
SENATE BILL 6118

State of Washington

68th Legislature

2024 Regular Session

By Senators Van De Wege, Braun, Keiser, and Stanford

Read first time 01/10/24. Referred to Committee on Labor & Commerce.

1 AN ACT Relating to protecting public health and safety by
2 enhancing the regulation of vapor products; adding a new section to
3 chapter 70.345 RCW; and prescribing penalties.

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

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

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

14 (a) The manufacturer has received a marketing authorization or
15 similar order for the vapor product from the United States food and
16 drug administration pursuant to 21 U.S.C. Sec. 387j; or

17 (b) The vapor product was marketed in the United States as of
18 August 8, 2016, the manufacturer submitted a premarket tobacco
19 product application for the vapor product to the United States food
20 and drug administration pursuant to 21 U.S.C. Sec. 387j on or before
21 September 9, 2020, and the application either remains under review by

1 the United States food and drug administration or a final decision on
2 the application has not otherwise taken effect.

3 (2) A manufacturer must submit a certification form that
4 separately lists each vapor product that is sold in this state.

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

6 (a) A copy of the marketing authorization or other order for the
7 vapor product issued by the United States food and drug
8 administration pursuant to 21 U.S.C. Sec. 387j, or evidence that the
9 premarket tobacco product application for the vapor product was
10 submitted to the United States food and drug administration, and a
11 final authorization or order has not yet taken effect; and

12 (b) A payment of \$1,000 for each vapor product the first time a
13 vapor product manufacturer submits a certification form for that
14 product and a payment of \$250 annually thereafter for each vapor
15 product.

16 (4) A manufacturer required to submit a certification form
17 pursuant to this section must notify the board within 30 days of any
18 material change to the certification form, including the issuance or
19 denial of a marketing authorization or other order by the United
20 States food and drug administration pursuant to 21 U.S.C. Sec. 387j,
21 or any other order or action by the United States food and drug
22 administration or any court that affects the ability of the vapor
23 product to be introduced or delivered into interstate commerce for
24 commercial distribution in the United States.

25 (5) The board must maintain and make available on its public
26 website a directory that lists all vapor product manufacturers and
27 vapor products for which certification forms have been submitted.

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

30 (b) The board must update the directory as necessary in order to
31 correct mistakes, ensure accuracy, and add or remove vapor product
32 manufacturers and vapor products on at least a monthly basis.

33 (6) The board must provide manufacturers notice and an
34 opportunity to cure deficiencies before removing manufacturers or
35 products from the directory.

36 (a) The board may not remove the manufacturer or its products
37 from the directory until at least 15 days after the manufacturer has
38 been given notice of an intended action. Notice must be sufficient
39 and be deemed immediately received by a manufacturer if the notice is
40 sent either electronically or by facsimile to an electronic mail

1 address or facsimile number, as the case may be, provided by the
2 manufacturer in its most recent certification, or to the
3 manufacturer's registered agent for service of process in the state.

4 (b) The vapor product manufacturer must have 15 business days
5 from the date of service of the notice of the board's intended action
6 to establish that the vapor product manufacturer or its products
7 should be included in the directory.

8 (7) If a product is removed from the directory, each retailer,
9 distributor, and wholesaler must have 21 days from the day such
10 product is removed from the directory to remove the product from its
11 inventory and return the product to the manufacturer for disposal.
12 After 21 days following removal from the directory, the vapor
13 products of a manufacturer identified in the notice of removal are
14 contraband and are subject to seizure, forfeiture, and destruction,
15 and may not be purchased or sold in the state.

16 (8) Beginning October 1, 2024, or on the date that the board
17 first makes the directory available for inspection on its public
18 website, a person may not sell or offer for sale a vapor product in
19 this state that is not included in the directory, and a vapor product
20 manufacturer may not sell, either directly or through a distributor
21 or wholesaler, retailer, delivery seller, or similar intermediary or
22 intermediaries, a vapor product in this state that is not included in
23 the directory.

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

25 (a) In addition to or in lieu of any other civil or criminal
26 remedy provided by law, a retailer, delivery seller, distributor, or
27 wholesaler who sells or offers for sale a vapor product in this state
28 that is not included in the directory must be subject to a civil
29 penalty of \$1,000 per day for each product offered for sale in
30 violation of this section until the offending product is removed from
31 the market or until the offending product is properly listed on the
32 directory.

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

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

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

39 (b) In addition to or in lieu of any other civil or criminal
40 remedy provided by law, a vapor product manufacturer whose vapor

1 products are not listed in the directory and are sold in this state,
2 whether directly or through a distributor or wholesaler, retailer, or
3 similar intermediary or intermediaries, is subject to a civil penalty
4 of \$1,000 per day for each product offered for sale in violation of
5 this section until the offending product is removed from the market,
6 or until the offending product is properly listed on the directory.
7 In addition, a manufacturer that knowingly makes a false
8 representation in any of the information required by the
9 certification forms required under this title is guilty of a
10 misdemeanor for each false representation.

11 (10) Vapor products offered for sale in violation of this section
12 are considered contraband and may be seized by an enforcement officer
13 of the board.

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

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

19 (13) A second or subsequent violation of this section is not
20 reasonable in relation to the development and preservation of
21 business and is an unfair and deceptive act or practice and an unfair
22 method of competition in the conduct of trade or commerce in
23 violation of RCW 19.86.020. Standing to bring an action to enforce
24 RCW 19.86.020 for violation of this section lies solely with the
25 attorney general. Remedies provided by chapter 19.86 RCW are
26 cumulative and not exclusive.

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

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

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

38 (16) Each retailer, distributor, and wholesaler that sells or
39 distributes vapor products in this state must be subject to at least
40 two unannounced compliance checks annually for purposes of enforcing

1 this section. Unannounced follow-up compliance checks of all
2 noncompliant retailers, distributors, and wholesalers must be
3 conducted within 30 days after any violation of this section. The
4 board must publish the results of all compliance checks at least
5 annually and must make the results available to the public on
6 request.

7 (17)(a) Any nonresident or foreign manufacturer that has not
8 registered to do business in the state as a foreign corporation or
9 business entity must, as a condition precedent to having its products
10 included or retained in the directory, appoint and continually engage
11 without interruption the services of an agent in this state to act as
12 agent for the service of process on whom all process, and any action
13 or proceeding against it concerning or arising out of the enforcement
14 of this section, may be served in any manner authorized by law. The
15 service must constitute legal and valid service of process on the
16 manufacturer. The manufacturer must provide the name, address, phone
17 number, and proof of the appointment and availability of the agent to
18 the satisfaction of the board.

19 (b) The manufacturer must provide notice to the board 30 calendar
20 days prior to termination of the authority of an agent and must
21 further provide proof to the satisfaction of the board of the
22 appointment of a new agent no less than five calendar days prior to
23 the termination of an existing agent appointment. In the event an
24 agent terminates an agency appointment, the manufacturer must notify
25 the board of the termination within five calendar days and include
26 proof to the satisfaction of the board of the appointment of a new
27 agent.

28 (c) Any manufacturer whose vapor products are sold in this state,
29 who has not appointed and engaged an agent as required in this
30 section, must be deemed to have appointed the secretary of state as
31 the agent and may be proceeded against in courts of this state by
32 service of process upon the secretary of state. However, the
33 appointment of the secretary of state as agent must not satisfy the
34 condition precedent for having the products of the manufacturer
35 included or retained in the directory.

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

38 (19) Starting January 31, 2025, and annually thereafter, the
39 board must provide a report to the legislature regarding the status
40 of the directory, manufacturers and products included in the

1 directory, revenue and expenditures related to administration of this
2 section, and enforcement activities undertaken pursuant to this
3 section.

4 (20) All fees collected and funds collected by the board from the
5 imposition of monetary penalties pursuant to this section must be
6 used by the board for implementation of this section.

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