
HOUSE BILL 2795

State of Washington

63rd Legislature

2014 Regular Session

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

Read first time 02/26/14. Referred to Committee on Finance.

1 AN ACT Relating to investing in education by clarifying laws
2 relating to tobacco substitutes; amending RCW 26.28.080, 70.155.010,
3 and 82.26.190; reenacting and amending RCW 82.26.010; adding new
4 sections to chapter 82.26 RCW; creating a new section; prescribing
5 penalties; and providing an effective date.

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

7 **Sec. 1.** RCW 26.28.080 and 2013 c 47 s 1 are each amended to read
8 as follows:

9 (1) Every person who sells or gives, or permits to be sold or
10 given, to any person under the age of eighteen years any (~~eigar,~~
11 ~~cigarette, cigarette paper or wrapper, tobacco in any form, or a~~
12 ~~vapor~~) tobacco product is guilty of a gross misdemeanor.

13 (2) It (~~shall be no~~) is not a defense to a prosecution for a
14 violation of this section that the person acted, or was believed by the
15 defendant to act, as agent or representative of another.

16 (3)(a) For the purposes of this section, (~~"vapor product" means a~~
17 ~~noncombustible tobacco derived product containing nicotine that employs~~
18 ~~a mechanical heating element, battery, or circuit, regardless of shape~~
19 ~~or size, that can be used to heat a liquid nicotine solution contained~~

1 ~~in cartridges. Vapor product does not include any product that is~~
2 ~~regulated by the United States food and drug administration under~~
3 ~~chapter V of the federal food, drug, and cosmetic act))~~ "tobacco
4 product" means:

5 (i) Any product containing, made, or derived from tobacco or
6 nicotine that is intended for human consumption, whether chewed,
7 smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by
8 any other means; and

9 (ii) Any electronic device that can be used to deliver nicotine or
10 other substances to, the person inhaling from the device, including,
11 but not limited to, an electronic cigarette, cigar, pipe, or hookah.

12 (b) Notwithstanding any provisions of (a)(i) and (ii) of this
13 subsection to the contrary, "tobacco product" includes any component,
14 part, or accessory of a tobacco product whether or not it is sold
15 separately. "Tobacco product" does not include any product that has
16 been approved by the United States food and drug administration for
17 tobacco cessation or other therapeutic purposes where such product is
18 marketed and sold solely for such an approved purpose.

19 **Sec. 2.** RCW 70.155.010 and 2009 c 278 s 1 are each amended to read
20 as follows:

21 The definitions (~~(set forth)~~) in this section and RCW 82.24.010
22 (~~(shall)~~) apply (~~(to)~~) throughout this chapter(~~(. In addition, for the~~
23 ~~purposes of this chapter,)~~) unless (~~(otherwise required by)~~) the
24 context(~~(+)~~) clearly requires otherwise.

25 (1) "Board" means the Washington state liquor control board.

26 (2) "Internet" means any computer network, telephonic network, or
27 other electronic network.

28 (3) "Minor" refers to an individual who is less than eighteen years
29 old.

30 (4) "Sample" means a tobacco product distributed to members of the
31 general public at no cost or at nominal cost for product promotion
32 purposes.

33 (5) "Sampling" means the distribution of samples to members of the
34 public.

35 (6)(a) "Tobacco product" means (~~(a product that contains tobacco~~
36 ~~and is intended for human use, including any product defined in RCW~~
37 ~~82.24.010(2) or 82.26.010(1), except that for the purposes of RCW~~

1 ~~70.155.140 only, "tobacco product" does not include cigars defined in~~
2 ~~RCW 82.26.010 as to which one thousand units weigh more than three~~
3 ~~pounds)) :~~

4 (i) Any product containing, made, or derived from tobacco or
5 nicotine that is intended for human consumption, whether chewed,
6 smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by
7 any other means, including, but not limited to, any product defined in
8 RCW 82.24.010(2) or 82.26.010(21)(a); and

9 (ii) Any electronic device that can be used to deliver nicotine or
10 other substances to the person inhaling from the device, including, but
11 not limited to, an electronic cigarette, cigar, pipe, or hookah.

12 (b) Notwithstanding any provisions of (a)(i) and (ii) of this
13 subsection to the contrary, "tobacco product" includes any component,
14 part, or accessory of a tobacco product whether or not it is sold
15 separately. "Tobacco product" does not include any product that has
16 been approved by the United States food and drug administration for
17 tobacco cessation or other therapeutic purposes where such product is
18 marketed and sold solely for such an approved purpose.

19 (c) Except for the purposes of RCW 70.155.140 only, "tobacco
20 product" does not include cigars defined in RCW 82.26.010 as to which
21 one thousand units weigh more than three pounds.

22 **Sec. 3.** RCW 82.26.010 and 2010 1st sp.s. c 22 s 4 are each
23 reenacted and amended to read as follows:

24 The definitions in this section apply throughout this chapter
25 unless the context clearly requires otherwise.

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

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

33 (3) "Board" means the liquor control board.

34 (4) "Business" means any trade, occupation, activity, or enterprise
35 engaged in for the purpose of selling or distributing tobacco products
36 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 whether
3 the tobacco is pure or flavored, adulterated or mixed with any other
4 ingredient, if the roll has a wrapper made wholly or in greater part of
5 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 stores
12 tobacco products in this state for sale in this state, (c) any person
13 engaged in the business of selling tobacco products without this state
14 who ships or transports tobacco products to retailers in this state, to
15 be sold by those retailers, (d) any person engaged in the business of
16 selling tobacco products in this state who handles for sale any tobacco
17 products that are within this state but upon which tax has not been
18 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 products,
27 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 oral,
30 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 group
37 of individuals acting as a unit, whether mutual, cooperative,
38 fraternal, nonprofit, or otherwise. The term excludes any person

1 immune from state taxation, including the United States or its
2 instrumentalities, and federally recognized Indian tribes and enrolled
3 tribal members, conducting business within Indian country.

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

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

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

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

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

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

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

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

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

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

1 (v) In the case of a taxpayer that has acquired tobacco products
2 under a sale as defined in subsection (18)(b) of this section, the
3 price, determined as nearly as possible according to the actual price,
4 that the taxpayer or other distributors sell the same tobacco products
5 or similar tobacco products of like quality and character to
6 unaffiliated distributors, unaffiliated retailers, or ultimate
7 consumers; or

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

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

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

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

23 (21) "Tobacco products" means:

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

38 (b) A tobacco substitute.

1 (22) "Tobacco substitute" means any product containing nicotine,
2 but not containing tobacco, that is intended for human consumption,
3 whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed,
4 or ingested by any other means, that has not been approved by the
5 United States food and drug administration for tobacco cessation or
6 other medical purposes.

7 (23) "Unaffiliated distributor" means a distributor that is not
8 affiliated with the manufacturer, distributor, or other person from
9 whom the distributor has purchased tobacco products.

10 (~~(23)~~) (24) "Unaffiliated retailer" means a retailer that is not
11 affiliated with the manufacturer, distributor, or other person from
12 whom the retailer has purchased tobacco products.

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

15 For purposes of the tax imposed under RCW 82.26.020, no deduction
16 from the taxable sales price is allowed for the value of nontobacco
17 products that are sold together with tobacco products for one
18 nonitemized price:

19 (1) To the taxpayer, and the taxable sales price is required to be
20 determined in accordance with RCW 82.26.010(19)(a)(i); or

21 (2) By the taxpayer, and the taxable sales price is required to be
22 determined in accordance with RCW 82.26.010(19)(a)(ii), (iii), (iv),
23 (v), or (vi).

24 **Sec. 5.** RCW 82.26.190 and 2009 c 154 s 6 are each amended to read
25 as follows:

26 (1)(a) No person may engage in or conduct business as a distributor
27 or retailer in this state after September 30, 2005, without a valid
28 license issued under this chapter, except as otherwise provided by law.
29 Any person who sells tobacco products to persons other than ultimate
30 consumers or who meets the definition of distributor under RCW
31 82.26.010(~~(3)~~) (8)(d) must obtain a distributor's license under this
32 chapter. Any person who sells tobacco products to ultimate consumers
33 must obtain a retailer's license under this chapter.

34 (b) A violation of this subsection (1) is punishable as a class C
35 felony according to chapter 9A.20 RCW.

1 (2)(a) No person engaged in or conducting business as a distributor
2 or retailer in this state may:

3 (i) Refuse to allow the department or the board, on demand, to make
4 a full inspection of any place of business where any of the tobacco
5 products taxed under this chapter are sold, stored, or handled, or
6 otherwise hinder or prevent such inspection;

7 (ii) Make, use, or present or exhibit to the department or the
8 board any invoice for any of the tobacco products taxed under this
9 chapter that bears an untrue date or falsely states the nature or
10 quantity of the goods invoiced; or

11 (iii) Fail to produce on demand of the department or the board all
12 invoices of all the tobacco products taxed under this chapter within
13 five years prior to such demand unless the person can show by
14 satisfactory proof that the nonproduction of the invoices was due to
15 causes beyond the person's control.

16 (b) No person, other than a licensed distributor or retailer, may
17 transport tobacco products for sale in this state for which the taxes
18 imposed under this chapter have not been paid unless:

19 (i) Notice of the transportation has been given as required under
20 RCW 82.26.140;

21 (ii) The person transporting the tobacco products actually
22 possesses invoices or delivery tickets showing the true name and
23 address of the consignor or seller, the true name and address of the
24 consignee or purchaser, and the quantity and brands of tobacco products
25 being transported; and

26 (iii) The tobacco products are consigned to or purchased by a
27 person in this state who is licensed under this chapter.

28 (c) A violation of this subsection (2) is a gross misdemeanor.

29 (3) Any person licensed under this chapter as a distributor, and
30 any person licensed under this chapter as a retailer, (~~shall~~) may not
31 operate in any other capacity unless the additional appropriate license
32 is first secured, except as otherwise provided by law. A violation of
33 this subsection (3) is a misdemeanor.

34 (4) The penalties provided in this section are in addition to any
35 other penalties provided by law for violating the provisions of this
36 chapter or the rules adopted under this chapter.

1 NEW SECTION. **Sec. 6.** (1) Sections 3 and 4 of this act apply only
2 with respect to tax liability incurred under chapter 82.26 RCW on and
3 after the effective date of this section, for the sale, handling, or
4 distribution of tobacco products, including preexisting inventories of
5 tobacco substitutes.

6 (2) Preexisting inventories of tobacco substitutes are subject to
7 the tax imposed in RCW 82.26.020. All retailers and other distributors
8 must report the tax due under RCW 82.26.020 on preexisting inventories
9 of tobacco substitutes on the taxpayer's excise tax return for a
10 reporting period that includes tax liability accruing on and after July
11 1, 2014, consistent with the taxpayer's regular tax reporting
12 frequency.

13 (3) A retailer required to comply with subsection (2) of this
14 section is not required to obtain a distributor's license as otherwise
15 required under chapter 82.26 RCW as long as the retailer (a) does not
16 sell tobacco products other than to ultimate consumers, and (b) does
17 not meet the definition of distributor in RCW 82.26.010(8)(d) other
18 than with respect to the sale of that retailer's preexisting inventory
19 of tobacco substitutes.

20 (4) For purposes of this section:

21 (a) The definitions in RCW 82.26.010 apply; and

22 (b) "Preexisting inventory" means an inventory of tobacco
23 substitutes located in this state as of the moment that section 4 of
24 this act takes effect and held by a distributor for sale, handling, or
25 distribution in this state.

26 NEW SECTION. **Sec. 7.** A new section is added to chapter 82.26 RCW
27 to read as follows:

28 Taxes collected under this chapter on the sale, handling, or
29 distribution of tobacco substitutes must be deposited in the education
30 legacy trust account. The department must establish a separate
31 reporting code for taxes collected under this chapter with respect to
32 such products.

33 NEW SECTION. **Sec. 8.** Sections 3 through 6 of this act take effect
34 July 1, 2014.

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