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**Business & Financial Services Committee**

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**HB 2565**

**Brief Description:** Providing for the operation of roll your own cigarette machines at retail establishments.

**Sponsors:** Representatives Kirby, Harris, Dammeier, Walsh, Orwall, Kelley, Moscoso and Zeiger.

**Brief Summary of Bill**

- Makes the product of bulk tobacco and empty tubes that are rolled by a machine a cigarette for the purposes of statutes regarding the National Uniform Tobacco Settlement, tobacco product manufacturers, and taxes on cigarettes.
- Makes a retailer who operates a machine that rolls bulk tobacco and empty tubes a manufacturer of cigarettes for the purposes of statutes regarding the National Uniform Tobacco Settlement, tobacco product manufacturers, and taxes on cigarettes.

**Hearing Date:** 1/24/12

**Staff:** Jon Hedegard (786-7127).

**Background:**

Definition of Cigarette.

"Cigarette" is defined as "any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or (2) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (3) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in clause (1) of this definition. The term 'cigarette' includes "roll-your-own" (i.e., any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by,

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consumers as tobacco for making cigarettes). For purposes of this definition of 'cigarette,' 0.09 ounces of "roll-your-own' tobacco shall constitute one individual 'cigarette'."

#### Definition of Manufacturer.

"Tobacco Product Manufacturer" means an entity that:

- manufactures cigarettes anywhere are intended to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except excluded by meeting the criteria in the Master Settlement Agreement);
- is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or
- becomes a successor of an entity described above.

Tobacco products are subject to various taxes, including state retail sales and use taxes and tobacco taxes that are paid by wholesalers or distributors of the products in the state.

#### Cigarette Taxes.

The cigarette tax is added directly to the price of cigarettes before the sales tax is applied. The cigarette tax is due from the first person who sells, uses, consumes, handles, possesses, or distributes the cigarettes in the state. The taxpayer pays the cigarette tax by purchasing cigarette tax stamps that are placed on cigarette packs. On May 1, 2010 the cigarette tax rate was increased from \$0.10125 to \$0.15125 per cigarette (from \$2.025 to \$3.025 per pack of 20 cigarettes).

Taxpayers pay the tax by purchasing cigarette tax stamps from banks authorized by the Department of Revenue (Department). The stamps are placed on cigarette packs. A licensed wholesaler may possess cigarettes for a reasonable period before affixing stamps. Except for licensed wholesalers, it is unlawful to possess unstamped cigarettes unless the possessor files a notice of intent to possess with the Department before receiving the cigarettes. It is unlawful for any person to place a cigarette tax stamp on a package of cigarettes unless the brand family is on the list on the Attorney General's website. Cigarettes without tax stamps are contraband and subject to seizure if in the possession of anyone other than a licensed wholesaler or a person who filed a notice of intent to possess.

#### Tobacco Products Taxes.

The tobacco products tax applies to all tobacco products, except cigarettes, which are taxed separately. Examples of tobacco products include cigars, pipe tobacco, snuff, and chewing tobacco. The tobacco products tax is due from the distributor when the distributor brings tobacco products into the state, manufactures tobacco products in the state, or ships tobacco products to retailers in the state.

Beginning May 1, 2010 the tobacco products tax was increased from 75 percent to 95 percent of the taxable sales price, with some exceptions. The tobacco products tax rate is 95 percent of the wholesale price, with some exemptions (cigars and snuff) but for cigars the tax is capped at 50 cents per cigar. The wholesale price is, generally, the actual purchase or selling price charged by the manufacturer or distributor. These tobacco products are not subject to any stamp requirement.

#### Tobacco Master Settlement.

The Tobacco Master Settlement Agreement is an agreement between 46 states, the District of Columbia, six territories, and a number of tobacco product manufacturers (Participating Manufacturers). Under the agreement, Participating Manufacturers agree to make specified payments to the states and agree to abide by extensive public health restrictions on the advertising, promotion and marketing of cigarettes. In exchange, the states agreed to release the Participating Manufacturers from claims by the states. Tobacco product manufacturers that did not sign the agreement (Non-Participating Manufacturers) were not released from potential state claims and did not undertake any of the payment obligations or agree to abide by the public health restrictions. In order to ensure that any state that successfully sues a Non-Participating Manufacturer in the future will have a fund against which they can recover any judgment or settlement moneys, the agreement included a proposed statute (Model Statute) which requires Non-Participating Manufacturers to make annual payments into an escrow fund based on the number of cigarettes sold in the state. The Model Statute is also intended to prevent Non-Participating Manufacturers from reaping a windfall benefit by selling cigarettes in a state without bearing the costs that cigarette smoking imposes on the state. Washington enacted the Model Statute in 1999.

#### Tobacco Manufacturers.

Every tobacco manufacturer must provide an annual certification to the Attorney General. For Participating Manufacturers, the certification must include a list of brand families. A brand family means all styles of cigarette sold under a particular brand name. For Non-Participating Manufacturer's, the certification must include additional information about the number of units sold under each brand family.

A Non-Participating Manufacturer must also certify that it:

- is registered to do business in the state, or has appointed an agent for service of process;
- maintains an escrow fund approved by the state;
- is in full compliance with the escrow statute; and
- identifies the financial institution where it has established the escrow fund and identifies all deposits and withdrawals to and from the fund. All manufacturers must accept responsibility for the brands they have listed, in terms of compliance with the Model Statute or the escrow requirements.

The Attorney General must publish on its web site a list of the brand families of tobacco manufacturers who have complied with the certification and escrow requirements.

Foreign and nonresident Non-Participating Manufacturers must provide an agent in this state for receipt of legal process. Non-Participating Manufacturers must provide information to the Attorney General as requested on the amount of money and activity in escrow accounts. Wholesalers and distributors of cigarettes must provide quarterly reports to the director of revenue on sales of cigarettes and make available invoices and documentation of sales. Wholesalers, distributors, and manufacturers must provide information to the Department, Liquor Control Board (Board), or Attorney General as requested to show compliance.

#### Tobacco Prevention and Control Account.

The Tobacco Prevention and Control Account (TPC Account) and the Tobacco Settlement Account were created in 1999, following Washington's entry into the Tobacco Master Settlement Agreement. Revenue for the TPC Account comes from the Tobacco Settlement Account,

investments, donations, and other revenue directed by law. Expenditures from the TPC Account are subject to appropriations.

Tobacco Tracking Code.

Within one year of the date that the federal government requires a tobacco code to track tobacco products, all individual packages must contain the code that would verify if taxes have been paid on the product. If the federal government does not implement a tobacco code by July 1, 2011, the Department must, by July 1, 2014, recommend to the Legislature a method of determining whether tax has been paid on a product.

Enforcement.

The Board may revoke or suspend the license of any wholesaler who violates tax and stamping provisions. The Board or Department may impose civil penalties for a violation, not to exceed the greater of 500 percent of the retail value of the cigarettes or \$5,000. The Attorney General may seek a court injunction to restrain a threatened or actual violation. It is a gross misdemeanor to sell, distribute, or possess cigarettes with tax stamps that have been affixed in violation of the requirements. Cigarettes not in compliance with the tax stamp requirements may be seized as contraband.

The Attorney General may bring a Consumer Protection Action to enforce laws regarding tobacco manufacturers.

**Summary of Bill:**

Every person who operates or maintains a machine at a retail establishment that enables the person to process a product made or derived from tobacco into a roll or tube is a manufacturer of cigarettes for the purposes of the statutes on

- the national uniform tobacco settlement;
- tobacco product manufacturers; and
- taxes on cigarettes.

The resulting product made or derived from the processing tobacco into a roll or tube is a cigarette.

**Appropriation:** None.

**Fiscal Note:** Requested on January 19, 2012.

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