A RULE AND REGULATION relating to electronic smoking devices and unapproved nicotine delivery products and adding a new chapter to BOH Title 19;

enacted pursuant to RCW 70.05.060 and 70.160.080,

including the latest amendments or revisions thereto.

BE IT ADOPTED BY THE KING COUNTY BOARD OF HEALTH:

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

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

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

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

B. It is expressly the purpose of this chapter to provide for and promote the health, safety and welfare of the general public, and not to create or otherwise establish or
designate any particular class or group of persons who will or should be especially
protected or benefited by this chapter.

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

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

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

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

Electronic smoking devices, commonly referred to as electronic cigarettes or e-
cigarettes, are battery operated devices that closely resemble cigarettes, although they do
not contain tobacco. People who use electronic smoking devices inhale vaporized liquid
nicotine, or other liquids, created by heat through an electronic ignition system and exhale the vapor in a way that mimics smoking.

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

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

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

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

A. "Electronic smoking device" means an electronic or battery-operated device, the use of which resembles smoking, that can be used to deliver nicotine or other
substances to the person inhaling from the device. "Electronic smoking device" includes, but is not limited to, an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe and an electronic hookah. "Electronic smoking device" does not include a cigarette, as defined in RCW Chapter 82.24 or tobacco products, as defined in RCW Chapter 82.26.

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

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

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

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

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

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

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

NEW SECTION. SECTION 7. Age identification requirement. Each seller shall verify by means of photographic identification listed in RCW 70.155.090 that no
person purchasing electronic smoking devices or unapproved nicotine delivery devices is younger than eighteen years old, except that no such verification is required for any purchaser over twenty-six years old.

NEW SECTION. SECTION 8. Sale to minors prohibited.

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

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

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

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

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

B. Permit the use of an electronic smoking device or unapproved nicotine delivery product at no cost or at nominal cost in any public place or place of employment.
NEW SECTION. SECTION 10. **Coupons.** To help prevent minors from accessing electronic smoking devices or unapproved nicotine delivery products, no person shall give or distribute electronic smoking devices or unapproved nicotine delivery products to a person by a coupon if the coupon is redeemed in any manner that does not require an in-person transaction in a retail store.

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

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

NEW SECTION. SECTION 13. **Enforcement - regulations.**

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

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

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

2. For a violation of section 8 of this rule:
a. A penalty of one hundred dollars for the first violation within any two-year period;

b. A penalty of three hundred dollars for the second violation within any two-year period;

c. A penalty of one thousand dollars for the third violation within any two-year period; and

d. A penalty of one thousand five hundred dollars for a period of twelve months for the fourth violation within any two-year period;

3. For a violation of section 9 of this rule, a penalty in the amount of three hundred dollars for each violation;

4. For a violation of section 10 of this rule, a penalty in the amount of one thousand dollars for each violation;

5. For a violation of section 11 of this rule, a penalty in the amount of one hundred dollars for each day upon which the violation occurred; and

6. When violations of section 12 of this rule occur, a warning shall first be given to the owner or other person in charge. Any subsequent violation is subject to a civil penalty of up to one hundred dollars. Each day upon which a violation occurs or is permitted to continue constitutes a separate violation.

C. The director may reduce or waive the penalties in this chapter if the elements of proof are inadequate or if there are mitigating circumstances. Mitigating circumstances may include, but are not limited to, an exercise of due diligence by a seller. Further, the director may exceed penalties in this chapter based on aggravating circumstances.
NEW SECTION. SECTION 14. Applicability. This chapter applies to the sale and distribution of all electronic smoking devices and unapproved nicotine delivery devices to the extent not preempted by federal law, including, but not limited to, the regulation of those products by the United States Food and Drug Administration.

SECTION 15. Severability. If any provision of this rule or its application to any
person or circumstance is held invalid, the remainder of the rule or the application of the
 provision to other persons or circumstances is not affected.

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