
**Consumer Protection & Business
Committee**

HB 2439

Brief Description: Enhancing public health by modifying cigarette, vapor product, and tobacco product policy.

Sponsors: Representatives Reeves, Parshley, Pollet and Macri.

Brief Summary of Bill

- Modifies cigarette, tobacco product, and vapor product laws by: (1) requiring the Liquor and Cannabis Board to develop a responsible vendor program; (2) increasing license fees and certain penalties; (3) adding a wholesaler/distributor requirement applicable to retailers; (4) adding certification, attestation, and other requirements for vapor product manufacturers; (5) requiring a study of a vapor product extended producer responsibility program; (6) adding agency laboratory testing authority for vapor products; (7) revising age verification requirements; (8) prohibiting entertainment, imitation, and related types of vapor products; (9) prohibiting sales below acquisition cost, by coupons, and combined with a free item; (10) removing state preemption of licensing and regulation of promotion and sales; and (11) modifying accounts to which tobacco products tax revenue is deposited.

Hearing Date: 1/20/26

Staff: Peter Clodfelter (786-7127)

Background:

Responsible Vendor Program.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

The Liquor and Cannabis Board (LCB) is required to have rules on, and administer, a compliance training program for spirits retail licensees, known as a responsible vendor program, to reduce underage drinking, encourage licensees to adopt specific best practices to prevent sales to minors, and provide licensees with an incentive to give their employees ongoing training in responsible alcohol sales and service. There is no requirement for the LCB to offer a similar program to cigarette, tobacco product, or vapor product licensees, which the LCB licenses and regulates.

Licenses Fees.

Vapor Product Distributor. The fee for a vapor product distributor's license is \$150. The fee for an additional vapor product distributor license for additional locations is \$100 each.

Vapor Product Retailer. The fee for a vapor product retailer's license is \$175. A retailer applying for or renewing both a vapor products retailer's license and a cigarette retailer's license may pay a combined application fee of \$250 for both licenses.

Vapor Product Delivery Seller. The fee for a vapor product delivery sale license is \$250.

Cigarette Wholesaler. The fee for a cigarette wholesaler's license is \$650. For a wholesaler that sells cigarettes at two or more places of business, the fee for a separate license is \$115 for each additional place of business.

Cigarette Retailer. The fee for a cigarette retailer's license is \$175. The fee for each cigarette vending machine is \$30. The additional fee for a retailer dealer operating a cigarette-making machine is \$93. A retailer applying for or renewing a cigarette retailer's license and a vapor product retailer's license may pay a combined fee of \$250 for both licenses.

Tobacco Product Distributor. The fee for a tobacco product distributor license is \$650. For distributors that sell tobacco products at two or more places of business, the separate license fee is \$115 for each additional place of business.

Tobacco Product Retailer. The fee for a tobacco product retailer's license is \$175. A retailer applying for or renewing both a tobacco product retailer's license and a vapor product retailer's license may pay a combined application fee of \$250 for both licenses.

Administrative Penalties.

Cigarette or Tobacco Product Retailers—Penalties. A licensed cigarette or tobacco product retailer is subject to the following maximum penalties for a violation of the prohibition on sales of cigarettes, tobacco products, or vapor products to a person under age 21:

- \$1,000 for the first violation within any three-year period;
- \$2,500 for the second violation within any three-year period;
- \$5,000 and a six-month license suspension for the third violation within any three-year period;
- \$10,000 and a 12-month license suspension for the fourth violation within any three-year period.

- period; and
- revocation of the license with no possibility of reinstatement for a period of five years for the fifth or more violation within any three-year period.

Vapor Product Retailers—Penalties. A licensed vapor product retailer is subject to the following maximum penalties for a violation of the prohibition on sales of cigarettes, tobacco products, or vapor products to a person under age 21 or other violations of vapor product laws:

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

If the LCB finds that a person licensed as a cigarette or tobacco product retailer and a vapor product retailer has violated the prohibition on sales of cigarettes, tobacco products, or vapor products to a person under age 21, each subsequent violation of either of the person's licenses counts as an additional violation within the three-year period. Any cigarette or tobacco product retailer's licenses issued to a person whose vapor product retailer's license has been suspended or revoked for violating the prohibition on sales of cigarettes, tobacco products, or vapor products to a person under age 21 must also be suspended or revoked during the period of the suspension or revocation.

Testing Authority.

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, the LCB, 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 product licensee to be analyzed by an analyst appointed or designated by the LCB.

If the analyzed vapor product contains an ingredient, substance, or solution present in quantities injurious to human health or posing a significant risk to public health, the LCB may suspend the license of the retailer or delivery sale licensee unless the retailer or delivery sale licensee agrees to remove the product from sales. If upon a finding from the Secretary of Health or local health jurisdiction that the vapor product poses an injurious risk to public health or significant public health risk, the retailer or delivery sale licensee does not remove the product from sale, the Secretary of Health or local health officer may file for an injunction in superior court prohibiting the sale or distribution of that specific vapor product substance or solution.

Age Verification.

Where there may be a question of a person's right to purchase or obtain tobacco products or vapor products by reason of age, the retailer or agent must require the purchaser to present an officially issued identification, identified in statute, that shows the purchaser's age and bears the purchaser's signature and photograph.

Sales Practices.

No person may give or distribute cigarettes or other tobacco products to a person by a coupon if the coupon is redeemed in any manner that does not require an in-person transaction in a retail store. 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. This 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.

Preemption.

Washington law preempts political subdivisions from adopting or enforcing requirements for the licensure and regulation of cigarette, tobacco product, and vapor product promotions and sales at retail. No political subdivision may impose fees or license requirements on retail outlets for possessing or selling such products, other than general business taxes or license fees not primarily levied on such products. However, political subdivisions that adopted ordinances prohibiting sampling by January 1, 1993, may continue to enforce these ordinances.

Cigarette, Tobacco Product, and Vapor Product Tax Revenues.

Collections from the cigarette tax and tobacco products tax are deposited into the General Fund. Collections from the vapor products tax are deposited between the Andy Hill Cancer Research Endowment Fund Match Transfer Account (subject to a \$10 million annual cap) and the Foundational Public Health Services Account.

Summary of Bill:

Responsible Vendor Program.

The Liquor and Cannabis Board (LCB) must develop rules concerning the adoption and administration of a compliance training program for vapor product retailers, vapor product delivery sellers, cigarette retailers, and tobacco product retailers to be known as a responsible vendor program, to reduce underage consumption of vapor products, cigarettes, and tobacco products, encourage licensees to adopt specific best practices to prevent sales to persons under age 21, and provide licensees with an incentive to give their employees ongoing training in responsible sales.

Licensees who join the responsible vendor program and maintain all the program's requirements are subject to a 50 percent reduction of a monetary penalty for a single violation in any period of 12 calendar months. The responsible vendor program must be free, voluntary, and self-monitoring. To participate in the responsible vendor program, licensees must submit an application form to the LCB. If the application establishes that the licensee meets the

qualifications to join the program, the LCB must send the licensee a membership certificate.

A licensee participating in the responsible vendor program must, at a minimum:

- provide ongoing training to employees;
- accept only certain forms of identification for sales of vapor products, cigarettes, and tobacco products;
- adopt policies on sales of vapor products, cigarettes, and tobacco products and checking identification;
- post specific signs in the business; and
- keep records verifying compliance with the program's requirements.

License Fees.

Vapor Product Distributor. The fee for a vapor product distributor's license is increased from \$150 to \$1,000. The fee for each additional vapor product distributor license for each additional location is increased from \$100 to \$1,000 each.

Vapor Product Retailer. The fee for a vapor product retailer's license is increased from \$175 to \$1,000. The authorization is removed for a retailer applying for or renewing both a vapor product retailer's license and a cigarette retailer's license to pay a combined fee of \$250 for both licenses.

Vapor Product Delivery Seller. The fee for a vapor product delivery sale license is increased from \$250 to \$1,000.

Cigarette Wholesaler. The fee for a cigarette wholesaler's license is increased from \$650 to \$1,000. For a wholesaler that sells cigarettes at two or more places of business, the fee for a separate license is increased from \$115 to \$1,000 for each additional place of business.

Cigarette Retailer. The fee for a cigarette retailer's license is increased from \$175 to \$1,000. The fee for each cigarette vending machine is increased from \$30 to \$200. The additional fee for a retail dealer operating a cigarette-making machine is increased from \$93 to \$500. The authorization is removed for a retailer applying for or renewing a cigarette retailer's license and a vapor product retailer's license to pay a combined fee of \$250 for both licenses.

Tobacco Product Distributor. The fee for a tobacco product distributor license is increased from \$650 to \$1,000. For distributors that sell tobacco products at two or more places of business, the separate license fee is increased from \$115 to \$1,000 for each additional place of business.

Tobacco Product Retailer. The fee for a tobacco product retailer's license is increased from \$175 to \$1,000. The authorization is removed for a retailer applying for or renewing both a tobacco product retailer's license and a vapor product retailer's license to pay a combined application fee of \$250 for both licenses.

Administrative Penalties.

The maximum monetary penalties for vapor product retailers for violations of the prohibition on sales to a person under age 21, or other violations of vapor product laws, are increased:

- The monetary penalty for the first violation within any three-year period is increased from \$200 to \$1,000.
- The monetary penalty for the second violation within any three-year period is increased from \$600 to \$2,500.
- The monetary penalty for the third violation within any three-year period is increased from \$2,000 to \$5,000.
- The monetary penalty for the fourth violation or subsequent violation within any three-year period is increased from \$3,000 to \$10,000.

Distributor/Wholesaler Requirement for Retailers.

Retailers may obtain cigarettes, tobacco products, and vapor products only from a licensed distributor or wholesaler. A retailer that obtains such products from any person that is not licensed, including directly from a manufacturer, must be licensed both as a retailer and a distributor or wholesaler. Products in violation are subject to seizure and forfeiture.

Manufacturer Certification, Attestation, and Other Requirements.

Certification and Attestation. Each manufacturer of vapor products containing nicotine that are sold at retail in Washington, whether directly or through a distributor, retailer, or similar intermediary, must be certified. An application for a certification must be made on a form and in a manner prescribed by the LCB. The application must include:

- the name and address of the applicant or, if the applicant is a firm, partnership, limited liability company, or association, the name and address of each of its members or, if the applicant is a corporation, the name and address of each of its officers and the address of its principal place of business;
- the location of the principal place of business to be licensed;
- if applicable, a copy of the Prevent All Cigarette Trafficking Act registration form (ATF Form 5070.1) as submitted by the applicant to the federal Bureau of Alcohol, Tobacco, Firearms and Explosives, and an attestation that the applicant is in compliance with, and will continue to comply with, all applicable requirements of federal law to register with and report monthly to Washington regarding sales and shipments of cigarettes and smokeless tobacco products;
- an attestation that the applicant will comply with all applicable laws of Washington and of the applicant's principal place of business;
- for an applicant with a principal place of business outside the United States, a declaration, from each of its importers into the United States of any of its brands to be sold in Washington, that the importer accepts joint and several liability with the applicant for all liability imposed under Washington vapor product tax laws, including any fees, costs, attorneys' fees, and penalties;
- an attestation that the applicant's products fully comply with the requirements of the US Customs and Border Protection Agency, including accurate entry summary forms (CPB Form 7501), and that the applicant is not in violation of federal laws relating to unlawful entry of goods and merchandise falsely classified, by means of false statements, or

- smuggling goods into the United States;
- a list of each type or model of vapor product containing nicotine that is sold in Washington; and
- such other information as the LCB may require for the purpose of administering vapor product laws.

Each application for certification must be accompanied by a payment of a \$1,000 fee for each type or model of vapor product containing nicotine the first time an annual certification form is delivered to the LCB and a payment of a \$500 fee for each type or model of vapor product containing nicotine the second and each subsequent time an annual certification form is delivered. A manufacturer may not cause to be sold at retail in Washington any type or model of vapor product containing nicotine not included in the application without first filing an amended certification form and paying the appropriate fee.

Upon receipt of an application in proper form and payment of the fee, the LCB must issue a certification to the applicant. A certification is not assignable, is valid only for the person in whose name it is issued, and is continuously valid unless suspended, canceled, or revoked by the LCB. A manufacturer who is certified is deemed to have established sufficient contact with Washington for the exercise of personal jurisdiction over the manufacturer in any matter or issue arising under vapor products laws. After notice and an opportunity for a hearing, the LCB may suspend, cancel, or revoke any certification for a violation of vapor product laws or an LCB rule.

Surety Bond. Any nonresident or foreign manufacturer that has not registered to do business in Washington as a foreign corporation or business entity must, as a condition to being certified, submit to the LCB a surety bond or other cash security payable to the state of Washington in the amount of \$25,000. The bond must be posted by a corporate surety located within the United States. The bond must be conditioned on the performance by the manufacturer of all requirements and obligations imposed by the law. A surety on a manufacturer's bond is liable up to the amount of the bond and Washington may execute on the surety bond for the payment of fines and penalties imposed on the manufacturer for the costs of seizure and destruction of products sold in violation of vapor product laws.

Agent for Service of Process. Any nonresident manufacturer of vapor products containing nicotine that has not registered to do business in Washington as a foreign corporation or business entity must, as a condition to being certified, appoint and continually engage the services of an agent Washington to act as agent for the service of process on whom all process, and any action or proceeding against such manufacturer concerning or arising out of the enforcement of vapor product laws may be served. Requirements are added regarding termination of an agent's authority and the appointment of a new agent, including notice to the LCB.

Additional Requirements. Existing requirements applicable to vapor product licensees are applied to manufacturers who are certified, related to recordkeeping, invoices, and the LCB compiling, maintaining, and publishing lists of businesses on the LCB's website.

Vapor Product Extended Producer Responsibility.

The Department of Ecology (Ecology), in consultation with the LCB and other agencies Ecology deems appropriate, must study and report by November 1, 2027, on policy options and the feasibility of Washington requiring manufacturers of vapor products sold in Washington to participate in a stewardship organization, with a plan approved by Ecology, to provide for the collection, transportation, recycling, and disposal of vapor products and their component parts.

Policies examined must include:

- how producers will fully finance the collection, transportation, recycling, and disposal of vapor products sold for use in Washington;
- a provision for the collection of products at each retail outlet operated by a person licensed as a vapor product retailer;
- methods for collection, transportation, recycling, and disposal of vapor products collected by the stewardship organization;
- a plan for education and outreach by the stewardship organization to vapor product retail license holders;
- a plan for education and outreach by the stewardship organization to consumers regarding the opportunities provided by the stewardship organization for the end-of-life management of vapor products; and
- performance goals for the collection and recycling of vapor products and their constituent parts, and a plan for measuring the operations of the program relative to those performance goals.

Washington State Department of Agriculture—Testing Authority.

In addition to the authority of any other state or local agency or local health jurisdiction to analyze a vapor product substance or solution, the Department of Agriculture may, but is not required to, perform laboratory tests and analyze any vapor product substance or solution obtained by the Department of Health, the LCB, the Department of Agriculture, another state agency, or a local health jurisdiction.

Age Verification.

A retailer or agent must require the purchaser of cigarettes, tobacco products, or vapor products to present an officially issued identification, of a type identified in statute, that shows the purchaser's age and bears their signature and photograph, instead of only being required to do so when there may be a question of a person's right to purchase or obtain cigarettes, tobacco products, or vapor products by reason of age.

Vapor Product Prohibitions.

Entertainment Vapor Products. Beginning January 1, 2027, no vapor product retailer, delivery sale licensee, distributor, or other person may sell, offer for sale, display, market, or advertise for sale in this state, any entertainment vapor product. "Entertainment vapor product" means any vapor product that has interactive gaming or entertainment features including, but not limited to, allowing a user to play music or audio, display photos or video, play virtual games, or display other animations on the device.

Imitation Vapor Products. Beginning January 1, 2027, no vapor product retailer, delivery sale licensee, distributor, or other person may market, promote, label, brand, advertise, distribute, offer for sale, or sell a vapor product in this state by imitating a product that is not a vapor product, including but not limited to food or a brand of food commonly marketed to minors including, but not limited to: (1) candy, desserts, and beverages; (2) school supplies commonly used by minors including, but not limited to, erasers, highlighters, pens, and pencils; and (3) a product based on or depicting a character, personality, or symbol known to appeal to minors including, but not limited to, a celebrity, a character in a comic book, movie, television show, or video game, or a mythical creature. The prohibition also applies to vapor products attempting to conceal the nature of the vapor product from parents, teachers, or other adults, and also using terms for, describing, or depicting any imitation vapor product.

Government-to-Government Negotiations. In recognition of the sovereign authority of tribal governments, the governor may seek government-to-government negotiations with federally recognized Indian tribes regarding prohibiting, in vapor products tax contracts, the sale and offer for sale of any entertainment vapor product, imitation vapor product, or related prohibited vapor product, and the display, marketing, or advertising for sale of such products.

Violations/Consumer Protection Act. Violations of the sales prohibitions on entertainment vapor products, imitation vapor products, and related vapor products are punishable for licensees under the same penalties as for selling to a person under age 21, and violations are also made per se violations of the Consumer Protection Act, as an unfair or deceptive act in trade or commerce and an unfair method of competition.

Prohibited Sales Practices.

Discounts. Cigarette, tobacco, and vapor product retailers and delivery sellers must sell cigarettes, tobacco products, or vapor products at or above the licensee's acquisition cost.

Coupons. No person may give or distribute cigarettes, tobacco products, or vapor products to a person by a coupon.

Free Products. It is made unlawful for a person to provide any free item or product to a customer as part of a transaction for the sale of cigarettes, tobacco products, or vapor products.

Removal of Preemption.

State preemption of political subdivisions adopting or enforcing requirements for the licensure and regulation of cigarette, tobacco product, and vapor product promotions and sales at retail is removed, and local governments are authorized to adopt and enforce requirements for the licensure and regulation of tobacco product promotions and sales.

Tobacco Products Tax Revenues.

Distributions of revenues from the tobacco products tax are modified, in order to direct:

- up to \$10 million to the Andy Hill Cancer Research Endowment Fund Match Transfer Account (Andy Hill Account), to the extent vapor products taxes and other revenue

- sources do not reach \$10 million in the Andy Hill Account;
- up to \$10 million annually to the Foundational Public Health Services Account, to the extent vapor products tax receipts in the Foundational Public Health Services Account do not reach \$10 million; and
 - up to \$20 annually to the Youth Tobacco and Vapor Products Prevention Account, to the extent fees and penalties in that account do not reach \$20 million.

Appropriation: None.

Fiscal Note: Requested on January 14, 2026.

Effective Date: The bill contains multiple effective dates. Please see the bill.