

FINAL BILL REPORT

E2SHB 1873

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Synopsis as Enacted

Brief Description: Concerning the taxation of vapor products as tobacco products.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Pollet, Harris, Cody, Robinson, Tarleton, Frame, Bergquist, Ryu, Kilduff, Macri, Stonier, Dolan, Orwall, Doglio, Senn, Stanford, Appleton, Callan, Wylie, Peterson, Valdez, Walen, Leavitt, Kloba and Lovick).

House Committee on Finance
House Committee on Appropriations
Senate Committee on Ways & Means

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, and fine-cut and other chewing tobaccos. 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 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 product 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

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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.

Vapor Products.

Retailer, distributor, and delivery sale licenses are administered by the 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 license violations.

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

"Vapor products" are defined 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.

Tribal Compacting.

The Governor is authorized 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:

Vapor Products Tax.

The sale, use, consumption, handling, possession, or distribution of vapor products subject to taxation as follows:

- 9 cents per milliliter of liquid or solution for accessible containers of liquid solution that are larger than 5 milliliters; or
- 27 cents per milliliter of liquid solution for all other vapor products.

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, 2019, and are responsible for payment of the tax by January 31, 2020. A penalty equal to the greater of \$250 or 10 percent of the tax due is applied if the preexisting inventory tax is not paid.

"Vapor products" are defined as any noncombustible product containing a solution or other consumable substance, regardless of whether it contains nicotine, which employs a mechanical heating element, battery, or electronic circuit that can be used to produce vapor from the solution or other substance. For purposes of taxation, vapor products do not include tobacco cessation products, component ingredients in vapor products, or marijuana or tobacco products. 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.

Foundational Public Health Services Account.

The Foundational Public Health Services Account is created in the State Treasury. Fifty percent of the funds generated by the vapor products tax must be deposited into the account. The account may be used to fund foundational health services, tobacco, vapor product, and nicotine control and prevention, to support increased access and training of public health professionals at public health programs, and for enforcement by the LCB.

Andy Hill Cancer Research Endowment Fund Match Transfer Account.

Fifty percent of the vapor product tax revenues are to be deposited into the Andy Hill Cancer Research Endowment Fund Match Transfer Account (Andy Hill Account). If amounts deposited into the account from the vapor product tax exceeds the cap of \$10 million in the account, excess funds must be deposited into the Foundational Public Health Services Account. Moneys in the account may only be spent after appropriation.

By October 15, 2020, and by each October 15 thereafter, the Department of Revenue (DOR) must estimate any increase in state general fund revenue collections from the vapor products tax imposed and notify the Office of the State Treasurer (Treasurer) of these estimated amounts. Beginning November 1, 2020, and by each November 1 thereafter, the Treasurer must transfer the amounts estimated by the DOR to have been collected from the vapor products tax from the general fund as follows:

- 50 percent to the Andy Hill Account; and
- 50 percent to the Foundational Public Health Services Account.

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.

Other Tobacco Products Tax Reduction.

The 95 percent tax imposed on a tobacco product must be reduced by 50 percent if the product is issued a modified risk tobacco product order by the Secretary of the United States Department of Health and Human Services that determines that the product may be commercially marketed because the product will significantly reduce harm and risk of tobacco-related disease and will benefit the health of the population as a whole. The 95 percent tax imposed on a tobacco product must be reduced by 25 percent if the product is issued a modified risk tobacco product order by the Secretary of the United States Department of Health and Human Services that determines that the product may be sold but not marketed.

Votes on Final Passage:

House	58	38	
Senate	35	13	(Senate amended)
House			(House refused to concur)
Senate			(Senate insists on its position)
House	56	42	(House concurred)

Effective: October 1, 2019