

# SENATE BILL REPORT

## E2SHB 1873

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As of April 27, 2019

**Title:** An act relating to the taxation of vapor products as tobacco products.

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

**Sponsors:** House Committee on Appropriations (originally sponsored by 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 History:** Passed House: 4/26/19, 58-38.

**Committee Activity:** Ways & Means: 4/27/19.

### Brief Summary of Bill

- Establishes a tax on vapor products in an amount equal to \$0.10 per milliliter of nicotine solution for any accessible container and \$0.30 per milliliter of nicotine solution for all other vapor products.
- Creates the Foundational Public Health Account and provides that all vapor tax revenues must be deposited into the account and used to fund foundational public health services; tobacco, vapor product, and other substance abuse prevention; expanded access to training of public health professionals; and the promotion of cancer research.
- Authorizes the Governor to enter into vapor products taxation compacts with federally recognized Indian tribes, and establishes requirements for such compacts.

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### SENATE COMMITTEE ON WAYS & MEANS

**Staff:** Alia Kennedy (786-7405)

**Background:** Regulation and Taxation of Vapor Products. Vapor products are regulated by state law and are defined for such purposes as any noncombustible product that may contain nicotine that employs a heating element, or another electronic, chemical, or other means that can be used to produce vapor or aerosol from a solution or other substance. The term

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includes electronic cigarettes, electronic pipes, and any vapor cartridge or other container intended to be used with or in an electronic cigarette or other similar device.

In 2016 the Legislature established retailer, distributor, and delivery sale licenses administered by the Liquor and Cannabis Board (LCB) to regulate the sale and distribution of vapor products. Possession of one or more license type is required to sell, distribute, or deliver vapor products. Vapor products are required to be labeled with various health and safety warnings. It is illegal for a person under the age of eighteen to purchase or possess vapor products, and retailers must display signage clearly identifying that the sale of vapor products to persons under age eighteen is prohibited.

The use of vapor products is prohibited in various places including inside child care facilities, schools, within 500 feet of schools, school buses, and elevators. LCB has various enforcement powers related to the sale and distribution of vapor products, including the ability to enter and inspect businesses where vapor products are sold; to suspend or revoke a retailer, distributor, or delivery sale license; and to impose monetary penalties for licensee violations.

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

Tribal Compacting. The Governor is authorized by statute to enter into compacts and agreements with the Indian tribes of the state regarding matters of mutual interest or concern. Among these contracts are those regarding the sale and taxation of cigarettes. In general, cigarettes sold on Indian lands during a contract term are subject to a tribal cigarette tax equal to the total combined rate of state cigarette and state and local sales and use taxes. Cigarettes sold on Indian land are exempt from state cigarette taxes, and from state sales and use taxes.

**Summary of Bill:** Tax on Vapor Products. The sale, use, consumption, handling, possession, or distribution of vapor products is subject to tax in an amount equal equal to \$0.10 per milliliter of nicotine solution for any accessible container and \$0.30 per of nicotine solution for all other vapor products. The tax on vapor products must be based on the volume of the solution as listed by the manufacturer.

The tax may be collected only once during the commercial distribution and retail sales process. The distributor is responsible for payment of the tax, but the tax may be imposed on the consumer if not otherwise collected by the distributor.

The Department of Revenue (DOR) is responsible for administering the tax and all agency administrative provisions apply with respect to tax collection and administration. DOR and LCB enforcement authority applies to the regulation of vapor products.

"Vapor product" means any noncombustible product containing a solution, regardless of whether it contains nicotine, which employs a mechanical heating element, battery, or electronic circuit regardless of shape or size that can be used to produce vapor from the solution or other substance, including an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, any vapor cartridge or other container, or similar product or device.

The term does not include:

- any product approved by the FDA for sale as a tobacco cessation product, medical device, or for other therapeutic purposes;
- any product that will become an ingredient or component in a vapor product manufactured by a distributor; or
- any product that meets the definition of marijuana, useable marijuana, marijuana concentrates, marijuana-infused products, cigarette, or tobacco products.

Foundational Public Health Services Account. The Foundational Public Health Services Account is created in the state treasury. All revenues collected on vapor products must be deposited into the Foundational Public Health Services Account. The Legislature intends to use the revenues generated from the tax on vapor products to fund foundational public health services; tobacco, vapor product, and other substance abuse prevention; expanded access to training of public health professionals; and the promotion of cancer research.

Tribal Compacting for Vapor Products. The Governor may enter into vapor products tax contracts with federally recognized Indian tribes located within Washington. Contracts must require that the tribal vapor products tax rate be 100 percent of the combined sum of the state vapor products tax and state and local sales and use taxes. Contracts with the Puyallup Tribe may set the tribal tax rate at 90 percent of the state vapor products tax. Any vapor products tax agreement with the Puyallup Tribe may also require the tribe to remit to the state 30 percent of all vapor products tax revenue it collects. The tribal vapor products tax is in lieu of all state and local taxes that would otherwise be applicable to sales of vapor products.

The Governor may delegate the power to negotiate vapor product tax contracts to DOR. DOR must consult with LCB during any such negotiations.

Miscellaneous. If any provision of this act is held invalid or in conflict with federal requirements, then only those provisions are considered inoperative and the remainder of this act is not affected. Any rules adopted under this act must meet federal requirements necessary for the state to receive federal funds.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** The bill contains several effective dates. Please refer to the bill.