

EFFECT:

- Bans the sale of all disposable vapor products;
- Adds menthol back into the definition of flavored vapor product;
- Bans the online sale of flavored vapor products;
- Exempts 21+ stores from the nicotine concentration and tank size limits; and
- Gives DOH rule making authority to ban flavored products marketed toward children.

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, 70.345.100, 70.345.110,
4 70.345.160, 70.345.170, 70.345.180, 43.70.170, 43.70.180, and
5 43.70.190; 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; repealing RCW 70.345.210; prescribing
8 penalties; providing an 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.

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

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

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

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

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

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

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

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

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

~~(a) "Vapor product" includes any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and any vapor cartridge or other container that may contain nicotine in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, 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 thirty-seven
25 percent of the selling price on each retail sale in this state of
26 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.

(2) All revenues collected from the tax imposed under this section must be deposited in the foundational public health services account provided in RCW 82.25.015.

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

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

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

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

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

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

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

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

(a) Twenty milligrams of nicotine per milliliter of liquid;

(b) Nicotine that is equivalent to two percent of the total volume of the liquid; or

(c) Twenty thousand parts per million of nicotine in the liquid.

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

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

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

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

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

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

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

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

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

(a) Additives;

(b) Thickening agents;

(c) Preservatives;

(d) Compounds;

(e) Nicotine content; and

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

(2) Disclosures must be completed for every vapor product constituent substance, regardless of whether such a constituent substance is an original constituent present in each vapor product, emitted during the use of the vapor product, or it is reasonably foreseeable that it will be present in the vapor product during the product's expected presale shelf life, or will develop in a vapor product after purchase without any action taken by the consumer. All disclosures must include the amounts and sources of each constituent substance. Constituent substance disclosures must be accompanied by a

1 signed declaration under penalty of perjury certifying the
2 completeness and accuracy of the information provided.

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

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

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

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

14 A fee of two hundred fifty dollars must accompany each vapor
15 product manufacturer's license application and license renewal
16 application under RCW 70.345.020.

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

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

28 (2) For closed system nicotine containers as defined in RCW
29 70.345.010, a manufacturer that sells, offers for sale, or
30 distributes vapor products in this state must annually provide the
31 department of health with a disclosure of the nicotine content of
32 such vapor product based on measurement standards to be established
33 by the department of health.

34 ~~((3)(a) This section expires on the effective date of the final~~
35 ~~regulations issued by the United States food and drug administration~~
36 ~~or by any other federal agency, when such regulations mandate warning~~
37 ~~or advertisement requirements for vapor products.~~

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

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

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

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

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

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

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

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

~~((+6))~~ (7) Before a delivery sale licensee delivers an initial purchase to any person, the licensee must verify the identity and

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

13 ~~((7))~~ (8) A delivery sale licensee must include on shipping
14 documents a clear and conspicuous statement which includes, at a
15 minimum, that the package contains vapor products manufactured under
16 a license issued by the board, Washington law prohibits sales to
17 those under the minimum age established by this chapter, and
18 violations may result in sanctions to both the licensee and the
19 purchaser.

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

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

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

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

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

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

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

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

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

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

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

18 **Sec. 14.** RCW 70.345.100 and 2019 c 15 s 7 are each amended to
19 read as follows:

20 (1) No person may offer a tasting of vapor products to the
21 general public ~~((unless:~~

22 ~~(a) The person is a licensed retailer under RCW 70.345.020;~~

23 ~~(b) The tastings are offered only within the licensed premises~~
24 ~~operated by the licensee and the products tasted are not removed from~~
25 ~~within the licensed premises by the customer;~~

26 ~~(c) Entry into the licensed premises is restricted to persons~~
27 ~~twenty-one years of age or older;~~

28 ~~(d) The vapor product being offered for tasting contains zero~~
29 ~~milligrams per milliliter of nicotine or the customer explicitly~~
30 ~~consents to a tasting of a vapor product that contains nicotine; and~~

31 ~~(e) If the customer is tasting from a vapor device owned and~~
32 ~~maintained by the retailer, a disposable mouthpiece tip is attached~~
33 ~~to the vapor product being used by the customer for tasting or the~~
34 ~~vapor device is disposed of after each tasting)).~~

35 (2) Nothing in this section prohibits a retailer from offering or
36 performing demonstrations or consumer training on proper use of a
37 vapor product device as long as liquid constituents are not provided
38 by the retailer to the consumer at or below cost to the retailer.

39 (3) A violation of this section is a misdemeanor.

Sec. 15. RCW 70.345.110 and 2016 sp.s. c 38 s 20 are each amended to read as follows:

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

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

Sec. 16. RCW 70.345.160 and 2016 sp.s. c 38 s 24 are each amended to read as follows:

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

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

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

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

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

~~(a) The board, in consultation with the department of health and local county health jurisdictions, may cause a vapor product substance or solution sample, purchased or obtained from any vapor~~

1 ~~product retailer, distributor, or delivery sale licensee, to be~~
2 ~~analyzed by an analyst appointed or designated by the board;~~

3 ~~(b) If the analyzed vapor product contains an ingredient,~~
4 ~~substance, or solution present in quantities injurious to human~~
5 ~~health or posing a significant risk to public health, as determined~~
6 ~~by the secretary of health or a local health jurisdiction, the board~~
7 ~~may suspend the license of the retailer or delivery sale licensee~~
8 ~~unless the retailer or delivery sale licensee agrees to remove the~~
9 ~~product from sales; and~~

10 ~~(c) If upon a finding from the secretary of health or local~~
11 ~~health jurisdiction that the vapor product poses an injurious risk to~~
12 ~~public health or significant public health risk, the retailer or~~
13 ~~delivery sale licensee does not remove the product from sale, the~~
14 ~~secretary of health or local health officer may file for an~~
15 ~~injunction in superior court prohibiting the sale or distribution of~~
16 ~~that specific vapor product substance or solution.~~

17 ~~(6) Nothing in subsection (5) of this section permits a total ban~~
18 ~~on the sale or use of vapor products.))~~ To the extent permitted by
19 federal law, the board shall, in consultation with the department of
20 health, adopt rules regarding: Inspection of the premises where vapor
21 products are manufactured within Washington state; conditions of
22 sanitation during manufacture, storage, and transport within
23 Washington state; and safe handling requirements for equipment and
24 ingredients within Washington state.

25 (6) Upon a determination by the secretary of health or a local
26 health jurisdiction that a vapor product, vapor product constituent,
27 emitted constituent, or vapor product component may be injurious to
28 human health or poses a significant risk to public health, the board
29 may:

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

32 (b) Require vapor product retailers to make a written point-of-
33 sale warning disclosure to consumers with respect to such a vapor
34 product, a type of vapor product, or such a vapor constituent or
35 component, in a format, style, and manner determined by the secretary
36 of health.

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

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

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

6 NEW SECTION. **Sec. 17.** A new section is added to chapter 70.345
7 RCW to read as follows:

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

10 NEW SECTION. **Sec. 18.** A new section is added to chapter 70.345
11 RCW to read as follows:

12 No disposable vapor product may be sold or offered for sale
13 within the state.

14 **Sec. 19.** RCW 70.345.170 and 2016 sp.s. c 38 s 11 are each
15 amended to read as follows:

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

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

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

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

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

34 (6) A person whose license has been suspended or revoked may not
35 sell vapor products or permit vapor products to be sold during the
36 period of suspension or revocation on the premises occupied by the

1 person or upon other premises controlled by the person or others or
2 in any other manner or form.

3 ~~(7) ((Any determination and order by the board, and any order of~~
4 ~~suspension or revocation by the board of the license or licenses~~
5 ~~issued under this chapter, or refusal to reinstate a license or~~
6 ~~licenses after revocation is reviewable by an appeal to the superior~~
7 ~~court of Thurston county. The superior court must review the order or~~
8 ~~ruling of the board and may hear the matter de novo, having due~~
9 ~~regard to the provisions of this chapter and the duties imposed upon~~
10 ~~the board.~~

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

14 **Sec. 20.** RCW 70.345.180 and 2016 sp.s. c 38 s 22 are each
15 amended to read as follows:

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

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

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

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

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

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

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

38 (3) If the board finds that a person licensed under this chapter
39 and chapter 82.24 or 82.26 RCW has violated this chapter or RCW

1 26.28.080, each subsequent violation of either of the person's
2 licenses counts as an additional violation within that three-year
3 period.

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

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

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

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

19 (8) The board may issue a cease and desist order to any person
20 who is found by the board to have violated or (~~intending~~ [~~intends~~])
21 intends to violate the provisions of this chapter or RCW 26.28.080,
22 requiring such person to cease specified conduct that is in
23 violation. The issuance of a cease and desist order does not preclude
24 the imposition of other sanctions authorized by this statute or any
25 other provision of law.

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

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

36 (11) The board may reduce or waive either the penalties or the
37 suspension or revocation of a license, or both, as set forth in this
38 chapter where the elements of proof are inadequate or where there are
39 mitigating circumstances. Mitigating circumstances may include, but
40 are not limited to, an exercise of due diligence by a retailer.

1 Further, the board may exceed penalties set forth in this chapter
2 based on aggravating circumstances.

3 (12) The board may:

4 (a) Suspend the license of a retailer or delivery seller that
5 violates a sales restriction imposed under RCW 70.345.160 or fails to
6 post a written point-of-sale warning disclosure required under RCW
7 70.345.160; and

8 (b) Revoke the license of a retailer or delivery seller that
9 violates a sales restriction imposed under RCW 70.345.160 or fails to
10 post a written point-of-sale warning disclosure required under RCW
11 70.345.160, when the retailer or delivery seller has been sent a
12 written notification warning the retailer or delivery seller that
13 they are selling vapor products in violation of this chapter and
14 describing how compliance may be achieved.

15 NEW SECTION. Sec. 21. A new section is added to chapter 70.345
16 RCW to read as follows:

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

21 **Sec. 22.** RCW 43.70.170 and 1989 1st ex.s. c 9 s 256 are each
22 amended to read as follows:

23 The secretary on his or her own motion or upon the complaint of
24 any interested party, may investigate, examine, sample or inspect any
25 article or condition constituting a threat to the public health
26 including, but not limited to, outbreaks of ~~((communicable))~~
27 diseases, food poisoning, contaminated water supplies, and all other
28 matters injurious to the public health. When not otherwise available,
29 the department may purchase such samples or specimens as may be
30 necessary to determine whether or not there exists a threat to the
31 public health. In furtherance of any such investigation, examination
32 or inspection, the secretary or the secretary's authorized
33 representative may examine that portion of the ledgers, books,
34 accounts, memorandums, and other documents and other articles and
35 things used in connection with the business of such person relating
36 to the actions involved.

37 For purposes of such investigation, the secretary or the
38 secretary's representative shall at all times have free and unimpeded

1 access to all buildings, yards, warehouses, storage and
2 transportation facilities or any other place. The secretary may also,
3 for the purposes of such investigation, issue subpoenas to compel the
4 attendance of witnesses, as provided for in RCW 43.70.090 or the
5 production of books and documents anywhere in the state.

6 **Sec. 23.** RCW 43.70.180 and 1989 1st ex.s. c 9 s 257 are each
7 amended to read as follows:

8 ~~((Pending the results))~~ During or upon completion of an
9 investigation provided for under RCW 43.70.170, the secretary may
10 ~~((issue an order prohibiting the disposition or sale of any food or~~
11 ~~other item involved in the investigation. The order of the secretary~~
12 ~~shall not be effective for more than fifteen days without the~~
13 ~~commencement of a legal action as provided for under RCW 43.70.190))~~
14 adopt rules, issue orders, or take any other action the secretary
15 deems necessary in order to regulate, control, prohibit, prevent, or
16 otherwise address any article or condition constituting a threat to
17 the public health.

18 **Sec. 24.** RCW 43.70.190 and 1990 c 133 s 3 are each amended to
19 read as follows:

20 The secretary of health or local health officer may bring an
21 action to enjoin a violation or the threatened violation of any of
22 the provisions of the public health laws of this state or any rules
23 or regulation made or orders issued by the state board of health, the
24 secretary of health, or the department of health pursuant to said
25 laws, or may bring any legal proceeding authorized by law~~((7))~~
26 including, but not limited to, the special proceedings authorized in
27 Title 7 RCW, in the superior court in the county in which such
28 violation occurs or is about to occur, or in the superior court of
29 Thurston county. Upon the filing of any action, the court may, upon a
30 showing of an immediate and serious danger to residents constituting
31 an emergency, issue a temporary injunctive order ex parte.

32 NEW SECTION. **Sec. 25.** RCW 70.345.210 (State preemption—
33 Exceptions) and 2016 sp.s. c 38 s 3 are each repealed.

34 NEW SECTION. **Sec. 26.** If any provision of this act or its
35 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other
2 persons or circumstances is not affected.

3 NEW SECTION. **Sec. 27.** If any part of this act is found to be in
4 conflict with federal requirements that are a prescribed condition to
5 the allocation of federal funds to the state, the conflicting part of
6 this act is inoperative solely to the extent of the conflict and with
7 respect to the agencies directly affected, and this finding does not
8 affect the operation of the remainder of this act in its application
9 to the agencies concerned. Rules adopted under this act must meet
10 federal requirements that are a necessary condition to the receipt of
11 federal funds by the state.

12 NEW SECTION. **Sec. 28.** Within one hundred eighty days of the
13 effective date of sections 3 and 4 of this act, the liquor and
14 cannabis board must adopt rules to implement sections 3 and 4 of this
15 act.

16 NEW SECTION. **Sec. 29.** Section 7 of this act takes effect
17 October 1, 2020.

18 NEW SECTION. **Sec. 30.** Sections 2, 6, 8, 9, 16 through 20, 26,
19 and 27 of this act are necessary for the immediate preservation of
20 the public peace, health, or safety, or support of the state
21 government and its existing public institutions, and take effect
22 immediately.

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