

HOUSE BILL REPORT

HB 2795

As Reported by House Committee On: Finance

Title: An act relating to investing in education by clarifying laws relating to tobacco substitutes.

Brief Description: Investing in education by clarifying laws relating to tobacco substitutes.

Sponsors: Representatives Carlyle, Hunter, Freeman, Ryu, Tharinger, Bergquist, Pollet, Senn, Van De Wege, Roberts, S. Hunt and Moscoso.

Brief History:

Committee Activity:

Finance: 2/28/14, 3/4/14 [DPS].

Brief Summary of Substitute Bill

- Imposes a 75 percent other tobacco products (OTP) tax on tobacco substitutes.
- Directs OTP tax revenue generated from the distribution of tobacco substitutes to the Education Legacy Trust Account.
- Prohibits the sale or distribution of all tobacco substitutes to minors except e-cigarettes, which are currently prohibited to sell or distribute to minors.
- Establishes provisions to further restrict access of e-cigarettes to minors.

HOUSE COMMITTEE ON FINANCE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Carlyle, Chair; Tharinger, Vice Chair; Fitzgibbon, Hansen, Lytton, Pollet and Springer.

Minority Report: Do not pass. Signed by 6 members: Representatives Nealey, Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Condotta, Reykdal, Vick and Wilcox.

Staff: Richelle Geiger (786-7175).

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.

Background:

Other Tobacco Products Tax.

The Other Tobacco Products (OTP) tax is due from a distributor for the sale, use, consumption, handling, and distribution of cigars, pipe tobacco, chewing tobacco, and other forms of tobacco, except 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, which is imposed at a rate of \$3.025 per pack of 20 cigarettes.

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. The OTP tax revenue is deposited in the State General Fund.

Tobacco product distributors must maintain records of their tobacco products transactions. Tobacco product distributors and retailers must obtain a license from the Liquor Control 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 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.

Nicotine Products.

Nicotine is a naturally occurring substance in tobacco that can be derived to produce a variety of products. An example of a product that contains nicotine, but does not contain tobacco, is a vapor product, commonly known as an electronic cigarette (e-cigarette). An e-cigarette is a battery powered electronic device that heats a liquid nicotine solution to create a nicotine-laced vapor that can be inhaled by the user.

Tobacco Products - Access to Minors.

The federal government requires states to enforce laws prohibiting the sale and distribution of tobacco to minors, individuals less than 18 years old. A person is guilty of a crime if he or she sells or distributes tobacco products or e-cigarettes to a minor. A minor who attempts to purchase or obtain tobacco products is subject to a fine or community service hours. The courts may also require the minor to participate in a smoking cessation program.

Tobacco sampling is prohibited. Coupons for tobacco products may only be used during an in-person transaction in a retail store. Tobacco products may not be ordered by mail or through the internet by anyone in the state other than a licensed wholesaler or retailer. A retailer may require a customer to provide photo identification to purchase tobacco products if there is a question regarding the customer's age.

The LCB may suspend or revoke a retailer's tobacco license if they distribute tobacco to a minor. The LCB may work with local county health departments or law enforcement to conduct random inspections to assure compliance. Any tobacco product possessed by a minor is considered contraband and may be seized by an LCB enforcement officer.

State regulations preempt local regulations regarding tobacco products.

Summary of Substitute Bill:

Tobacco Substitutes and Other Tobacco Product Tax.

Tobacco substitutes are subject to a 75 percent OTP tax. "Tobacco substitutes" are defined as products that contain nicotine and are intended for human consumption. This includes any electronic device that can be used to ingest nicotine, including e-cigarettes. Tobacco substitutes do not include: (1) United States Food and Drug Administration (FDA) approved products marketed and sold solely for tobacco cessation or other therapeutic purposes; or (2) e-cigarettes that are prescribed by a licensed physician and purchased at a pharmacy at such time the FDA approves e-cigarettes for tobacco cessation and other therapeutic purposes.

The OTP tax revenue generated from tobacco substitutes must be deposited in the Education Legacy Trust Account. Inventory of tobacco substitutes held by a distributor for sale or distribution at the time this bill takes effect is subject to the OTP tax. A retailer is not required to obtain a distributor's license for the sale of preexisting inventory of tobacco substitutes if the retailer only sells the preexisting inventory to final consumers and does not otherwise qualify as a tobacco distributor. Any nontobacco product sold together with a tobacco product for one, non-itemized price is subject to the OTP tax.

Tobacco substitute distributors must maintain records regarding their tobacco substitute transactions. Tobacco substitute distributors and retailers must obtain a license from the LCB. The distributor license fee is \$650 and the retailer license fee is \$93, annually. LCB has the authority to revoke or suspend the license of a retailer or distributor for noncompliance with the OTP tax regulations. The LCB may seize tobacco substitutes from: (1) an unlicensed distributor or retailer; or (2) a distributor or retailer selling tobacco products while their license is suspended or revoked.

Tobacco substitutes- Access to Minors.

A person is guilty of a crime if he or she sells or distributes a tobacco substitute to a minor. A minor who attempts to purchase or obtain a tobacco substitute is subject to a fine or community service hours. The courts may also require the minor to participate in a smoking cessation program.

Tobacco substitute sampling is prohibited. Coupons for tobacco substitutes may only be used during an in-person transaction in a retail store. Tobacco substitutes may not be ordered by mail or through the Internet by anyone in the state other than a licensed wholesaler or retailer. A retailer may require a customer to provide photo identification to purchase tobacco substitutes if there is a question regarding the customer's age.

The LCB may suspend or revoke a retailer's tobacco license if they distribute tobacco to a minor. The LCB may work with local county health departments or law enforcement to conduct random inspections to assure compliance. Any tobacco substitute possessed by a minor is considered contraband and may be seized by an LCB enforcement officer.

State regulations preempt local regulations regarding tobacco substitutes.

Substitute Bill Compared to Original Bill:

Tobacco substitutes are subject to a 75 percent OTP tax.

Electronic cigarettes that are prescribed by a licensed physician and purchased at a pharmacy are excluded from the definition of "tobacco product" at such time as the USDA approves e-cigarettes for tobacco cessation and other therapeutic purposes.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on March 4, 2014.

Effective Date of Substitute Bill: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for sections 3 through 8 relating to tobacco substitutes and other tobacco product tax, which takes effect July 1, 2014.

Staff Summary of Public Testimony:

(In support with concerns) It is admirable that individuals have used e-cigarettes to stop smoking. However, many medical associations want to outlaw e-cigarettes. One in five children who have not tried a cigarette has tried an e-cigarette. Ten minutes after the use of an e-cigarette, the user experiences decreased breathing capacity. The OTP tax revenue from e-cigarettes and tobacco substitutes should be directed to tobacco reduction and cessation programs. The rest of the bill is supported.

(Opposed) Cigarettes and e-cigarettes are completely different products. They cannot be compared to one another. Tobacco has 4,000 chemicals, 400 of which are carcinogenic. E-cigarettes are made with food-grade ingredients. There is no second hand smoke from e-cigarettes. The exhale is water vapor and doesn't contain chemicals.

Many e-cigarette users are current or former cigarette smokers. Many have reported decreased cigarette use or have used e-cigarettes to stop smoking cigarettes completely. E-cigarette distributors are doing God's work. Many standard cigarette users say that e-cigarettes are the only cessation tactic that works for them. The military is using e-cigarettes to get soldiers to stop smoking cigarettes. Non-smokers are not interested in e-cigarettes. This bill is unfair and makes creating a healthy environment difficult. We hope the will of the Legislature is not to harm, and potentially kill, their constituents by driving them away from e-cigarettes and back to standard cigarettes.

A new tax on e-cigarettes would deter new users from a healthy alternative to cigarettes. Consumers who currently purchase e-cigarettes from Washington retailers may begin to purchase their e-cigarettes out of state or online if this tax is implemented. The tax will drive tax revenue out of Washington. Many e-cigarette retailers do not mind paying fair taxes. However, the Legislature needs to understand e-cigarettes before they tax the industry. Some

of the nicotine is not derived from tobacco and it doesn't make sense to tax them as tobacco products.

The 95 percent OTP tax rate would make the cost of e-cigarettes astronomical. Methadone is not taxed at 95 percent for patients trying to get off drugs.

The nicotine portion of some e-cigarettes cannot be separated from the non-nicotine products. This is unfair because the whole e-cigarette product would be subject to the OTP tax.

This is not an industry run by "big business." This industry is by the people, for the people. This industry is young and quickly expanding. The job opportunities are high quality and encourage upward mobility.

This legislation is premature. Washington should wait to design e-cigarette policy until the federal government regulates the industry.

Many stores currently require photo identification from customers and will not sell e-cigarettes to anyone under 18 years old. E-cigarettes out price most minors.

Many e-cigarette distributors are electronic commerce only companies. The prohibition of e-cigarette online sales would drive them and their customers out of state.

Electric cigarettes bring people from all walks of life together and provide a shared experience.

Persons Testifying: (In support with concerns) Susie Tracey, Washington State Medical Association

(Opposed) Larry Stewart, Washington Association of Neighborhood Stores; Stephen McLain and Zach McLain, Future Vapor; Representative Muri; Amber Carter, Association of Washington Business; Mark Johnson, Washington Retailers Association; Jeff Gombosky, McLane Company; Allen Lattle, Vape D Lish; Dave Buckly; Angela Britton; Lisa Sauve, Anthony McMullen; Adam Brown, Innovape; Shawn D'Sylva, Bubba's; Kim Thompson, The Vaporium; Joshua Baba, Tobacco Joes; Jim Oliver, Steampower Vapory Lounge; Mark Jarret, Bonzai Vapors; Constance Statham; Terrence Sparks; Tammy Brookins; Holly Chisa, Njoy Manufacturing; Kyle Chapman, Mt. Baker Vapor; Rose Andersen, Steampunk Vapory Lounge; Matt Zukowski; Rick Sauve; Cary Falk, Vape; and Thao Nguyen, Strange Clouds.

Persons Signed In To Testify But Not Testifying: None.