

**ESSB 5993** - H AMD TO FIN COMM AMD (H-3193.1/19) **905**  
By Representative Vick

**OUT OF ORDER 04/27/2019**

1 On page 2, after line 8, insert the following:

2 **"Sec. 102.** RCW 82.21.020 and 2002 c 105 s 1 are each amended to  
3 read as follows:

4 (~~Unless the context clearly requires otherwise,~~) The  
5 definitions in this section apply throughout this chapter unless the  
6 context clearly requires otherwise.

7 (1) "Hazardous substance" means:

8 (a) Any substance that, on March 1, 2002, is a hazardous  
9 substance under section 101(14) of the federal comprehensive  
10 environmental response, compensation, and liability act of 1980, 42  
11 U.S.C. Sec. 9601(14), as amended by Public Law 99-499 on October 17,  
12 1986, except that hazardous substance does not include the following  
13 noncompound metals when in solid form in a particle larger than one  
14 hundred micrometers (0.004 inches) in diameter: Antimony, arsenic,  
15 beryllium, cadmium, chromium, copper, lead, nickel, selenium, silver,  
16 thallium, or zinc;

17 (b) Petroleum products;

18 (c) Any pesticide product required to be registered under section  
19 136a of the federal insecticide, fungicide and rodenticide act, 7  
20 U.S.C. Sec. 136 et seq., as amended by Public Law 104-170 on August  
21 3, 1996; and

22 (d) Any other substance, category of substance, and any product  
23 or category of product determined by the director of ecology by rule  
24 to present a threat to human health or the environment if released  
25 into the environment. The director of ecology (~~shall~~) may not add  
26 or delete substances from this definition more often than twice  
27 during each calendar year. For tax purposes, changes in this  
28 definition (~~shall~~) take effect on the first day of the next month  
29 that is at least thirty days after the effective date of the rule.  
30 The word "product" or "products" as used in this paragraph (d) means  
31 an item or items containing both: (i) One or more substances that are  
32 hazardous substances under (a), (b), or (c) of this subsection or

1 that are substances or categories of substances determined under this  
2 paragraph (d) to present a threat to human health or the environment  
3 if released into the environment; and (ii) one or more substances  
4 that are not hazardous substances.

5 (2) "Petroleum product" means plant condensate, lubricating oil,  
6 gasoline, (~~(aviation fuel,~~) kerosene, diesel motor fuel, benzol,  
7 fuel oil, residual oil, liquefied or liquefiable gases such as  
8 butane, ethane, and propane, and every other product derived from the  
9 refining of crude oil, but the term does not include crude oil or  
10 aviation fuel.

11 (3) "Possession" means the control of a hazardous substance  
12 located within this state and includes both actual and constructive  
13 possession. "Actual possession" occurs when the person with control  
14 has physical possession. "Constructive possession" occurs when the  
15 person with control does not have physical possession. "Control"  
16 means the power to sell or use a hazardous substance or to authorize  
17 the sale or use by another.

18 (4) "Previously taxed hazardous substance" means a hazardous  
19 substance in respect to which a tax has been paid under this chapter  
20 and which has not been remanufactured or reprocessed in any manner  
21 (other than mere repackaging or recycling for beneficial reuse) since  
22 the tax was paid.

23 (5) "Wholesale value" means fair market wholesale value,  
24 determined as nearly as possible according to the wholesale selling  
25 price at the place of use of similar substances of like quality and  
26 character, in accordance with rules of the department.

27 (6) Except for terms defined in this section, the definitions in  
28 chapters 82.04, 82.08, and 82.12 RCW apply to this chapter.

29 **Sec. 103.** RCW 82.21.040 and 2015 3rd sp.s. c 6 s 1902 are each  
30 amended to read as follows:

31 The following are exempt from the tax imposed in this chapter:

32 (1) Any successive possession of a previously taxed hazardous  
33 substance. If tax due under this chapter has not been paid with  
34 respect to a hazardous substance, the department may collect the tax  
35 from any person who has had possession of the hazardous substance. If  
36 the tax is paid by any person other than the first person having  
37 taxable possession of a hazardous substance, the amount of tax paid  
38 (~~(shall)~~) constitutes a debt owed by the first person having taxable  
39 possession to the person who paid the tax(~~(-)~~);

1 (2) Any possession of a hazardous substance by a natural person  
2 under circumstances where the substance is used, or is to be used,  
3 for a personal or domestic purpose (and not for any business purpose)  
4 by that person or a relative of, or person residing in the same  
5 dwelling as, that person((-));

6 (3) Any possession of a hazardous substance amount which is  
7 determined as minimal by the department of ecology and which is  
8 possessed by a retailer for the purpose of making sales to ultimate  
9 consumers. This exemption does not apply to pesticide or petroleum  
10 products((-);

11 (4) Any possession of alumina or natural gas((-);

12 (5) (a) Any possession of a hazardous substance as defined in RCW  
13 82.21.020(1)(c) that is solely for use by a farmer or certified  
14 applicator as an agricultural crop protection product and warehoused  
15 in this state or transported to or from this state, provided that the  
16 person possessing the substance does not otherwise use, manufacture,  
17 package for sale, or sell the substance in this state.

18 (b) The definitions in this subsection apply throughout this  
19 section unless the context clearly requires otherwise.

20 (i) "Agricultural crop protection product" means a chemical  
21 regulated under the federal insecticide, fungicide, and rodenticide  
22 act, 7 U.S.C. Sec. 136 as amended as of September 1, 2015, when used  
23 to prevent, destroy, repel, mitigate, or control predators, diseases,  
24 weeds, or other pests.

25 (ii) "Certified applicator" has the same meaning as provided in  
26 RCW 17.21.020.

27 (iii) "Farmer" has the same meaning as in RCW 82.04.213.

28 (iv) "Manufacturing" includes mixing or combining agricultural  
29 crop protection products with other chemicals or other agricultural  
30 crop protection products.

31 (v) "Package for sale" includes transferring agricultural crop  
32 protection products from one container to another, including the  
33 transfer of fumigants and other liquid or gaseous chemicals from one  
34 tank to another.

35 (vi) "Use" has the same meaning as in RCW 82.12.010((-);

36 (6) Any possession of aviation fuel; and

37 (7) Persons or activities ((which)) that the state is prohibited  
38 from taxing under the United States Constitution."

39 Correct the title.

EFFECT: Removes aviation fuel from the definition of petroleum product for the purposes of not being considered subject to the hazardous substance tax.

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