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**SENATE BILL 5793**

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**State of Washington**

**66th Legislature**

**2019 Regular Session**

**By** Senators Keiser, Nguyen, and Wilson, C.

Read first time 02/01/19. Referred to Committee on Ways & Means.

1 AN ACT Relating to increasing funding for public health services;  
2 amending RCW 82.26.020; reenacting and amending RCW 82.26.010; adding  
3 new sections to chapter 82.26 RCW; creating a new section; providing  
4 an effective date; and declaring an emergency.

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

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

8 The definitions in this section apply throughout this chapter  
9 unless the context clearly requires otherwise.

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

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

17 (3) "Board" means the state liquor (~~((control))~~) and cannabis  
18 board.

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

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

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

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

8 (8) "Distributor" means (a) any person engaged in the business of  
9 selling tobacco products in this state who brings, or causes to be  
10 brought, into this state from without the state any tobacco products  
11 for sale, (b) any person who makes, manufactures, fabricates, or  
12 stores tobacco products in this state for sale in this state, (c) any  
13 person engaged in the business of selling tobacco products without  
14 this state who ships or transports tobacco products to retailers in  
15 this state, to be sold by those retailers, (d) any person engaged in  
16 the business of selling tobacco products in this state who handles  
17 for sale any tobacco products that are within this state but upon  
18 which tax has not been imposed.

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

21 (10) "Little cigar" means a cigar that has a cellulose acetate  
22 integrated filter.

23 (11) "Manufacturer" means a person who manufactures and sells  
24 tobacco products.

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

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

31 (14) "Person" means any individual, receiver, administrator,  
32 executor, assignee, trustee in bankruptcy, trust, estate, firm,  
33 copartnership, joint venture, club, company, joint stock company,  
34 business trust, municipal corporation, the state and its departments  
35 and institutions, political subdivision of the state of Washington,  
36 corporation, limited liability company, association, society, any  
37 group of individuals acting as a unit, whether mutual, cooperative,  
38 fraternal, nonprofit, or otherwise. The term excludes any person  
39 immune from state taxation, including the United States or its

1 instrumentalities, and federally recognized Indian tribes and  
2 enrolled tribal members, conducting business within Indian country.

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

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

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

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

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

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

18 (i) In the case of a taxpayer that is not affiliated with the  
19 manufacturer, distributor, or other person from whom the taxpayer  
20 purchased tobacco products, the actual price for which the taxpayer  
21 purchased the tobacco products;

22 (ii) In the case of a taxpayer that purchases tobacco products  
23 from an affiliated manufacturer, affiliated distributor, or other  
24 affiliated person, and that sells those tobacco products to  
25 unaffiliated distributors, unaffiliated retailers, or ultimate  
26 consumers, the actual price for which that taxpayer sells those  
27 tobacco products to unaffiliated distributors, unaffiliated  
28 retailers, or ultimate consumers;

29 (iii) In the case of a taxpayer that sells tobacco products only  
30 to affiliated distributors or affiliated retailers, the price,  
31 determined as nearly as possible according to the actual price, that  
32 other distributors sell similar tobacco products of like quality and  
33 character to unaffiliated distributors, unaffiliated retailers, or  
34 ultimate consumers;

35 (iv) In the case of a taxpayer that is a manufacturer selling  
36 tobacco products directly to ultimate consumers, the actual price for  
37 which the taxpayer sells those tobacco products to ultimate  
38 consumers;

39 (v) In the case of a taxpayer that has acquired tobacco products  
40 under a sale as defined in subsection (18)(b) of this section, the

1 price, determined as nearly as possible according to the actual  
2 price, that the taxpayer or other distributors sell the same tobacco  
3 products or similar tobacco products of like quality and character to  
4 unaffiliated distributors, unaffiliated retailers, or ultimate  
5 consumers; or

6 (vi) In any case where (a)(i) through (v) of this subsection do  
7 not apply, the price, determined as nearly as possible according to  
8 the actual price, that the taxpayer or other distributors sell the  
9 same tobacco products or similar tobacco products of like quality and  
10 character to unaffiliated distributors, unaffiliated retailers, or  
11 ultimate consumers.

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

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

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

22 (21) "Tobacco products" means cigars, cheroots, stogies,  
23 periques, granulated, plug cut, crimp cut, ready rubbed, and other  
24 smoking tobacco, snuff, snuff flour, cavendish, plug and twist  
25 tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps,  
26 clippings, cuttings and sweepings of tobacco, and other kinds and  
27 forms of tobacco, prepared in such manner as to be suitable for  
28 chewing or smoking in a pipe or otherwise, or both for chewing and  
29 smoking, and any other product, regardless of form, that contains  
30 tobacco or nicotine, such as that used in vapor products, and is  
31 intended for human consumption or placement in the oral or nasal  
32 cavity or absorption into the human body by any other means, but does  
33 not include cigarettes as defined in RCW 82.24.010. "Tobacco  
34 products" includes vapor products as defined in RCW 70.345.010.

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

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

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

3        The department must create a unique reporting code for amounts  
4    collected on the sale, handling, or distribution of vapor products  
5    for the purpose of making distributions in accordance with RCW  
6    82.26.020(3)(b) and section 4 of this act.

7        **Sec. 3.**    RCW 82.26.020 and 2010 1st sp.s. c 22 s 5 are each  
8    amended to read as follows:

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

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

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

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

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

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

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

31        (2) Taxes under this section must be imposed at the time the  
32    distributor (a) brings, or causes to be brought, into this state from  
33    without the state tobacco products for sale, (b) makes, manufactures,  
34    fabricates, or stores tobacco products in this state for sale in this  
35    state, (c) ships or transports tobacco products to retailers in this  
36    state, to be sold by those retailers, or (d) handles for sale any  
37    tobacco products that are within this state but upon which tax has  
38    not been imposed.

1       (3) (a) Except as provided in (b) of this subsection, the moneys  
2 collected under this section must be deposited into the state general  
3 fund.

4       (b) Twenty-five percent of the amount collected under this  
5 section on the sale, handling, or distribution of vapor products must  
6 be deposited into the tobacco prevention and control account created  
7 in RCW 43.79.480 and the remainder must be deposited into the  
8 foundational public health account created in section 5 of this act.

9       NEW SECTION. Sec. 4. A new section is added to chapter 82.26  
10 RCW to read as follows:

11       (1) In addition to the tax imposed upon the sale, use,  
12 consumption, handling, possession, or distribution of cigarettes set  
13 forth in RCW 82.24.020, there is imposed a tax in an amount equal to  
14 two and one-half cents per cigarette.

15       (2) Twenty-five percent of the amount collected under this  
16 section must be deposited into the tobacco prevention and control  
17 account created in RCW 43.79.480 and the remainder must be deposited  
18 into the foundational public health account created in section 5 of  
19 this act.

20       NEW SECTION. Sec. 5. The foundational public health account is  
21 created in the custody of the state treasurer. All receipts from  
22 amounts collected under RCW 82.26.020(3)(b) and section 4 of this act  
23 must be deposited into the account. Expenditures from the account may  
24 be used only for the support of foundational public health services  
25 as determined by the department of health. Only the director of the  
26 department of health or the director's designee may authorize  
27 expenditures from the account. The account is subject to allotment  
28 procedures under chapter 43.88 RCW, but an appropriation is not  
29 required for expenditures.

30       NEW SECTION. Sec. 6. This act is necessary for the immediate  
31 preservation of the public peace, health, or safety, or support of  
32 the state government and its existing public institutions, and takes  
33 effect July 1, 2019.

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