



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

December 20, 2010

R&R BOH10-04.2

Proposed No. BOH10-04.2

Sponsors

1 A RULE AND REGULATION relating to electronic
2 smoking devices and unapproved nicotine delivery
3 products and adding a new chapter to BOH Title 19;
4 enacted pursuant to RCW 70.05.060 and 70.160.080,
5 including the latest amendments or revisions thereto.

6 BE IT ADOPTED BY THE KING COUNTY BOARD OF HEALTH:

7 SECTION 1. BOHC Title 19 is hereby amended to be entitled "TOBACCO
8 PRODUCTS, ELECTRONIC SMOKING DEVICES AND UNAPPROVED NICOTINE
9 DELIVERY PRODUCTS."

10 SECTION 2. Sections 3 through 14 of this rule and regulation should constitute a
11 new chapter in BOHC Title 19.

12 NEW SECTION. SECTION 3. **Adoption as exercise of powers - construction**
13 **- purposes - intent.**

14 A. This chapter is adopted as an exercise of the board of health powers of King
15 County to protect and preserve the public peace, health, safety and welfare. Its
16 provisions shall be liberally construed for the accomplishment of these purposes.

17 B. It is expressly the purpose of this chapter to provide for and promote the
18 health, safety and welfare of the general public, and not to create or otherwise establish or

19 designate any particular class or group of persons who will or should be especially
20 protected or benefited by this chapter.

21 C. It is the specific intent of this chapter to place the obligation of complying
22 with its requirements upon the owner of each establishment within its scope, and no
23 provision or term used in this title is intended to impose any duty whatsoever upon King
24 County or any of its officers or employees, for whom the implementation or enforcement
25 of this title is discretionary and not mandatory.

26 D. Nothing in this chapter is intended to be or shall be construed to create or form
27 the basis for any liability on the part of King County, or its officers, employees or agents,
28 for any injury or damage resulting from the failure of any person subject to this chapter to
29 comply with this chapter, or by reason or in consequence of any act or omission in
30 connection with the implementation or enforcement of this chapter on the part of King
31 County by its officers, employees or agents.

32 NEW SECTION. SECTION 4. Citation and reference to chapter. This
33 chapter may be cited and referred to as the "Restriction on Sale, Use and Availability of
34 Electronic Smoking Devices and Unapproved Nicotine Delivery Products."

35 NEW SECTION. SECTION 5. Findings. The Board of Health finds that the
36 emergence of new, unregulated electronic smoking devices and unregulated nicotine
37 delivery products presents a threat to the public health.

38 Electronic smoking devices, commonly referred to as electronic cigarettes or e-
39 cigarettes, are battery operated devices that closely resemble cigarettes, although they do
40 not contain tobacco. People who use electronic smoking devices inhale vaporized liquid

41 nicotine, or other liquids, created by heat through an electronic ignition system and
42 exhale the vapor in a way that mimics smoking.

43 In addition to electronic smoking devices, other unregulated nicotine delivery
44 products have recently emerged on the market. These include bottled water products
45 containing nicotine, sometimes referred to as "nico-water," and nicotine lollipops that
46 taste and look exactly like regular candy lollipops but contain nicotine.

47 The United States Food and Drug Administration has conducted laboratory tests
48 on numerous brands of electronic smoking devices and found that they contained toxic
49 chemicals and carcinogens in addition to nicotine. Although some electronic smoking
50 devices claim not to contain nicotine, there is no regulatory program to monitor this
51 assertion. The United States Department of Health and Human Services has concluded
52 that nicotine is as addictive as cocaine or heroin and is a highly toxic substance.

53 Electronic smoking devices and other unapproved nicotine delivery products have
54 a high appeal to youth due to their high tech design and availability in child-friendly
55 flavors like chocolate and strawberry. They also present a substantial risk of nicotine
56 addiction and resultant harm to the public health and safety. In addition, the use of
57 electronic smoking devices in public places and places of employment returns smoking to
58 the public consciousness, and complicates enforcement of the state and county laws
59 governing the smoking of tobacco products in public places.

60 NEW SECTION. SECTION 6. Definitions. As used in this chapter, the
61 following terms shall be defined as follows:

62 A. "Electronic smoking device" means an electronic or battery-operated device,
63 the use of which resembles smoking, that can be used to deliver nicotine or other

64 substances to the person inhaling from the device. "Electronic smoking device" includes,
65 but is not limited to, an electronic cigarette, an electronic cigar, an electronic cigarillo, an
66 electronic pipe and an electronic hookah. "Electronic smoking device" does not include a
67 cigarette, as defined in RCW Chapter 82.24 or tobacco products, as defined in RCW
68 Chapter 82.26.

69 B. "Employer" shall have the meaning set forth in BOH 19.03.040.

70 C. "Minor" means any person younger than eighteen years old.

71 D. "Person" means any natural person, individual, corporation, unincorporated
72 association, proprietorship, firm partnership, joint venture, joint stock association or other
73 entity of business of any kind.

74 E. "Place of employment" shall have the meaning set forth in BOH 19.03.040.

75 F. "Public place" shall have the meaning set forth in BOH 19.03.040.

76 G. "Seller" means any person who sells, distributes with an economic or a
77 business purpose, offers for sale or does or offers to exchange for any form of
78 consideration, electronic smoking devices or unapproved nicotine delivery products.

79 F. "Unapproved nicotine delivery product" means a product containing or
80 delivering nicotine intended or expected for human consumption, or any part of such a
81 product, that is not a cigarette, as defined by RCW 82.24.010, or a tobacco product, as
82 defined by RCW 82.26.010, and that has not been approved or otherwise certified for sale
83 by the United States Food and Drug Administration as a tobacco use cessation product, or
84 for other medical purposes.

85 NEW SECTION. SECTION 7. Age identification requirement. Each seller
86 shall verify by means of photographic identification listed in RCW 70.155.090 that no

87 person purchasing electronic smoking devices or unapproved nicotine delivery devices is
88 younger than eighteen years old, except that no such verification is required for any
89 purchaser over twenty-six years old.

90 NEW SECTION. SECTION 8. Sale to minors prohibited.

91 A. No person shall sell, give or furnish, or cause or allow to be sold, given or
92 furnished, electronic smoking devices to a minor unless those products have been
93 approved or otherwise certified for legal sale by the United States Food and Drug
94 Administration and approved for use by minors, and the products are being sold, given or
95 otherwise furnished pursuant to that approval and in full compliance with any related
96 Food and Drug Administration rules, regulations or other requirements.

97 B. No person shall sell, give or furnish, or cause or allow to be sold, given or
98 furnished, unapproved nicotine delivery devices product to a minor.

99 C. It is a defense to a prosecution for violation of this section that the person
100 making the sale, gift or otherwise furnishing the product reasonably relied on any of the
101 officially issued identifications listed in RCW 70.155.090 showing that the purchaser or
102 recipient was at least eighteen years old.

103 NEW SECTION. SECTION 9. Sampling prohibited. No manufacturer, seller
104 or distributor of electronic smoking devices or unapproved nicotine delivery products
105 shall:

106 A. Give, or cause or allow to be given, an electronic smoking device or
107 unapproved nicotine delivery product to any person at no cost or at nominal cost; or

108 B. Permit the use of an electronic smoking device or unapproved nicotine
109 delivery product at no cost or at nominal cost in any public place or place of employment.

110 NEW SECTION. SECTION 10. Coupons. To help prevent minors from
111 accessing electronic smoking devices or unapproved nicotine delivery products, no
112 person shall give or distribute electronic smoking devices or unapproved nicotine
113 delivery products to a person by a coupon if the coupon is redeemed in any manner that
114 does not require an in-person transaction in a retail store.

115 NEW SECTION. SECTION 11. Mechanical sales restricted. No person shall
116 sell or permit to be sold electronic smoking devices or unapproved nicotine delivery
117 products through any device that mechanically dispenses such products unless the device
118 is located fully within premises from which minors are prohibited or in industrial
119 worksites where minors are not employed and not less than ten feet from all entrance or
120 exit ways to and from each premise.

121 NEW SECTION. SECTION 12. Use of electronic smoking devices prohibited
122 **in public places and places of employment.** Owners, or in the case of a leased or rented
123 space the lessee or other person in charge, shall prohibit the use of electronic smoking
124 devices in public places and places of employment.

125 NEW SECTION. SECTION 13. Enforcement - regulations.

126 A. The director is authorized to enforce this chapter in accordance with BOH
127 chapter 1.08 and consistent with subsections B. and C. of this section.

128 B. The civil penalties that may be imposed on sellers for violations of this chapter
129 shall be assessed as follows:

130 1. For a violation of section 7 of this rule, a penalty of fifty dollars for the first
131 violation and one hundred dollars for each subsequent violation.

132 2. For a violation of section 8 of this rule:

- 133 a. A penalty of one hundred dollars for the first violation within any two-year
134 period;
- 135 b. A penalty of three hundred dollars for the second violation within any two-
136 year period;
- 137 c. A penalty of one thousand dollars for the third violation within any two-year
138 period; and
- 139 d. A penalty of one thousand five hundred dollars for a period of twelve
140 months for the fourth violation within any two-year period;
- 141 3. For a violation of section 9 of this rule, a penalty in the amount of three
142 hundred dollars for each violation;
- 143 4. For a violation of section 10 of this rule, a penalty in the amount of one
144 thousand dollars for each violation;
- 145 5. For a violation of section 11 of this rule, a penalty in the amount of one
146 hundred dollars for each day upon which the violation occurred; and
- 147 6. When violations of section 12 of this rule occur, a warning shall first be given
148 to the owner or other person in charge. Any subsequent violation is subject to a civil
149 penalty of up to one hundred dollars. Each day upon which a violation occurs or is
150 permitted to continue constitutes a separate violation.
- 151 C. The director may reduce or waive the penalties in this chapter if the elements
152 of proof are inadequate or if there are mitigating circumstances. Mitigating
153 circumstances may include, but are not limited to, an exercise of due diligence by a seller.
154 Further, the director may exceed penalties in this chapter based on aggravating
155 circumstances.

156 NEW SECTION. SECTION 14. Applicability. This chapter applies to the sale
157 and distribution of all electronic smoking devices and unapproved nicotine delivery
158 devices to the extent not preempted by federal law, including, but not limited to, the
159 regulation of those products by the United States Food and Drug Administration.

160 SECTION 15. Severability. If any provision of this rule or its application to any

161 person or circumstance is held invalid, the remainder of the rule or the application of the
162 provision to other persons or circumstances is not affected.
163

R&R BOH10-04.2 was introduced on and passed as amended by the Board of Health on 12/16/2010, by the following vote:

Yes: 10 - Mr. Hutchinson, Mr. Conlin, Ms. Patterson, Ms. Lambert,
Mr. Licata, Ms. Clark, Dr. Nicola and Ms. Manning
No: 0
Excused: 3 - Ms. Frisinger, Dr. Danielson and Mr. McDermott

BOARD OF HEALTH
KING COUNTY, WASHINGTON



Julia Patterson, Chair

ATTEST:



Anne Noris, Clerk of the Board

Attachments: None