

HOUSE BILL REPORT

HB 1203

As Reported by House Committee On:
Consumer Protection & Business

Title: An act relating to protecting the health of all Washingtonians by ending the sale of certain tobacco and nicotine products, including products with flavors and video games.

Brief Description: Prohibiting the sale of certain tobacco and nicotine products.

Sponsors: Representatives Reeves, Entenman, Nance, Peterson, Pollet, Ryu, Stonier, Reed, Leavitt, Berry, Ramel, Macri, Callan, Obras, Doglio, Gregerson, Street, Kloba, Berg, Davis, Ormsby, Bergquist and Hill.

Brief History:

Committee Activity:

Consumer Protection & Business: 1/31/25, 2/18/25 [DP].

Brief Summary of Bill

- Prohibits the sale, display, and advertisement of any flavored tobacco, nicotine, or vapor product and any entertainment vapor product.
- Requires a prevention and awareness campaign, requires signage, imposes penalties, specifies enforcement provisions, applies the Consumer Protection Act, and authorizes tribal consultations.

HOUSE COMMITTEE ON CONSUMER PROTECTION & BUSINESS

Majority Report: Do pass. Signed by 8 members: Representatives Walen, Chair; Berry, Donaghy, Fosse, Kloba, Reeves, Ryu and Santos.

Minority Report: Do not pass. Signed by 6 members: Representatives Dufault, Assistant Ranking Minority Member; Abbarno, Corry, Morgan, Steele and Volz.

Minority Report: Without recommendation. Signed by 1 member: Representative

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.

McClintock, Ranking Minority Member.

Staff: Peter Clodfelter (786-7127).

Background:

The Liquor and Cannabis Board (LCB) licenses and regulates businesses including cigarette, tobacco product, and vapor product retailers; distributors; and vapor product delivery sellers. A person who sells or gives, or permits to be sold or given, to any person under the age of 21 any cigar, cigarette, cigarette paper or wrapper, tobacco in any form, or a vapor product is guilty of a gross misdemeanor.

A licensed cigarette or tobacco product retailer is subject to the following maximum penalties for a violation of this prohibition:

- \$1,000 for the first violation within any three-year period;
- \$2,500 for the second violation within any three-year period;
- \$5,000 and a six-month license suspension for the third violation within any three-year period;
- \$10,000 and a 12-month license suspension for the fourth violation within any three-year period; and
- revocation of the license with no possibility of reinstatement for a period of five years for the fifth-or-more violation within any three-year period.

A licensed vapor product retailer is subject to the following maximum penalties for a violation of the prohibition:

- \$200 for the first violation within any three-year period;
- \$600 for the second violation within any three-year period;
- \$2,000 and a six-month license suspension for the third violation within any three-year period;
- \$3,000 and a 12-month license suspension for the fourth violation within any three-year period; and
- revocation of the license with no possibility of reinstatement for a five-year period for the fifth-or-more violation within any three-year period.

Federal law prohibits the sale of flavored cigarettes except for menthol cigarettes. A variety of state and local jurisdictions in the United States have enacted policies restricting or prohibiting the sale of flavored tobacco, nicotine, and vapor products.

Summary of Bill:

Prohibition on Sale and Advertisement of Flavored Tobacco, Nicotine, or Vapor Products and Entertainment Vapor Products.

Beginning January 1, 2026, no retailer may sell, offer for sale, display, market, or advertise

for sale in Washington, any flavored tobacco, nicotine, or vapor product or entertainment vapor product.

There is a rebuttable presumption that a tobacco, nicotine, or vapor product is flavored if any communication by or on behalf of the manufacturer or retailer indicates that the product imparts: (1) a taste or smell other than the taste or smell of tobacco; or (2) a cooling or numbing sensation. Evidence of this communication may include but is not limited to the use of terms like "cool," "chill," "ice," "fresh," "arctic," or "frost" to describe the product.

Flavored tobacco, nicotine, or vapor products are defined to mean products that impart:

- a taste or smell, other than the taste or smell of tobacco, distinguishable by an ordinary consumer either before or during the consumption of the tobacco product including, but not limited to, the taste or smell of fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, mint, wintergreen, menthol, herb, or spice; or
- a cooling or numbing sensation distinguishable by an ordinary consumer either before or during the consumption of such tobacco product.

Entertainment vapor products are defined to mean any vapor product that has interactive gaming or entertainment features including, but not limited to, allowing a user to play music or audio, display photos or video, play virtual games, or display other animations on the device.

Department of Health—Prevention and Awareness Campaign.

The Department of Health (DOH) must develop, implement, and maintain a statewide flavored tobacco, nicotine, and vapor products and entertainment vapor products prevention and awareness campaign to address the use of these products. The campaign must educate the public about the health risks and addictive nature of these products, include outreach to both youth and adults aimed at preventing use, and be consistent with best practices identified by the United States (US) Centers for Disease Control and Prevention. The DOH must report to the appropriate committees of the Legislature regarding the status of the education program by January 1, 2026.

Signage.

Cigarette retailers and wholesalers must display a sign concerning the sales prohibition. The sign must be posted so that it is clearly visible to anyone purchasing tobacco products from the licensee. It must be designed and produced by the DOH to read: "THE SALE OF FLAVORED TOBACCO AND NICOTINE PRODUCTS IN THIS STATE IS STRICTLY PROHIBITED BY STATE LAW."

Vapor products retailers must display a sign concerning the sales prohibition. The sign must be posted so that it is clearly visible to anyone purchasing vapor products or entertainment vapor products from the licensee. It must be designed and produced by the DOH to read: "THE SALE OF FLAVORED TOBACCO AND NICOTINE PRODUCTS

AND ENTERTAINMENT VAPOR PRODUCTS IN THIS STATE IS STRICTLY PROHIBITED BY STATE LAW."

Penalties.

The LCB's authority to suspend a cigarette, tobacco product, or vapor product retailer's license and to seek injunction relief and impose monetary penalties for violations is extended to include a violation of the new prohibition on sales of flavored tobacco or nicotine products or entertainment vapor products. Retailers are subject to the same monetary penalties as persons who sell or give a cigarette, tobacco, or a vapor product to a person under age 21.

Consumer Protection Act.

It is deemed an unfair or deceptive practice under the Consumer Protection Act (CPA) for any retailer to sell, offer for sale, display, market, or advertise for sale any flavored tobacco, nicotine, or vapor product or any entertainment vapor product in Washington. The per se public interest element of a CPA claim is also deemed met for a violation.

Tribal Consultations.

In recognition of the sovereign authority of tribal governments, the Governor may seek government-to-government consultations with federally recognized Indian tribes regarding prohibiting the sale or offer for sale of any flavored tobacco, nicotine, vapor product, or entertainment vapor product, and the display, marketing, or advertising for sale of such products in compacts between tribes and Washington.

Liquor and Cannabis Board Rules.

The LCB must adopt rules to implement the new requirements and compliance education for licensed retailers, distributors, and manufacturers, and employees of these licensees.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This is about preventing youth access to products that create lifelong addictions. Nicotine products do not add value to society or communities. Menthol cigarettes are highly addictive, harm families' health, finances, and relationships, and cause early death. Washington is seeing an unprecedented rise in the use of flavored nicotine and vapor products by youth. Not only has vaping replaced smoking, but now vaping is merging with music and video game devices that incentivize use. Kids as young as third

grade are vaping. There is an alarming number of late elementary and middle school students using vapor products, as well as high school students. It is an epidemic and a major problem in schools for students and administrators. Social media makes it impossible to prevent messages from getting to youth. A flavor ban is the necessary step. Students are easily accessing products through social sources with a person age 21 originally purchasing the products. The bright colors, design, and fruity flavors of vapes are highly appealing to youth, drawing them in to nicotine addiction. Flavors include pina colada, blow pop, peach rings, raspberry ice, mango, and strawberry. Products and advertisements are designed to attract kids and it is working. There is significant peer pressure on youth to try and begin vaping. The products are marketed as harmless. Vaping takes over your life and becomes a constant struggle. Even youth who never considered smoking find themselves vaping. Once vaping, youth then begin trying cigarettes and cigars. Marginalized communities are even more significantly impacted by flavored vapor and tobacco products, leading to disproportionate health risks. Hispanic and Latino youth are especially impacted by flavored products with reported use at higher rates. Washington currently has failing grades for tobacco control policies. Flavored vapor products are not approved as smoking cessation products. Youth vaping is so pervasive it is uncontrollable by parents or schools. Thousands of lives and substantial healthcare costs would be saved by a flavor ban. Protect future generations by making products less accessible.

(Opposed) Washington should not ban flavored vapor products properly labeled and marketed and sold to adults. Prohibition does not work as a regulatory tool. The bill will have the effect of creating an unregulated underground market for products, which will have significant effects on adult smokers and the Washington economy. If this policy is passed, Washington and local governments will face substantial revenue losses, job losses, and closures of small businesses. This bill would cause a big revenue loss for many convenience stores, many of which are minority owned and operated businesses. This ties into losses of food and fuel sales. The youth vaping rate has plummeted since 2019. There are ways to increase regulation, education, and enforcement while preserving adults' access to products. Vapor products have helped people quit smoking. Flavored tobacco nicotine pouches have helped people stop using higher risk nicotine products, and these helpful products that adults like would be banned by the bill. Adult consumers like flavored vapor products. Focus efforts on youth prevention and education. The bill could potentially have devastating effects on the African American community by inevitably creating an underground market for menthol cigarettes and setting up law enforcement conflicts. Historically, African Americans are the predominant consumers of menthol cigarettes. Bans aimed at public health overlook the disproportionate impact to the African American community. Other states' flavor ban laws have not worked as intended. There are more effective ways to address this policy, like removing certain illegal products from the market.

(Other) Nationally and in Washington, youth vapor product use remains high. The Healthy Youth Survey reports that 14 percent of twelfth graders are currently using electronic cigarettes, and there are higher rates among certain youth. A US Surgeon General report found nicotine to be highly addictive and harmful to the adolescent developing brain,

especially related to attention, memory, and learning. Vapor products have much higher nicotine content than cigarettes. Evidence suggests that prohibiting the sale of flavored vapor products is an effective method to reduce nicotine usage, especially among youth. Appealing vape products like fruit or candy are one of the leading reasons youth begin vaping. Flavored cigarettes other than menthol have been banned since 2009 because flavors are appealing to youth, and this is why the US Centers for Disease Control and Prevention recommends prohibiting the sale of flavored vapor products. There are also concerns with the new development of entertainment vapor products and youth appeal.

Persons Testifying: (In support) Representative Kristine Reeves, prime sponsor; Chris Reykdal, Superintendent of Public Instruction; McKenah Perdue, Student Representative for Eatonville School District; Robert Poulter, Student Representative for Eatonville School District; Julian Jansen, Student Representative for Eatonville School District; Nancy Carroll, Assistant Principal, West Seattle High School; Krystal Forslin, Student; Megan Moore, WA State Public Health Association; Marley Franich, Middle School Student; Onya Robertson, Parent; Mohammad Shidane, Somali Health Board; Josie Shapiro, Student; Amelia Escobedo, LULAC; April Keim, PAVE; Maud De Bel, PAVE; Malcolm Clay, Tacoma NAACP; Jonathan Bricker, Fred Hutch Cancer Center; and Jay Miller, Tacoma Pierce County Health Department.

(Opposed) Katie Beeson, Washington Food Industry Association (WFIA); Doug Ball, Jackson's Food Stores, Inc.; Jeff Small, Small and Sons Oil; Lamont Robinson; Yvonne Pack; Gregory Smith; Robert Lambeth; Aaron Holmes, Vapor Technology Association; Jonny Ghim, KAGRO Washington; Sara Stewart, Washington Smoke-Free Association; Chong Sullivan, KAGRO; Kerry Schultz, Creekside Market; Alex Wardi, OMG Food Mart; and Crystal Leatherman, WA Retail Association.

(Other) Michele Roberts, Washington State Department of Health.

Persons Signed In To Testify But Not Testifying: Roz Thompson, Association of Washington School Principals (ASWP); Audrey Miller Garcia, ACSCAN; Carol Coram, ACSCAN; Kelsey Beck, Kaiser; Lyset Cadena, Andy Hill Cancer Research Endowment Fund; Pam Johnson, Hazardous Waste Management Program; Mikayla Tanis, Educator; Thomas Eshleman, Doyles Sheehan; Neill Franklin, Law Enforcement Action Partnership; Christopher Hudgins, National Hookah Community Association; Elliot Boyce; Corey Pegues, Corey Pegues Enterprise; Joe Hunt, United Pacific; William Robinson, Urban Coalition Against Substance Abuse; Jiles Ship, (NOBLE) National Organization of Black Law Enforcement Executives; and Guy Bentley, Reason Foundation.