Washington State
House of Representatives
Office of Program Research

BILL ANALYSIS

Finance Committee

HB 2144

Brief Description: Concerning the taxation of vapor products.

Sponsors: Representatives Pollet, Cody, Ryu, Robinson, Jinkins, Kagi and Peterson.

Brief Summary of Bill

- Includes vapor cartridges and products containing nicotine derived from tobacco in the definition of "tobacco products," thereby subjecting them to the 95 percent Other Tobacco Products tax rate and other regulatory requirements.
- Creates the Essential Public Health Services account.

Hearing Date: 3/21/17

Staff: Rachelle Harris (786-7137).

Background:

Tobacco Products Regulation and Tax.
Tobacco products are defined as products that include tobacco prepared to be suitable for chewing or smoking, or for both chewing and smoking, as well as any other product that contains tobacco, and is intended for human consumption or placement in the oral or nasal cavity. This includes cigars, stogies, pipe or other smoking tobacco, snuff, fine-cut and other chewing tobaccos, etc. The term does not include cigarettes or vapor products.

The Other Tobacco Products (OTP) tax is due from a distributor for the sale, use, consumption, handling, and distribution of items defined as "tobacco products," including cigars, pipe tobacco, chewing tobacco, and other forms of tobacco, but excluding 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.

The OTP tax rate is imposed on the taxable sales price of most tobacco products at a rate of 95 percent. For cigars, the tax is capped at 65 cents per cigar. Dipping tobacco is taxed based on

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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. All OTP tax revenue is deposited in the State General Fund.

Tobacco product distributors and retailers are subject to various regulatory requirements. Distributors must maintain records of their tobacco products transactions. Tobacco product distributors and retailers must obtain a license from the Liquor and Cannabis Board (LCB). The distributor license fee is $650, and the retailer license fee is $93, annually. The LCB has the authority to revoke or suspend the license of a retailer or distributor for noncompliance with the OTP tax regulations. The LCB may seize tobacco products from: (1) an unlicensed distributor or retailer; or (2) a distributor or retailer selling tobacco products while their license is suspended or revoked. Shipment and transportation of tobacco products (other than cigars) ordered or purchased by mail, or through the internet, to anyone other than a licensed wholesaler or retailer is prohibited.

<u>Vapor Products</u>.
Vapor products are defined in state law to include any noncombustible product that may contain nicotine that employs a heating element or other electronic, chemical, or other means that can be used to produce vapor or aerosol from a solution or other substance. This is inclusive of electronic cigarettes, electronic pipes, and any vapor cartridge or other container that is intended to be used with or in an electronic cigarette or other similar device. The definition does not include cigarettes or other tobacco products.

Vapor products are subject to normal sales and use taxes, but are not subject to any additional state taxes.

Summary of Bill:

A product that contains nicotine derived from tobacco is included in the definition of "tobacco products" for the purposes of the tax on tobacco products. The definition of "tobacco products" is also expanded to include vapor cartridges that contain tobacco or nicotine derived from tobacco. This would make vapor cartridges and other products containing nicotine derived from tobacco subject to the 95 percent OTP tax, licensing, and other regulatory provisions, including a prohibition on the shipment of these products ordered or purchased by mail, or through the internet, to anyone other than a licensed wholesaler or retailer.

The Essential Public Health Services account is created in the State Treasury. Beginning in fiscal year 2021, the account is funded with 40 percent of the proceeds from the vapor products tax established in HB 2165 (Vapor products, etc./taxation). The Department of Health must use the funds in the account for four purposes: (1) to fund foundational health services; (2) to fund tobacco, vapor product, and nicotine control and prevention, and other substance use prevention and education programs; (3) at least 10 percent of funds to support increased access and training of public health professionals at public health programs at institutions of higher education in Washington; and (4) no more than 12.5 percent may be provided to the LCB to enforce vapor products regulations.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.