
HOUSE BILL 1873

State of Washington

66th Legislature

2019 Regular Session

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

Read first time 02/04/19. Referred to Committee on Finance.

1 AN ACT Relating to the taxation of vapor products as tobacco
2 products; amending RCW 70.345.090 and 82.26.020; reenacting and
3 amending RCW 82.26.010; adding new sections to chapter 82.26 RCW; and
4 creating a new section.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that the
7 nicotine in vapor products such as electronic cigarettes, electronic
8 devices, and vape pens is almost exclusively processed or derived
9 from tobacco and that the products are intended for human consumption
10 in the oral or nasal cavity or absorption into the human body.
11 Therefore, the legislature finds that these vapor products, including
12 electronic cigarettes and other products are "tobacco products" as
13 defined in RCW 82.26.010. Although these products have been
14 documented as being interchangeably used by consumers with cigarettes
15 or other tobacco products, and there is nicotine, which is usually
16 produced or derived from tobacco in the products intended for human
17 consumption and absorption into the human body, the manufacturers,
18 wholesalers, and retailers have not been paying the tax levied on
19 tobacco products pursuant to chapter 82.26 RCW on these products. The
20 legislature intends to clarify that the tax on tobacco products
21 applies to electronic cigarettes, electronic devices, vape pens, and

1 other vaping products, despite the fact that no tobacco or cigarette
2 tax has been previously paid on these products to date. Recognition
3 of the application of this tax going forward will resolve claims of
4 nonpayment of tobacco product taxes pursuant to chapter 82.26 RCW.
5 The legislature believes that vapor products containing nicotine have
6 always been subject to taxation pursuant to chapter 82.26 RCW, and
7 passage of this act may not be interpreted as any indication
8 otherwise.

9 (2) The legislature finds that electronic vapor product devices
10 that heat liquids for inhalation are also frequently used for
11 inhalation of THC and cannabis derivative products and other drugs.
12 The legislature finds that there is extensive documentation and
13 reporting of vapor products being used by minors in public schools,
14 and that school officials have no readily available means to
15 determine if the liquids being vaporized and inhaled are free of
16 nicotine or illegal substances. The legislature finds that the
17 centers for disease control has documented that as the price of
18 electronic cigarettes and other vapor products has dropped,
19 consumption has dramatically increased. The legislature finds that
20 prices for electronic cigarette and vapor products are substantially
21 lower than cigarettes, often as low as a fifth or a third of the
22 comparable price. The legislature finds that there is strong evidence
23 that low prices increase youth access to vapor products, as with
24 cigarettes. Therefore, the legislature intends to tax these products
25 to both decrease youth access and to provide funding for nicotine and
26 other drug use prevention, education, enforcement, and research;
27 foundational public health; and public health professional education
28 and training purposes.

29 **Sec. 2.** RCW 70.345.090 and 2016 sp.s. c 38 s 17 are each amended
30 to read as follows:

31 (1) No person may conduct a delivery sale or otherwise ship or
32 transport, or cause to be shipped or transported, any vapor product
33 ordered or purchased by mail or through the internet to any person
34 unless such seller has a valid delivery sale license as required
35 under this chapter.

36 (2) No person may conduct a delivery sale or otherwise ship or
37 transport, or cause to be shipped or transported, any vapor product
38 ordered or purchased by mail or through the internet to any person

1 under the minimum age required for the legal sale of vapor products
2 as provided under RCW 70.345.140.

3 (3) A delivery sale licensee must provide notice on its mail
4 order or internet sales forms of the minimum age required for the
5 legal sale of vapor products in Washington state as provided by RCW
6 70.345.140.

7 (4) A delivery sale licensee must not accept a purchase or order
8 from any person without first obtaining the full name, birth date,
9 and residential address of that person and verifying this information
10 through an independently operated third-party database or aggregate
11 of databases, which includes data from government sources, that are
12 regularly used by government and businesses for the purpose of age
13 and identity verification and authentication.

14 (5) A delivery sale licensee must accept payment only through a
15 credit or debit card issued in the purchaser's own name. The licensee
16 must verify that the card is issued to the same person identified
17 through identity and age verification procedures in subsection (4) of
18 this section.

19 (6) Before a delivery sale licensee delivers an initial purchase
20 to any person, the licensee must verify the identity and delivery
21 address of the purchaser by mailing or shipping to the purchaser a
22 notice of sale and certification form confirming that the addressee
23 is in fact the person placing the order. The purchaser must return
24 the signed certification form to the licensee before the initial
25 shipment of product. Certification forms are not required for repeat
26 customers. In the alternative, before a seller delivers an initial
27 purchase to any person, the seller must first obtain from the
28 prospective customer an electronic certification, such as by email,
29 that includes a declaration that, at a minimum, the prospective
30 customer is over the minimum age required for the legal sale of a
31 vapor product, and the credit or debit card used for payment has been
32 issued in the purchaser's name.

33 (7) A delivery sale licensee must include on shipping documents a
34 clear and conspicuous statement which includes, at a minimum, that
35 the package contains vapor products, Washington law prohibits sales
36 to those under the minimum age established by this chapter, and
37 violations may result in sanctions to both the licensee and the
38 purchaser.

1 (8) A delivery sale licensee must collect the tax imposed under
2 RCW 82.26.020 on sales of vaporized tobacco products as defined in
3 RCW 82.26.010(21)(b).

4 (9) A person who knowingly violates this section is guilty of a
5 class C felony, except that the maximum fine that may be imposed is
6 five thousand dollars.

7 (~~(9)~~) (10) In addition to or in lieu of any other civil or
8 criminal remedy provided by law, a person who has violated this
9 section is subject to a civil penalty of up to five thousand dollars
10 for each violation. The attorney general, acting in the name of the
11 state, may seek recovery of the penalty in a civil action in superior
12 court.

13 (~~(10)~~) (11) The attorney general may seek an injunction in
14 superior court to restrain a threatened or actual violation of this
15 section and to compel compliance with this section.

16 (~~(11)~~) (12) Any violation of this section is not reasonable in
17 relation to the development and preservation of business and is an
18 unfair and deceptive act or practice and an unfair method of
19 competition in the conduct of trade or commerce in violation of RCW
20 19.86.020. Standing to bring an action to enforce RCW 19.86.020 for
21 violation of this section lies solely with the attorney general.
22 Remedies provided by chapter 19.86 RCW are cumulative and not
23 exclusive.

24 (~~(12)~~) (13)(a) In any action brought under this section, the
25 state is entitled to recover, in addition to other relief, the costs
26 of investigation, expert witness fees, costs of the action, and
27 reasonable attorneys' fees.

28 (b) If a court determines that a person has violated this
29 section, the court (~~shall~~) must order any profits, gain, gross
30 receipts, or other benefit from the violation to be disgorged and
31 paid to the state treasurer for deposit in the general fund.

32 (~~(13)~~) (14) Unless otherwise expressly provided, the penalties
33 or remedies, or both, under this section are in addition to any other
34 penalties and remedies available under any other law of this state.

35 (~~(14)~~) (15) A licensee who violates this section is subject to
36 license suspension or revocation by the board.

37 (~~(15)~~) (16) The board may adopt by rule additional requirements
38 for mail or internet sales.

39 (~~(16)~~) (17) The board must not adopt rules prohibiting internet
40 sales.

1 NEW SECTION. **Sec. 3.** A new section is added to chapter 82.26
2 RCW to read as follows:

3 (1) The essential public health services account is created in
4 the state treasury. In the 2019-2021 biennium, seventy-five percent
5 of the moneys collected from the tax collected from RCW
6 82.26.010(21)(b) must be deposited into the account. Beginning in the
7 2021-2023 biennium and thereafter, sixty percent of the moneys
8 collected from the tax collected from RCW 82.26.010(21)(b) must be
9 deposited into the account. Moneys in the account may be spent only
10 after appropriation to the department. The department of health must
11 use the moneys in the account for each of the four following
12 purposes:

13 (a) To fund foundational health services, with a minimum of
14 twenty percent of the funds deposited into the account to be used for
15 this purpose;

16 (b) To fund tobacco, vapor product, nicotine control and
17 prevention, and other substance use prevention and education;

18 (c) At least ten percent of funds deposited must be used to
19 support increased access and training of public health professionals
20 at public health programs at accredited public institutions of higher
21 education in Washington; and

22 (d) To fund enforcement by the state liquor and cannabis board of
23 the provisions of this chapter to prevent sales of vapor products to
24 minors and related provisions for control of marketing and product
25 safety, provided that no more than 12.5 percent of the funds
26 deposited into the account established by this section may be
27 utilized and distributed by the department of health to the state
28 liquor and cannabis board for these enforcement purposes.

29 (2) To determine the funding for foundational health services
30 pursuant to subsection (1)(a) of this section, the department of
31 health and representatives of local health jurisdictions must work
32 together to:

33 (a) Arrive at a mutually acceptable allocation and distribution
34 of funds from the account; and

35 (b) Determine the best accountability measures to ensure
36 efficient and effective use of funds, emphasizing use of shared
37 services when appropriate.

38 **Sec. 4.** RCW 82.26.010 and 2010 1st sp.s. c 22 s 4 are each
39 reenacted and amended to read as follows:

1 The definitions in this section apply throughout this chapter
2 unless the context clearly requires otherwise.

3 (1) "Actual price" means the total amount of consideration for
4 which tobacco products are sold, valued in money, whether received in
5 money or otherwise, including any charges by the seller necessary to
6 complete the sale such as charges for delivery, freight,
7 transportation, or handling.

8 (2) "Affiliated" means related in any way by virtue of any form
9 or amount of common ownership, control, operation, or management.

10 (3) "Board" means the liquor (~~control~~) and cannabis board.

11 (4) "Business" means any trade, occupation, activity, or
12 enterprise engaged in for the purpose of selling or distributing
13 tobacco products in this state.

14 (5) "Cigar" means a roll for smoking that is of any size or shape
15 and that is made wholly or in part of tobacco, irrespective of
16 whether the tobacco is pure or flavored, adulterated or mixed with
17 any other ingredient, if the roll has a wrapper made wholly or in
18 greater part of tobacco. "Cigar" does not include a cigarette.

19 (6) "Cigarette" has the same meaning as in RCW 82.24.010.

20 (7) "Department" means the department of revenue.

21 (8) "Distributor" means (a) any person engaged in the business of
22 selling tobacco products in this state who brings, or causes to be
23 brought, into this state from without the state any tobacco products
24 for sale, (b) any person who makes, manufactures, fabricates, or
25 stores tobacco products in this state for sale in this state, (c) any
26 person engaged in the business of selling tobacco products without
27 this state who ships or transports tobacco products to retailers or
28 consumers in this state, to be sold by those retailers, (d) any
29 person engaged in the business of selling tobacco products in this
30 state who handles for sale any tobacco products that are within this
31 state but upon which tax has not been imposed.

32 (9) "Indian country" means the same as defined in chapter 82.24
33 RCW.

34 (10) "Little cigar" means a cigar that has a cellulose acetate
35 integrated filter.

36 (11) "Manufacturer" means a person who manufactures and sells
37 tobacco products.

38 (12) "Manufacturer's representative" means a person hired by a
39 manufacturer to sell or distribute the manufacturer's tobacco
40 products, and includes employees and independent contractors.

1 (13) "Moist snuff" means tobacco that is finely cut, ground, or
2 powdered; is not for smoking; and is intended to be placed in the
3 oral, but not the nasal, cavity.

4 (14) "Person" means any individual, receiver, administrator,
5 executor, assignee, trustee in bankruptcy, trust, estate, firm,
6 copartnership, joint venture, club, company, joint stock company,
7 business trust, municipal corporation, the state and its departments
8 and institutions, political subdivision of the state of Washington,
9 corporation, limited liability company, association, society, any
10 group of individuals acting as a unit, whether mutual, cooperative,
11 fraternal, nonprofit, or otherwise. The term excludes any person
12 immune from state taxation, including the United States or its
13 instrumentalities, and federally recognized Indian tribes and
14 enrolled tribal members, conducting business within Indian country.

15 (15) "Place of business" means any place where tobacco products
16 are sold or where tobacco products are manufactured, stored, or kept
17 for the purpose of sale, including any vessel, vehicle, airplane,
18 train, or vending machine.

19 (16) "Retail outlet" means each place of business from which
20 tobacco products are sold to consumers.

21 (17) "Retailer" means any person engaged in the business of
22 selling tobacco products to ultimate consumers.

23 (18)(a) "Sale" means any transfer, exchange, or barter, in any
24 manner or by any means whatsoever, for a consideration, and includes
25 and means all sales made by any person.

26 (b) The term "sale" includes a gift by a person engaged in the
27 business of selling tobacco products, for advertising, promoting, or
28 as a means of evading the provisions of this chapter.

29 (19)(a) "Taxable sales price" means:

30 (i) In the case of a taxpayer that is not affiliated with the
31 manufacturer, distributor, or other person from whom the taxpayer
32 purchased tobacco products, the actual price for which the taxpayer
33 purchased the tobacco products;

34 (ii) In the case of a taxpayer that purchases tobacco products
35 from an affiliated manufacturer, affiliated distributor, or other
36 affiliated person, and that sells those tobacco products to
37 unaffiliated distributors, unaffiliated retailers, or ultimate
38 consumers, the actual price for which that taxpayer sells those
39 tobacco products to unaffiliated distributors, unaffiliated
40 retailers, or ultimate consumers;

1 (iii) In the case of a taxpayer that sells tobacco products only
2 to affiliated distributors or affiliated retailers, the price,
3 determined as nearly as possible according to the actual price, that
4 other distributors sell similar tobacco products of like quality and
5 character to unaffiliated distributors, unaffiliated retailers, or
6 ultimate consumers;

7 (iv) In the case of a taxpayer that is a manufacturer selling
8 tobacco products directly to ultimate consumers, the actual price for
9 which the taxpayer sells those tobacco products to ultimate
10 consumers;

11 (v) In the case of a taxpayer that has acquired tobacco products
12 under a sale as defined in subsection (18)(b) of this section, the
13 price, determined as nearly as possible according to the actual
14 price, that the taxpayer or other distributors sell the same tobacco
15 products or similar tobacco products of like quality and character to
16 unaffiliated distributors, unaffiliated retailers, or ultimate
17 consumers; or

18 (vi) In any case where (a)(i) through (v) of this subsection do
19 not apply, the price, determined as nearly as possible according to
20 the actual price, that the taxpayer or other distributors sell the
21 same tobacco products or similar tobacco products of like quality and
22 character to unaffiliated distributors, unaffiliated retailers, or
23 ultimate consumers.

24 (b) For purposes of (a)(i) and (ii) of this subsection only,
25 "person" includes both persons as defined in subsection (14) of this
26 section and any person immune from state taxation, including the
27 United States or its instrumentalities, and federally recognized
28 Indian tribes and enrolled tribal members, conducting business within
29 Indian country.

30 (c) The department may adopt rules regarding the determination of
31 taxable sales price under this subsection.

32 (20) "Taxpayer" means a person liable for the tax imposed by this
33 chapter.

34 (21)(a) "Tobacco products" means cigars, cheroots, stogies,
35 periques, granulated, plug cut, crimp cut, ready rubbed, and other
36 smoking tobacco, snuff, snuff flour, cavendish, plug and twist
37 tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps,
38 clippings, cuttings and sweepings of tobacco, and other kinds and
39 forms of tobacco, prepared in such manner as to be suitable for
40 chewing or smoking in a pipe or otherwise, or both for chewing and

1 smoking, and any other product, regardless of form, that contains
2 tobacco or contains nicotine and is intended for human consumption or
3 placement in the oral or nasal cavity or absorption into the human
4 body by any other means, but does not include cigarettes as defined
5 in RCW 82.24.010.

6 (b) "Tobacco products" includes:

7 (i) Any product containing a solution or other consumable
8 substance that contains tobacco or nicotine that employs a mechanical
9 heating element, battery, or electronic circuit that can be used to
10 produce vapor from the solution or other substance;

11 (ii) Any product that contains tobacco or nicotine that is in the
12 form of a solid that is vaporized for inhalation. It also includes
13 any flavored liquids intended for inhalation in vaporizing devices
14 that the department determines the manufacturer or distributor
15 intends to be inhaled in combination with either a tobacco, nicotine,
16 or THC containing substance; and

17 (iii) Any hardware that comes preloaded with a vaporizable liquid
18 intended for inhalation or can accept a preloaded liquid cartridge or
19 cartridge with a solid substance intended to be vaporized for
20 inhalation.

21 (c) "Tobacco products" does not include:

22 (i) Any product approved by the United States food and drug
23 administration for sale as a tobacco cessation product, medical
24 device, or for other therapeutic purposes when such product is
25 marketed and sold solely for such an approved purpose;

26 (ii) Any product that will become an ingredient or component in a
27 vapor product manufactured by a distributor. It also does not include
28 any stand-alone hardware a consumer uses to vaporize a liquid or
29 solid substance when the hardware is refilled from bulk liquid.

30 (22) "Unaffiliated distributor" means a distributor that is not
31 affiliated with the manufacturer, distributor, or other person from
32 whom the distributor has purchased tobacco products.

33 (23) "Unaffiliated retailer" means a retailer that is not
34 affiliated with the manufacturer, distributor, or other person from
35 whom the retailer has purchased tobacco products.

36 **Sec. 5.** RCW 82.26.020 and 2010 1st sp.s. c 22 s 5 are each
37 amended to read as follows:

1 (1) There is levied and collected a tax upon the sale, handling,
2 or distribution of all tobacco products in this state at the
3 following rate:

4 (a) For cigars except little cigars, ninety-five percent of the
5 taxable sales price of cigars, not to exceed sixty-five cents per
6 cigar;

7 (b) For all tobacco products except those covered under separate
8 provisions of this subsection, ninety-five percent of the taxable
9 sales price;

10 (c) For moist snuff, as established in this subsection (1)(c) and
11 computed on the net weight listed by the manufacturer:

12 (i) On each single unit consumer-sized can or package whose net
13 weight is one and two-tenths ounces or less, a rate per single unit
14 that is equal to the greater of 2.526 dollars or eighty-three and
15 one-half percent of the cigarette tax under chapter 82.24 RCW
16 multiplied by twenty; or

17 (ii) On each single unit consumer-sized can or package whose net
18 weight is more than one and two-tenths ounces, a proportionate tax at
19 the rate established in (c)(i) of this subsection (1) on each ounce
20 or fractional part of an ounce; and

21 (d) For little cigars, an amount per cigar equal to the cigarette
22 tax under chapter 82.24 RCW.

23 (2) Taxes under this section must be imposed at the time the
24 distributor (a) brings, or causes to be brought, into this state from
25 without the state tobacco products for sale, (b) makes, manufactures,
26 fabricates, or stores tobacco products in this state for sale in this
27 state, (c) ships or transports tobacco products to retailers in this
28 state, to be sold by those retailers, or (d) handles for sale any
29 tobacco products that are within this state but upon which tax has
30 not been imposed.

31 (3) ~~((The))~~ (a) Except as provided in (b) of this subsection,
32 moneys collected under this section must be deposited into the state
33 general fund.

34 (b) Moneys collected under this section on products defined under
35 RCW 82.26.010(21)(b) must be deposited into the essential public
36 health services account created in section 3 of this act.

37 NEW SECTION. Sec. 6. A new section is added to chapter 82.26
38 RCW to read as follows:

1 The department may require testing of any products sold to
2 determine if tobacco or nicotine is present in the product. If
3 independent testing determines that a product has tobacco or nicotine
4 when not advertised or sold as such, or if nicotine content was not
5 disclosed, the tax due under RCW 82.26.020 may be applied
6 retroactively on sales made of that product up to five years prior to
7 the testing date.

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