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**Finance Committee**

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**HB 2795**

**Brief Description:** Investing in education by clarifying laws relating to tobacco substitutes.

**Sponsors:** Representatives Carlyle, Hunter, Freeman, Ryu, Tharinger, Bergquist, Pollet, Senn, Van De Wege, Roberts, S. Hunt and Moscoso.

**Brief Summary of Bill**

- Extends the other tobacco products tax to tobacco substitutes.
- Directs other tobacco products tax revenue generated from the distribution of tobacco substitutes to the Education Legacy Trust Account.
- Prohibits the sale or distribution of tobacco substitutes to minors.

**Hearing Date:** 2/28/14

**Staff:** Richelle Geiger (786-7175).

**Background:**

Other Tobacco Products tax.

The Other Tobacco Products (OTP) tax is due from a distributor for the sale, use, consumption, handling and distribution of cigars, pipe tobacco, chewing tobacco and other forms of tobacco, except cigarettes. OTP tax is due when the product is brought into or manufactured in Washington for sale in the state. The OTP tax is distinct from the cigarette tax, which is imposed at a rate of \$3.025 per pack of 20 cigarettes

The OTP tax rate is 95 percent of the taxable sales price of most tobacco products. For cigars, the tax is capped at 65 cents per cigar. Dipping tobacco is taxed based on the net weight listed by the manufacturer at the rate of \$2.526 per single unit of 1.2 ounces or less and at a proportionate rate for larger single units. OTP tax revenue is deposited into the state general fund.

Nicotine products.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Nicotine is a naturally occurring substance in tobacco that can be derived to produce a variety of products. Products that contain nicotine, but do not contain tobacco, include: dissolvable nicotine tablets, nicotine infused bottled water, and vapor products, commonly known as e-cigarettes. An e-cigarette is battery powered electronic device that heats a liquid nicotine solution to create a nicotine-laced vapor that can be inhaled by the user.

#### Tobacco products - Access to minors.

The federal government requires states to enforce laws prohibiting sale and distribution of tobacco to minors. A person is guilty of a crime if he or she sells or distributes tobacco products or e-cigarettes to a minor. A minor who attempts to purchase or obtain tobacco products is subject to a fine or community service hours. The courts may also require the minor to participate in a smoking cessation program.

A tobacco warning sign must be posted at each location where tobacco products are sold. The warning sign must state the sale of tobacco products to a minor is prohibited and photo identification is required to purchase tobacco products. Vending machines that distribute tobacco products may only be located on premises where minors are prohibited and machines must be at least 10 feet from all entrance or exit ways. Tobacco sampling is prohibited. Coupons for tobacco products may only be used during an in-person transaction in a retail store. Tobacco products may not be ordered by mail or through the internet by anyone in the state other than a licensed wholesaler or retailer.

The Liquor Control Board (LCB) may suspend or revoke a retailer's tobacco license or impose a monetary fine if they have distributed tobacco to minors. LCB may enter any place of business where tobacco products are sold and work with local county health departments or law enforcement to conduct random inspections to assure compliance. Any tobacco product possessed by a minor is considered contraband and may be seized by an LCB enforcement officer.

#### **Summary of Bill:**

##### Tobacco Substitutes and other Tobacco Product tax.

Tobacco substitutes are subject to OTP tax. "Tobacco substitutes" are defined as products that contain nicotine, but do not contain tobacco, and are intended for human consumption. This includes any electronic device that can be used to ingest nicotine. Tobacco substitutes do not include USDA approved products marketed and sold solely for tobacco cessation or other therapeutic purposes.

OTP tax revenue generated from tobacco substitutes must be deposited in the Education Legacy Trust Account. Inventory of tobacco substitutes held by a distributor for sale or distribution at time this bill takes effect is subject to OTP tax. A retailer is not required to obtain a distributor's license for the sale of preexisting inventory of tobacco substitutes if the retailer only sells the preexisting inventory to final consumers and does not otherwise qualify as a tobacco distributor. Any nontobacco product sold together with a tobacco product for one, non-itemized price is subject to OTP tax.

##### Tobacco substitutes- Access to minors.

A person is guilty of a crime if he or she sells or distributes a tobacco substitute to a minor. A minor who attempts to purchase or obtain a tobacco substitute is subject to a fine or community service hours. The courts may also require the minor participates in a smoking cessation program.

A tobacco warning sign must be posted at each location where tobacco substitutes are sold. The warning sign must state the sale of tobacco substitutes to a minor is prohibited and photo identification is required to purchase tobacco substitutes. Vending machines that distribute tobacco substitutes may only be located on premises where minors are prohibited and machines must be at least 10 feet from all entrance or exit ways. Tobacco substitute sampling is prohibited. Coupons for tobacco substitutes may only be used during an in-person transaction in a retail store. Tobacco substitutes may not be ordered by mail or through the internet by anyone in the state other than a licensed wholesaler or retailer.

The LCB may suspend or revoke a retailer's tobacco license or impose a monetary fine if they have distributed tobacco to minors. LCB may enter any place of business where tobacco substitutes are sold and work with local county health departments or law enforcement to conduct random inspections to assure compliance. Any tobacco substitute possessed by a minor is considered contraband and may be seized by an LCB enforcement officer.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for sections 3 through 6 relating to tobacco substitutes and other tobacco product tax, which takes effect July 1, 2014.