

HOUSE BILL REPORT

HB 2165

As Reported by House Committee On:
Finance

Title: An act relating to vapor products, e-cigarettes, and nicotine products taxation.

Brief Description: Concerning vapor products, e-cigarettes, and nicotine products taxation.

Sponsors: Representatives Harris, Cody, Pollet, Doglio, Kagi, Ryu and Slatter.

Brief History:

Committee Activity:

Finance: 3/21/17, 3/30/17 [DPS].

Brief Summary of Substitute Bill

- Imposes a 60 percent tax on vapor cartridges and "e-liquid."
- Creates the Essential Public Health Services account.
- Authorizes the Governor to enter into vapor products taxation 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 7 members: Representatives Lytton, Chair; Frame, Vice Chair; Nealey, Ranking Minority Member; Dolan, Pollet, Springer and Wylie.

Minority Report: Do not pass. Signed by 4 members: Representatives Orcutt, Assistant Ranking Minority Member; Condotta, Stokesbary and Wilcox.

Staff: Rachelle Harris (786-7137).

Background:

Regulation and Taxation of Vapor Products.

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.

Vapor products are regulated by state law and are defined for such purposes as any noncombustible product that may contain nicotine that employs a heating element, or another electronic, chemical, or other means that can be used to produce vapor or aerosol from a solution or other substance. The term 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.

In 2016 the Legislature established retailer, distributor, and delivery sale licenses administered by the Liquor and Cannabis Board (LCB) to regulate the sale and distribution of vapor products. Possession of one or more license types is required in order to engage in the sale, distribution, or delivery of vapor products. Vapor products are required to be labeled with various health and safety warnings. It is illegal for a person under the age of 18 to purchase or possess vapor products, and retailers must display signage clearly identifying that the sale of vapor products to persons under age 18 is prohibited.

The use of vapor products is prohibited in various places including inside child care facilities, schools, within 500 feet of schools, school buses, and elevators. The LCB has various enforcement powers related to the sale and distribution of vapor products, including the ability to enter and inspect businesses where vapor products are sold, to suspend or revoke a retailer, distributor, or delivery sale license, and to impose monetary penalties for licensee violations.

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

Tribal Compacting.

The Governor is authorized by statute to enter into compacts and agreements with the Indian tribes of the state regarding matters of mutual interest or concern. Among these contracts are those regarding the sale and taxation of cigarettes. In general, cigarettes sold on Indian lands during a contract term are subject to a tribal cigarette tax equal to the total combined rate of state cigarette and state and local sales and use taxes. Cigarettes sold on Indian land are exempt from state cigarette taxes, and from state sales and use taxes.

Summary of Substitute Bill:

Vapor Products Tax.

The sale, use, consumption, handling, possession, or distribution of vapor cartridges and e-liquids are subject to a tax of 60 percent of the taxable sales price. The distributor is responsible for the payment of the tax, but the tax may be imposed on the consumer if it was not previously collected. The tax may be collected only once during the commercial distribution and retail sales process. The tax applies to preexisting inventories of vapor products. Retailers and distributors must report the tax due on preexisting inventories of vapor products on or before October 31, 2017.

All proceeds from the vapor products tax must be deposited into the State General Fund until the end of fiscal year 2020. Beginning in fiscal year 2021, 40 percent of the proceeds from

the vapor products tax must be deposited into the Essential Public Health Services Account created in the bill, and 60 percent must be deposited into the State General Fund.

The Department of Revenue (DOR) is responsible for administration of the tax and all agency administrative provisions apply with respect to collection and administration of the tax. The DOR and LCB have various enforcement powers, including inspection of records and premises of distributors and retailers, and seizure of illegally held vapor products.

Essential Public Health Services Account.

The Essential Public Health Services Account (Account) is created in the State Treasury. Beginning in fiscal year 2021, the Account will be funded with 40 percent of the proceeds from the vapor products tax. 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 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.

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. Contracts must require that the tribal vapor products tax rate be 100 percent of the combined sum of the state vapor products tax and state and local sales and use taxes. Contracts with the Puyallup Tribe may set the tribal tax rate at 90 percent of the state vapor products tax. Any vapor products tax agreement with the Puyallup Tribe may 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 broadens the definition of "distributor." The substitute also modifies the definition of "vapor product" to clarify that the tax will only apply to cartridges/"e-liquid" (and not stand-alone/hardware devices), excludes smoking cessation products, and products that will become an ingredient in vapor products, and explicitly excludes marijuana products. The substitute bill requires vapor products delivery sale licensees to collect the tax imposed by the act. It removes the exception to negotiation authority with the Puyallup Tribe.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect on October 1, 2017.

Staff Summary of Public Testimony:

(In support) Increasing the price of tobacco products results in significant decreases in the number of children who use these products. A 10 percent increase in the real cost of these products results in a 6–7 percent decrease in youth use rate. The regulatory framework for vapor products is new and provides a good foundation for further work on this issue. It is very easy for youth to access these products because they are more affordable than cigarettes and other tobacco products. Tobacco and nicotine products are marketed to children, and we ought to take all steps necessary to help prevent youth tobacco use. The bill will help expand budget support for foundational health services and other positive public health programs. Youth and students use e-cigarettes to smoke cannabis, and students are using them in inappropriate places, such as in school.

(Opposed) New markets should not be discouraged by taxes. Regulatory authority from the federal level is ongoing, and the state should give the federal government the opportunity to lead and implement vaping policies at the national level. Federal regulation will bring more consistency and fairness to tax policy on this issue. Enforcement and collection issues are prevalent in this market. Smaller businesses will experience a drop in sales and this will harm their ability to operate. Products will be doubled in price, and consumers will look for other ways to get the product on the black market. The tax proposed on these items is higher than the costs to manufacture the product. Other regulatory requirements are extremely burdensome on small convenience stores. Vapor products are less harmful than cigarettes or other tobacco products. Pennsylvania taxed their vapor industry and closures of businesses resulted; as many as 110 stores have closed. Legislation has since been introduced to repeal the tax. Taxation is not the most effective route to undermine youth access. These products are made up of very simple ingredients that are readily available, and are not age restricted. The tax will result in people going underground and mixing their own e-liquid. Taxation of existing products is also problematic especially for small businesses.

Persons Testifying: (In support) Representative Paul Harris, prime sponsor; Drew Bouton, Department of Health; David Horn, Office of the Attorney General; Lili Helsby; Fel Pajimula, Public Health Seattle and King County; Lori Stolee; Theresa Adkinson, Grant County Health District; and Miles Schoenberg.

(Opposed) Eric Lohnes, Association of Washington Business; Mark Johnson, Washington Retail Association; Holly Chisa, Northwest Grocery Association; Kimberly Thompson and Marc Jarrett, Pink Lung Brigade; and Larry Stewart, Washington Association of Neighborhood Stores.

Persons Signed In To Testify But Not Testifying: None.