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**SENATE BILL 5266**

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**State of Washington****67th Legislature****2021 Regular Session****By** Senators Kuderer and Wilson, C.

1 AN ACT Relating to protecting public health and safety by  
2 enhancing the regulation of products sold to adults age 21 and over;  
3 amending RCW 70.345.020, 70.345.030, 70.345.060, 70.345.090,  
4 70.345.160, 70.345.170, 70.345.180, 70.345.190, 82.25.005, 82.25.010,  
5 82.25.020, 82.25.075, 82.25.060, 82.25.080, 82.25.005, 82.25.065,  
6 82.25.075, and 82.25.090; reenacting and amending RCW 70.155.120 and  
7 70.345.010; adding new sections to chapter 70.345 RCW; adding a new  
8 section to chapter 82.04 RCW; adding new sections to chapter 82.25  
9 RCW; adding a new chapter to Title 70 RCW; repealing RCW 70.345.210,  
10 82.25.045, and 82.25.085; prescribing penalties; providing effective  
11 dates; providing an expiration date; and declaring an emergency.

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

13 NEW SECTION. **Sec. 1.** (1) The legislature makes the following  
14 findings:

15 (a) Nicotine is a highly addictive substance, particularly for  
16 children and youth under 21 years of age, whose brains are still  
17 developing. Currently, there is no limit in the United States on  
18 nicotine levels of vapor products. While other nations limit the  
19 nicotine content of vapor products to not more than two percent  
20 nicotine, vapor products commonly sold in this state and accessed by  
21 youth contain five percent nicotine. Vapor products that deliver high

1 levels of nicotine are fueling youth addiction to nicotine and have  
2 created an epidemic. The 2019 national youth tobacco survey found  
3 that about 27 percent of high school students reported current use of  
4 electronic cigarettes and, among electronic cigarette users, about  
5 one-third reported using electronic cigarettes on 20 or more of the  
6 preceding 30 days.

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

23 (c) Early research from Stanford University school of medicine  
24 indicates that teenagers and young adults that vape are five to seven  
25 times more likely to be infected with COVID-19 compared to those who  
26 do not use vapor products.

27 (d) While the long-term health effects of vapor products are  
28 unknown, current data suggests they are harmful to human health.  
29 Vapor products have been shown to impair lung function in several  
30 ways, such as by inhibiting ciliary beating, impairing immune  
31 function, and causing toxicity to epithelial cells.

32 (2) Therefore, the legislature intends to ban the sale of  
33 flavored vapor products and enact additional regulatory protections  
34 to protect the health of youth and young adults in Washington state.

35 **Sec. 2.** RCW 70.155.120 and 2019 c 415 s 979 and 2019 c 15 s 10  
36 are each reenacted and amended to read as follows:

37 (1) The youth tobacco and vapor products prevention account is  
38 created in the state treasury. All fees collected pursuant to RCW  
39 82.24.520, 82.24.530, 82.26.160, and 82.26.170 and funds collected by

1 the liquor and cannabis board from the imposition of monetary  
2 penalties shall be deposited into this account, except that ten  
3 percent of all such fees and penalties shall be deposited in the  
4 state general fund.

5 (2) Moneys appropriated from the youth tobacco and vapor products  
6 prevention account to the department of health shall be used by the  
7 department of health for implementation of this chapter, including  
8 collection and reporting of data regarding enforcement and the extent  
9 to which access to tobacco products and vapor products by youth has  
10 been reduced.

11 (3) The department of health shall enter into interagency  
12 agreements with the liquor and cannabis board to pay the costs  
13 incurred, up to thirty percent of available funds, in carrying out  
14 its enforcement responsibilities under this chapter. Such agreements  
15 shall set forth standards of enforcement, consistent with the funding  
16 available, so as to reduce the extent to which tobacco products and  
17 vapor products are available to individuals under the age of twenty-  
18 one. The agreements shall also set forth requirements for data  
19 reporting by the liquor and cannabis board regarding its enforcement  
20 activities. During the 2019-2021 fiscal biennium, the department of  
21 health shall pay the costs incurred, up to twenty-three percent of  
22 available funds, in carrying out its enforcement responsibilities.

23 (4) The department of health, the liquor and cannabis board, and  
24 the department of revenue shall enter into an interagency agreement  
25 for payment of the cost of administering the tobacco retailer  
26 licensing system and for the provision of quarterly documentation of  
27 tobacco wholesaler, retailer, and vending machine names and  
28 locations.

29 (5) The department of health shall, within up to seventy percent  
30 of available funds, provide grants to local health departments or  
31 other local community agencies to develop and implement coordinated  
32 tobacco and vapor product intervention strategies to prevent and  
33 reduce tobacco and vapor product use by youth. During the 2019-2021  
34 fiscal biennium, the department of health shall, within up to  
35 seventy-seven percent of available funds, provide grants to local  
36 health departments or other local community agencies to develop and  
37 implement coordinated tobacco and vapor product intervention  
38 strategies to prevent and reduce tobacco and vapor product use by  
39 youth.

1       (6) Moneys deposited in the youth tobacco and vapor products  
2 prevention account from receipts of the additional delivery sales  
3 license fee authorized in RCW 70.345.060(2) must be made available to  
4 the board to hire staff for enforcement of laws and rules applicable  
5 to internet and other delivery sales of vapor products, including  
6 with respect to sales to persons under age 21 and collection of the  
7 vapor product tax.

8       **Sec. 3.** RCW 70.345.010 and 2019 c 445 s 210 and 2019 c 15 s 4  
9 are each reenacted and amended to read as follows:

10       The definitions in this section apply throughout this chapter  
11 unless the context clearly requires otherwise.

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

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

16       (3) "Child care facility" has the same meaning as provided in RCW  
17 (~~70.140.020~~) 70A.320.020.

18       (4) "Closed system nicotine container" means a sealed, prefilled,  
19 and disposable container of nicotine in a solution or other form in  
20 which such container is inserted directly into an electronic  
21 cigarette, electronic nicotine delivery system, or other similar  
22 product, if the nicotine in the container is inaccessible through  
23 customary or reasonably foreseeable handling or use, including  
24 reasonably foreseeable ingestion or other contact by children.

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

27       (a) The purchaser submits the order for such sale by means of a  
28 telephonic or other method of voice transmission, the mails or any  
29 other delivery service, or the internet or other online service; or

30       (b) The vapor product is delivered by use of the mails or of a  
31 delivery service. The foregoing sales of vapor products constitute a  
32 delivery sale regardless of whether the seller is located within or  
33 without this state. "Delivery sale" does not include a sale of any  
34 vapor product not for personal consumption to a retailer.

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

36       (7) "Distinguishable" means perceivable by an ordinary consumer  
37 by either the sense of smell or taste.

38       (8) "Distributor" has the same meaning as in RCW 82.25.005.

1       ~~((8))~~ (9) "Flavored vapor product" means any vapor product that  
2 contains a taste or smell, other than the taste or smell of tobacco,  
3 that is distinguishable by an ordinary consumer either prior to or  
4 during the consumption of a vapor product including, but not limited  
5 to, any taste or smell relating to fruit, menthol, mint, wintergreen,  
6 chocolate, cocoa, vanilla, or honey, or any candy, dessert, alcoholic  
7 beverage, herb, or spice.

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

13       ~~((9))~~ (11) "Manufacture" means to mix, prepare, create,  
14 produce, fabricate, assemble, modify, or label vapor products.

15       (12) "Manufacturer" means a person who manufactures and sells  
16 vapor products.

17       ~~((10))~~ (13) "Person" means any individual, receiver,  
18 administrator, executor, assignee, trustee in bankruptcy, trust,  
19 estate, firm, copartnership, joint venture, club, company, joint  
20 stock company, business trust, municipal corporation, the state and  
21 its departments and institutions, political subdivision of the state  
22 of Washington, corporation, limited liability company, association,  
23 society, any group of individuals acting as a unit, whether mutual,  
24 cooperative, fraternal, nonprofit, or otherwise.

25       ~~((11))~~ (14) "Place of business" means any place where vapor  
26 products are sold or where vapor products are manufactured, stored,  
27 or kept for the purpose of sale.

28       ~~((12))~~ (15) "Playground" means any public improved area  
29 designed, equipped, and set aside for play of six or more children  
30 which is not intended for use as an athletic playing field or  
31 athletic court, including but not limited to any play equipment,  
32 surfacing, fencing, signs, internal pathways, internal land forms,  
33 vegetation, and related structures.

34       ~~((13))~~ (16) "Retail outlet" means each place of business from  
35 which vapor products are sold to consumers.

36       ~~((14))~~ (17) "Retailer" means any person engaged in the business  
37 of selling vapor products to ultimate consumers.

38       ~~((15))~~ (18)(a) "Sale" means any transfer, exchange, or barter,  
39 in any manner or by any means whatsoever, for a consideration, and  
40 includes and means all sales made by any person.

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

4 ~~((16))~~ (19) "School" has the same meaning as provided in RCW  
5 ~~((70.140.020))~~ 70A.320.020.

6 ~~((17))~~ (20) "Self-service display" means a display that  
7 contains vapor products and is located in an area that is openly  
8 accessible to customers and from which customers can readily access  
9 such products without the assistance of a salesperson. A display case  
10 that holds vapor products behind locked doors does not constitute a  
11 self-service display.

12 ~~((18))~~ (21) "Vapor product" means any noncombustible product  
13 that may contain nicotine and that employs a heating element, power  
14 source, electronic circuit, or other electronic, chemical, or  
15 mechanical means, regardless of shape or size, that can be used to  
16 produce vapor or aerosol from a solution or other substance.

17 (a) "Vapor product" includes any electronic cigarette, electronic  
18 cigar, electronic cigarillo, electronic pipe, or similar product or  
19 device and any vapor cartridge or other container that may contain  
20 nicotine in a solution or other form that is intended to be used with  
21 or in an electronic cigarette, electronic cigar, electronic  
22 cigarillo, electronic pipe, or similar product or device.

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

26 (c) For purposes of this subsection ~~((18))~~ (21), "marijuana,"  
27 "useable marijuana," "marijuana concentrates," and "marijuana-infused  
28 products" have the same meaning as provided in RCW 69.50.101.

29 **Sec. 4.** RCW 70.345.020 and 2016 sp.s. c 38 s 5 are each amended  
30 to read as follows:

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

- 33 (a) A vapor product retailer's license;
- 34 (b) A vapor product distributor's license; ~~((and))~~
- 35 (c) A vapor product manufacturer's license; and
- 36 (d) A vapor product delivery sale license.

37 (2) Application for the licenses must be made through the  
38 business licensing system under chapter 19.02 RCW. The board may  
39 adopt rules regarding the regulation of the licenses and licensees.

1 The board may refuse to issue any license under this chapter if the  
2 board has reasonable cause to believe that the applicant has  
3 willfully withheld information requested for the purpose of  
4 determining the eligibility of the applicant to receive a license, or  
5 if the board has reasonable cause to believe that information  
6 submitted in the application is false or misleading or is not made in  
7 good faith. In addition, for the purpose of reviewing an application  
8 for a manufacturer's license, distributor's license, retailer's  
9 license, or delivery seller's license, and for considering the  
10 denial, suspension, or revocation of any such license, the board may  
11 consider criminal conduct of the applicant, including an  
12 administrative violation history record with the board and a criminal  
13 history record information check within the previous five years, in  
14 any state, tribal, or federal jurisdiction in the United States, its  
15 territories, or possessions, and the provisions of RCW 9.95.240 and  
16 chapter 9.96A RCW do not apply to such cases. The board may, in its  
17 discretion, issue or refuse to issue ((the)) a manufacturer's  
18 license, retailer's license, distributor's license, ((and)) or  
19 delivery sale license subject to the provisions of RCW 70.155.100.

20 (3) The application processes for the retailer license and the  
21 distributor license, and any forms used for such processes, must  
22 allow the applicant to simultaneously apply for a delivery sale  
23 license without requiring the applicant to undergo a separate  
24 licensing application process in order to be licensed to conduct  
25 delivery sales. However, a delivery sale license obtained in  
26 conjunction with a retailer or distributor license under this  
27 subsection remains a separate license subject to the delivery sale  
28 licensing fee established under this chapter.

29 (4) No person may qualify for a manufacturer's license,  
30 retailer's license, distributor's license, or delivery sale license  
31 under this section without first undergoing a criminal background  
32 check. The background check must be performed by the board and must  
33 disclose any criminal conduct within the previous five years in any  
34 state, tribal, or federal jurisdiction in the United States, its  
35 territories, or possessions. If the applicant or licensee also has a  
36 license issued under chapter 66.24, 69.50, 82.24, or 82.26 RCW, the  
37 background check done under the authority of chapter 66.24, 69.50,  
38 82.24, or 82.26 RCW satisfies the requirements of this subsection.

39 (5) Each license issued under this chapter expires on the  
40 business license expiration date. The license must be continued

1 annually if the licensee has paid the required fee and complied with  
2 all the provisions of this chapter and the rules of the board adopted  
3 pursuant to this chapter.

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

8 **Sec. 5.** RCW 70.345.030 and 2019 c 445 s 211 are each amended to  
9 read as follows:

10 (1)(a) No person may engage in or conduct business as a  
11 manufacturer, retailer, distributor, or delivery seller in this state  
12 without a valid license issued under this chapter, except as  
13 otherwise provided by law. Any person who meets the definition of  
14 manufacturer under this chapter must obtain a manufacturer's license  
15 under this chapter. Any person who sells vapor products to ultimate  
16 consumers by a means other than delivery sales must obtain a  
17 retailer's license under this chapter. Any person who meets the  
18 definition of distributor under this chapter must obtain a  
19 distributor's license under this chapter. Any person who conducts  
20 delivery sales of vapor products must obtain a delivery sale license.

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

23 (2) No person engaged in or conducting business as a  
24 manufacturer, retailer, distributor, or delivery seller in this state  
25 may refuse to allow the enforcement officers of the board, on demand,  
26 to make full inspection of any place of business or vehicle where any  
27 of the vapor products regulated under this chapter are sold, stored,  
28 transported, or handled, or otherwise hinder or prevent such  
29 inspection. A person who violates this subsection is guilty of a  
30 gross misdemeanor.

31 (3) Any person licensed under this chapter as a distributor, any  
32 person licensed under this chapter as a retailer, and any person  
33 licensed under this chapter as a delivery seller may not operate in  
34 any other capacity unless the additional appropriate license is first  
35 secured, except as otherwise provided by law. A violation of this  
36 subsection is a misdemeanor.

37 (4) Any person licensed under this chapter as a retailer,  
38 distributor, or delivery seller may only sell vapor products obtained  
39 directly from:



1 (a) A person holding a valid manufacturer's license under this  
2 chapter; or

3 (b) A person holding a valid distributor's license under this  
4 chapter if the distributor obtained the vapor products from a person  
5 holding a valid manufacturer's license under this chapter.

6 (5) No person engaged in or conducting business as a  
7 manufacturer, retailer, distributor, or delivery seller in this state  
8 may sell or give, or permit to sell or give, a product that contains  
9 any amount of any cannabinoid, synthetic cannabinoid, cathinone, or  
10 methcathinone, unless otherwise provided by law. A violation of this  
11 subsection ((+4)) is punishable according to RCW 69.50.401.

12 ((+5)) (6) The penalties provided in this section are in  
13 addition to any other penalties provided by law for violating the  
14 provisions of this chapter or the rules adopted under this chapter.

15 **Sec. 6.** RCW 70.345.060 and 2016 sp.s. c 38 s 10 are each amended  
16 to read as follows:

17 (1) A fee of ((two hundred fifty dollars)) \$250, in addition to  
18 any fee that may be applicable under subsection (2) of this section,  
19 must accompany each vapor product delivery sale license application  
20 or license renewal application under RCW 70.345.020.

21 (2) The board may establish an additional fee of up to \$250 to  
22 accompany each vapor product delivery sale license application or  
23 license renewal application under RCW 70.345.020. In accordance with  
24 RCW 70.155.120, the moneys from this additional fee must be available  
25 to the board to hire staff for enforcement of laws and rules  
26 applicable to internet and other delivery sales of vapor products,  
27 including with respect to sales to persons under age 21 and  
28 collection of the vapor product tax.

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

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

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

6 (3)(a) A delivery sale licensee must provide notice on its mail  
7 order or internet sales forms of the minimum age required for the  
8 legal sale of vapor products in Washington state as provided by RCW  
9 70.345.140.

10 (b) For delivery sales of vapor products that are closed system  
11 nicotine containers, a delivery sale licensee may not sell or deliver  
12 more than a total of 16 individual cartridges of vapor product to an  
13 individual customer per month.

14 (4)(a) A delivery sale licensee must not accept a purchase or  
15 order from any person without first (~~obtaining~~) verifying the  
16 person is 21 years of age or older and complying with this section.  
17 The licensee shall attempt to match the full name, birthdate, and  
18 residential address of that person and (~~verifying~~) verify this  
19 information through an independently operated third-party database or  
20 aggregate of databases, which includes data from government sources,  
21 that are regularly used by government and businesses for the purpose  
22 of age and identity verification and authentication.

23 (b) If the licensee is unable to verify the person is 21 years of  
24 age or older under (a) of this subsection, the licensee must require  
25 the person to submit an age verification kit consisting of an  
26 attestation signed by the person that they are 21 years of age or  
27 older and a copy of a valid form of government identification. For  
28 purposes of this subsection, a valid form of government  
29 identification includes the officially issued forms of identification  
30 listed in RCW 70.345.120 (1)(a) through (f). If the person submits an  
31 age verification kit and the licensee is still unable to verify the  
32 person is age 21 years or older, the licensee may not proceed with  
33 the transaction and may not allow the person to submit more than one  
34 age verification kit.

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

1 billing address on the credit or debit card offered for payment by  
2 the person matches the address listed in the database.

3 (b) The licensee shall submit to each credit card acquiring  
4 company with which it has credit card sales identification  
5 information in an appropriate form and format so that the words  
6 "vapor product" may be printed in the purchaser's credit card  
7 statement when a purchase of a vapor product is made by credit card  
8 payment.

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

23 (b) Upon accepting an order for vapor products, but before  
24 shipping the vapor products, a delivery sale licensee must make a  
25 telephone call after 5:00 p.m. to the purchaser confirming the order.  
26 The telephone call may be a person-to-person call or a recorded  
27 message. The licensee is not required to speak directly with a person  
28 and may leave a message on an answering machine or by voice mail.

29 (7) (a) A delivery sale licensee must include on shipping  
30 documents a clear and conspicuous statement which includes, at a  
31 minimum, that the package contains vapor products manufactured under  
32 a license issued by the board, Washington law prohibits sales to  
33 those under the minimum age established by this chapter, and  
34 violations may result in sanctions to both the licensee and the  
35 purchaser. Vapor products must be delivered only in a container that  
36 is conspicuously labeled with the words: "CONTAINS VAPOR PRODUCTS:  
37 SIGNATURE OF PERSON 21 YEARS OF AGE OR OLDER REQUIRED FOR DELIVERY."

38 (b) A delivery sale licensee must deliver the vapor products to  
39 the purchaser's verified billing address on the credit or debit card

1 used for payment. A delivery of vapor products may not be made to a  
2 post office box.

3 (c) Upon the delivery of the vapor product to the purchaser's  
4 address, the licensee must obtain the signature of a person 21 years  
5 of age or older before completing the delivery.

6 (8) For purposes of the enforcement of this section, the acts of  
7 the United States postal service or other common carrier when engaged  
8 in the business of transporting and delivering packages for others  
9 are not unlawful and are not subject to civil or criminal penalties.

10 (9) For purposes of this ((subsection—(8)—[this—section]))  
11 section, "vapor products" has the same meaning as provided in RCW  
12 82.25.005.

13 ((+9)) (10) A person who knowingly violates this section is  
14 guilty of a class C felony, except that the maximum fine that may be  
15 imposed is five thousand dollars.

16 ((+10)) (11) In addition to or in lieu of any other civil or  
17 criminal remedy provided by law, a person who has violated this  
18 section is subject to a civil penalty of up to five thousand dollars  
19 for each violation. The attorney general, acting in the name of the  
20 state, may seek recovery of the penalty in a civil action in superior  
21 court.

22 ((+11)) (12) The attorney general may seek an injunction in  
23 superior court to restrain a threatened or actual violation of this  
24 section and to compel compliance with this section.

25 ((+12)) (13) Any violation of this section is not reasonable in  
26 relation to the development and preservation of business and is an  
27 unfair and deceptive act or practice and an unfair method of  
28 competition in the conduct of trade or commerce in violation of RCW  
29 19.86.020. Standing to bring an action to enforce RCW 19.86.020 for  
30 violation of this section lies solely with the attorney general.  
31 Remedies provided by chapter 19.86 RCW are cumulative and not  
32 exclusive.

33 ((+13)) (14)(a) In any action brought under this section, the  
34 state is entitled to recover, in addition to other relief, the costs  
35 of investigation, enforcement actions by the board, expert witness  
36 fees, costs of the action, and reasonable attorneys' fees.

37 (b) If a court determines that a person has violated this  
38 section, the court shall order any profits, gain, gross receipts, or  
39 other benefit from the violation to be disgorged and paid to the

1 state treasurer for deposit in the (~~general fund~~) foundational  
2 public health services account created in RCW 82.25.015.

3 (c) Monetary penalties imposed under this section must be  
4 deposited in the foundational public health services account created  
5 in RCW 82.25.015.

6 (~~(14)~~) (15) Unless otherwise expressly provided, the penalties  
7 or remedies, or both, under this section are in addition to any other  
8 penalties and remedies available under any other law of this state.

9 (~~(15)~~) (16) A licensee who violates this section is subject to  
10 license suspension or revocation by the board.

11 (~~(16)~~) (17) The board may adopt by rule additional requirements  
12 for mail or internet sales.

13 (~~(17)~~) (18) The board must not adopt rules prohibiting internet  
14 sales.

15 **Sec. 8.** RCW 70.345.160 and 2016 sp.s. c 38 s 24 are each amended  
16 to read as follows:

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

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

24 (~~(For the purpose of enforcing the provisions of this~~  
25 ~~chapter, a peace officer or enforcement officer of the board who has~~  
26 ~~reasonable grounds to believe a person observed by the officer~~  
27 ~~purchasing, attempting to purchase, or in possession of vapor~~  
28 ~~products is under eighteen years of age, may detain such person for a~~  
29 ~~reasonable period of time and in such a reasonable manner as is~~  
30 ~~necessary to determine the person's true identity and date of birth.~~  
31 ~~Further, vapor products possessed by persons under eighteen years of~~  
32 ~~age are considered contraband and may be seized by a peace officer or~~  
33 ~~enforcement officer of the board.)) For the purpose of investigating  
34 the illegal sale of vapor products, a local health officer or  
35 enforcement officer of the board:~~

36 (a) Who has reasonable grounds to believe an illegal sale to a  
37 person under 21 years of age has occurred, may seize the vapor  
38 products believed to be sold illegally to a person under 21 years of  
39 age.

1 (b) Who has reasonable grounds to believe a person observed by  
2 the officer purchasing, attempting to purchase, or in possession of  
3 vapor products is under 18 years of age, may detain such person for a  
4 reasonable period of time and in such a reasonable manner as is  
5 necessary to determine the person's true identity and date of birth.

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

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

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

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

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

31 ~~(6) Nothing in subsection (5) of this section permits a total ban~~  
32 ~~on the sale or use of vapor products)), vapor product constituent,~~  
33 emitted constituent, or vapor product component may be injurious to  
34 human health or poses a significant risk to public health, the board  
35 may:

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

38 (b) Require vapor product retailers to make a written point-of-  
39 sale warning disclosure to consumers with respect to such a vapor  
40 product, a type of vapor product, or such a vapor constituent or

1 component, in a format, style, and manner determined by the secretary  
2 of health.

3 (6) (a) Nothing in this section permits a permanent ban on the  
4 sale or use of all vapor products.

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

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

10 **Sec. 9.** RCW 70.345.170 and 2016 sp.s. c 38 s 11 are each amended  
11 to read as follows:

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

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

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

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

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

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

35 (7) Any determination and order by the board, and any order of  
36 suspension or revocation by the board of the license or licenses  
37 issued under this chapter, or refusal to reinstate a license or  
38 licenses after revocation is reviewable by an appeal to the superior  
39 court of Thurston county. The superior court must review the order or

1 ruling of the board and may hear the matter de novo, having due  
2 regard to the provisions of this chapter and the duties imposed upon  
3 the board.

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

7 **Sec. 10.** RCW 70.345.180 and 2016 sp.s. c 38 s 22 are each  
8 amended to read as follows:

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

12 (2) Subject to subsection (3) of this section, the sanctions that  
13 the board may impose against a person licensed under this chapter  
14 based upon one or more findings under subsection (1) of this section  
15 may not exceed the following:

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

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

20 (c) A monetary penalty of two thousand dollars for the third  
21 violation within any three-year period and suspension of the license  
22 for a period of six months for the third violation of RCW 26.28.080  
23 within any three-year period;

24 (d) A monetary penalty of three thousand dollars for the fourth  
25 or subsequent violation within any three-year period and suspension  
26 of the license for a period of twelve months for the fourth violation  
27 of RCW 26.28.080 within any three-year period;

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

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

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



1 (5) The board may impose a monetary penalty upon any person other  
2 than a licensed retailer if the board finds that the person has  
3 violated RCW 26.28.080.

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

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

11 (8) The board may issue a cease and desist order to any person  
12 who is found by the board to have violated or (~~(intending [intends])~~)  
13 intends to violate the provisions of this chapter or RCW 26.28.080,  
14 requiring such person to cease specified conduct that is in  
15 violation. The issuance of a cease and desist order does not preclude  
16 the imposition of other sanctions authorized by this statute or any  
17 other provision of law.

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

25 (10) All proceedings under subsections (1) through (8) of this  
26 section must be conducted in accordance with chapter 34.05 RCW.

27 (11) The board may reduce or waive either the penalties or the  
28 suspension or revocation of a license, or both, as set forth in this  
29 chapter where the elements of proof are inadequate or where there are  
30 mitigating circumstances. Mitigating circumstances may include, but  
31 are not limited to, an exercise of due diligence by a retailer.  
32 Further, the board may exceed penalties set forth in this chapter  
33 based on aggravating circumstances.

34 (12) The attorney general has primary jurisdiction over the  
35 board's actions under this section and may seek recovery of penalties  
36 in a civil or criminal action in superior court before a local  
37 prosecutor decline to file an action.

38 **Sec. 11.** RCW 70.345.190 and 2016 sp.s. c 38 s 25 are each  
39 amended to read as follows:

1       (~~All~~) Except as provided in RCW 70.345.090 and 70.345.180, all  
2 license fees collected and funds collected by the board from the  
3 imposition of monetary penalties pursuant to this chapter must be  
4 deposited into the youth tobacco and vapor products prevention  
5 account created in RCW 70.155.120.

6       NEW SECTION. Sec. 12. A new section is added to chapter 70.345  
7 RCW to read as follows:

8       A fee of \$250 must accompany each vapor product manufacturer's  
9 license application and license renewal application under RCW  
10 70.345.020.

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

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

- 17       (1) Twenty milligrams of nicotine per milliliter of liquid;
- 18       (2) Nicotine that is equivalent to two percent of the total  
19 volume of the liquid; or
- 20       (3) Twenty thousand parts per million of nicotine in the liquid.

21       NEW SECTION. Sec. 14. A new section is added to chapter 70.345  
22 RCW to read as follows:

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

- 28       (a) Additives;
- 29       (b) Thickening agents;
- 30       (c) Preservatives;
- 31       (d) Compounds;
- 32       (e) Nicotine content; and
- 33       (f) Any other substance used in the production and processing of  
34 each vapor product.

35       (2) Disclosures must be completed for every vapor product  
36 constituent substance, regardless of whether such a constituent  
37 substance is an original constituent present in each vapor product,

1 emitted during the use of the vapor product, or it is reasonably  
2 foreseeable that it will be present in the vapor product during the  
3 product's expected presale shelf life, or will develop in a vapor  
4 product after purchase without any action taken by the consumer. All  
5 disclosures must include the amounts and sources of each constituent  
6 substance. Constituent substance disclosures must be accompanied by a  
7 signed declaration under penalty of perjury certifying the  
8 completeness and accuracy of the information provided.

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

13 (4) The board and department of health may use constituent  
14 disclosures for the purposes of enforcement, investigation, research,  
15 and public information, and for any other matter intended to protect  
16 the public health.

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

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

21 (1) A retailer, manufacturer, delivery seller, or distributor  
22 licensed under this chapter may not sell, offer for sale, or possess  
23 with the intent to sell or offer for sale flavored vapor products, or  
24 any product that he or she knows or reasonably should know will be  
25 used with or in a vapor product to create a flavored vapor product.

26 (2) This section applies to all persons who sell vapor products  
27 in this state including, but not limited to, cigarette and tobacco  
28 product retailers, vapor product retailers, manufacturers, delivery  
29 sellers, and distributors licensed under this chapter.

30 (3) There is a rebuttable presumption that a vapor product is a  
31 flavored vapor product if a delivery seller, distributor,  
32 manufacturer, or retailer, or any agent or employee of a delivery  
33 seller, distributor, manufacturer, or retailer, in the course of  
34 their agency or employment, has made a statement or claim directed to  
35 consumers or to the public that the vapor product has or produces a  
36 taste or smell other than tobacco including, but not limited to,  
37 text, color, or images, or any combination thereof, on the product's  
38 labeling or packaging used to explicitly or implicitly communicate  
39 that the vapor product has a taste or smell other than tobacco.

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

3        A city, town, county, or local health jurisdiction may limit the  
4    location of licensed vapor product retailers within a certain  
5    perimeter of schools and youth-orientated programs and activities if  
6    the city, town, county, or local health jurisdiction determines that  
7    such restriction may reduce underage access and addiction.

8        NEW SECTION.    **Sec. 17.**    (1) A person may not sell, offer for  
9    sale, or possess with the intent to sell or offer for sale any  
10   menthol-flavored tobacco product. This section applies to all persons  
11   who sell tobacco products in this state including, but not limited  
12   to, cigarette and tobacco product retailers, wholesalers, and  
13   distributors licensed under chapter 82.24 or 82.26 RCW.

14        (2) There is a rebuttable presumption that a tobacco product is a  
15   menthol-flavored tobacco product if a manufacturer or any of the  
16   manufacturer's agents or employees, in the course of their agency or  
17   employment, has made a statement or claim directed to consumers or to  
18   the public that the tobacco product has or produces a characterizing  
19   flavor including, but not limited to, text, color, or images, or any  
20   combination thereof, on the product's labeling or packaging used to  
21   explicitly or implicitly communicate that the tobacco product has a  
22   characterizing flavor.

23        (3) For the purposes of this section and section 18 of this act:

24        (a) "Tobacco product" means:

25        (i) Any product containing, made, or derived from tobacco or  
26   nicotine that is intended for human consumption, whether smoked,  
27   heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or  
28   ingested by any other means including, but not limited to,  
29   cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco,  
30   bidis, or snuf; and

31        (ii) Any device or component, part, or accessory that delivers  
32   nicotine alone or combined with other substances to the person using  
33   the device including, but not limited to, electronic cigarettes,  
34   cigars, or pipes, whether or not the device or component is sold  
35   separately.

36        (b) "Tobacco product" does not include any product approved by  
37   the United States food and drug administration for sale as a tobacco  
38   cessation product, medical device, or for other therapeutic purposes

1 when such product is marketed and sold solely for such an approved  
2 purpose.

3 NEW SECTION. **Sec. 18.** (1) The liquor and cannabis board shall  
4 enforce this chapter and may suspend or revoke the license of a  
5 cigarette or tobacco retailer, wholesaler, or distributor licensed  
6 under chapter 82.24 or 82.26 RCW for a violation or violations of  
7 section 17 of this act. If the board makes an initial decision to  
8 suspend or revoke a license, the licensee may request a hearing  
9 subject to chapter 34.05 RCW.

10 (2) The liquor and cannabis board may conduct random and  
11 unannounced inspections of a cigarette or tobacco retailer,  
12 wholesaler, or distributor licensed under chapter 82.24 or 82.26 RCW  
13 to ensure compliance with this chapter. The board may conduct such  
14 inspections with local law enforcement.

15 (3) Menthol-flavored tobacco products sold, offered for sale, or  
16 possessed in violation of this chapter are subject to seizure and  
17 forfeiture by the liquor and cannabis board.

18 NEW SECTION. **Sec. 19.** A new section is added to chapter 82.04  
19 RCW to read as follows:

20 (1) Beginning with business activities occurring on or after July  
21 1, 2021, a vapor products surcharge is imposed as follows:

22 (a) Upon every person engaging within this state in business as a  
23 manufacturer of vapor products, in addition to the tax imposed under  
24 RCW 82.04.240, a surcharge equal to the value of the manufactured  
25 vapor products, including by-products, multiplied by the rate of 4.4  
26 percent;

27 (b) Upon every person engaging within this state in business as a  
28 vapor product distributor licensed under RCW 70.345.020, in addition  
29 to the tax imposed under RCW 82.04.240, a surcharge equal to the  
30 value of the manufactured vapor products, including by-products,  
31 multiplied by the rate of 4.4 percent.

32 (2) Beginning with business activities occurring on or after July  
33 1, 2021, a tobacco products surcharge is imposed as follows:

34 (a) Upon every person engaging within this state in business as a  
35 manufacturer of tobacco products, in addition to the tax imposed  
36 under RCW 82.04.240, a surcharge equal to the value of the  
37 manufactured tobacco products, including by-products, multiplied by  
38 the rate of 4.4 percent;

1 (b) Upon every person engaging within this state in business as a  
2 tobacco product distributor licensed under RCW 82.26.190, in addition  
3 to the tax imposed under RCW 82.04.240, a surcharge equal to the  
4 value of the manufactured tobacco products, including by-products,  
5 multiplied by the rate of 4.4 percent.

6 **Sec. 20.** RCW 82.25.005 and 2019 c 445 s 101 are each amended to  
7 read as follows:

8 The definitions in this section apply throughout this chapter  
9 unless the context clearly requires otherwise.

10 (1) (~~("Accessible container" means a container that is intended~~  
11 ~~to be opened. The term does not mean a closed cartridge or closed~~  
12 ~~container that is not intended to be opened such as a disposable e-~~  
13 ~~cigarette.~~

14 ~~(2))~~ "Affiliated" means related in any way by virtue of any form  
15 or amount of common ownership, control, operation, or management.

16 ~~((3))~~ (2) "Board" means the Washington state liquor and  
17 cannabis board.

18 ~~((4))~~ (3) "Business" means any trade, occupation, activity, or  
19 enterprise engaged in selling or distributing vapor products in this  
20 state.

21 ~~((5))~~ (4) "Distributor" (~~(mean[s])~~) means any person:

22 (a) Engaged in the business of selling vapor products in this  
23 state who brings, or causes to be brought, into this state from  
24 outside the state any vapor products for sale;

25 (b) Who makes, manufactures, fabricates, or stores vapor products  
26 in this state for sale in this state;

27 (c) Engaged in the business of selling vapor products outside  
28 this state who ships or transports vapor products to retailers or  
29 consumers in this state; or

30 (d) Engaged in the business of selling vapor products in this  
31 state who handles for sale any vapor products that are within this  
32 state but upon which tax has not been imposed.

33 ~~((6))~~ (5) "Indian country" has the same meaning as provided in  
34 RCW 82.24.010.

35 ~~((7))~~ (6) "Manufacturer" has the same meaning as provided in  
36 RCW 70.345.010.

37 ~~((8) "Manufacturer's representative" means a person hired by a~~  
38 ~~manufacturer to sell or distribute the manufacturer's vapor products~~  
39 ~~and includes employees and independent contractors.~~

1       ~~(9)~~) (7) "Person" means: Any individual, receiver,  
2 administrator, executor, assignee, trustee in bankruptcy, trust,  
3 estate, firm, copartnership, joint venture, club, company, joint  
4 stock company, business trust, municipal corporation, corporation,  
5 limited liability company, association, or society; the state and its  
6 departments and institutions; any political subdivision of the state  
7 of Washington; and any group of individuals acting as a unit, whether  
8 mutual, cooperative, fraternal, nonprofit, or otherwise. Except as  
9 provided otherwise in this chapter, "person" does not include any  
10 person immune from state taxation, including the United States or its  
11 instrumentalities, and federally recognized Indian tribes and  
12 enrolled tribal members, conducting business within Indian country.

13       ~~((10))~~ (8) "Place of business" means any place where vapor  
14 products are sold or where vapor products are manufactured, stored,  
15 or kept for the purpose of sale, including any vessel, vehicle,  
16 airplane, or train.

17       ~~((11))~~ (9) "Retail outlet" has the same meaning as provided in  
18 RCW 70.345.010.

19       ~~((12))~~ (10) "Retailer" has the same meaning as provided in RCW  
20 70.345.010.

21       ~~((13))~~ (11) "Sale" has the same meaning as provided in RCW  
22 70.345.010.

23       ~~((14))~~ (12) "Taxpayer" means a person liable for the tax  
24 imposed by this chapter.

25       ~~((15))~~ (13) "Vapor product" means any noncombustible product  
26 containing a solution or other consumable substance, regardless of  
27 whether it contains nicotine, which employs a mechanical heating  
28 element, battery, or electronic circuit regardless of shape or size  
29 that can be used to produce vapor from the solution or other  
30 substance, including an electronic cigarette, electronic cigar,  
31 electronic cigarillo, electronic pipe, or similar product or device.  
32 The term also includes any cartridge or other container of liquid  
33 nicotine, solution, or other consumable substance, regardless of  
34 whether it contains nicotine, that is intended to be used with or in  
35 a device that can be used to deliver aerosolized or vaporized  
36 nicotine to a person inhaling from the device and is sold for such  
37 purpose.

38       (a) The term does not include:

39       (i) Any product approved by the United States food and drug  
40 administration for sale as a tobacco cessation product, medical

1 device, or for other therapeutic purposes when such product is  
2 marketed and sold solely for such an approved purpose;

3 (ii) Any product that will become an ingredient or component in a  
4 vapor product manufactured by a distributor; or

5 (iii) Any product that meets the definition of marijuana, useable  
6 marijuana, marijuana concentrates, marijuana-infused products,  
7 cigarette, or tobacco products.

8 (b) For purposes of this subsection (~~((15))~~) (13):

9 (i) "Cigarette" has the same meaning as provided in RCW  
10 82.24.010; and

11 (ii) "Marijuana," "useable marijuana," "marijuana concentrates,"  
12 and "marijuana-infused products" have the same meaning as provided in  
13 RCW 69.50.101.

14 **Sec. 21.** RCW 82.25.010 and 2019 c 445 s 102 are each amended to  
15 read as follows:

16 (1) (a) There is levied and collected a (~~(tax upon the sale, use,~~  
17 ~~consumption, handling, possession, or distribution of all vapor~~  
18 ~~products in this state as follows:~~

19 ~~(i) All vapor products other than those taxed under (a) (ii) of~~  
20 ~~this subsection are taxed at a rate equal to twenty-seven cents per~~  
21 ~~milliliter of solution, regardless of whether it contains nicotine,~~  
22 ~~and a proportionate tax at the like rate on all fractional parts of a~~  
23 ~~milliliter thereof.~~

24 ~~(ii) Any accessible container of solution, regardless of whether~~  
25 ~~it contains nicotine, that is greater than five milliliters, is taxed~~  
26 ~~at a rate equal to nine cents per milliliter of solution and a~~  
27 ~~proportionate tax at the like rate on all fractional parts of a~~  
28 ~~milliliter thereof.~~

29 ~~(b) The tax in this section must be imposed based on the volume~~  
30 ~~of the solution as listed by the manufacturer.~~

31 ~~(2) (a) The tax under this section must be collected at the time~~  
32 ~~the distributor: (i) Brings, or causes to be brought, into this state~~  
33 ~~from without the state vapor products for sale; (ii) makes,~~  
34 ~~manufactures, fabricates, or stores vapor products in this state for~~  
35 ~~sale in this state; (iii) ships or transports vapor products to~~  
36 ~~retailers or consumers in this state; or (iv) handles for sale any~~  
37 ~~vapor products that are within this state but upon which tax has not~~  
38 ~~been imposed.~~



1 ~~(b) The tax imposed under this section must also be collected by~~  
2 ~~the department from the consumer of vapor products where the tax~~  
3 ~~imposed under this section was not paid by the distributor on such~~  
4 ~~vapor products.~~

5 (3)(a)) vapor product excise tax equal to 45 percent of the  
6 selling price on each retail sale in this state of vapor products.  
7 This tax is separate and in addition to general state and local sales  
8 and use taxes that apply to retail sales of tangible personal  
9 property, and is not part of the total retail price to which general  
10 state and local sales and use taxes apply. The tax must be separately  
11 itemized from the state and local retail sales tax on the sales  
12 receipt provided to the buyer.

13 (b) The tax levied in this section must be reflected in the price  
14 list or quoted shelf price in the vapor products retail store, on the  
15 website or sales platform of a delivery seller, and in any  
16 advertising of vapor products that includes prices for vapor  
17 products.

18 (2)(a) The moneys collected under this section must be deposited  
19 as follows:

20 (i) Fifty percent into the Andy Hill cancer research endowment  
21 fund match transfer account created in RCW 43.348.080; and

22 (ii) Fifty percent into the foundational public health services  
23 account created in RCW 82.25.015.

24 (b) The funding provided under this subsection is intended to  
25 supplement and not supplant general fund investments in cancer  
26 research and foundational public health services.

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

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

39 (a) "Product" means vapor products.

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

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

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

13 **Sec. 22.** RCW 82.25.020 and 2019 c 445 s 104 are each amended to  
14 read as follows:

15 It is the intent and purpose of this chapter to levy a tax on all  
16 vapor products sold(~~(r)~~) or used(~~(, consumed, handled, possessed, or~~  
17 ~~distributed)~~) within this state. It is the further intent and purpose  
18 of this chapter to impose the tax only once on all vapor products in  
19 this state. Nothing in this chapter may be construed to exempt any  
20 person taxable under any other law or under any other tax imposed  
21 under this title.

22 **Sec. 23.** RCW 82.25.075 and 2019 c 445 s 115 are each amended to  
23 read as follows:

24 (1) No person engaged in or conducting business as a distributor  
25 or retailer in this state may:

26 (a) Make, use, or present or exhibit to the department or the  
27 board any invoice for any of the vapor products taxed under this  
28 chapter that bears an untrue date or falsely states the nature or  
29 quantity of the goods invoiced; or

30 (b) Fail to produce on demand of the department or the board all  
31 invoices of all the vapor products taxed under this chapter within  
32 five years prior to such demand unless the person can show by  
33 satisfactory proof that the nonproduction of the invoices was due to  
34 causes beyond the person's control.

35 ~~(2) ((a) No person, other than a licensed distributor, retailer~~  
36 ~~or delivery sales licensee, or manufacturer's representative, may~~  
37 ~~transport vapor products for sale in this state for which the taxes~~  
38 ~~imposed under this chapter have not been paid unless:~~

1 ~~(i) Notice of the transportation has been given as required under~~  
2 ~~RCW 82.25.065;~~

3 ~~(ii) The person transporting the vapor products actually~~  
4 ~~possesses invoices or delivery tickets showing the true name and~~  
5 ~~address of the consignor or seller, the true name and address of the~~  
6 ~~consignee or purchaser, and the quantity and brands of vapor products~~  
7 ~~being transported; and~~

8 ~~(iii) The vapor products are consigned to or purchased by a~~  
9 ~~person in this state who is licensed under chapter 70.345 RCW.~~

10 ~~(b) A violation of this subsection (2) is a gross misdemeanor.~~

11 ~~(3)) Any person licensed under chapter 70.345 RCW as a~~  
12 ~~distributor, and any person licensed under chapter 70.345 RCW as a~~  
13 ~~retailer, may not operate in any other capacity unless the additional~~  
14 ~~appropriate license is first secured, except as otherwise provided by~~  
15 ~~law. A violation of this subsection ((3)) is a misdemeanor.~~

16 ~~((4)) (3) The penalties provided in this section are in~~  
17 ~~addition to any other penalties provided by law for violating the~~  
18 ~~provisions of this chapter or the rules adopted under this chapter.~~

19 ~~((5) This section does not apply to a motor carrier or freight~~  
20 ~~forwarder as defined in Title 49 U.S.C. Sec. 13102 or an air carrier~~  
21 ~~as defined in Title 49 U.S.C. Sec. 40102.))~~

22 **Sec. 24.** RCW 82.25.060 and 2019 c 445 s 112 are each amended to  
23 read as follows:

24 ~~((1)) The department may by rule establish the invoice detail~~  
25 ~~required under RCW 82.25.030 for a distributor and for those invoices~~  
26 ~~required to be provided to retailers under RCW 82.25.040.~~

27 ~~((2) If a retailer fails to keep invoices as required under RCW~~  
28 ~~82.25.040, the retailer is liable for the tax owed on any uninvoiced~~  
29 ~~vapor products but not penalties and interest, except as provided in~~  
30 ~~subsection (3) of this section.~~

31 ~~(3) If the department finds that the nonpayment of tax by the~~  
32 ~~retailer was willful or if in the case of a second or plural~~  
33 ~~nonpayment of tax by the retailer, penalties and interest must be~~  
34 ~~assessed in accordance with chapter 82.32 RCW.))~~

35 **Sec. 25.** RCW 82.25.080 and 2019 c 445 s 116 are each amended to  
36 read as follows:

37 (1) A retailer that obtains vapor products from an unlicensed  
38 distributor or any other person that is not licensed under chapter

1 70.345 RCW must be licensed both as a retailer and a distributor  
2 (~~and is liable for the tax imposed under RCW 82.25.010 with respect~~  
3 ~~to the vapor products acquired from the unlicensed person that are~~  
4 ~~held for sale, handling, or distribution in this state)). For the~~  
5 purposes of this subsection, "person" includes both persons defined  
6 in chapter 445, Laws of 2019 and any person immune from state  
7 taxation, such as the United States or its instrumentalities, and  
8 federally recognized Indian tribes and enrolled tribal members,  
9 conducting business within Indian country.

10 (2) Every distributor licensed under chapter 70.345 RCW may sell  
11 vapor products to retailers located in Washington only if the  
12 retailer has a current retailer's license under chapter 70.345 RCW.

13 NEW SECTION. **Sec. 26.** A new section is added to chapter 82.25  
14 RCW to read as follows:

15 (1) The legislature intends to create a tax credit so that vapor  
16 products taxed at the wholesale level under the law as it existed  
17 immediately before the effective date of this section are not also  
18 taxed in a retail sale under the provisions of this act.

19 (2) Except as provided in subsection (3) of this section, a tax  
20 credit is established and available to distributors with respect to  
21 vapor products:

22 (a) In their possession on the effective date of this section on  
23 which tax was paid to the state by the distributor pursuant to the  
24 law as it existed immediately before the effective date of this  
25 section; or

26 (b) Returned to the distributor by a retailer, other purchaser,  
27 or consignee, on or after the effective date of this section, if tax  
28 on the vapor products was previously paid by the distributor to the  
29 state pursuant to the law as it existed immediately before the  
30 effective date of this section.

31 (3) Nothing in this section authorizes a tax credit for vapor  
32 products that are expired, destroyed, unsellable, or that are not  
33 held for sale by the distributor and intended to ultimately be sold  
34 by a licensee at retail.

35 (4) Credit allowed under this section must be determined based on  
36 the tax rate in effect for the period for which the tax imposed by  
37 this chapter, for which a credit is sought, was paid.

38 (5) To be eligible for a tax credit under this section, a  
39 distributor shall apply for the credit to the department on a form

1 and in a manner required by the department. The department may  
2 establish requirements related to distributors documenting and  
3 claiming a tax credit pursuant to this section in order to determine  
4 eligibility.

5 **Sec. 27.** RCW 82.25.005 and 2019 c 445 s 101 are each amended to  
6 read as follows:

7 The definitions in this section apply throughout this chapter  
8 unless the context clearly requires otherwise.

9 (1) "Accessible container" means a container that is intended to  
10 be opened. The term does not mean a closed cartridge or closed  
11 container that is not intended to be opened such as a disposable e-  
12 cigarette.

13 (2) "Affiliated" means related in any way by virtue of any form  
14 or amount of common ownership, control, operation, or management.

15 (3) "Board" means the Washington state liquor and cannabis board.

16 (4) "Business" means any trade, occupation, activity, or  
17 enterprise engaged in selling or distributing vapor products in this  
18 state.

19 (5) "Distributor" (~~mean[s]~~) means any person:

20 (a) Engaged in the business of selling vapor products in this  
21 state who brings, or causes to be brought, into this state from  
22 outside the state any vapor products for sale;

23 (b) Who makes, manufactures, fabricates, or stores vapor products  
24 in this state for sale in this state;

25 (c) Engaged in the business of selling vapor products outside  
26 this state who ships or transports vapor products to retailers or  
27 consumers in this state; or

28 (d) Engaged in the business of selling vapor products in this  
29 state who handles for sale any vapor products that are within this  
30 state but upon which tax has not been imposed.

31 (6) "Indian country" has the same meaning as provided in RCW  
32 82.24.010.

33 (7) "Manufacturer" has the same meaning as provided in RCW  
34 70.345.010.

35 (~~("Manufacturer's representative" means a person hired by a  
36 manufacturer to sell or distribute the manufacturer's vapor products  
37 and includes employees and independent contractors.~~

38 ~~(9))~~ "Person" means: Any individual, receiver, administrator,  
39 executor, assignee, trustee in bankruptcy, trust, estate, firm,

1 copartnership, joint venture, club, company, joint stock company,  
2 business trust, municipal corporation, corporation, limited liability  
3 company, association, or society; the state and its departments and  
4 institutions; any political subdivision of the state of Washington;  
5 and any group of individuals acting as a unit, whether mutual,  
6 cooperative, fraternal, nonprofit, or otherwise. Except as provided  
7 otherwise in this chapter, "person" does not include any person  
8 immune from state taxation, including the United States or its  
9 instrumentalities, and federally recognized Indian tribes and  
10 enrolled tribal members, conducting business within Indian country.

11 ~~((10))~~ (9) "Place of business" means any place where vapor  
12 products are sold or where vapor products are manufactured, stored,  
13 or kept for the purpose of sale, including any vessel, vehicle,  
14 airplane, or train.

15 ~~((11))~~ (10) "Retail outlet" has the same meaning as provided in  
16 RCW 70.345.010.

17 ~~((12))~~ (11) "Retailer" has the same meaning as provided in RCW  
18 70.345.010.

19 ~~((13))~~ (12) "Sale" has the same meaning as provided in RCW  
20 70.345.010.

21 ~~((14))~~ (13) "Taxpayer" means a person liable for the tax  
22 imposed by this chapter.

23 ~~((15))~~ (14) "Vapor product" means any noncombustible product  
24 containing a solution or other consumable substance, regardless of  
25 whether it contains nicotine, which employs a mechanical heating  
26 element, battery, or electronic circuit regardless of shape or size  
27 that can be used to produce vapor from the solution or other  
28 substance, including an electronic cigarette, electronic cigar,  
29 electronic cigarillo, electronic pipe, or similar product or device.  
30 The term also includes any cartridge or other container of liquid  
31 nicotine, solution, or other consumable substance, regardless of  
32 whether it contains nicotine, that is intended to be used with or in  
33 a device that can be used to deliver aerosolized or vaporized  
34 nicotine to a person inhaling from the device and is sold for such  
35 purpose.

36 (a) The term does not include:

37 (i) Any product approved by the United States food and drug  
38 administration for sale as a tobacco cessation product, medical  
39 device, or for other therapeutic purposes when such product is  
40 marketed and sold solely for such an approved purpose;

1 (ii) Any product that will become an ingredient or component in a  
2 vapor product manufactured by a distributor; or

3 (iii) Any product that meets the definition of marijuana, useable  
4 marijuana, marijuana concentrates, marijuana-infused products,  
5 cigarette, or tobacco products.

6 (b) For purposes of this subsection (~~((15))~~) (14):

7 (i) "Cigarette" has the same meaning as provided in RCW  
8 82.24.010; and

9 (ii) "Marijuana," "useable marijuana," "marijuana concentrates,"  
10 and "marijuana-infused products" have the same meaning as provided in  
11 RCW 69.50.101.

12 **Sec. 28.** RCW 82.25.065 and 2019 c 445 s 113 are each amended to  
13 read as follows:

14 (1) No person may transport or cause to be transported in this  
15 state vapor products for sale other than: (a) A licensed distributor  
16 under chapter 70.345 RCW (~~(, or a manufacturer's representative~~  
17 ~~authorized to sell or distribute vapor products in this state)); (b)~~  
18 a licensed manufacturer under chapter 70.345 RCW; (~~((b))~~) (c) a  
19 licensed retailer under chapter 70.345 RCW; (~~((e))~~) (d) a seller with  
20 a valid delivery sale license under chapter 70.345 RCW; or (~~((d))~~)  
21 (e) a person who has given notice to the board in advance of the  
22 commencement of transportation.

23 (2) When transporting vapor products for sale, the person must  
24 have in his or her actual possession, or cause to have in the actual  
25 possession of those persons transporting such vapor products on his  
26 or her behalf, invoices or delivery tickets for the vapor products,  
27 which must show the true name and address of the consignor or seller,  
28 the true name and address of the consignee or purchaser, and the  
29 quantity and brands of the vapor products being transported.

30 (3) In any case where the department or the board, or any peace  
31 officer of the state, has knowledge or reasonable grounds to believe  
32 that any vehicle is transporting vapor products in violation of this  
33 section, the department, board, or peace officer is authorized to  
34 stop the vehicle and to inspect it for contraband vapor products.

35 (4) This section does not apply to a motor carrier or freight  
36 forwarder as defined in Title 49 U.S.C. Sec. 13102 or an air carrier  
37 as defined in Title 49 U.S.C. Sec. 40102.

1       **Sec. 29.** RCW 82.25.075 and 2019 c 445 s 115 are each amended to  
2 read as follows:

3       (1) No person engaged in or conducting business as a distributor  
4 or retailer in this state may:

5       (a) Make, use, or present or exhibit to the department or the  
6 board any invoice for any of the vapor products taxed under this  
7 chapter that bears an untrue date or falsely states the nature or  
8 quantity of the goods invoiced; or

9       (b) Fail to produce on demand of the department or the board all  
10 invoices of all the vapor products taxed under this chapter within  
11 five years prior to such demand unless the person can show by  
12 satisfactory proof that the nonproduction of the invoices was due to  
13 causes beyond the person's control.

14       (2)(a) No person, other than a licensed distributor, retailer or  
15 delivery sales licensee, or ~~((manufacturer's—representative))~~  
16 licensed manufacturer, may transport vapor products for sale in this  
17 state for which the taxes imposed under this chapter have not been  
18 paid unless:

19       (i) Notice of the transportation has been given as required under  
20 RCW 82.25.065;

21       (ii) The person transporting the vapor products actually  
22 possesses invoices or delivery tickets showing the true name and  
23 address of the consignor or seller, the true name and address of the  
24 consignee or purchaser, and the quantity and brands of vapor products  
25 being transported; and

26       (iii) The vapor products are consigned to or purchased by a  
27 person in this state who is licensed under chapter 70.345 RCW.

28       (b) A violation of this subsection (2) is a gross misdemeanor.

29       (3) Any person licensed under chapter 70.345 RCW as a  
30 distributor, and any person licensed under chapter 70.345 RCW as a  
31 retailer, may not operate in any other capacity unless the additional  
32 appropriate license is first secured, except as otherwise provided by  
33 law. A violation of this subsection (3) is a misdemeanor.

34       (4) The penalties provided in this section are in addition to any  
35 other penalties provided by law for violating the provisions of this  
36 chapter or the rules adopted under this chapter.

37       (5) This section does not apply to a motor carrier or freight  
38 forwarder as defined in Title 49 U.S.C. Sec. 13102 or an air carrier  
39 as defined in Title 49 U.S.C. Sec. 40102.



1       **Sec. 30.** RCW 82.25.090 and 2019 c 445 s 118 are each amended to  
2 read as follows:

3       (1) Any vapor products in the possession of a person selling  
4 vapor products in this state acting as a distributor or retailer and  
5 who is not licensed as required under chapter 70.345 RCW, or a person  
6 who is selling vapor products in violation of RCW 82.24.550(6), may  
7 be seized without a warrant by any agent of the department, agent of  
8 the board, or law enforcement officer of this state. Any vapor  
9 products seized under this subsection are deemed forfeited.

10       (2) Any vapor products in the possession of a person who is not a  
11 licensed distributor, delivery seller, (~~manufacturer's~~  
12 ~~representative~~) manufacturer, or retailer and who transports vapor  
13 products for sale without having provided notice to the board  
14 required under RCW 82.25.065, or without invoices or delivery tickets  
15 showing the true name and address of the consignor or seller, the  
16 true name and address of the consignee or purchaser, and the quantity  
17 and brands of vapor products being transported may be seized and are  
18 subject to forfeiture.

19       (3) All conveyances, including aircraft, vehicles, or vessels  
20 that are used, or intended for use to transport, or in any manner to  
21 facilitate the transportation, for the purpose of sale or receipt of  
22 vapor products under subsection (2) of this section, may be seized  
23 and are subject to forfeiture except:

24       (a) A conveyance used by any person as a common or contract  
25 carrier having in actual possession invoices or delivery tickets  
26 showing the true name and address of the consignor or seller, the  
27 true name of the consignee or purchaser, and the quantity and brands  
28 of the vapor products transported, unless it appears that the owner  
29 or other person in charge of the conveyance is a consenting party or  
30 privy to a violation of this chapter;

31       (b) A conveyance subject to forfeiture under this section by  
32 reason of any act or omission of which the owner establishes to have  
33 been committed or omitted without his or her knowledge or consent; or

34       (c) A conveyance encumbered by a bona fide security interest if  
35 the secured party neither had knowledge of nor consented to the act  
36 or omission.

37       (4) Property subject to forfeiture under subsections (2) and (3)  
38 of this section may be seized by any agent of the department, the  
39 board, or law enforcement officer of this state upon process issued

1 by any superior court or district court having jurisdiction over the  
2 property. Seizure without process may be made if:

3 (a) The seizure is incident to an arrest or a search warrant or  
4 an inspection under an administrative inspection warrant; or

5 (b) The department, board, or law enforcement officer has  
6 probable cause to believe that the property was used or is intended  
7 to be used in violation of this chapter and exigent circumstances  
8 exist making procurement of a search warrant impracticable.

9 (5) This section may not be construed to require the seizure of  
10 vapor products if the department's agent, board's agent, or law  
11 enforcement officer reasonably believes that the vapor products are  
12 possessed for personal consumption by the person in possession of the  
13 vapor products.

14 (6) Any vapor products seized by a law enforcement officer must  
15 be turned over to the board as soon as practicable.

16 (7) This section does not apply to a motor carrier or freight  
17 forwarder as defined in Title 49 U.S.C. Sec. 13102 or an air carrier  
18 as defined in Title 49 U.S.C. Sec. 40102.

19 NEW SECTION. **Sec. 31.** A new section is added to chapter 82.25  
20 RCW to read as follows:

21 (1) A bundled transaction that includes a vapor product is  
22 subject to the tax imposed under this chapter on the entire selling  
23 price of the bundled transaction.

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

26 (a) "Bundled transaction" means:

27 (i) The sale of two or more products where the products are  
28 otherwise distinct and identifiable, are sold for one nonitemized  
29 price, and at least one product is a vapor product subject to the tax  
30 under this chapter; and

31 (ii) A vapor product provided free of charge with the required  
32 purchase of another product. A vapor product is provided free of  
33 charge if the sales price of the product purchased does not vary  
34 depending on the inclusion of the vapor product provided free of  
35 charge.

36 (b) "Distinct and identifiable products" does not include  
37 packaging such as containers, boxes, sacks, bags, and bottles, or  
38 materials such as wrapping, labels, tags, and instruction guides,

1 that accompany the sale of the products and are incidental or  
2 immaterial to the sale thereof.

3 NEW SECTION. **Sec. 32.** A new section is added to chapter 82.25  
4 RCW to read as follows:

5 (1) The taxes imposed by this chapter do not apply to the sale of  
6 vapor products by an Indian retailer during the effective date of a  
7 vapor product tax contract subject to RCW 43.06.510 or a vapor  
8 product tax agreement under RCW 43.06.515.

9 (2) The definitions in RCW 43.06.505 apply to this section.

10 NEW SECTION. **Sec. 33.** A new section is added to chapter 70.345  
11 RCW to read as follows:

12 For the purpose of carrying into the effect the provisions of  
13 this chapter according to their true intent or supplying any  
14 deficiency therein, the board and the department of health may adopt  
15 those rules as are deemed necessary or advisable.

16 NEW SECTION. **Sec. 34.** The following acts or parts of acts are  
17 each repealed:

18 (1) RCW 70.345.210 (State preemption—Exceptions) and 2016 sp.s. c  
19 38 s 3;

20 (2) RCW 82.25.045 (Shipped or transported outside state—Tax  
21 credit) and 2019 c 445 s 109; and

22 (3) RCW 82.25.085 (Manufacturer's representatives) and 2019 c 445  
23 s 117.

24 NEW SECTION. **Sec. 35.** If any provision of this act or its  
25 application to any person or circumstance is held invalid, the  
26 remainder of the act or the application of the provision to other  
27 persons or circumstances is not affected.

28 NEW SECTION. **Sec. 36.** If any part of this act is found to be in  
29 conflict with federal requirements that are a prescribed condition to  
30 the allocation of federal funds to the state, the conflicting part of  
31 this act is inoperative solely to the extent of the conflict and with  
32 respect to the agencies directly affected, and this finding does not  
33 affect the operation of the remainder of this act in its application  
34 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. 37.** Sections 17 and 18 of this act constitute  
4 a new chapter in Title 70 RCW.

5 NEW SECTION. **Sec. 38.** Sections 20 through 26 of this act take  
6 effect January 1, 2022.

7 NEW SECTION. **Sec. 39.** Sections 27 and 29 of this act expire  
8 January 1, 2022.

9 NEW SECTION. **Sec. 40.** Section 19 of this act is necessary for  
10 the immediate preservation of the public peace, health, or safety, or  
11 support of the state government and its existing public institutions,  
12 and takes effect July 1, 2021.

--- END ---