
Finance Committee

HB 1873

Brief Description: Concerning the taxation of vapor products as tobacco products.

Sponsors: Representatives Pollet, Harris, Cody, Robinson, Tarleton, Frame, Bergquist, Ryu, Kilduff, Macri, Stonier, Dolan, Orwall, Doglio, Senn, Stanford, Appleton, Callan, Wylie, Peterson, Valdez, Walen, Leavitt, Kloba and Lovick.

Brief Summary of Bill

- Expands the definition of "tobacco products" for the purposes of taxation.
- Creates the Essential Public Health Services account.

Hearing Date: 2/26/19

Staff: Rachelle Harris (786-7137).

Background:

Tobacco Products Regulation and Tax.

Tobacco products are defined as products that include tobacco prepared to be suitable for chewing or smoking, or for both chewing and smoking, as well as any other product that contains tobacco, and is intended for human consumption or placement in the oral or nasal cavity. This includes cigars, stogies, pipe or other smoking tobacco, snuff, fine-cut and other chewing tobaccos, etc. The term does not include cigarettes or vapor products.

The Other Tobacco Products (OTP) tax is due from a distributor for the sale, use, consumption, handling, and distribution of items defined as "tobacco products," including cigars, pipe tobacco, chewing tobacco, and other forms of tobacco, but excluding 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.

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

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

Tobacco product distributors and retailers are subject to various regulatory requirements. Distributors must maintain records of their tobacco products transactions. Tobacco product distributors and retailers must obtain a license from the Liquor and Cannabis 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. Shipment and transportation of tobacco products (other than cigars) ordered or purchased by mail, or through the internet, to anyone other than a licensed wholesaler or retailer is prohibited.

Vapor Products.

Vapor products are defined in state law to include any noncombustible product that may contain nicotine that employs a heating element or other electronic, chemical, or other means that can be used to produce vapor or aerosol from a solution or other substance. This is inclusive of electronic cigarettes, electronic pipes, and any vapor cartridge or other container that is intended to be used with or in an electronic cigarette or other similar device. The definition does not include cigarettes or other tobacco products.

Vapor products are subject to normal sales and use taxes, but are not subject to any additional state taxes.

Summary of Bill:

For the purposes of taxation, the definition of "tobacco products" is expanded to include:

1. Products containing a solution or other consumable substance that contains tobacco or nicotine that employs a mechanical heating element, battery, or electronic circuit that can be used to produce vapor from the solution or other substance;
2. Products that contain tobacco or nicotine that is in the form of a solid that is vaporized for inhalation;
3. Flavored liquids intended for inhalation in vaporizing devices that the Department of Revenue determines the manufacturer or distributor intends to be inhaled in combination with either a tobacco, nicotine, or tetrahydrocannabinol containing substance; and
4. Hardware that comes preloaded with a vaporizable liquid intended for inhalation or can accept a preloaded liquid cartridge or cartridge with a solid substance intended to be vaporized for inhalation.

Products that are approved by the United States Food and Drug Administration as tobacco cessation products, medical devices, or other therapeutic devices are excluded, as are any products that will become ingredients or components in a vapor product. Stand-alone hardware used to vaporize a liquid or solid when the hardware is refilled from bulk liquid is also excluded.

The Essential Public Health Services account is created. For the 2019-21 biennium, 75 percent of the revenues from the tax collected from the expanded portion of the tobacco products

definition must be deposited into the account. Beginning in the 2021-23 biennium, 60 percent of those revenues must be deposited into the account. Moneys in the account may only be used by the Department of Health (DOH) for specified purposes:

1. To fund foundational health services, with a minimum of 20 percent of the funds deposited into the account to be used for this purpose;
2. To fund tobacco, vapor product, nicotine control and prevention, and other substance use prevention and education;
3. At least 10 percent of funds deposited must be used to support increased access and training of public health professionals at public health programs at accredited public institutions of higher education; and
4. No more than 12.5 percent of the funds in the account are to be used to fund enforcement by the LCB to prevent sales of vapor products to minors and related provisions for control of marketing and product safety.

The DOH and representatives of local health jurisdictions must work together to achieve a mutually acceptable distribution of the money, and to determine the best accountability measures to ensure efficient and effective use of the funds.

The DOR is permitted to require testing of any products to determine if tobacco or nicotine is present in the product. If independent testing determines that a product has tobacco or nicotine when not advertised or sold as such, or if nicotine content was not disclosed, tax may be applied retroactively on sales made of that product up to five years prior to the testing date.

Appropriation: None.

Fiscal Note: Available.

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