

Vapor Product Bill: HB 1645 (1/26/15)

Topic	Section	Description	Notes/Commentary
Underage sales and purchase	102	Prohibits vapor product sales to and purchases by persons under age 18, with same penalties as cigarettes	Updates language defining “vapor product” – see section 104.
School policies	103	Requires school districts to prohibit use of vapor products on school property	Current law is that schools SHALL have a policy prohibiting use of tobacco on property. New language is that schools MUST have a policy and adds vapor products to the prohibition.
Definitions	104	Definitions of terms used	<ul style="list-style-type: none"> • Notably changes current “vapor product” definition. • SB 5124 also changes vapor product definition but is not as comprehensive and exempts products designed solely to produce an ambient aroma.
Retailers	105,106	Requires vapor product retailers to be licensed, post signage, check identification, and maintain the business in compliance with criminal laws	Adds “vapor product” to current language about tobacco product retailers.
Vending machines	107	Prohibits sales of vapor products through vending machines (except in 21 and over locations)	Adds “vapor product” to current language about tobacco vending machines; includes language “unless preempted by federal law” and changes SHALL to MUST.
Sampling and coupons	108, 109	Prohibits the business of sampling vapor products as well as distributing vapor products by coupon without an in-person transaction	Adds “vapor product” to current language about sampling and coupons; includes language “unless preempted by federal law” and changes SHALL to MUST.
Labeling and advertisement	110	Requires DOH to adopt a rule on labeling and advertising that requires manufacturers to disclosure nicotine content (verified by an independent lab) and a warning regarding the harmful effects of nicotine; permits DOH to require labeling regarding other harmful constituents	<ul style="list-style-type: none"> • New section that applies only to vapor products. • SB 5477 also addresses this topic but omits requirement for labeling with nicotine content and warning is instead to “keep away from children.” Omits language about independent lab and labeling regarding other harmful constituents.

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Open display	111	Requires retailers to store vapor and tobacco products behind the counter (except in stores limited to 21 and over)	This closes a loophole related to tobacco products as well as adds vapor products. Current federal law only requires behind the counter sales for cigarettes and smokeless tobacco but not little cigars or “other tobacco products” like hookah.
Child resistant packaging	112	Requires child resistant packaging for vapor products	New language. SB 5477 also addresses this but includes language that exempts products that are “not intended to be opened by the consumer” and makes the provisions null and void if there are regulations made at the federal level.
Flavored products	113	Prohibits the sale of vapor products with flavors related to fruit, chocolate, vanilla, honey, candy, cocoa, or dessert and exempts flavors related to menthol, wintergreen or mint	New language. This expands the federal prohibition on flavored cigarettes except for menthol. If enacted as written, there would still be a loophole for flavored “other tobacco products” such as little cigars and hookah. See definition of “characterizing flavor” in section 104.
Product composition	114	Prohibits the sale of a vapor product containing a substance that increases the absorption of nicotine or other psychoactive chemicals, as determined by DOH	This is related to a concern that the Tobacco Industry has added substances to cigarettes that increased nicotine absorption.
Possession	115	A person under 18 who purchases, possesses, or obtains or attempts to obtain cigarettes tobacco products, or vapor products commits a class 3 civil infraction	Amends current language to include vapor products.
Penalties	117	Doubles the penalties under current law applicable to tobacco violations and applies them to vapor products and increasing time period from 2 to 3 years	This change from 2 to 3 years is critical because there has been a marked reduction in compliance checks in past years (with decreased funding) so this allows for more time for repeat checks to be done.
Youth Tobacco Account	119	Adds vapor products to title of account in treasury	Adds “vapor product” to current language about tobacco prevention account; changes SHALL to MUST for departments impacted. Current language requires the 30% of funds to be

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			paid to LCB for enforcement and up to 70% on grants to LHJs and local other community agencies.
Preemption	120	Provides that nothing preempts local governments from imposing additional restrictions on the sale, purchase, use, or promotion of vapor products	Includes floor preemption language only for vapor products to clearly state that this does not preempt locals from imposing additional restrictions.
Internet shipping of tobacco	121	Bans shipping of vapor products purchased by mail or the internet, except to licensed wholesalers, distributors, and retailers; creates an exception for concentrated nicotine sold to a business with a demonstrated commercial or industrial need for concentrated nicotine if LCB grants a waiver	Amends current tobacco internet shipping restrictions to include vapor products and distributors.
Study	124	DOH and LCB must study whether the label and disclosure should include information regarding harmful vapor product constituents or vapor product aerosol constituents other than nicotine; also DOH must submit a report recommending if additional vapor product flavors should be restricted.	Report must be submitted by Dec. 1, 2016 and this provision expires Jan.1, 2017.
Tax	202	Taxes vapor products at 95%, with provisions generally parallel to the tax on other tobacco products	The moneys collected under this section must be deposited as follows: (a) Ninety percent into the state general fund; and (b) ten percent into the essential public health services account created in 203 of this act.
Tax Distributions	203	Directs revenues to the General Fund, with dedicated amounts for public health, including substance use	<ul style="list-style-type: none"> DOH must use the money in three ways: (a) To fund 10 essential governmental public health services; (b) to fund tobacco control and prevention and other substance use

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		prevention and education and public health education and training	<p>prevention and education; and (c) to use to strengthen and support public health system capabilities, including <i>accredited higher education public health programs</i>.</p> <ul style="list-style-type: none"> • UW has requested that this language be changed to “to use to strengthen and support public health system capabilities, including schools of public health accredited by the Council on Education for Public Health.” • DOH and LHJs must arrive at a mutually acceptable funding allocation.
Expiration	204	States that tax will expire 10 years from effective date.	Have contacted department of revenue to determine if this interpretation is correct.
Fees	217; 231	Imposes a \$250 license and renewal fee on vapor product, cigarette, and other tobacco product retailers	For tobacco and OTP retailers, this is an increase from \$93 (which was established in 1993). Currently, tobacco retailers are able to obtain an “other tobacco products” retail fee at no additional cost. At most, retailers will pay \$500 (for a tobacco retail fee plus a vapor products fee).
Compacts	Part 3	Authorizes tribal compacting	
Effective date	404	October 1, 2015	