

# Summary of Washington State and Federal Vapor Product Regulations

JUNE 2016

The following is a brief summary of the new Washington State law (ESSB 6328) and FDA deeming rules related to e-cigarettes, vapor products, and other tobacco products. (Note: Starting on page 2, key elements of each regulation are listed in alphabetical order for quick reference.)

	WASHINGTON STATE LAW (ESSB 6328)	FDA DEEMING RULE
<b>LAWS/RULES</b>	Creates a new chapter within Title 70 RCW, alongside RCW 70.155 (Tobacco - Youth Access) and other statutes. Also amends 70.155, 26.28, and other chapters of the RCW.	Amends Title 21 of the Code of Federal Regulations (CFR) which contains the FDA's rules. Extends the federal Family Smoking Prevention and Tobacco Control Act of 2009 ("Tobacco Control Act") to electronic nicotine delivery systems/ENDS (including all vapor products with nicotine), hookah tobacco, cigars, pipe tobacco, dissolvables, and novel future products. FDA may now regulate these products just as it does cigarettes, cigarette tobacco, roll-your-own tobacco, smokeless tobacco, and other tobacco products.
<b>DEFINITIONS</b>	<p><b>Vapor product</b> Any noncombustible product that may or may not contain nicotine and that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size that can be used to produce vapor or aerosol from a solution or other substance.</p> <p>Includes any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and any vapor cartridge or other container that may contain nicotine in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device.</p>	<p><b>Tobacco product</b> Any product made or derived from tobacco, including nicotine, that is not a "drug," "device," or combination product under the FD&amp;C Act.</p> <p>The FDA regulations only cover vapor products that contain nicotine. This includes components or parts that are used for the consumption of a tobacco product, whether or not the component or part itself contains tobacco or nicotine.</p>

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<b>ADVERTISING</b>	No provision.	Warning labels required on “covered tobacco product” advertising: <i>WARNING: This product contains nicotine. Nicotine is an addictive chemical.</i>  Need FDA approval for health claims.
<b>AGE OF SALE AND PURCHASE</b>	<b>Age of sale/gift</b> – Sales/gifting only to those 18 and over. This has been in state law for two years.  <b>Age of possession, purchase</b> – Must be 18 or older. This is new to the state law.	<b>Age of sale/gift</b> – Sales/gifting only to those 18 or over (FDA requires check of anyone 27 years old and younger).  <b>Age of possession, purchase</b> – Must be 18 or older.
<b>CHILD RESISTANT PACKAGING</b>	Liquid nicotine containers must satisfy the child-resistant effectiveness standards established by the Poison Prevention Packaging Act of 1970, and enforced by the federal Consumer Product Safety Commission.	The FDA has also issued a draft guidance on premarket applications that addresses child-resistant packaging.
<b>COUPONS</b>	No coupons for free vapor products without purchase.	No provision.
<b>EFFECTIVE DATES</b>	Most provisions go in effect on June 28, 2016.  The licensing provisions, sections 5-10 and 28 go into effect 30 days after the Liquor and Cannabis Board prescribes the form for a license application.	Provisions that automatically apply to newly deemed products, such as the bans on free samples, along with minimum age, identification, and vending machine restrictions, are effective on August 8, 2016.  Health warning requirement is effective May 10, 2018.  Products not already on the market by February 15, 2007 must obtain premarket approval, and the FDA will stagger the effective dates for those. Manufacturers have 12, 18, or 24 months to apply to the FDA, and then another year to obtain approval. The effect is that premarket approval requirements will become effective from August 2018 to August 2019.
<b>INTERNET OR MAIL SALES</b>	May only occur with proof that purchaser is 18 years and older. Sellers must obtain a delivery sale license, and provide notice of the minimum age on their order form. Then, before accepting a purchase or order, they must verify the buyer’s full name, birth date, and residential address through a third-party database that is regularly used by government and businesses to verify age and identity. Further, they may only accept payment via a credit or debit card in the purchaser’s own name, and before shipping, must have the purchaser certify or declare that he or she is over 18.	Prohibit internet sales to minors, but does not require age verification.

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<p><b>LABELING</b></p>	<p>Nicotine liquid containers must be labeled with the following: (a) Warning regarding the harmful effects of nicotine; (b) warning to keep the vapor product away from children; (c) warning that vaping is illegal for those under the legal age to use the product; (d) the amount of nicotine in milligrams per milliliter of liquid and the total volume of liquid in milliliters. Manufacturers of closed system nicotine containers that make an annual disclosure to DOH under Section 13(2) need not include (d).</p> <p>This sunsets on a date to be designated by the LCB, when FDA regulations begin to mandate warning or advertisement requirements.</p>	<p>Warning labels on “covered tobacco product” packages (Does not include amount of nicotine in the product.):</p> <p><i>WARNING: This product contains nicotine. Nicotine is an addictive chemical.</i></p> <p>Health warning requirement is effective May 10, 2018.</p>
<p><b>LICENSURE</b></p>	<p>Retailers, distributors, and delivery sellers are required to have vapor product licenses. They may purchase tobacco or vapor license separately (\$175 each) or together (\$250) – This is the first increase in tobacco licensing fees since 1993.</p> <p>Funds go into the Youth Tobacco and Vapor Products Prevention Account (formerly the Youth Tobacco Prevention Account), with portions to Liquor and Cannabis Board (LCB) for enforcement, and to community youth tobacco and vapor product prevention activities.</p>	<p>No license requirement, but see “Manufacturing” topic below.</p>
<p><b>MANUFACTURING</b></p>	<p>Labeling requirements apply to a manufacturer or distributor that sells, offers for sale, or distributes vapor products.</p>	<p>Retailers who mix vapor products (containing nicotine) in their store are considered manufacturers. FDA requires manufacturers to obtain approval of all products that were not already on the market on February 15, 2007, obtain approval of new products/devices, and report ingredients in their products.</p>
<p><b>PENALTIES</b></p>	<p><b>Minors</b> – Class 3 Civil penalty or 4 hours community service.</p> <p><b>Retailers</b> – For violation within 3 year period of the most recent offense: \$200 first offense; \$600 second offense; \$2,000 third offense; \$3,000 fourth and subsequent offense; License revoked for five years for the fifth violation.</p> <p><b>Clerks</b> – Gross misdemeanor (criminal penalty) though enforcement officer may limit to \$100 for first offense; \$200 for each following offense.</p> <p><b>Mail and Internet Sales</b> – Violations of the mail and internet sales provisions are violations of the consumer protection act, and expose the violator to an action by the Attorney General seeking injunctions, restitution, civil penalties of up to \$2000 per violation, and recovery of costs and fees.</p>	<p>Violation of rule provisions may result in warning letters, criminal prosecution, civil money penalties, injunction, seizure, and/or no-sale orders.</p>

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<b>PRE-MARKET PRODUCT REVIEW</b>	No provisions.	No new products after August 2016 without premarket tobacco application (PMTA) to FDA.  PMTA required for all products on market after 2007, staggered deadlines over next 2 years.
<b>PREEMPTION OF LOCAL ORDINANCES</b>	<p>No local regulation of promotions or retail sales.</p> <p>No local licenses other than general business licenses.</p> <p>No local taxes or fees other than general business taxes or fees.</p> <p>Local ordinances may regulate the use of vapor products in outdoor public places in areas where children congregate, such as schools, playgrounds and parks.</p> <p>Local ordinances may regulate the use of vapor products in indoor public places as long as they do not allow use of vapor products where state law forbids it.</p>	<p>State and local authority is preserved, except as noted below.</p> <p>No State or political subdivision of a State may establish (or continue) any requirement that is different from or in addition to any requirements of the Tobacco Control Act relating to:</p> <ul style="list-style-type: none"> <li>• Tobacco product standards;</li> <li>• Premarket review;</li> <li>• Adulteration;</li> <li>• Misbranding;</li> <li>• Labeling;</li> <li>• Registration;</li> <li>• Good manufacturing standards; or</li> <li>• Modified risk tobacco products.</li> </ul>
<b>SAMPLING &amp; TASTING</b>	Allows tasting in licensed, adult-only retail premises. Tasting of vapor products is limited to products without nicotine unless the customer explicitly consents to taste a vapor product with nicotine. (Note: The FDA has banned free samples or tasting of nicotine-containing vapor products.)	Prohibits tasting or sampling of tobacco products, including vapor products that contain nicotine. Product may be held, smelled and touched, but not inhaled or consumed.
<b>TAX</b>	None.	None.
<b>SIGNAGE</b>	<p>Requires retailers to post signs provided by the Department of Health stating that it's illegal to sell to minors: <i>The sale of vapor products to persons under age eighteen is strictly prohibited by state law. If you are under age eighteen, you could be penalized for purchasing a vapor product; photo ID required.</i></p> <p>For retailers also licensed to sell cigarettes or other tobacco products, the Liquor and Cannabis Board will distribute a sign that warns about selling either tobacco or vapor products to those under 18.</p> <p>No requirement for signage in schools, but DOH has distributed school signs that say schools are "electronic cigarette and vapor-free."</p>	No provision.

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<p><b>USE (IN PUBLIC PLACES)</b></p>	<p><b>Outdoor</b> – Prohibited on the property of child care facilities (except in-home child care facilities when kids are not present), on school property, and in playgrounds between sunrise and sunset when at least one child under 12 is present. No other state prohibitions. Local jurisdictions may regulate use in outdoor public places where children congregate, such as schools, and playgrounds.</p> <p><b>Indoor</b> – Prohibited in schools, within 500 feet of schools, on school buses, in elevators, and in child care facilities (except in-home child care facilities when no kids are present). Local jurisdictions may regulate indoor use, but cannot allow use in places where state law bans it.</p> <p>Note that the bill language on use in public places is not part of, and did not amend, RCW 70.160, the state Smoking in Public Places law.</p>	<p>No provision.</p>
<p><b>VENDING MACHINES/SELF-SERVICE</b></p>	<p>No self-service displays or vending machines except in adult-only stores with signs posted at all entrances stating that minors are prohibited.</p>	<p>No self-service displays. Vending machines only in adult-only areas.</p>
<p><b>ONLINE RESOURCES</b></p>	<p>ESSB 6328, Chapter 38, Laws of 2016: <a href="http://apps.leg.wa.gov/billinfo/summary.aspx?bill=6328">http://apps.leg.wa.gov/billinfo/summary.aspx?bill=6328</a></p> <p>WA DOH Tobacco page: <a href="http://www.doh.wa.gov/YouandYourFamily/Tobacco">http://www.doh.wa.gov/YouandYourFamily/Tobacco</a></p> <p>WA Liquor &amp; Cannabis Board: <a href="http://www.liq.wa.gov/">http://www.liq.wa.gov/</a></p>	<p>Complete Deeming Rule: <a href="https://federalregister.gov/a/2016-10685">https://federalregister.gov/a/2016-10685</a></p> <p>FDA Tobacco Regulation page: <a href="http://www.fda.gov/tobacco">http://www.fda.gov/tobacco</a></p>

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