

**SHB 2795 - H AMD 939**

By Representative Tharinger

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that research by the  
4 centers for disease control and prevention has shown dramatic recent  
5 increases in the use of electronic cigarette nicotine delivery devices  
6 by youth. The legislature further finds that decreasing the disparity  
7 in taxation of nicotine used in electronic cigarettes and traditional  
8 tobacco products will increase barriers to the use of electronic  
9 cigarettes by minors. The legislature further finds that investments  
10 in education, including in research and development activities that  
11 improve public health such as those funded by the life sciences  
12 discovery fund and those that contribute to tobacco cessation, are in  
13 the public interest. Therefore, the legislature intends to dedicate  
14 revenues from the taxation of nicotine used in electronic cigarettes  
15 for educational purposes.

16 **Sec. 2.** RCW 26.28.080 and 2013 c 47 s 1 are each amended to read  
17 as follows:

18 (1) Every person who sells or gives, or permits to be sold or  
19 given, to any person under the age of eighteen years any (~~cigar,~~  
20 ~~cigarette, cigarette paper or wrapper, tobacco in any form, or a~~  
21 ~~vapor~~) tobacco product is guilty of a gross misdemeanor.

22 (2) It (~~shall be no~~) is not a defense to a prosecution for a  
23 violation of this section that the person acted, or was believed by the  
24 defendant to act, as agent or representative of another.

25 (3)(a) For the purposes of this section, (~~"vapor product" means a~~  
26 ~~noncombustible tobacco derived product containing nicotine that employs~~  
27 ~~a mechanical heating element, battery, or circuit, regardless of shape~~  
28 ~~or size, that can be used to heat a liquid nicotine solution contained~~  
29 ~~in cartridges. Vapor product does not include any product that is~~

1 regulated by the United States food and drug administration under  
2 chapter V of the federal food, drug, and cosmetic act)) "tobacco  
3 product" means:

4 (i) Any product containing, made, or derived from tobacco or  
5 nicotine that is intended for human consumption, whether chewed,  
6 smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by  
7 any other means; and

8 (ii) Any electronic device that can be used to deliver nicotine or  
9 other substances to, the person inhaling from the device, including,  
10 but not limited to, an electronic cigarette, cigar, pipe, or hookah.

11 (b) Notwithstanding any provisions of (a)(i) and (ii) of this  
12 subsection to the contrary, "tobacco product" includes any component,  
13 part, or accessory of a tobacco product whether or not it is sold  
14 separately. "Tobacco product" does not include any product that has  
15 been approved by the United States food and drug administration for  
16 tobacco cessation or other therapeutic purposes where such product is  
17 marketed and sold solely for such an approved purpose.

18 **Sec. 3.** RCW 70.155.010 and 2009 c 278 s 1 are each amended to read  
19 as follows:

20 The definitions (~~(set forth)~~) in this section and RCW 82.24.010  
21 (~~(shall)~~) apply (~~(to)~~) throughout this chapter(~~(. In addition, for the~~  
22 ~~purposes of this chapter,)~~) unless (~~(otherwise required by)~~) the  
23 context(~~(+)~~) clearly requires otherwise.

24 (1) "Board" means the Washington state liquor control board.

25 (2) "Internet" means any computer network, telephonic network, or  
26 other electronic network.

27 (3) "Minor" refers to an individual who is less than eighteen years  
28 old.

29 (4) "Sample" means a tobacco product distributed to members of the  
30 general public at no cost or at nominal cost for product promotion  
31 purposes.

32 (5) "Sampling" means the distribution of samples to members of the  
33 public.

34 (6)(a) "Tobacco product" means (~~(a product that contains tobacco~~  
35 ~~and is intended for human use, including any product defined in RCW~~  
36 ~~82.24.010(2) or 82.26.010(1), except that for the purposes of RCW~~

1 ~~70.155.140 only, "tobacco product" does not include cigars defined in~~  
2 ~~RCW 82.26.010 as to which one thousand units weigh more than three~~  
3 ~~pounds)):~~

4 (i) Any product containing, made, or derived from tobacco or  
5 nicotine that is intended for human consumption, whether chewed,  
6 smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by  
7 any other means, including, but not limited to, any product defined in  
8 RCW 82.24.010(2) or 82.26.010(22)(a); and

9 (ii) Any electronic device that can be used to deliver nicotine or  
10 other substances to the person inhaling from the device, including, but  
11 not limited to, an electronic cigarette, cigar, pipe, or hookah.

12 (b) Notwithstanding any provisions of (a)(i) and (ii) of this  
13 subsection to the contrary, "tobacco product" includes any component,  
14 part, or accessory of a tobacco product whether or not it is sold  
15 separately. "Tobacco product" does not include any product that has  
16 been approved by the United States food and drug administration for  
17 tobacco cessation or other therapeutic purposes where such product is  
18 marketed and sold solely for such an approved purpose.

19 (c) Except for the purposes of RCW 70.155.140 only, "tobacco  
20 product" does not include cigars defined in RCW 82.26.010 as to which  
21 one thousand units weigh more than three pounds.

22 **Sec. 4.** RCW 82.26.010 and 2010 1st sp.s. c 22 s 4 are each  
23 reenacted and amended to read as follows:

24 The definitions in this section apply throughout this chapter  
25 unless the context clearly requires otherwise.

26 (1) "Actual price" means the total amount of consideration for  
27 which tobacco products are sold, valued in money, whether received in  
28 money or otherwise, including any charges by the seller necessary to  
29 complete the sale such as charges for delivery, freight,  
30 transportation, or handling.

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

33 (3) "Board" means the liquor control board.

34 (4) "Business" means any trade, occupation, activity, or enterprise  
35 engaged in for the purpose of selling or distributing tobacco products  
36 in this state.

1 (5) "Cigar" means a roll for smoking that is of any size or shape  
2 and that is made wholly or in part of tobacco, irrespective of whether  
3 the tobacco is pure or flavored, adulterated or mixed with any other  
4 ingredient, if the roll has a wrapper made wholly or in greater part of  
5 tobacco. "Cigar" does not include a cigarette.

6 (6) "Cigarette" has the same meaning as in RCW 82.24.010.

7 (7) "Department" means the department of revenue.

8 (8) "Distributor" means (a) any person engaged in the business of  
9 selling tobacco products in this state who brings, or causes to be  
10 brought, into this state from without the state any tobacco products  
11 for sale, (b) any person who makes, manufactures, fabricates, or stores  
12 tobacco products in this state for sale in this state, (c) any person  
13 engaged in the business of selling tobacco products without this state  
14 who ships or transports tobacco products to retailers in this state, to  
15 be sold by those retailers, (d) any person engaged in the business of  
16 selling tobacco products in this state who handles for sale any tobacco  
17 products that are within this state but upon which tax has not been  
18 imposed.

19 (9) "Indian country" means the same as defined in chapter 82.24  
20 RCW.

21 (10) "Inhalable nicotine product" means any cartridge, bottle, or  
22 other product containing nicotine that is used in conjunction with an  
23 electronic device that can be used to deliver nicotine or other  
24 substances to the person inhaling from the device, including, but not  
25 limited to, an electronic cigarette, cigar, pipe, or hookah.

26 (11) "Little cigar" means a cigar that has a cellulose acetate  
27 integrated filter.

28 ~~((+11+))~~ (12) "Manufacturer" means a person who manufactures and  
29 sells tobacco products.

30 ~~((+12+))~~ (13) "Manufacturer's representative" means a person hired  
31 by a manufacturer to sell or distribute the manufacturer's tobacco  
32 products, and includes employees and independent contractors.

33 ~~((+13+))~~ (14) "Moist snuff" means tobacco that is finely cut,  
34 ground, or powdered; is not for smoking; and is intended to be placed  
35 in the oral, but not the nasal, cavity.

36 ~~((+14+))~~ (15) "Person" means any individual, receiver,  
37 administrator, executor, assignee, trustee in bankruptcy, trust,  
38 estate, firm, copartnership, joint venture, club, company, joint stock

1 company, business trust, municipal corporation, the state and its  
2 departments and institutions, political subdivision of the state of  
3 Washington, corporation, limited liability company, association,  
4 society, any group of individuals acting as a unit, whether mutual,  
5 cooperative, fraternal, nonprofit, or otherwise. The term excludes any  
6 person immune from state taxation, including the United States or its  
7 instrumentalities, and federally recognized Indian tribes and enrolled  
8 tribal members, conducting business within Indian country.

9 ~~((+15+))~~ (16) "Place of business" means any place where tobacco  
10 products are sold or where tobacco products are manufactured, stored,  
11 or kept for the purpose of sale, including any vessel, vehicle,  
12 airplane, train, or vending machine.

13 ~~((+16+))~~ (17) "Retail outlet" means each place of business from  
14 which tobacco products are sold to consumers.

15 ~~((+17+))~~ (18) "Retailer" means any person engaged in the business  
16 of selling tobacco products to ultimate consumers.

17 ~~((+18+))~~ (19)(a) "Sale" means any transfer, exchange, or barter, in  
18 any manner or by any means whatsoever, for a consideration, and  
19 includes and means all sales made by any person.

20 (b) The term "sale" includes a gift by a person engaged in the  
21 business of selling tobacco products, for advertising, promoting, or as  
22 a means of evading the provisions of this chapter.

23 ~~((+19+))~~ (20)(a) "Taxable sales price" means:

24 (i) In the case of a taxpayer that is not affiliated with the  
25 manufacturer, distributor, or other person from whom the taxpayer  
26 purchased tobacco products, the actual price for which the taxpayer  
27 purchased the tobacco products;

28 (ii) In the case of a taxpayer that purchases tobacco products from  
29 an affiliated manufacturer, affiliated distributor, or other affiliated  
30 person, and that sells those tobacco products to unaffiliated  
31 distributors, unaffiliated retailers, or ultimate consumers, the actual  
32 price for which that taxpayer sells those tobacco products to  
33 unaffiliated distributors, unaffiliated retailers, or ultimate  
34 consumers;

35 (iii) In the case of a taxpayer that sells tobacco products only to  
36 affiliated distributors or affiliated retailers, the price, determined  
37 as nearly as possible according to the actual price, that other

1 distributors sell similar tobacco products of like quality and  
2 character to unaffiliated distributors, unaffiliated retailers, or  
3 ultimate consumers;

4 (iv) In the case of a taxpayer that is a manufacturer selling  
5 tobacco products directly to ultimate consumers, the actual price for  
6 which the taxpayer sells those tobacco products to ultimate consumers;

7 (v) In the case of a taxpayer that has acquired tobacco products  
8 under a sale as defined in subsection ~~((+18+))~~ (19)(b) of this section,  
9 the price, determined as nearly as possible according to the actual  
10 price, that the taxpayer or other distributors sell the same tobacco  
11 products or similar tobacco products of like quality and character to  
12 unaffiliated distributors, unaffiliated retailers, or ultimate  
13 consumers; or

14 (vi) In any case where (a)(i) through (v) of this subsection do not  
15 apply, the price, determined as nearly as possible according to the  
16 actual price, that the taxpayer or other distributors sell the same  
17 tobacco products or similar tobacco products of like quality and  
18 character to unaffiliated distributors, unaffiliated retailers, or  
19 ultimate consumers.

20 (b) For purposes of (a)(i) and (ii) of this subsection only,  
21 "person" includes both persons as defined in subsection ~~((+14+))~~ (15)  
22 of this section and any person immune from state taxation, including  
23 the United States or its instrumentalities, and federally recognized  
24 Indian tribes and enrolled tribal members, conducting business within  
25 Indian country.

26 (c) The department may adopt rules regarding the determination of  
27 taxable sales price under this subsection.

28 ~~((+20+))~~ (21) "Taxpayer" means a person liable for the tax imposed  
29 by this chapter.

30 ~~((+21+))~~ (22) "Tobacco products" means:

31 (a) Any product, regardless of form, other than cigarettes, that  
32 contains tobacco and is intended for human consumption or placement in  
33 the oral or nasal cavity or absorption into the human body by any other  
34 means, including: Cigars, cheroots, stogies, periques, granulated,  
35 plug cut, crimp cut, ready rubbed, and other smoking tobacco, snuff,  
36 snuff flour, cavendish, plug and twist tobacco, fine-cut and other  
37 chewing tobaccos, shorts, refuse scraps, clippings, cuttings and  
38 sweepings of tobacco, and other kinds and forms of tobacco, prepared in

1 such manner as to be suitable for chewing or smoking in a pipe or  
2 otherwise, or both for chewing and smoking(~~(, and any other product,~~  
3 ~~regardless of form, that contains tobacco and is intended for human~~  
4 ~~consumption or placement in the oral or nasal cavity or absorption into~~  
5 ~~the human body by any other means, but does not include cigarettes as~~  
6 ~~defined in RCW 82.24.010.~~

7 ~~(22))~~; and

8 (b) A tobacco substitute.

9 (23) "Tobacco substitute" means any product containing nicotine,  
10 but not containing tobacco, that is intended for human consumption,  
11 whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed,  
12 or ingested by any other means, that has not been approved by the  
13 United States food and drug administration for tobacco cessation or  
14 other medical purposes.

15 (24) "Unaffiliated distributor" means a distributor that is not  
16 affiliated with the manufacturer, distributor, or other person from  
17 whom the distributor has purchased tobacco products.

18 ~~((23))~~ (25) "Unaffiliated retailer" means a retailer that is not  
19 affiliated with the manufacturer, distributor, or other person from  
20 whom the retailer has purchased tobacco products.

21 **Sec. 5.** RCW 82.26.020 and 2010 1st sp.s. c 22 s 5 are each amended  
22 to read as follows:

23 (1) There is levied and collected a tax upon the sale, handling, or  
24 distribution of all tobacco products in this state at the following  
25 rate:

26 (a) For cigars except little cigars, ninety-five percent of the  
27 taxable sales price of cigars, not to exceed sixty-five cents per  
28 cigar;

29 (b) For all tobacco products except those covered under separate  
30 provisions of this subsection, ninety-five percent of the taxable sales  
31 price;

32 (c) For moist snuff, as established in this subsection (1)(c) and  
33 computed on the net weight listed by the manufacturer:

34 (i) On each single unit consumer-sized can or package whose net  
35 weight is one and two-tenths ounces or less, a rate per single unit  
36 that is equal to the greater of 2.526 dollars or eighty-three and one-

1 half percent of the cigarette tax under chapter 82.24 RCW multiplied by  
2 twenty; or

3 (ii) On each single unit consumer-sized can or package whose net  
4 weight is more than one and two-tenths ounces, a proportionate tax at  
5 the rate established in (c)(i) of this subsection (1) on each ounce or  
6 fractional part of an ounce; (~~and~~)

7 (d) For little cigars, an amount per cigar equal to the cigarette  
8 tax under chapter 82.24 RCW; and

9 (e) For each inhalable nicotine product, eight cents per milligram  
10 of nicotine, or portion thereof, contained within such product.

11 (2) Taxes under this section must be imposed at the time the  
12 distributor (a) brings, or causes to be brought, into this state from  
13 without the state tobacco products for sale, (b) makes, manufactures,  
14 fabricates, or stores tobacco products in this state for sale in this  
15 state, (c) ships or transports tobacco products to retailers in this  
16 state, to be sold by those retailers, or (d) handles for sale any  
17 tobacco products that are within this state but upon which tax has not  
18 been imposed.

19 (3) Except as provided in section 9 of this act, the moneys  
20 collected under this section must be deposited into the state general  
21 fund.

22 NEW SECTION. Sec. 6. A new section is added to chapter 82.26 RCW  
23 to read as follows:

24 For purposes of the tax imposed under RCW 82.26.020, no deduction  
25 from the taxable sales price is allowed for the value of nontobacco  
26 products that are sold together with tobacco products for one  
27 nonitemized price:

28 (1) To the taxpayer, and the taxable sales price is required to be  
29 determined in accordance with RCW 82.26.010(20)(a)(i); or

30 (2) By the taxpayer, and the taxable sales price is required to be  
31 determined in accordance with RCW 82.26.010(20)(a)(ii), (iii), (iv),  
32 (v), or (vi).

33 **Sec. 7.** RCW 82.26.190 and 2009 c 154 s 6 are each amended to read  
34 as follows:

35 (1)(a) No person may engage in or conduct business as a distributor  
36 or retailer in this state after September 30, 2005, without a valid



1 license issued under this chapter, except as otherwise provided by law.  
2 Any person who sells tobacco products to persons other than ultimate  
3 consumers or who meets the definition of distributor under RCW  
4 82.26.010(~~(+3)~~) (8)(d) must obtain a distributor's license under this  
5 chapter. Any person who sells tobacco products to ultimate consumers  
6 must obtain a retailer's license under this chapter.

7 (b) A violation of this subsection (1) is punishable as a class C  
8 felony according to chapter 9A.20 RCW.

9 (2)(a) No person engaged in or conducting business as a distributor  
10 or retailer in this state may:

11 (i) Refuse to allow the department or the board, on demand, to make  
12 a full inspection of any place of business where any of the tobacco  
13 products taxed under this chapter are sold, stored, or handled, or  
14 otherwise hinder or prevent such inspection;

15 (ii) Make, use, or present or exhibit to the department or the  
16 board any invoice for any of the tobacco products taxed under this  
17 chapter that bears an untrue date or falsely states the nature or  
18 quantity of the goods invoiced; or

19 (iii) Fail to produce on demand of the department or the board all  
20 invoices of all the tobacco products taxed under this chapter within  
21 five years prior to such demand unless the person can show by  
22 satisfactory proof that the nonproduction of the invoices was due to  
23 causes beyond the person's control.

24 (b) No person, other than a licensed distributor or retailer, may  
25 transport tobacco products for sale in this state for which the taxes  
26 imposed under this chapter have not been paid unless:

27 (i) Notice of the transportation has been given as required under  
28 RCW 82.26.140;

29 (ii) The person transporting the tobacco products actually  
30 possesses invoices or delivery tickets showing the true name and  
31 address of the consignor or seller, the true name and address of the  
32 consignee or purchaser, and the quantity and brands of tobacco products  
33 being transported; and

34 (iii) The tobacco products are consigned to or purchased by a  
35 person in this state who is licensed under this chapter.

36 (c) A violation of this subsection (2) is a gross misdemeanor.

37 (3) Any person licensed under this chapter as a distributor, and  
38 any person licensed under this chapter as a retailer, (~~shall~~) may not

1 operate in any other capacity unless the additional appropriate license  
2 is first secured, except as otherwise provided by law. A violation of  
3 this subsection (3) is a misdemeanor.

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

7 NEW SECTION. Sec. 8. (1) Sections 4 and 7 of this act apply only  
8 with respect to tax liability incurred under chapter 82.26 RCW on and  
9 after the effective date of this section, for the sale, handling, or  
10 distribution of tobacco products, including preexisting inventories of  
11 tobacco substitutes.

12 (2) Preexisting inventories of tobacco substitutes are subject to  
13 the tax imposed in RCW 82.26.020. All retailers and other distributors  
14 must report the tax due under RCW 82.26.020 on preexisting inventories  
15 of tobacco substitutes on the taxpayer's excise tax return for a  
16 reporting period that includes tax liability accruing on and after July  
17 1, 2014, consistent with the taxpayer's regular tax reporting  
18 frequency.

19 (3) A retailer required to comply with subsection (2) of this  
20 section is not required to obtain a distributor's license as otherwise  
21 required under chapter 82.26 RCW as long as the retailer (a) does not  
22 sell tobacco products other than to ultimate consumers, and (b) does  
23 not meet the definition of distributor in RCW 82.26.010(8)(d) other  
24 than with respect to the sale of that retailer's preexisting inventory  
25 of tobacco substitutes.

26 (4) For purposes of this section:

27 (a) The definitions in RCW 82.26.010 apply; and

28 (b) "Preexisting inventory" means an inventory of tobacco  
29 substitutes located in this state as of the moment that section 6 of  
30 this act takes effect and held by a distributor for sale, handling, or  
31 distribution in this state.

32 NEW SECTION. Sec. 9. A new section is added to chapter 82.26 RCW  
33 to read as follows:

34 (1) Taxes collected under this chapter on the sale, handling, or  
35 distribution of tobacco substitutes must be deposited in the education

1 legacy trust account. The department must establish a separate  
2 reporting code for taxes collected under this chapter with respect to  
3 such products.

4 (2) By January 1, 2015, every inhalable nicotine product and every  
5 other tobacco product containing an inhalable nicotine product, and the  
6 packaging provided to the consumer containing such products, must be  
7 clearly labeled as to the milligram nicotine content of individual  
8 inhalable nicotine products and the total nicotine content for multiple  
9 inhalable nicotine products contained within a package.

10 NEW SECTION. **Sec. 10.** Sections 4 through 8 of this act take  
11 effect July 1, 2014."

12 Correct the title.

EFFECT: Changes the tax rate for inhalable nicotine products from  
95 percent of sales price to 8 cents per milligram of nicotine.  
Requires inhalable nicotine products or packages of such products to  
have labels indicating nicotine content. Eliminates provisions that  
would exempt electronic cigarettes from OTP tax if prescribed by a  
doctor and purchased at a pharmacy. Adds intent language.

--- END ---