Finance Committee

HB 2211

Brief Description: Concerning vapor products, e-cigarette, and nicotine products tax and regulatory reform to support youth substance prevention.

Sponsors: Representatives Pollet, Ryu, McBride, Cody, Robinson and Gregerson.

Brief Summary of Bill

- Creates a distributor and retailer license to distribute or sell vapor products in the state.
- Imposes a 60 percent tax on vapor products.
- Creates the Public Health Services Account and directs a portion of vapor products tax revenue to the account.
- Authorizes the Governor to enter into vapor products compacts with federally recognized Indian tribes and establishes requirements for such compacts.

Hearing Date: 4/3/15

Staff: Dominique Meyers (786-7150).

Background:

Vapor Products.
Under state law, the term "vapor product" is defined to mean a noncombustible product containing nicotine that employs a mechanical heating element, battery, or circuit, regardless of shape or size, that can be used to heat a liquid nicotine solution contained in cartridges. "Electronic cigarettes" (e-cigarettes) are a form of vapor product, and the terms are often used interchangeably. Vapor product cartridges generally include nicotine extracted from tobacco, glycerol, propylene glycol, and flavorings.

In 2014, the Legislature directed the Washington State Institute for Public Policy (WSIPP) to review research on the prevention of tobacco and vapor product use. Noting that vapor products

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were a relatively new phenomenon, WSIPP concluded that there were no studies that met its research standards and observed that there was a general lack of scientific information regarding the health effects of vapor products. The WSIPP study also cites surveys indicating that the use of vapor products among adults increased from 1 percent in 2009 to over 6 percent in 2011 and among adolescents use rates increased from 3 percent to 7 percent between 2011 and 2012.

Federal Regulation of Vapor Products.
Vapor products are not currently subject to federal regulation or taxation. However, in April of 2014, the Food and Drug Administration (FDA) issued proposed regulations that would include coverage of vapor products under their authority to regulate tobacco products. The proposed rules include the following:

- prohibiting sales to persons under age 18;
- banning vending machine sales;
- mandating warning labels;
- prohibiting free samples; and
- requiring vapor product companies to register with the FDA to monitor compliance and quality.

The proposed rules have not yet been adopted.

State Regulation and Taxation of Vapor Products.
Washington state neither taxes nor regulates vapor products, except for the imposition of criminal penalties for the sale of vapor or tobacco products to a minor. Pursuant to statute, a person who sells cigars, cigarettes, tobacco, or vapor products to a person under the age of 18 is guilty of a gross misdemeanor. State law does not prohibit the use or possession of vapor products by minors, nor does it require that a retailer be licensed to sell vapor products.

Taxation of Tobacco Products.
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. The 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. The OTP tax revenue is deposited into the state general fund.

Tribal-State Compacts Regarding Cigarette Taxation.
Where authorized by statute, the Governor may enter into compacts and agreements with the Indian tribes of this state regarding matters of mutual interest or concern. Many such compacts have been implemented regarding gambling and various taxation issues, most notably those regarding cigarette taxes and gasoline taxes. In 2001, legislation was passed allowing the Governor to enter into contracts with the tribes concerning the sale of cigarettes. Such contracts must be for renewable terms of eight years or less. Cigarettes sold on Indian lands during the contract term are subject to a tribal cigarette tax and are exempt from state cigarette, sales, and use taxes.

Summary of Bill:

Liquor Control Board Licensing and Enforcement Authority.
Vapor product distributors and retailers must be licensed by the Liquor Control Board (LCB). Applications for such licenses must be submitted to the state Business Licensing Service administered by the Department of Revenue (DOR). There is no fee established for either the distributor or retailer license.

Vapor Products Tax.
The sale, use, consumption, handling, possession, or distribution of vapor products is subject to a tax of 60 percent of the taxable sales price. The distributor is responsible for the payment of the tax, but such tax may be imposed on the consumer if it was not previously collected. However, the tax may be collected only once during the commercial distribution and retail sales process. Sixty percent of the proceeds from the vapor products' tax must be deposited into the state general fund and forty percent deposited into the Essential Public Health Services Account.

The DOR is responsible for administration of the tax on vapor products and all agency administrative provisions apply in respect to collection and administration of the tax.

Essential Public Health Services Account.
The Essential Public Health Services Account is created in the State Treasury, consisting of forty percent of the revenues derived from the vapor products tax. The Department of Health must use the funds in the account for three purposes: (a) to fund essential governmental public health services; (b) to fund tobacco control and prevention and other substance use prevention and education programs; and (c) to strengthen and support public health system capabilities, including accredited higher education public health programs.

Tribal Compacting for Vapor Products.
The Governor is granted the authority to enter into vapor products tax contracts with federally recognized Indian tribes located within the geographic boundaries of the state of Washington. With the exception of contracts with the Puyallup Tribe, each contract must require that the tribal vapor products tax rate be 100 percent of the combined sum of the state vapor products tax, state and local sales and use taxes. Contracts with the Puyallup Tribe must set the tribal tax rate at 90 percent of the state vapor products tax. However, any vapor products tax agreement with the Puyallup Tribe must also require the tribe to remit to the state 30 percent of all vapor products tax revenue it collects. The tribal vapor products tax is in lieu of all state and local taxes that would otherwise be applicable to sales of vapor products.

The Governor may delegate the power to negotiate vapor product tax contracts to the DOR. The DOR must consult with the LCB during any such negotiations.

Appropriation: None.

Fiscal Note: Requested on March 25, 2015.

Effective Date: The bill takes effect on October 1, 2015.