date that the board first  
12 makes the directory available for inspection on its public website,  
13 whichever is later.

14 (c) After 60 days following publication of the directory, a  
15 closed system nicotine container or disposable nicotine vapor product  
16 not listed in the directory and intended for retail sale in the state  
17 is subject to seizure, forfeiture, and destruction, and may not be  
18 purchased or sold for retail sale in the state. The cost of such  
19 seizure, forfeiture, and destruction is borne by the person from whom  
20 the products are confiscated, except that no products may be seized  
21 from a consumer who has made a bona fide purchase of such product.  
22 The board may store and dispose of the seized products as  
23 appropriate, in accordance with federal, state, and local laws  
24 pertaining to storage and disposal of such products.

25 (9) The following penalties apply to violations of this section:

26 (a) In addition to or in lieu of any other civil or criminal  
27 remedy provided by law, the board may impose a civil penalty on a  
28 retailer, delivery seller, distributor, or wholesaler who sells at  
29 retail or offers for sale at retail a closed system nicotine  
30 container or disposable nicotine vapor product in this state that is  
31 not included in the directory. The civil penalty is \$1,000 per day  
32 for each product offered for sale in violation of this section until  
33 the offending product is removed from the market or until the  
34 offending product is properly listed on the directory.

35 (b) In addition to or in lieu of any other civil or criminal  
36 remedy provided by law, the board may impose restrictions on the  
37 license of a retailer, delivery seller, distributor, or wholesaler  
38 who sells or offers for sale a closed system nicotine container or  
39 disposable nicotine vapor product in this state that is not included  
40 in the directory, as follows:

1 (i) For a second violation within a period of two years, the  
2 licensee's license also must be suspended for a period of 30 days.

3 (ii) For a third violation within a period of two years, the  
4 licensee's license also must be suspended for a period of 90 days.

5 (iii) For a fourth violation within a period of two years, the  
6 licensee's license must be revoked.

7 (c) In addition to or in lieu of any other civil or criminal  
8 remedy provided by law, the board may impose a civil penalty on a  
9 closed system nicotine container or disposable nicotine vapor product  
10 manufacturer whose closed system nicotine containers or disposable  
11 nicotine vapor products are not listed in the directory and are sold  
12 in this state, whether directly or through a distributor or  
13 wholesaler, retailer, or similar intermediary or intermediaries. The  
14 civil penalty is \$1,000 per day for each product offered for sale in  
15 violation of this section until the offending product is removed from  
16 the market, or until the offending product is properly listed on the  
17 directory. In addition, a manufacturer that knowingly makes a false  
18 representation in any of the information required by the  
19 certification forms required under this title is guilty of a  
20 misdemeanor for each false representation.

21 (10) Closed system nicotine containers and disposable nicotine  
22 vapor products offered for sale in violation of this section are  
23 considered contraband and may be seized and disposed of by an  
24 enforcement officer of the board. The cost of such seizure and  
25 disposal are borne by the person from whom the products are  
26 confiscated, and not by the board.

27 (11) The attorney general, acting in the name of the state, may  
28 seek recovery of the penalty in a civil action in superior court.

29 (12) The attorney general may seek an injunction in superior  
30 court to restrain a threatened or actual violation of this section  
31 and to compel compliance with this section.

32 (13) A second or subsequent violation of this section is not  
33 reasonable in relation to the development and preservation of  
34 business and is an unfair and deceptive act or practice and an unfair  
35 method of competition in the conduct of trade or commerce in  
36 violation of RCW 19.86.020. Standing to bring an action to enforce  
37 RCW 19.86.020 for violation of this section lies solely with the  
38 attorney general. Remedies provided by chapter 19.86 RCW are  
39 cumulative and not exclusive.

1 (14) (a) In any action brought under this section, the state is  
2 entitled to recover, in addition to other relief, the costs of  
3 investigation, expert witness fees, costs of the action, and  
4 reasonable attorneys' fees.

5 (b) If a court determines that a person has violated this  
6 section, the court must order any gross receipts or other benefit  
7 from the violation to be disgorged and paid to the state treasurer  
8 for deposit in the general fund.

9 (15) Unless otherwise expressly provided, the penalties or  
10 remedies, or both, under this section are in addition to any other  
11 penalties and remedies available under any other law of this state.

12 (16) Each retailer, distributor, and wholesaler that sells or  
13 distributes closed system nicotine containers or disposable nicotine  
14 vapor products in this state must be subject to at least two  
15 unannounced compliance checks annually for purposes of enforcing this  
16 section. Unannounced follow-up compliance checks of all noncompliant  
17 retailers, distributors, and wholesalers must be conducted within 30  
18 days after any violation of this section. The board must publish the  
19 results of all compliance checks at least annually and must make the  
20 results available to the public on request. The requirements of this  
21 subsection do not apply to an Indian tribal organization, Indian  
22 retailer, or Indian distributor, as those terms are defined in RCW  
23 82.25.105.

24 (17) (a) Any nonresident or foreign manufacturer that has not  
25 registered to do business in the state as a foreign corporation or  
26 business entity must, as a condition precedent to having its products  
27 included or retained in the directory, appoint and continually engage  
28 without interruption the services of an agent in this state to act as  
29 agent for the service of process on whom all process, and any action  
30 or proceeding against it concerning or arising out of the enforcement  
31 of this section, may be served in any manner authorized by law. The  
32 service must constitute legal and valid service of process on the  
33 manufacturer. The manufacturer must provide the name, address, phone  
34 number, and proof of the appointment and availability of the agent to  
35 the satisfaction of the board.

36 (b) The manufacturer must provide notice to the board 30 calendar  
37 days prior to termination of the authority of an agent and must  
38 further provide proof to the satisfaction of the board of the  
39 appointment of a new agent no less than five calendar days prior to  
40 the termination of an existing agent appointment. In the event an

1 agent terminates an agency appointment, the manufacturer must notify  
2 the board of the termination within five calendar days and include  
3 proof to the satisfaction of the board of the appointment of a new  
4 agent.

5 (c) Any manufacturer whose closed system nicotine containers or  
6 disposable nicotine vapor products are sold in this state, who has  
7 not appointed and engaged an agent as required in this section, must  
8 be deemed to have appointed the secretary of state as the agent and  
9 may be proceeded against in courts of this state by service of  
10 process upon the secretary of state. However, the appointment of the  
11 secretary of state as agent must not satisfy the condition precedent  
12 for having the products of the manufacturer included or retained in  
13 the directory.

14 (18) The board may adopt by rule requirements necessary to  
15 implement this section.

16 (19) Starting January 31, 2025, and annually thereafter, the  
17 board must provide a report to the legislature regarding the status  
18 of the directory, manufacturers and products included in the  
19 directory, revenue and expenditures related to administration of this  
20 section, and enforcement activities undertaken pursuant to this  
21 section.

22 (20) All fees collected and funds collected by the board from the  
23 imposition of monetary penalties pursuant to this section must be  
24 deposited into the general fund and must be used by the board for  
25 implementation of this section.

26 **Sec. 2.** RCW 70.345.010 and 2022 c 16 s 135 are each amended to  
27 read as follows:

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

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

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

34 (3) "Child care facility" has the same meaning as provided in RCW  
35 70A.320.020.

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

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

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

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

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

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

15 (7) "Disposable nicotine vapor product" means a vapor product  
16 consisting of a power source and a solution or other substance  
17 containing nicotine in a single unit that is sealed by the  
18 manufacturer, not intended to be opened by the consumer, and intended  
19 to be disposed of after the solution or other substance has been  
20 depleted.

21 (8) "Distributor" has the same meaning as in RCW 82.25.005.

22 (~~(8)~~) (9) "Liquid nicotine container" means a package from  
23 which nicotine in a solution or other form is accessible through  
24 normal and foreseeable use by a consumer and that is used to hold  
25 soluble nicotine in any concentration. "Liquid nicotine container"  
26 does not include closed system nicotine containers.

27 (~~(9)~~) (10) "Manufacturer" means a person who manufactures and  
28 sells vapor products.

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

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



1       (~~(12)~~) (13) "Playground" means any public improved area  
2 designed, equipped, and set aside for play of six or more children  
3 which is not intended for use as an athletic playing field or  
4 athletic court, including but not limited to any play equipment,  
5 surfacing, fencing, signs, internal pathways, internal land forms,  
6 vegetation, and related structures.

7       (~~(13)~~) (14) "Retail outlet" means each place of business from  
8 which vapor products are sold to consumers.

9       (~~(14)~~) (15) "Retailer" means any person engaged in the business  
10 of selling vapor products to ultimate consumers.

11       (~~(15)~~) (16)(a) "Sale" means any transfer, exchange, or barter,  
12 in any manner or by any means whatsoever, for a consideration, and  
13 includes and means all sales made by any person.

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

17       (~~(16)~~) (17) "School" has the same meaning as provided in RCW  
18 70A.320.020.

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

25       (~~(18)~~) (19) "Vapor product" means any noncombustible product  
26 that 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 cigar, 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 cigarillo, electronic pipe, or similar product or device.

36       (b) "Vapor product" does not include any product that meets the  
37 definition of cannabis, useable cannabis, cannabis concentrates,  
38 cannabis-infused products, cigarette, or tobacco products.

1           (c) For purposes of this subsection (~~(18)~~) (19), "cannabis,"  
2 "useable cannabis," "cannabis concentrates," and "cannabis-infused  
3 products" have the same meaning as provided in RCW 69.50.101.

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