

HOUSE BILL REPORT

HB 1534

As Reported by House Committee On:
Consumer Protection & Business

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

Brief Description: Enhancing the regulation of tobacco products, alternative nicotine products, and vapor products.

Sponsors: Representatives Santos, Wylie, Parshley, Scott, Leavitt, Reeves, Doglio, Tharinger, Nance, Corry, Ybarra, Couture, McClintock, Hackney, Berry, Davis, Dufault, Ramel, Reed, Mendoza, Obras, Gregerson, Kloba, Callan, Shavers, Peterson, Zahn, Ormsby, Pollet and Hill.

Brief History:

Committee Activity:

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

Brief Summary of Substitute Bill

- Requires the Liquor and Cannabis Board (LCB) to establish a vapor product directory using annual certifications from vapor product manufacturers, and prohibits the sale of vapor products containing nicotine that are not in the directory.
- Establishes penalties for violations, requires an annual report, and creates a Public Records Act exemption.
- Modifies monetary penalties for violations of cigarette, tobacco, and vapor product laws, and creates a new prohibition related to nicotine analogue products.
- Defines and adds "alternative nicotine product" to tobacco product laws, while excluding these products from the tobacco product tax.
- Makes other modifications to tobacco and vapor product laws.

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.

HOUSE COMMITTEE ON CONSUMER PROTECTION & BUSINESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Walen, Chair; Dufault, Assistant Ranking Minority Member; Corry, Donaghy, Fosse, Kloba, Reeves, Ryu and Santos.

Minority Report: Do not pass. Signed by 3 members: Representatives Abbarno, Steele and Volz.

Minority Report: Without recommendation. Signed by 3 members: Representatives McClintock, Ranking Minority Member; Berry and Morgan.

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. Escalating monetary penalties, including license suspension and revocation, also apply to licensees for multiple violations within a three-year period.

In the United States, under federal law, to legally market and sell a new tobacco product, including a vapor product containing nicotine, a company must generally receive a written marketing-granted order from the United States Food and Drug Administration (FDA), upon a showing that marketing of the product is appropriate for the protection of the public health.

Federal law requires denial of an application for premarket review and approval upon a finding that:

- there is a lack of a showing that permitting the tobacco product to be marketed would be appropriate for the protection of the public health;
- the methods used in, or the facilities or controls used for, the manufacture, processing, or packing of the tobacco product do not conform to federal requirements;
- based on a fair evaluation of all material facts, the proposed labeling is false or misleading; or
- the tobacco product is not shown to conform in all respects to the applicable standard, and there is a lack of adequate information to justify the deviation from the standard.

Washington levies separate taxes on cigarettes, tobacco products, and vapor products. With

respect to the tobacco product tax, there is a tax levied and collected upon the sale, handling, or distribution of all tobacco products in Washington at the following rates:

- for cigars except little cigars, 95 percent of the taxable sales price, not to exceed 65 cents per cigar;
- for all other tobacco products except as provided below, 95 percent of the taxable sales price;
- for moist snuff, specified rates on each single unit based on net weight; and
- for little cigars, an amount equal to the cigarette tax, which is \$3.025 on a pack of 20.

Summary of Substitute Bill:

Annual Certifications.

By October 1, 2025, and annually thereafter, every manufacturer of a vapor product that contains nicotine that is sold for retail sale in Washington or to a consumer in Washington must execute and deliver to the LCB a certification, under penalty of perjury, on a form and in a manner prescribed by the LCB. The certification must state that the manufacturer is compliant and that for each vapor product sold for retail sale in Washington or to a consumer in Washington, the manufacturer:

- has received a marketing-granted order for the vapor product from the FDA;
- submitted a timely filed premarket tobacco product application for the vapor product to the FDA, and the application either remains under review or has received a denial order that is stayed by the FDA or court order, rescinded by the FDA, or vacated by a court; or
- is not required to submit an additional marketing-granted order or premarket tobacco product application for the vapor product because the vapor product merely reflects changes to the name, brand style, or packaging of a vapor product.

Requirements are established for the content of certification forms and accompanying materials. Each certification must also be accompanied by a payment of a \$1,000 fee for each vapor product containing nicotine the first time an annual certification form is delivered to the LCB, and a payment of a \$500 fee for each vapor product containing nicotine the second and each subsequent time an annual certification form is delivered.

Information submitted by a manufacturer is confidential and exempt from public disclosure under the Public Records Act. A manufacturer required to submit a certification form must notify the Attorney General within 30 days of any material change to the certification form.

The Directory.

Starting January 1, 2026, the LCB must maintain and make publicly available on its website a directory that lists all manufacturers and vapor products containing nicotine. The LCB must update the directory at least monthly and establish a process to provide licensed retailers, distributors, and others notice of the initial publication of the directory and changes made to the directory in the previous month.

No manufacturer or the manufacturer's vapor products containing nicotine may be included or retained in the directory if the LCB determines that any of the following apply:

- The manufacturer failed to provide a complete and accurate certification.
- The manufacturer submitted a certification that does not comply with the requirements.
- The manufacturer failed to include with its certification the required payment.
- The manufacturer sold vapor products containing nicotine in Washington required to be certified during a period when either the manufacturer or the vapor product had not been certified and listed on the directory.
- The information provided by the manufacturer in its certification is determined by the Attorney General to contain false information or material misrepresentations or omissions.

Requirements are provided for the LCB's removal from the directory of manufacturers or vapor products containing nicotine, including an opportunity to correct deficiencies.

After 60 days following publication of the directory, vapor products containing nicotine not listed in the directory and intended for retail sale in Washington or to a consumer in Washington are subject to seizure, forfeiture, and destruction or disposal, and may not be purchased or sold for retail sale in Washington or to a consumer in Washington.

Any nonresident or foreign manufacturer that has not registered to do business in Washington as a foreign corporation or business entity must, as a condition to having its vapor products containing nicotine included or retained in the directory, comply with a \$25,000 surety bond requirement and appoint an agent for service of process.

Annually beginning on July 1, 2026, the LCB must provide a report to the Legislature regarding the status of the directory, manufacturers, and vapor products containing nicotine included in the directory; revenue and expenditures related to the administration of the directory; and enforcement activities.

Violations Related to the Directory.

Escalating monetary penalties, including license suspension and cancellation, are established for violations of the directory requirements for multiple violations within a 12-month period.

A second or subsequent violation of requirements related to the directory is not reasonable in relation to the development and preservation of business and is deemed an unfair and deceptive act or practice and an unfair method of competition in the conduct of trade or commerce in violation of the Consumer Protection Act (CPA). Enforcement of the CPA is solely by the Attorney General. It is provided that for purposes of this violation, remedies in the CPA are cumulative and not exclusive.

A manufacturer whose vapor products containing nicotine are not listed in the directory and who causes the vapor products containing nicotine that are not listed to be sold for retail sale in Washington is subject to a civil penalty of \$10,000 for each individual vapor product offered for sale. In addition, any manufacturer that falsely represents any information required by a certification form is guilty of a class C misdemeanor for each false representation.

Vapor products containing nicotine offered for sale in violation of the directory requirements are considered contraband and may be seized and disposed of or destroyed by an LCB enforcement officer.

Each vapor product retailer, distributor, and wholesaler that sells or distributes vapor products containing nicotine is subject to at least two unannounced compliance checks annually for purposes of enforcing requirements related to the directory. Unannounced follow-up compliance checks of all noncompliant retailers, distributors, and wholesalers must be conducted within 30 days after any violation related to the directory. The LCB must publish the results of all compliance checks at least annually and make the results available to the public on request.

The Vapor Product Nicotine Directory Account (Account) is created in the State Treasury. All receipts from monetary penalties must be deposited into the Account. Moneys in the Account may be spent only after appropriation. Expenditures from the Account may only be used by the LCB for implementation of the directory.

Nicotine Analogue.

It is unlawful for any person to sell, give, deliver, or furnish to a person in Washington a product that contains a nicotine analogue. A nicotine analogue is a substance with a substantially similar chemical structure to that of nicotine or that has, purports to have, or is represented to have, an effect on the central nervous system that is similar to or greater than the effect of nicotine on the central nervous system. Escalating monetary penalties, including license suspension or revocation, are established for violations within any 12-month period. Receipts from fines are deposited to the Account.

Alternative Nicotine Products—Relation to Tobacco Products.

A definition of "alternative nicotine products" is added to tobacco product laws. The term means any noncombustible product containing nicotine that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means. However, it does not include a vapor product or a product regulated as a drug or device by the FDA. Alternative nicotine products are included as a type of tobacco product, but are excluded from the tobacco product tax.

Miscellaneous Provisions.

A \$500 fine is added as an additional penalty for 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. Additionally, selling such a person alternative nicotine products is added to the prohibition.

Certain existing monetary penalties against cigarette, tobacco product, and vapor product licensees are increased, while the period of time is decreased, from three years to two years, when multiple violations in a period of time result in higher penalties. Monetary penalties are added to also apply to a person whose license is revoked for multiple violations within a period of time.

Retailers must require the purchaser of a tobacco product or vapor product to present an officially issued identification. An existing condition is eliminated that presenting identification is only required where there may be a question of a person's right to purchase or obtain tobacco products by reason of age.

A retailer may obtain vapor products or tobacco products only from a licensed distributor. A retailer that obtains vapor products or tobacco products from any person that is not licensed, including directly from a manufacturer, must be licensed both as a retailer and a distributor and is liable for the tax with respect to the products acquired from the unlicensed person.

Vapor product distributors' records must also include the quantity of vapor products by brand, and tobacco product distributors' records must include the quantity of tobacco products by brand. Additionally, the Department of Revenue (DOR) or the LCB may share information obtained from the inspection of distributors' places of business and records, that is deemed relevant to the potential violation of the laws of other jurisdictions, with the duly authorized agents of those jurisdictions.

The DOR is granted authority to destroy vapor products when vapor products are forfeited under vapor product tax laws. Products offered for sale in violation of cigarette distribution laws are deemed contraband and subject to seizure. The LCB and the DOR are authorized to destroy tobacco products in cases of forfeiture.

Substitute Bill Compared to Original Bill:

The substitute bill adds the LCB as also having authority to share information that is obtained while inspecting vapor product and tobacco product distributors' businesses and records, and that is deemed relevant to the potential violation of the laws of other jurisdictions, with the duly authorized agents of those other jurisdictions. The terminology is changed to "duly authorized agents" from "duly appointed agents."

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

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

Staff Summary of Public Testimony:

(In support) The problem is the accessibility of flavored vapor nicotine products by youth. Seven out of the 10 most used products by youth are still being sold, though banned by the FDA. This bill proposes a directory modeled after the cigarette registry, to curb the availability of illicit products by defining what is and is not legal. The proposal intends to use the entire supply chain system from manufacturers, to distributors, to retailers to share enforcement compliance, rather than focusing only on the end-retailer through punitive measures. This approach to preventing youth access will work better than prohibition on certain products. Currently, retailers bear the burden of determining which products are legal, and there are federally illegal products throughout the market. This bill will provide distributors, wholesalers, and retailers a clear list of legal vapor products. The bill ensures only legal, regulated products are sold and holds the supply chain accountable. Louisiana and Alabama are examples of states with directories that are easy for retailers to use. The illicit vapor market has grown substantially and it is challenging for retailers to know what products are legal under federal law. The bill has a lot of benefits for all.

(Opposed) There are concerning provisions in the bill like allowing products for which an application has merely been submitted to the FDA to remain on the shelves. This is like giving someone a firearm while their background check is still in process, and means the difference between 34 products remaining on shelves and over 10,000 products that the FDA considers illegal. There is no evidence directories reduce tobacco use. Establishing one in Washington will waste resources and time. Federal law gives the FDA authority to regulate these products and a registry essentially already exists. There is current litigation over the FDA's premarket tobacco review process, with a possible US Supreme Court decision this year. The only vapor products approved federally are owned by big tobacco companies, for which this bill results in a market takeover. There are products consumers and retailers want that would be prohibited. People may opt back to cigarettes. The bill would effectively prohibit the sale of all synthetic-based vapor products.

Persons Testifying: (In support) Representative Sharon Tomiko Santos, prime sponsor; Tom Eshleman, Doyles Sheehan; Tom Eshleman, Doyles Sheehan; Jonny Ghim, KAGRO Washington; Charlie Choi, Mickey Deli; Paul Namkung, Lucky Seven Food; Chong Sullivan, KAGRO; Kerry Schultz, Creekside Market; Alex Wardi, OMG Food Mart; and Crystal Leatherman, WA Retail Association.

(Opposed) Megan Moore, Washington State Public Health Association; Doug Ball, Jacksons Food Stores; Audrey Miller Garcia, ACSCAN; Aaron Holmes, Vapor Technology Association; and Sara Stewart, Washington Smoke-Free Association.

Persons Signed In To Testify But Not Testifying: None.