
SECOND SUBSTITUTE SENATE BILL 6254

State of Washington

66th Legislature

2020 Regular Session

By Senate Ways & Means (originally sponsored by Senators Kuderer, Cleveland, Wilson, C., Carlyle, Das, and Darneille; by request of Office of the Governor)

READ FIRST TIME 03/02/20.

1 AN ACT Relating to protecting public health and safety by
2 enhancing the regulation of vapor products; amending RCW 70.345.020,
3 70.345.030, 70.345.075, 70.345.090, 70.345.110, 70.345.160,
4 70.345.170, 70.345.180, 43.70.170, 43.70.180, 43.70.190, and
5 70.345.210; reenacting and amending RCW 70.345.010; adding new
6 sections to chapter 70.345 RCW; adding a new section to chapter 82.25
7 RCW; creating new sections; prescribing penalties; providing an
8 effective date; and declaring an emergency.

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

10 NEW SECTION. **Sec. 1.** (1) The legislature makes the following
11 findings:

12 (a) Nicotine is a highly addictive substance, particularly for
13 children and youth under twenty-one years of age, whose brains are
14 still developing. Currently, there is no limit in the United States
15 on nicotine levels of vapor products. While other nations limit the
16 nicotine content of vapor products to not more than two percent
17 nicotine, vapor products commonly sold in this state and accessed by
18 youth contain five percent nicotine. Vapor products that deliver high
19 levels of nicotine are fueling youth addiction to nicotine and have
20 created an epidemic. The 2019 national youth tobacco survey found
21 that about twenty-seven percent of high school students reported

1 current use of electronic cigarettes and, among electronic cigarette
2 users, about a third reported using electronic cigarettes on twenty
3 or more of the preceding thirty days;

4 (b) Research consistently shows that flavors and associated
5 advertising contribute to the appeal, initiation, and use of tobacco
6 products, including vapor products, particularly among adolescents
7 and young adults. Evidence also suggests that the 2009 flavored
8 cigarette ban did achieve its objective of reducing adolescent
9 tobacco use, but effects were likely diminished by the continued
10 availability of menthol cigarettes and other flavored tobacco
11 products. Preliminary data from the national youth tobacco survey
12 show that more than a quarter of high school students were current
13 electronic cigarette users in 2019 and the overwhelming majority of
14 youth electronic cigarette users cited the use of popular fruit and
15 menthol or mint flavors. A health impact review performed by the
16 state board of health in 2019 concluded that eliminating flavored
17 vapor products would likely decrease initiation and use of vapor
18 products and other tobacco products among youth and young adults,
19 thereby improving health outcomes; and

20 (c) While the long-term health effects of vapor products are
21 unknown, current data suggests they are harmful to human health.
22 Vapor products have been shown to impair lung function in several
23 ways, such as by inhibiting ciliary beating, impairing immune
24 function, and causing toxicity to epithelial cells.

25 (2) Therefore, the legislature intends to restrict the sale of
26 flavored vapor products and enact additional regulatory protections
27 to protect the health of youth and young adults in Washington state.

28 **Sec. 2.** RCW 70.345.010 and 2019 c 445 s 210 and 2019 c 15 s 4
29 are each reenacted and amended to read as follows:

30 The definitions in this section apply throughout this chapter
31 unless the context clearly requires otherwise.

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

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

36 (3) "Child care facility" has the same meaning as provided in RCW
37 70.140.020.

38 (4) "Closed system nicotine container" means a sealed, prefilled,
39 and disposable container of nicotine in a solution or other form in

1 which such container is inserted directly into an electronic
2 cigarette, electronic nicotine delivery system, or other similar
3 product, if the nicotine in the container is inaccessible through
4 customary or reasonably foreseeable handling or use, including
5 reasonably foreseeable ingestion or other contact by children.

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

8 (a) The purchaser submits the order for such sale by means of a
9 telephonic or other method of voice transmission, the ~~((mails))~~
10 United States postal service or any other delivery service, or the
11 internet or other online service; or

12 (b) The vapor product is delivered by use of the ~~((mails))~~ United
13 States postal service or ~~((of a))~~ any other delivery service. The
14 foregoing sales of vapor products constitute a delivery sale
15 regardless of whether the seller is located within ~~((or without))~~
16 this state. "Delivery sale" does not include a sale of any vapor
17 product not for personal consumption to a retailer.

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

19 (7) "Distributor" ~~((has the same meaning as in RCW 82.25.005))~~
20 means any person who:

21 (a) Sells vapor products to persons other than ultimate
22 consumers; or

23 (b) Is engaged in the business of selling vapor products in this
24 state and who brings, or causes to be brought, into this state from
25 outside of the state any vapor products for sale.

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

31 (9) "Manufacturer" means a person who manufactures and sells
32 vapor products to a licensed distributor or licensed manufacturer.

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

1 (11) "Place of business" means any place where vapor products are
2 sold or where vapor products are manufactured, stored, or kept for
3 the purpose of sale.

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

10 (13) "Retail outlet" means each place of business from which
11 vapor products are sold to consumers.

12 (14) "Retailer" means any person engaged in the business of
13 selling vapor products to ultimate consumers.

14 (15) ~~((a))~~ "Sale" means any transfer, exchange, or barter, in
15 any manner or by any means whatsoever, for a consideration, and
16 includes and means all sales made by any person. This includes any
17 transfer, exchange, or barter, in any manner or by any means
18 whatsoever, of vapor products at or below the cost of acquisition or
19 at no cost to a person at retail.

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

23 (16) "School" has the same meaning as provided in RCW 70.140.020.

24 (17) "Self-service display" means a display that contains vapor
25 products and is located in an area that is openly accessible to
26 customers and from which customers can readily access such products
27 without the assistance of a salesperson. A display case that holds
28 vapor products behind locked doors does not constitute a self-service
29 display.

30 (18) (a) "Vapor product" means any ~~((noncombustible product that~~
31 ~~may contain nicotine and that employs a heating element, power~~
32 ~~source, electronic circuit, or other electronic, chemical, or~~
33 ~~mechanical means, regardless of shape or size, that can be used to~~
34 ~~produce vapor or aerosol from a solution or other substance.~~

35 ~~(a) "Vapor product" includes any electronic cigarette, electronic~~
36 ~~eigar, electronic cigarillo, electronic pipe, or similar product or~~
37 ~~device and any vapor cartridge or other container that may contain~~
38 ~~nicotine in a solution or other form that is intended to be used with~~
39 ~~or in an electronic cigarette, electronic cigar, electronic~~
40 ~~eigarillo, electronic pipe, or similar product or device)) product~~

1 that may be used to deliver any aerosolized or vaporized substance to
2 the person inhaling from the device including, but not limited to, an
3 electronic cigarette, e-cigar, e-pipe, vape pen, or e-hookah. "Vapor
4 product" includes any component, part, or accessory of the product
5 and also includes any substance that may be aerosolized or vaporized
6 by such a product, regardless of whether the substance contains
7 nicotine. "Vapor product" does not include drugs, devices, or
8 combination products authorized for sale by the United States food
9 and drug administration as those terms are defined in the federal
10 food, drug, and cosmetic act.

11 (b) "Vapor product" does not include any product that meets the
12 definition of marijuana, useable marijuana, marijuana concentrates,
13 marijuana-infused products, cigarette, or tobacco products.

14 (c) For purposes of this subsection (18), "marijuana," "useable
15 marijuana," "marijuana concentrates," and "marijuana-infused
16 products" have the same meaning as provided in RCW 69.50.101.

17 (19) "Disposable vapor product" means a closed system vapor
18 product that contains a sealed, prefilled container of nicotine,
19 flavorings, or both, in addition to other ingredients in a solution
20 or other form. The container within the vapor product is not intended
21 to be refilled or accessed by the user and the vapor product is
22 intended to be disposed of when the battery no longer carries
23 sufficient charge to heat the substance inside the prefilled
24 container.

25 (20) "Distinguishable" means perceivable by an ordinary consumer
26 by either the sense of smell or taste.

27 (21) "Domicile" means a person's true, fixed, primary permanent
28 home and place of habitation and the tax parcel on which it is
29 located.

30 (22) "Flavored vapor product" means any vapor product that
31 contains a taste or smell, other than the taste or smell of tobacco,
32 that is distinguishable by an ordinary consumer either prior to or
33 during the consumption of a vapor product, including, but not limited
34 to, any taste or smell relating to fruit, menthol, mint, wintergreen,
35 chocolate, cocoa, vanilla, honey, or any candy, dessert, alcoholic
36 beverage, herb, or spice.

37 (23) "Manufacture" means to mix, prepare, create, produce,
38 fabricate, assemble, modify, or label vapor products.

1 **Sec. 3.** RCW 70.345.020 and 2016 sp.s. c 38 s 5 are each amended
2 to read as follows:

3 (1) The licenses issuable by the board under this chapter are as
4 follows:

- 5 (a) A vapor product retailer's license;
- 6 (b) A vapor product distributor's license; (~~and~~)
- 7 (c) A vapor product manufacturer's license; and
- 8 (d) A vapor product delivery sale license.

9 (2) Application for the licenses must be made through the
10 business licensing system under chapter 19.02 RCW. The board may
11 adopt rules regarding the regulation of the licenses and licensees.
12 The board may refuse to issue any license under this chapter if the
13 board has reasonable cause to believe that the applicant has
14 willfully withheld information requested for the purpose of
15 determining the eligibility of the applicant to receive a license, or
16 if the board has reasonable cause to believe that information
17 submitted in the application is false or misleading or is not made in
18 good faith. In addition, for the purpose of reviewing an application
19 for a manufacturer's license, distributor's license, retailer's
20 license, or delivery seller's license, and for considering the
21 denial, suspension, or revocation of any such license, the board may
22 consider criminal conduct of the applicant, including an
23 administrative violation history record with the board and a criminal
24 history record information check within the previous five years, in
25 any state, tribal, or federal jurisdiction in the United States, its
26 territories, or possessions, and the provisions of RCW 9.95.240 and
27 chapter 9.96A RCW do not apply to such cases. The board may, in its
28 discretion, issue or refuse to issue (~~the~~) a manufacturer's
29 license, retailer's license, distributor's license, (~~and~~) or
30 delivery sale license subject to the provisions of RCW 70.155.100.

31 (3) The application processes for the retailer license and the
32 distributor license, and any forms used for such processes, must
33 allow the applicant to simultaneously apply for a delivery sale
34 license without requiring the applicant to undergo a separate
35 licensing application process in order to be licensed to conduct
36 delivery sales. However, a delivery sale license obtained in
37 conjunction with a retailer or distributor license under this
38 subsection remains a separate license subject to the delivery sale
39 licensing fee established under this chapter.

1 (4) No person may qualify for a manufacturer's license,
2 retailer's license, distributor's license, or delivery sale license
3 under this section without first undergoing a criminal background
4 check. The background check must be performed by the board and must
5 disclose any criminal conduct within the previous five years in any
6 state, tribal, or federal jurisdiction in the United States, its
7 territories, or possessions. If the applicant or licensee also has a
8 license issued under chapter 66.24, 69.50, 82.24, or 82.26 RCW, the
9 background check done under the authority of chapter 66.24, 69.50,
10 82.24, or 82.26 RCW satisfies the requirements of this subsection.

11 (5) Each license issued under this chapter expires on the
12 business license expiration date. The license (~~must~~) may be
13 continued annually if the licensee has paid the required fee and
14 complied with all the provisions of this chapter and the rules of the
15 board adopted pursuant to this chapter.

16 (6) Each license and any other evidence of the license required
17 under this chapter must be exhibited in each place of business for
18 which it is issued and in the manner required for the display of a
19 business license.

20 (7) A place of business for any holder of a license issued under
21 this chapter must not be located in a domicile.

22 **Sec. 4.** RCW 70.345.030 and 2019 c 445 s 211 are each amended to
23 read as follows:

24 (1)(a) No person may engage in or conduct business as a
25 manufacturer, retailer, distributor, or delivery seller in this state
26 without a valid license issued under this chapter, except as
27 otherwise provided by law. Any person who meets the definition of
28 manufacturer under this chapter must obtain a manufacturer's license
29 under this chapter. Any person who sells vapor products to ultimate
30 consumers by a means other than delivery sales must obtain a
31 retailer's license under this chapter. Any person who meets the
32 definition of distributor under this chapter must obtain a
33 distributor's license under this chapter. Any person who conducts
34 delivery sales of vapor products must obtain a delivery sale license.

35 (b) A violation of this subsection is punishable as a class C
36 felony according to chapter 9A.20 RCW.

37 (2) No person engaged in or conducting business as a
38 manufacturer, retailer, distributor, or delivery seller in this state
39 may refuse to allow the enforcement officers of the board, on demand,

1 to make full inspection of any place of business or vehicle where any
2 of the vapor products regulated under this chapter are sold, stored,
3 transported, or handled, or otherwise hinder or prevent such
4 inspection. The board may conduct such inspections with local law
5 enforcement. A person who violates this subsection is guilty of a
6 gross misdemeanor.

7 (3) Any person licensed under this chapter as a distributor, any
8 person licensed under this chapter as a retailer, and any person
9 licensed under this chapter as a delivery seller may not operate in
10 any other capacity unless the additional appropriate license is first
11 secured, except as otherwise provided by law. A violation of this
12 subsection is a misdemeanor.

13 (4) Any person licensed under this chapter as a retailer,
14 distributor, or delivery seller may only sell vapor products obtained
15 from a person holding a valid manufacturer's license granted by the
16 board under this chapter.

17 (5) No person engaged in or conducting business as a
18 manufacturer, retailer, distributor, or delivery seller in this state
19 may sell or give, or permit to sell or give, a product that contains
20 any amount of any cannabinoid, synthetic cannabinoid, cathinone, or
21 methcathinone, unless otherwise provided by law. A violation of this
22 subsection (~~((4))~~) is punishable according to RCW 69.50.401.

23 (~~((5))~~) (6) The penalties provided in this section are in
24 addition to any other penalties provided by law for violating the
25 provisions of this chapter or the rules adopted under this chapter.

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

28 To the extent permitted by federal law, the board shall, in
29 consultation with the department of health, adopt rules for safe
30 handling and sanitation practices for manufacturers, distributors,
31 delivery sellers, and retailers, or any combination thereof, who
32 manufacture, produce, or mix liquids for use in vapor products to the
33 extent permitted under federal law.

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

36 (1) Except for retailers operating in a retail outlet restricted
37 to persons twenty-one years of age or older, retailers and delivery
38 sellers licensed under this chapter may not sell, offer for sale, or

1 possess with the intent to sell or offer for sale flavored vapor
2 products, or any product that he or she knows or reasonably should
3 know will be used with or in a vapor product to create a flavored
4 vapor product.

5 (2) There is a rebuttable presumption that a vapor product is a
6 flavored vapor product if a delivery seller, distributor,
7 manufacturer, or retailer, or any agent or employee of a delivery
8 seller, distributor, manufacturer, or retailer, in the course of
9 their agency or employment, has made a statement or claim directed to
10 consumers or to the public that the vapor product has or produces a
11 taste or smell other than tobacco including, but not limited to,
12 text, color, or images, or any combination thereof, on the product's
13 labeling or packaging used to explicitly or implicitly communicate
14 that the vapor product has a taste or smell other than tobacco.

15 (3) The department of health may adopt rules banning the sale of
16 flavored vapor products with flavors or labels that are likely to be
17 attractive to persons under twenty-one years of age due to factors
18 including, but not limited to, links to products or advertising
19 directed to or likely to be appealing to children or persons under
20 twenty-one years of age.

21 NEW SECTION. **Sec. 7.** A new section is added to chapter 82.25
22 RCW to read as follows:

23 (1)(a) In addition to the tax imposed under RCW 82.25.010, there
24 is levied and collected a special excise tax equal to eighteen and
25 one-half percent of the selling price on each retail sale in this
26 state of flavored vapor products.

27 (b) The tax under this section is separate and in addition to
28 general state and local sales and use taxes that apply to retail
29 sales of tangible personal property, and is not part of the total
30 retail price to which general state and local sales and use taxes
31 apply. The tax must be separately itemized from the state and local
32 retail sales tax on the sales receipt provided to the buyer.

33 (c) The tax levied in this section must be reflected in the price
34 list or quoted shelf price by retailers operating in a retail outlet
35 that is restricted to individuals twenty-one years of age and older
36 and in any advertising that includes prices for all flavored vapor
37 products.

38 (2) All revenues collected from the tax imposed under this
39 section must be deposited as follows: (a) Sixty-seven percent in the

1 foundational public health services account provided in RCW
2 82.25.015; and (b) thirty-three percent in the tobacco prevention and
3 control account provided in RCW 43.79.480. Funds deposited into the
4 tobacco prevention and control account shall be used solely by the
5 department to fund tobacco and vapor product prevention and education
6 campaigns targeted to youth and enforcement by the state liquor and
7 cannabis board under this act.

8 (3) The tax imposed in this section must be paid by the buyer to
9 the seller. Each seller must collect from the buyer the full amount
10 of the tax payable on each taxable sale. The tax collected as
11 required by this section is deemed to be held in trust by the seller
12 until paid to the department. If any seller fails to collect the tax
13 imposed in this section or, having collected the tax, fails to pay it
14 as prescribed by the department, whether such failure is the result
15 of the seller's own acts or the result of acts or conditions beyond
16 the seller's control, the seller is, nevertheless, personally liable
17 to the state for the amount of the tax.

18 (4) The definitions in this subsection apply throughout this
19 section unless the context clearly requires otherwise.

20 (a) "Flavored vapor product" has the meaning provided in RCW
21 70.345.010.

22 (b) "Retail sale" has the meaning provided in RCW 82.08.010.

23 (c) "Selling price" has the meaning provided in RCW 82.08.010,
24 except that when product is sold under circumstances where the total
25 amount of consideration paid for the product is not indicative of its
26 true value, "selling price" means the true value of the product sold.

27 (d) "True value" means market value based on sales at comparable
28 locations in this state of the same or similar product of like
29 quality and character sold under comparable conditions of sale to
30 comparable purchasers. However, in the absence of such sales of the
31 same or similar product, true value means the value of the product
32 sold as determined by all the seller's direct and indirect costs
33 attributable to the product.

34 NEW SECTION. **Sec. 8.** A new section is added to chapter 70.345
35 RCW to read as follows:

36 (1) A vapor product may not be sold or offered for sale if the
37 product has nicotine salts or other ingredients that result in
38 nicotine concentrations that exceed any of the following comparative
39 levels of nicotine:

- 1 (a) Twenty milligrams of nicotine per milliliter of liquid;
2 (b) Nicotine that is equivalent to two percent of the total
3 volume of the liquid; or
4 (c) Twenty thousand parts per million of nicotine in the liquid.
5 (2) This section shall not apply to vapor products sold in retail
6 outlets restricted to persons twenty-one years of age or older.

7 NEW SECTION. **Sec. 9.** A new section is added to chapter 70.345
8 RCW to read as follows:

9 (1) Vapor product liquid containing nicotine may be sold and
10 offered for sale at retail only in:

11 (a) A dedicated refill container in a volume not exceeding ten
12 milliliters; or

13 (b) A disposable vapor product, a single use cartridge, or a
14 tank, in a volume not exceeding two milliliters.

15 (2) The capacity of the tank of a refillable vapor product may
16 not exceed two milliliters.

17 (3) This section shall not apply to vapor products sold in retail
18 outlets restricted to persons twenty-one years of age or older.

19 NEW SECTION. **Sec. 10.** A new section is added to chapter 70.345
20 RCW to read as follows:

21 (1) Licensed vapor product distributors and manufacturers who
22 sell vapor products in this state must submit under oath to the
23 department of health a complete list of all constituent substances
24 and the amounts and sources thereof in each vapor product offered for
25 sale, distributed, or manufactured in the state, including all:

26 (a) Additives;

27 (b) Thickening agents;

28 (c) Preservatives;

29 (d) Compounds;

30 (e) Nicotine content; and

31 (f) Any other substance used in the production and processing of
32 each vapor product.

33 (2) Disclosures must be completed for every vapor product
34 constituent substance, regardless of whether such a constituent
35 substance is an original constituent present in each vapor product,
36 emitted during the use of the vapor product, or it is reasonably
37 foreseeable that it will be present in the vapor product during the
38 product's expected presale shelf life, or will develop in a vapor

1 product after purchase without any action taken by the consumer. All
2 disclosures must include the amounts and sources of each constituent
3 substance. Constituent substance disclosures must be accompanied by a
4 signed declaration under penalty of perjury certifying the
5 completeness and accuracy of the information provided.

6 (3) No vapor product shall be sold, offered for sale,
7 distributed, or manufactured in this state unless a constituent
8 disclosure has been submitted to the department of health in a manner
9 determined by the department.

10 (4) The board and department of health may use constituent
11 disclosures for the purposes of enforcement, investigation, research,
12 and for any other matter intended to protect the public health.

13 (5) The department of health may adopt rules to implement the
14 provisions of this section.

15 NEW SECTION. **Sec. 11.** A new section is added to chapter 70.345
16 RCW to read as follows:

17 A fee of two hundred fifty dollars must accompany each vapor
18 product manufacturer's license application and license renewal
19 application under RCW 70.345.020.

20 **Sec. 12.** RCW 70.345.075 and 2016 sp.s. c 38 s 13 are each
21 amended to read as follows:

22 (1) A manufacturer or distributor that sells, offers for sale, or
23 distributes liquid nicotine containers shall label the vapor product
24 with a: (a) Warning regarding the harmful effects of nicotine; (b)
25 warning to keep the vapor product away from children; (c) warning
26 that vaping is illegal for those under the legal age to use the
27 product; and (d) except as provided in subsection (2) of this
28 section, the amount of nicotine in milligrams per milliliter of
29 liquid along with the total volume of the liquid contents of the
30 product expressed in milliliters.

31 (2) For closed system nicotine containers as defined in RCW
32 70.345.010, a manufacturer that sells, offers for sale, or
33 distributes vapor products in this state must annually provide the
34 department of health with a disclosure of the nicotine content of
35 such vapor product based on measurement standards to be established
36 by the department of health.

37 ~~((3)(a) This section expires on the effective date of the final~~
38 ~~regulations issued by the United States food and drug administration~~

1 ~~or by any other federal agency, when such regulations mandate warning~~
2 ~~or advertisement requirements for vapor products.~~

3 ~~(b) The board must provide notice of the expiration date of this~~
4 ~~section to affected parties, the chief clerk of the house of~~
5 ~~representatives, the secretary of the senate, the office of the code~~
6 ~~reviser, and others as deemed appropriate by the board.)~~

7 **Sec. 13.** RCW 70.345.090 and 2019 c 445 s 212 are each amended to
8 read as follows:

9 (1) No person may conduct a delivery sale or otherwise ship or
10 transport, or cause to be shipped or transported, any vapor product
11 ordered or purchased by mail or through the internet to any person
12 unless such seller has a valid delivery sale license as required
13 under this chapter and unless the vapor product was manufactured by a
14 person holding a valid manufacturer's license issued by the board
15 under this chapter.

16 (2) No person may conduct a delivery sale or otherwise ship or
17 transport, or cause to be shipped or transported, any vapor product
18 ordered or purchased by mail or through the internet to any person
19 under the minimum age required for the legal sale of vapor products
20 as provided under RCW 70.345.140.

21 (3) No person may conduct a delivery sale or otherwise ship or
22 transport, or cause to be shipped or transported, any flavored vapor
23 product ordered or purchased by mail or through the internet.

24 (4) A delivery sale licensee must provide notice on its mail
25 order or internet sales forms of the minimum age required for the
26 legal sale of vapor products in Washington state as provided by RCW
27 70.345.140.

28 ((+4)) (5) A delivery sale licensee must not accept a purchase
29 or order from any person without first obtaining the full name,
30 birthdate, and residential address of that person and verifying this
31 information through an independently operated third-party database or
32 aggregate of databases, which includes data from government sources,
33 that are regularly used by government and businesses for the purpose
34 of age and identity verification and authentication.

35 ((+5)) (6) A delivery sale licensee must accept payment only
36 through a credit or debit card issued in the purchaser's own name.
37 The licensee must verify that the card is issued to the same person
38 identified through identity and age verification procedures in
39 subsection ((+4)) (5) of this section.

1 ~~((6))~~ (7) Before a delivery sale licensee delivers an initial
2 purchase to any person, the licensee must verify the identity and
3 delivery address of the purchaser by mailing or shipping to the
4 purchaser a notice of sale and certification form confirming that the
5 addressee is in fact the person placing the order. The purchaser must
6 return the signed certification form to the licensee before the
7 initial shipment of product. Certification forms are not required for
8 repeat customers. In the alternative, before a seller delivers an
9 initial purchase to any person, the seller must first obtain from the
10 prospective customer an electronic certification, such as by email,
11 that includes a declaration that, at a minimum, the prospective
12 customer is over the minimum age required for the legal sale of a
13 vapor product, and the credit or debit card used for payment has been
14 issued in the purchaser's name.

15 ~~((7))~~ (8) A delivery sale licensee must include on shipping
16 documents a clear and conspicuous statement which includes, at a
17 minimum, that the package contains vapor products manufactured under
18 a license issued by the board, Washington law prohibits sales to
19 those under the minimum age established by this chapter, and
20 violations may result in sanctions to both the licensee and the
21 purchaser.

22 ~~((8) For purposes of this subsection (8) [this section], "vapor~~
23 ~~products" has the same meaning as provided in RCW 82.25.005.)~~

24 (9) A person who knowingly violates this section is guilty of a
25 class C felony, except that the maximum fine that may be imposed is
26 five thousand dollars.

27 (10) In addition to or in lieu of any other civil or criminal
28 remedy provided by law, a person who has violated this section is
29 subject to a civil penalty of up to five thousand dollars for each
30 violation. The attorney general, acting in the name of the state, may
31 seek recovery of the penalty in a civil action in superior court.

32 (11) The attorney general may seek an injunction in superior
33 court to restrain a threatened or actual violation of this section
34 and to compel compliance with this section.

35 (12) Any violation of this section is not reasonable in relation
36 to the development and preservation of business and is an unfair and
37 deceptive act or practice and an unfair method of competition in the
38 conduct of trade or commerce in violation of RCW 19.86.020. Standing
39 to bring an action to enforce RCW 19.86.020 for violation of this

1 section lies solely with the attorney general. Remedies provided by
2 chapter 19.86 RCW are cumulative and not exclusive.

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

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

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

14 (15) A licensee who violates this section is subject to license
15 suspension or revocation by the board.

16 (16) The board may adopt by rule additional requirements for mail
17 or internet sales.

18 ~~((17) The board must not adopt rules prohibiting internet
19 sales.))~~

20 **Sec. 14.** RCW 70.345.110 and 2016 sp.s. c 38 s 20 are each
21 amended to read as follows:

22 ~~((1))~~ No person may give or distribute vapor products to a
23 person free of charge ~~((by coupon, unless the vapor product was
24 provided to the person as a contingency of prior or the same purchase
25 as part of an in-person transaction or delivery sale.~~

26 ~~(2) This section does not prohibit the use of coupons to receive
27 a discount on a vapor product as part of an in-person transaction or
28 delivery sale)).~~ No person may sell or furnish vapor products at or
29 below the cost of acquisition to the seller.

30 **Sec. 15.** RCW 70.345.160 and 2016 sp.s. c 38 s 24 are each
31 amended to read as follows:

32 (1) The board ~~((must have))~~ has, in addition to the board's other
33 powers and authorities, the authority to enforce the provisions of
34 this chapter.

35 (2) The board and the board's authorized agents or employees have
36 full power and authority to enter any place of business where vapor
37 products are sold or manufactured for the purpose of enforcing the
38 provisions of this chapter.

1 (3) For the purpose of enforcing the provisions of this chapter,
2 a peace officer or enforcement officer of the board who has
3 reasonable grounds to believe a person observed by the officer
4 purchasing, attempting to purchase, or in possession of vapor
5 products is under eighteen years of age, may detain such person for a
6 reasonable period of time and in such a reasonable manner as is
7 necessary to determine the person's true identity and date of birth.
8 Further, vapor products possessed by persons under eighteen years of
9 age are considered contraband and may be seized by a peace officer or
10 enforcement officer of the board.

11 (4) The board may work with local county health departments or
12 districts and local law enforcement agencies to conduct random,
13 unannounced, inspections to assure compliance.

14 (5) ~~((Upon a determination by the secretary of health or a local
15 health jurisdiction that a vapor product may be injurious to human
16 health or poses a significant risk to public health:~~

17 ~~(a) The board, in consultation with the department of health and
18 local county health jurisdictions, may cause a vapor product
19 substance or solution sample, purchased or obtained from any vapor
20 product retailer, distributor, or delivery sale licensee, to be
21 analyzed by an analyst appointed or designated by the board;~~

22 ~~(b) If the analyzed vapor product contains an ingredient,
23 substance, or solution present in quantities injurious to human
24 health or posing a significant risk to public health, as determined
25 by the secretary of health or a local health jurisdiction, the board
26 may suspend the license of the retailer or delivery sale licensee
27 unless the retailer or delivery sale licensee agrees to remove the
28 product from sales; and~~

29 ~~(c) If upon a finding from the secretary of health or local
30 health jurisdiction that the vapor product poses an injurious risk to
31 public health or significant public health risk, the retailer or
32 delivery sale licensee does not remove the product from sale, the
33 secretary of health or local health officer may file for an
34 injunction in superior court prohibiting the sale or distribution of
35 that specific vapor product substance or solution.~~

36 ~~(6) Nothing in subsection (5) of this section permits a total ban
37 on the sale or use of vapor products.)) To the extent permitted by
38 federal law, the board shall, in consultation with the department of
39 health, adopt rules regarding: Inspection of the premises where vapor
40 products are manufactured within Washington state; conditions of~~

1 sanitation during manufacture, storage, and transport within
2 Washington state; and safe handling requirements for equipment and
3 ingredients within Washington state.

4 (6) Upon a determination by the secretary of health or a local
5 health jurisdiction that a vapor product, vapor product constituent,
6 emitted constituent, or vapor product component may be injurious to
7 human health or poses a significant risk to public health, the board
8 may:

9 (a) Restrict the sale of any such vapor product or any vapor
10 product containing such a constituent or component; or

11 (b) Require vapor product retailers to make a written point-of-
12 sale warning disclosure to consumers with respect to such a vapor
13 product, a type of vapor product, or such a vapor constituent or
14 component, in a format, style, and manner determined by the secretary
15 of health.

16 (7) (a) Nothing in this section permits permanent ban on the sale
17 or use of all vapor products.

18 (b) Nothing in this section requires a person in this state to be
19 actually injured or ill before the secretary of health may take
20 action authorized under this section.

21 (8) The board may seize any vapor products sold, offered for
22 sale, or possessed in violation of this chapter.

23 NEW SECTION. Sec. 16. A new section is added to chapter 70.345
24 RCW to read as follows:

25 No vapor product containing vitamin E acetate may be sold or
26 offered for sale within this state.

27 NEW SECTION. Sec. 17. A new section is added to chapter 70.345
28 RCW to read as follows:

29 No disposable vapor product may be sold or offered for sale
30 within the state.

31 **Sec. 18.** RCW 70.345.170 and 2016 sp.s. c 38 s 11 are each
32 amended to read as follows:

33 (1) The board, or its enforcement officers, has the authority to
34 enforce provisions of this chapter.

35 (2) The board may revoke or suspend a manufacturer's, retailer's,
36 distributor's, or delivery seller's license issued under this chapter
37 upon sufficient cause showing a violation of this chapter.

1 (3) A license may not be suspended or revoked except upon notice
2 to the licensee (~~and after a hearing as prescribed by the board~~).

3 (4) Any retailer's licenses issued under chapter 82.24 or 82.26
4 RCW to a person whose vapor product retailer's license or licenses
5 have been suspended or revoked for violating RCW 26.28.080 must also
6 be suspended or revoked during the period of suspension or revocation
7 under this section.

8 (5) Any person whose license or licenses have been revoked under
9 this section may reapply to the board at the expiration of two years
10 of the license or licenses, unless the license was revoked pursuant
11 to RCW 70.345.180(2)(e). The license or licenses may be approved by
12 the board if it appears to the satisfaction of the board that the
13 licensee will comply with the provisions of this chapter.

14 (6) A person whose license has been suspended or revoked may not
15 sell vapor products or permit vapor products to be sold during the
16 period of suspension or revocation on the premises occupied by the
17 person or upon other premises controlled by the person or others or
18 in any other manner or form.

19 ~~(7) ((Any determination and order by the board, and any order of
20 suspension or revocation by the board of the license or licenses
21 issued under this chapter, or refusal to reinstate a license or
22 licenses after revocation is reviewable by an appeal to the superior
23 court of Thurston county. The superior court must review the order or
24 ruling of the board and may hear the matter de novo, having due
25 regard to the provisions of this chapter and the duties imposed upon
26 the board.~~

27 ~~(8))~~ If the board makes an initial decision to deny a license or
28 renewal, or suspend or revoke a license, the applicant may request a
29 hearing subject to the applicable provisions under Title 34 RCW.

30 **Sec. 19.** RCW 70.345.180 and 2016 sp.s. c 38 s 22 are each
31 amended to read as follows:

32 (1) The board may impose a monetary penalty as set forth in
33 subsection (2) of this section, if the board finds that the licensee
34 has violated RCW 26.28.080 or any other provision of this chapter.

35 (2) Subject to subsections (3) and (12) of this section, the
36 sanctions that the board may impose against a person licensed under
37 this chapter based upon one or more findings under subsection (1) of
38 this section may not exceed the following:

1 (a) A monetary penalty of two hundred dollars for the first
2 violation within any three-year period;

3 (b) A monetary penalty of six hundred dollars for the second
4 violation within any three-year period;

5 (c) A monetary penalty of two thousand dollars for the third
6 violation within any three-year period and suspension of the license
7 for a period of six months for the third violation of this chapter or
8 RCW 26.28.080 within any three-year period;

9 (d) A monetary penalty of three thousand dollars for the fourth
10 or subsequent violation within any three-year period and suspension
11 of the license for a period of twelve months for the fourth violation
12 of this chapter or RCW 26.28.080 within any three-year period;

13 (e) Revocation of the license with no possibility of
14 reinstatement for a period of five years for the fifth or more
15 violation within any three-year period.

16 (3) If the board finds that a person licensed under this chapter
17 and chapter 82.24 or 82.26 RCW has violated this chapter or RCW
18 26.28.080, each subsequent violation of either of the person's
19 licenses counts as an additional violation within that three-year
20 period.

21 (4) Any retailer's licenses issued under chapter 82.24 or 82.26
22 RCW to a person whose vapor product retailer's license or licenses
23 have been suspended or revoked by the board for violating this
24 chapter or RCW 26.28.080 must also be suspended or revoked during the
25 period of suspension or revocation under this section.

26 (5) The board may impose a monetary penalty upon any person other
27 than a licensed retailer if the board finds that the person has
28 violated this chapter or RCW 26.28.080.

29 (6) The monetary penalty that the board may impose based upon one
30 or more findings under subsection (5) of this section may not exceed
31 fifty dollars for the first violation and one hundred dollars for
32 each subsequent violation.

33 (7) The board may develop and offer a class for retail clerks and
34 use this class in lieu of a monetary penalty for the clerk's first
35 violation.

36 (8) The board may issue a cease and desist order to any person
37 who is found by the board to have violated or (~~intending~~ [intends])
38 intends to violate the provisions of this chapter or RCW 26.28.080,
39 requiring such person to cease specified conduct that is in
40 violation. The issuance of a cease and desist order does not preclude

1 the imposition of other sanctions authorized by this statute or any
2 other provision of law.

3 (9) The board may seek injunctive relief to enforce the
4 provisions of RCW 26.28.080 or this chapter. The board may initiate
5 legal action to collect civil penalties imposed under this chapter if
6 the same have not been paid within thirty days after imposition of
7 such penalties. In any action filed by the board under this chapter,
8 the court may, in addition to any other relief, award the board
9 reasonable attorneys' fees and costs.

10 (10) All enforcement proceedings by the board under (~~subsections~~
11 ~~(1) through (8) of this section~~) this chapter must be conducted in
12 accordance with chapter 34.05 RCW.

13 (11) The board may reduce or waive either the penalties or the
14 suspension or revocation of a license, or both, as set forth in this
15 chapter where the elements of proof are inadequate or where there are
16 mitigating circumstances. Mitigating circumstances may include, but
17 are not limited to, an exercise of due diligence by a retailer.
18 Further, the board may exceed penalties set forth in this chapter
19 based on aggravating circumstances.

20 (12) The board may:

21 (a) Suspend the license of a retailer or delivery seller that
22 violates a sales restriction imposed under RCW 70.345.160 or fails to
23 post a written point-of-sale warning disclosure required under RCW
24 70.345.160; and

25 (b) Revoke the license of a retailer or delivery seller that
26 violates a sales restriction imposed under RCW 70.345.160 or fails to
27 post a written point-of-sale warning disclosure required under RCW
28 70.345.160, when the retailer or delivery seller has been sent a
29 written notification warning the retailer or delivery seller that
30 they are selling vapor products in violation of this chapter and
31 describing how compliance may be achieved.

32 NEW SECTION. Sec. 20. A new section is added to chapter 70.345
33 RCW to read as follows:

34 For the purpose of carrying into effect the provisions of this
35 chapter according to their true intent or of supplying any deficiency
36 therein, the board may adopt those rules as are deemed necessary or
37 advisable.

1 **Sec. 21.** RCW 43.70.170 and 1989 1st ex.s. c 9 s 256 are each
2 amended to read as follows:

3 The secretary on his or her own motion or upon the complaint of
4 any interested party, may investigate, examine, sample or inspect any
5 article or condition constituting a threat to the public health
6 including, but not limited to, outbreaks of (~~communicable~~)
7 diseases, food poisoning, contaminated water supplies, and all other
8 matters injurious to the public health. When not otherwise available,
9 the department may purchase such samples or specimens as may be
10 necessary to determine whether or not there exists a threat to the
11 public health. In furtherance of any such investigation, examination
12 or inspection, the secretary or the secretary's authorized
13 representative may examine that portion of the ledgers, books,
14 accounts, memorandums, and other documents and other articles and
15 things used in connection with the business of such person relating
16 to the actions involved.

17 For purposes of such investigation, the secretary or the
18 secretary's representative shall at all times have free and unimpeded
19 access to all buildings, yards, warehouses, storage and
20 transportation facilities or any other place. The secretary may also,
21 for the purposes of such investigation, issue subpoenas to compel the
22 attendance of witnesses, as provided for in RCW 43.70.090 or the
23 production of books and documents anywhere in the state.

24 **Sec. 22.** RCW 43.70.180 and 1989 1st ex.s. c 9 s 257 are each
25 amended to read as follows:

26 (~~(Pending the results)~~) During or upon completion of an
27 investigation provided for under RCW 43.70.170, the secretary may
28 (~~(issue an order prohibiting the disposition or sale of any food or~~
29 ~~other item involved in the investigation. The order of the secretary~~
30 ~~shall not be effective for more than fifteen days without the~~
31 ~~commencement of a legal action as provided for under RCW 43.70.190))~~
32 adopt rules, issue orders, or take any other action the secretary
33 deems necessary in order to regulate, control, prohibit, prevent, or
34 otherwise address any article or condition constituting a threat to
35 the public health.

36 **Sec. 23.** RCW 43.70.190 and 1990 c 133 s 3 are each amended to
37 read as follows:

1 The secretary of health or local health officer may bring an
2 action to enjoin a violation or the threatened violation of any of
3 the provisions of the public health laws of this state or any rules
4 or regulation made or orders issued by the state board of health, the
5 secretary of health, or the department of health pursuant to said
6 laws, or may bring any legal proceeding authorized by law((~~7~~))
7 including, but not limited to, the special proceedings authorized in
8 Title 7 RCW, in the superior court in the county in which such
9 violation occurs or is about to occur, or in the superior court of
10 Thurston county. Upon the filing of any action, the court may, upon a
11 showing of an immediate and serious danger to residents constituting
12 an emergency, issue a temporary injunctive order ex parte.

13 **Sec. 24.** RCW 70.345.210 and 2016 sp.s. c 38 s 3 are each amended
14 to read as follows:

15 (1) This chapter preempts political subdivisions from adopting or
16 enforcing requirements for the licensure and regulation of vapor
17 product promotions and sales at retail. No political subdivision may
18 impose fees or license requirements on retail outlets for possessing
19 or selling vapor products, other than general business taxes or
20 license fees not primarily levied on such products.

21 (2) ~~((No political subdivision may regulate the use of vapor~~
22 ~~products in outdoor public places, unless the public place is an area~~
23 ~~where children congregate, such as schools, playgrounds, and parks.~~

24 (~~3~~)) Subject to RCW 70.345.150, political subdivisions may
25 regulate the use of vapor products in indoor public places.

26 NEW SECTION. **Sec. 25.** If any provision of this act or its
27 application to any person or circumstance is held invalid, the
28 remainder of the act or the application of the provision to other
29 persons or circumstances is not affected.

30 NEW SECTION. **Sec. 26.** If any part of this act is found to be in
31 conflict with federal requirements that are a prescribed condition to
32 the allocation of federal funds to the state, the conflicting part of
33 this act is inoperative solely to the extent of the conflict and with
34 respect to the agencies directly affected, and this finding does not
35 affect the operation of the remainder of this act in its application
36 to the agencies concerned. Rules adopted under this act must meet

1 federal requirements that are a necessary condition to the receipt of
2 federal funds by the state.

3 NEW SECTION. **Sec. 27.** Within one hundred eighty days of the
4 effective date of sections 3 and 4 of this act, the liquor and
5 cannabis board must adopt rules to implement sections 3 and 4 of this
6 act.

7 NEW SECTION. **Sec. 28.** Section 7 of this act takes effect
8 October 1, 2020.

9 NEW SECTION. **Sec. 29.** Sections 2, 6, 8, 9, 15 through 19, 25,
10 and 26 of this act are necessary for the immediate preservation of
11 the public peace, health, or safety, or support of the state
12 government and its existing public institutions, and take effect
13 immediately.

--- END ---