

HOUSE BILL REPORT

HB 2211

As Reported by House Committee On: Finance

Title: An act relating to vapor products, e-cigarette, and nicotine products tax and regulatory reform to support youth substance prevention.

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 History:

Committee Activity:

Finance: 4/3/15, 6/8/15, 6/25/15 [DPS].

Brief Summary of Substitute Bill

- Creates a distributor and retailer license to distribute or sell vapor products in the state.
- Imposes a 45 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.

HOUSE COMMITTEE ON FINANCE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Carlyle, Chair; Tharinger, Vice Chair; Nealey, Ranking Minority Member; Fitzgibbon, Pollet, Robinson, Ryu, Springer, Stokesbary and Wylie.

Minority Report: Do not pass. Signed by 4 members: Representatives Condotta, Manweller, Vick and Wilcox.

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.

Minority Report: Without recommendation. Signed by 1 member: Representative Reykdal.

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 were a relatively new phenomenon, the 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 Substitute 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 40 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 40 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.

Substitute Bill Compared to Original Bill:

The substitute bill includes the following changes:

- removes stand-alone devices that do not contain a liquid solution from the definition of vapor product thereby, exempting stand-alone devices from taxation;
- reduces the tax rate to 45 percent and removes the floor stock tax requirement on retailers with untaxed inventory once the tax takes effect;
- exempts common carriers from regulatory provisions and sanctions related to tax collection and documentation requirements applicable to distributors and retailers of vapor products; and
- makes technical corrections and updates statutes amended during the 2015 regular session to reflect the current version of the statute.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on June 26, 2015.

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

Staff Summary of Public Testimony:

(In support) There is a direct correlation between the consumption of a product and price of a product. For the adult smoker that has not had success in quitting smoking vaping is a better alternative; however, there should be a price point that adults can afford but children cannot. Dedicating revenue to public health programs by taxing vapor products makes sense. A tax increase is definitely needed but a fee increase for a license to sell and distribute vapor products is needed too. Even with a 60 percent tax on e-cigarettes the cost is still cheaper than traditional cigarettes. Taxing vapor products will have the beneficial effect of keeping prices high enough to discourage use by young people.

One in five tenth graders and one in four twelfth graders admitted to vaping in the past 30 days. There is a rapid normalization of vaping among school children. Producers are looking to addict the next generation. Vapor product use has become a significant problem in many high schools. The reason young people are so attracted to vapor products is that they are cheap, convenient, and easy to get. Nicotine has long-term, adverse effects on the brain development of young adults. There is little evidence that vapor products are useful for smoking cessation purposes, and the overall health effects of vapor products is still unknown.

(Oppose) E-cigarettes are becoming increasingly used as a smoking cessation tool and the FDA has not demonstrated that e-cigarettes are just as harmful as smoking. E-cigarettes have helped people quit smoking and in turn has saved people money. This tax is significant and people trying to quit shouldn't have to pay this large tax when they are trying to do the right thing by quitting traditional cigarettes. The best way to stop minors from buying vapor products is to provide enforcement efforts and fine stores that sell to minors, not raise the cost for responsible adult users. The bill would reduce sales and will impact small retail businesses. The tax rate in the bill will make vapor products too expensive for many consumers and would be an economic disaster for many independent small retailers. Vapor product stores already pay taxes to the state on sales. This product is regulated at the federal level and the state should wait for future guidance by the FDA before passing legislation that would regulate and tax vapor products. There are provisions of the bill that would need to be amendment to address concerns that common carriers will be fined for not complying with distributor or retailer licenses requirements; however, common carries are not distributors or retailers.

Persons Testifying: (In support) Representative Pollet, prime sponsor; Representative Harris; John Wiesman, Secretary of Health; Gary Goldbaum, Washington State Association of Public Officials; Anthony Chen, Tacoma-Pierce County Health Department; Rusty Fallis, Attorney General's Office; Bryce Hackett; and Seth Dawson, Washington Association of Substance Prevention.

(Opposed) Stephen McLain, Future Vapor; Julie Anderson, eCig n'Vape; Joshua Landen; Josh Baba, Washington Vape Association; Kim Thompson, Pink Lung Brigade; Holly Chisa, N Joy; Al Ralston, Fed Ex; Anthony McMullen; Matt Zukowski; Shaun D'sylva, Fatboy Vapors; Michael Sullivan and Kenny Davis, Mount Baker Vapor; Amber Carter, Association of Washington Business; and Dave Buckley, Volcano Vapor Café.

Persons Signed In To Testify But Not Testifying: None.