H-2307.2

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**HOUSE BILL 2091**

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**State of Washington 67th Legislature 2022 Regular Session**

**By** Representatives Davis, Berg, Ryu, Santos, Bergquist, Ramel, Kloba, and Pollet

AN ACT Relating to creating pathways to recovery from addiction by eliminating an obsolete tax preference for the warehousing of opioids and other drugs; amending RCW 82.04.272; adding a new section to chapter 71.24 RCW; creating new sections; and providing an effective date.

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

NEW SECTION. **Sec.**  (1) The legislature finds that:

(a) Pharmaceutical warehouse distributors serve as the purveyors of opioids and other drugs to pharmacies;

(b) The pharmaceutical warehouse distributor tax preferential rate was created in 1998 to level the playing field for Washington distributors. At that time, the constitutionally permissible limits of state tax authority required companies to have a physical presence within Washington in order to be subject to the business and occupation tax. This left Washington's distributors, who were required to pay the tax, at an economic disadvantage compared to out-of-state distributors; and

(c) In 2018, this physical presence tax standard was discarded in the United States supreme court decision in *South Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080 (2018), and replaced with an economic presence test. Now, all pharmaceutical warehouse distributors are subject to the business and occupation tax, regardless of their physical location. The original rationale that led to the creation of this tax preference is no longer applicable, yet the tax preference remains in law.

(2) The legislature further finds that:

(a) Washington state is in the midst of an opioid epidemic, with a staggering death toll;

(b) Washington's opioid epidemic has ripped children from their parents and parents from their children;

(c) The opioid epidemic has contributed to a dramatic increase in jail and prison populations and skyrocketing health care usage, all at public expense;

(d) Opioid use disorder is a treatable brain disease from which people can and do recover;

(e) Recovery from substance use disorder is predicated upon advancing an individual through the stages of change until the individual is willing to seek help. Building bridges of trust and hope and the use of evidence-based practices such as motivational interviewing are effective outreach tools to engage individuals in treatment. Outreach and engagement services are not reimbursable through medicaid or commercial insurance; and

(f) Treatment alone does not support long-term recovery from addiction. Recovery support services are a suite of critical services that help individuals in early recovery from addiction maintain their recovery during and after treatment. Lack of access to recovery support services is a leading driver of return to use. Recovery support services include recovery housing, education and employment supports, recovery community programs, legal support services, and family education. Recovery support services are generally not reimbursable through medicaid or commercial insurance.

(3) Therefore, it is the intent of the legislature to close the obsolete pharmaceutical warehouse distributor tax preference and allocate the new revenue to fund the outreach and recovery support services that are essential to combating the opioid epidemic.

**Sec.**  RCW 82.04.272 and 2013 c 19 s 127 are each amended to read as follows:

(1) Upon every person engaging within this state in the business of warehousing and reselling drugs for human use pursuant to a prescription; as to such persons, the amount of the tax shall be equal to the gross income of the business multiplied by the rate of ((~~0.138~~)) 0.484 percent.

(2) At least one month prior to the end of each quarter, beginning December 1, 2022, the department must calculate:

(a) The proceeds of the tax imposed under this section generated for the most recently completed quarter;

(b) The estimated amount of the proceeds the tax imposed pursuant to this section would have generated during the most recently completed quarter, if the rate of this tax was 0.138 percent for all taxable activities under this section; and

(c) The net difference in proceeds of the taxes collected in (a) of this subsection and the estimated amount of proceeds calculated in (b) of this subsection.

(3) By the last day of each quarter, beginning December 31, 2022, the department must notify the state treasurer of the calculations under subsection (2) of this section. The state treasurer shall transfer into the recovery pathways account created in section 4 of this act, the amount determined under subsection (2)(c) of this section by the beginning of the quarter immediately following.

(4) For the purposes of this section, the following dates must be considered the beginning of a quarter: January 1st, April 1st, July 1st, and October 1st.

(5) For the purposes of this section:

(a) "Prescription" and "drug" have the same meaning as in RCW 82.08.0281; and

(b) "Warehousing and reselling drugs for human use pursuant to a prescription" means the buying of drugs for human use pursuant to a prescription from a manufacturer or another wholesaler, and reselling of the drugs to persons selling at retail or to hospitals, clinics, health care providers, or other providers of health care services, by a wholesaler or retailer who is registered with the federal drug enforcement administration and licensed by the pharmacy quality assurance commission.

NEW SECTION. **Sec.**  Section 2 of this act applies to taxes due for reporting periods beginning on or after the effective date of this section.

NEW SECTION. **Sec.**  A new section is added to chapter 71.24 RCW to read as follows:

(1) The recovery pathways account is created in the state treasury. All receipts from taxes collected and directed to be transferred pursuant to RCW 82.04.272(3) must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for services for persons with substance use disorder that are not insurance reimbursable, including outreach services and recovery support services.

(2) For the purposes of this section:

(a) "Outreach services" means outreach and engagement services that build bridges of trust and hope with individuals in active addiction and facilitate access to treatment and other social services. Outreach services include the recovery navigator program established in RCW 71.24.115.

(b) "Recovery support services" means services that support a person's recovery including, but not limited to, recovery housing, education and employment support, recovery coaching, family education, recovery community programs, legal support services, transportation support, child care support, and technological recovery supports.

NEW SECTION. **Sec.**  This act takes effect July 1, 2022.

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