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**HOUSE BILL 1676**

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

**By** Representatives Harris, Pollet, Leavitt, Ryu, Chopp, Senn, Duerr, Valdez, Callan, Cody, Macri, Wylie, Ramel, Bergquist, Gregerson, Riccelli, and Bronoske

AN ACT Relating to taxation of vapor products to fund additional tobacco and vapor use prevention and cessation programs and services; amending RCW 82.25.005, 82.25.010, 82.25.015, 82.25.075, 82.25.080, 82.25.090, 82.25.065, 82.25.075, and 82.32.145; adding a new section to chapter 82.25 RCW; creating a new section; repealing RCW 82.25.060, 82.25.085, and 82.25.105; and providing an effective date.

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

NEW SECTION. **Sec.**  The legislature intends to increase funding for cancer research and tobacco cessation by changing the way it taxes vapor products.

**Sec.**  RCW 82.25.005 and 2019 c 445 s 101 are each amended to read as follows:

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

(1) ((~~"Accessible container" means a container that is intended to be opened. The term does not mean a closed cartridge or closed container that is not intended to be opened such as a disposable e-cigarette.~~

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

~~(3)~~)) "Board" means the Washington state liquor and cannabis board.

((~~(4)~~)) (2) "Business" means any trade, occupation, activity, or enterprise engaged in selling or distributing vapor products in this state.

((~~(5)~~)) (3) "Distributor" ((~~mean[s]~~)) means any person:

(a) Engaged in the business of selling vapor products in this state who brings, or causes to be brought, into this state from outside the state any vapor products for sale;

(b) Who makes, manufactures, fabricates, or stores vapor products in this state for sale in this state;

(c) Engaged in the business of selling vapor products outside this state who ships or transports vapor products to retailers or consumers in this state; or

(d) Engaged in the business of selling vapor products in this state who handles for sale any vapor products that are within this state but upon which tax has not been imposed.

((~~(6)~~)) (4) "Indian country" has the same meaning as provided in RCW 82.24.010.

((~~(7)~~)) (5) "Manufacturer" has the same meaning as provided in RCW 70.345.010.

((~~(8) "Manufacturer's representative" means a person hired by a manufacturer to sell or distribute the manufacturer's vapor products and includes employees and independent contractors.~~

~~(9)~~)) (6) "Person" means: Any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, corporation, limited liability company, association, or society; the state and its departments and institutions; any political subdivision of the state of Washington; and any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise. Except as provided otherwise in this chapter, "person" does not include any person immune from state taxation, including the United States or its instrumentalities, and federally recognized Indian tribes and enrolled tribal members, conducting business within Indian country.

((~~(10)~~)) (7) "Place of business" means any place where vapor products are sold or where vapor products are manufactured, stored, or kept for the purpose of sale, including any vessel, vehicle, airplane, or train.

((~~(11)~~)) (8) "Retail outlet" has the same meaning as provided in RCW 70.345.010.

((~~(12)~~)) (9) "Retailer" has the same meaning as provided in RCW 70.345.010.

((~~(13)~~)) (10) "Sale" has the same meaning as provided in RCW 70.345.010.

((~~(14)~~)) (11) "Taxpayer" means a person liable for the tax imposed by this chapter.

((~~(15)~~)) (12) "Vapor product" means any noncombustible product containing a solution or other consumable substance, 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, or similar product or device. The term also includes any cartridge or other container of liquid nicotine, solution, or other consumable substance, regardless of whether it contains nicotine, that is intended to be used with or in a device that can be used to deliver aerosolized or vaporized nicotine to a person inhaling from the device and is sold for such purpose.

(a) The term does not include:

(i) Any product approved by the United States food and drug administration for sale as a tobacco cessation product, medical device, or for other therapeutic purposes when such product is marketed and sold solely for such an approved purpose;

(ii) Any product that will become an ingredient or component in a vapor product manufactured by a distributor; or

(iii) Any product that meets the definition of marijuana, useable marijuana, marijuana concentrates, marijuana-infused products, cigarette, or tobacco products.

(b) For purposes of this subsection ((~~(15)~~)) (12):

(i) "Cigarette" has the same meaning as provided in RCW 82.24.010; and

(ii) "Marijuana," "useable marijuana," "marijuana concentrates," and "marijuana-infused products" have the same meaning as provided in RCW 69.50.101.

**Sec.**  RCW 82.25.010 and 2019 c 445 s 102 are each amended to read as follows:

(1)(a) There is levied and collected a ((~~tax upon the sale, use, consumption, handling, possession, or distribution of all vapor products in this state as follows:~~

~~(i) All vapor products other than those taxed under (a)(ii) of this subsection are taxed at a rate equal to twenty-seven cents per milliliter of solution, regardless of whether it contains nicotine, and a proportionate tax at the like rate on all fractional parts of a milliliter thereof.~~

~~(ii) Any accessible container of solution, regardless of whether it contains nicotine, that is greater than five milliliters, is taxed at a rate equal to nine cents per milliliter of solution and a proportionate tax at the like rate on all fractional parts of a milliliter thereof.~~

~~(b) The tax in this section must be imposed based on the volume of the solution as listed by the manufacturer.~~

~~(2)(a) The tax under this section must be collected at the time the distributor: (i) Brings, or causes to be brought, into this state from without the state vapor products for sale; (ii) makes, manufactures, fabricates, or stores vapor products in this state for sale in this state; (iii) ships or transports vapor products to retailers or consumers in this state; or (iv) handles for sale any vapor products that are within this state but upon which tax has not been imposed.~~

~~(b) The tax imposed under this section must also be collected by the department from the consumer of vapor products where the tax imposed under this section was not paid by the distributor on such vapor products.~~

~~(3)(a)~~)) vapor product excise tax equal to 33 percent of the selling price on each retail sale in this state of vapor products. This tax is separate and in addition to general state and local sales and use taxes that apply to retail sales of tangible personal property, and is not part of the total retail price to which general state and local sales and use taxes apply. The tax must be separately itemized from the state and local retail sales tax on the sales receipt provided to the buyer.

(b) The tax levied in this section must be reflected in the price list or quoted shelf price in the vapor products retail store, on the website or sales platform of a delivery seller, and in any advertising of vapor products that includes prices for vapor products.

(2)(a) The moneys collected under this section must be deposited as follows:

(i) ((~~Fifty percent into the~~)) The first $30,000,000 must be split evenly between the following:

(A) The Andy Hill cancer research endowment fund match transfer account created in RCW 43.348.080;

(B) The department of health to be used exclusively for tobacco and vapor product use prevention and cessation services and projects; and

((~~(ii) Fifty percent into the~~)) (C) The foundational public health services account created in RCW 82.25.015.

(ii) All subsequent revenue must be split evenly between:

(A) The department of health to be used exclusively for tobacco and vapor product use prevention and cessation services and projects; and

(B) The foundational public health services account created in RCW 82.25.015.

(b) The funding provided under this subsection is intended to supplement and not supplant general fund investments in cancer research and foundational public health services.

**Sec.**  RCW 82.25.015 and 2019 c 445 s 103 are each amended to read as follows:

The foundational public health services account is created in the state treasury. ((~~Half of all of the moneys collected from the tax imposed on vapor products under RCW 66.44.010 must be deposited into the account.~~)) Moneys in the account may be spent only after appropriation. Moneys in the account are to be used for the following purposes:

(1) To fund foundational health services. In the 2019-2021 biennium, at least twelve million dollars of the funds deposited into the account must be appropriated for this purpose. Beginning in the 2021-2023 biennium, fifty percent of the funds deposited into the account, but not less than twelve million dollars each biennium, are to be used for this purpose;

(2) To fund tobacco, vapor product, and nicotine control and prevention, and other substance use prevention and education. Beginning in the 2021-2023 biennium, seventeen percent of the funds deposited into the account are to be used for this purpose;

(3) To support increased access and training of public health professionals at public health programs at accredited public institutions of higher education in Washington. Beginning in the 2021-2023 biennium, five percent of the funds deposited into the account are to be used for this purpose;

(4) To fund enforcement by the state liquor and cannabis board of the provisions of this chapter to prevent sales of vapor products to minors and related provisions for control of marketing and product safety, provided that no more than eight percent of the funds deposited into the account may be appropriated for these enforcement purposes.

**Sec.**  RCW 82.25.075 and 2019 c 445 s 115 are each amended to read as follows:

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

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

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

(2)((~~(a) No person, other than a licensed distributor, retailer or delivery sales licensee, or manufacturer's representative, may transport vapor products for sale in this state for which the taxes imposed under this chapter have not been paid unless:~~

~~(i) Notice of the transportation has been given as required under RCW 82.25.065;~~

~~(ii) The person transporting the vapor products actually possesses invoices or delivery tickets showing the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity and brands of vapor products being transported; and~~

~~(iii) The vapor products are consigned to or purchased by a person in this state who is licensed under chapter 70.345 RCW.~~

~~(b) A violation of this subsection (2) is a gross misdemeanor.~~

~~(3)~~)) Any person licensed under chapter 70.345 RCW as a distributor, and any person licensed under chapter 70.345 RCW as a retailer, may not operate in any other capacity unless the additional appropriate license is first secured, except as otherwise provided by law. A violation of this subsection ((~~(3)~~)) (2) is a misdemeanor.

((~~(4)~~)) (3) The penalties provided in this section are in addition to any other penalties provided by law for violating the provisions of this chapter or the rules adopted under this chapter.

((~~(5) This section does not apply to a motor carrier or freight forwarder as defined in Title 49 U.S.C. Sec. 13102 or an air carrier as defined in Title 49 U.S.C. Sec. 40102.~~))

**Sec.**  RCW 82.25.080 and 2019 c 445 s 116 are each amended to read as follows:

(1) A retailer that obtains vapor products from an unlicensed distributor or any other person that is not licensed under chapter 70.345 RCW must be licensed both as a retailer and a distributor ((~~and is liable for the tax imposed under RCW 82.25.010 with respect to the vapor products acquired from the unlicensed person that are held for sale, handling, or distribution in this state~~)). For the purposes of this subsection, "person" includes both persons defined in chapter 445, Laws of 2019 and any person immune from state taxation, such as the United States or its instrumentalities, and federally recognized Indian tribes and enrolled tribal members, conducting business within Indian country.

(2) Every distributor licensed under chapter 70.345 RCW may sell vapor products to retailers located in Washington only if the retailer has a current retailer's license under chapter 70.345 RCW.

**Sec.**  RCW 82.25.090 and 2019 c 445 s 118 are each amended to read as follows:

(1) Any vapor products in the possession of a person selling vapor products in this state acting as a distributor or retailer and who is not licensed as required under chapter 70.345 RCW, or a person who is selling vapor products in violation of RCW 82.24.550(6), may be seized without a warrant by any agent of the department, agent of the board, or law enforcement officer of this state. Any vapor products seized under this subsection are deemed forfeited.

(2) Any vapor products in the possession of a person who is not a licensed distributor, delivery seller, ((~~manufacturer's representative,~~)) or retailer and who transports vapor products for sale without having provided notice to the board required under RCW 82.25.065, or without invoices or delivery tickets showing the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity and brands of vapor products being transported may be seized and are subject to forfeiture.

(3) All conveyances, including aircraft, vehicles, or vessels that are used, or intended for use to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of vapor products under subsection (2) of this section, may be seized and are subject to forfeiture except:

(a) A conveyance used by any person as a common or contract carrier having in actual possession invoices or delivery tickets showing the true name and address of the consignor or seller, the true name of the consignee or purchaser, and the quantity and brands of the vapor products transported, unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;

(b) A conveyance subject to forfeiture under this section by reason of any act or omission of which the owner establishes to have been committed or omitted without his or her knowledge or consent; or

(c) A conveyance encumbered by a bona fide security interest if the secured party neither had knowledge of nor consented to the act or omission.

(4) Property subject to forfeiture under subsections (2) and (3) of this section may be seized by any agent of the department, the board, or law enforcement officer of this state upon process issued by any superior court or district court having jurisdiction over the property. Seizure without process may be made if:

(a) The seizure is incident to an arrest or a search warrant or an inspection under an administrative inspection warrant; or

(b) The department, board, or law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter and exigent circumstances exist making procurement of a search warrant impracticable.

(5) This section may not be construed to require the seizure of vapor products if the department's agent, board's agent, or law enforcement officer reasonably believes that the vapor products are possessed for personal consumption by the person in possession of the vapor products.

(6) Any vapor products seized by a law enforcement officer must be turned over to the board as soon as practicable.

(7) This section does not apply to a motor carrier or freight forwarder as defined in Title 49 U.S.C. Sec. 13102 or an air carrier as defined in Title 49 U.S.C. Sec. 40102.

**Sec.**  RCW 82.25.065 and 2019 c 445 s 113 are each amended to read as follows:

(1) No person may transport or cause to be transported in this state vapor products for sale other than: (a) A licensed distributor under chapter 70.345 RCW((~~, or a manufacturer's representative authorized to sell or distribute vapor products in this state under chapter 70.345 RCW~~)); (b) a licensed retailer under chapter 70.345 RCW; (c) a seller with a valid delivery sale license under chapter 70.345 RCW; or (d) a person who has given notice to the board in advance of the commencement of transportation.

(2) When transporting vapor products for sale, the person must have in his or her actual possession, or cause to have in the actual possession of those persons transporting such vapor products on his or her behalf, invoices or delivery tickets for the vapor products, which must show the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity and brands of the vapor products being transported.

(3) In any case where the department or the board, or any peace officer of the state, has knowledge or reasonable grounds to believe that any vehicle is transporting vapor products in violation of this section, the department, board, or peace officer is authorized to stop the vehicle and to inspect it for contraband vapor products.

(4) This section does not apply to a motor carrier or freight forwarder as defined in Title 49 U.S.C. Sec. 13102 or an air carrier as defined in Title 49 U.S.C. Sec. 40102.

**Sec.**  RCW 82.25.075 and 2019 c 445 s 115 are each amended to read as follows:

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

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

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

(2)(a) No person, other than a licensed distributor, retailer, or delivery sales licensee, ((~~or manufacturer's representative,~~)) may transport vapor products for sale in this state for which the taxes imposed under this chapter have not been paid unless:

(i) Notice of the transportation has been given as required under RCW 82.25.065;

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

(iii) The vapor products are consigned to or purchased by a person in this state who is licensed under chapter 70.345 RCW.

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

(3) Any person licensed under chapter 70.345 RCW as a distributor, and any person licensed under chapter 70.345 RCW as a retailer, may not operate in any other capacity unless the additional appropriate license is first secured, except as otherwise provided by law. A violation of this subsection (3) is a misdemeanor.

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

(5) This section does not apply to a motor carrier or freight forwarder as defined in Title 49 U.S.C. Sec. 13102 or an air carrier as defined in Title 49 U.S.C. Sec. 40102.

NEW SECTION. **Sec.**  A new section is added to chapter 82.25 RCW to read as follows:

(1) A bundled transaction that includes a vapor product is subject to the tax imposed under this chapter on the entire selling price of the bundled transaction.

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

(a) "Bundled transaction" means:

(i) The sale of two or more products where the products are otherwise distinct and identifiable, are sold for one nonitemized price, and at least one product is a vapor product subject to the tax under this chapter; and

(ii) A vapor product provided free of charge with the required purchase of another product. A vapor product is provided free of charge if the sales price of the product purchased does not vary depending on the inclusion of the vapor product provided free of charge.

(b) "Distinct and identifiable" products does not include packaging such as containers, boxes, sacks, bags, and bottles, or materials such as wrapping, labels, tags, and instruction guides, that accompany the sale of the products and are incidental or immaterial to the sale of the products.

**Sec.**  RCW 82.32.145 and 2020 c 301 s 6 are each amended to read as follows:

(1) Whenever the department has issued a warrant under RCW 82.32.210 for the collection of unpaid trust fund taxes from a limited liability business entity and that business entity has been terminated, dissolved, or abandoned, or is insolvent, the department may pursue collection of the entity's unpaid trust fund taxes, including penalties and interest on those taxes, against any or all of the responsible individuals. For purposes of this subsection, "insolvent" means the condition that results when the sum of the entity's debts exceeds the fair market value of its assets. The department may presume that an entity is insolvent if the entity refuses to disclose to the department the nature of its assets and liabilities.

(2) Personal liability under this section may be imposed for state and local trust fund taxes.

(3)(a) For a responsible individual who is the current or a former chief executive or chief financial officer, liability under this section applies regardless of fault or whether the individual was or should have been aware of the unpaid trust fund tax liability of the limited liability business entity.

(b) For any other responsible individual, liability under this section applies only if he or she willfully fails to pay or to cause to be paid to the department the trust fund taxes due from the limited liability business entity.

(4)(a) Except as provided in this subsection (4)(a), a responsible individual who is the current or a former chief executive or chief financial officer is liable under this section only for trust fund tax liability accrued during the period that he or she was the chief executive or chief financial officer. However, if the responsible individual had the responsibility or duty to remit payment of the limited liability business entity's trust fund taxes to the department during any period of time that the person was not the chief executive or chief financial officer, that individual is also liable for trust fund tax liability that became due during the period that he or she had the duty to remit payment of the limited liability business entity's taxes to the department but was not the chief executive or chief financial officer.

(b) All other responsible individuals are liable under this section only for trust fund tax liability that became due during the period he or she had the responsibility or duty to remit payment of the limited liability business entity's taxes to the department.

(5) Persons described in subsection (3)(b) of this section are exempt from liability under this section in situations where nonpayment of the limited liability business entity's trust fund taxes is due to reasons beyond their control as determined by the department by rule.

(6) Any person having been issued a notice of assessment under this section is entitled to the appeal procedures under RCW 82.32.160, 82.32.170, 82.32.180, 82.32.190, and 82.32.200.

(7) This section does not relieve the limited liability business entity of its trust fund tax liability or otherwise impair other tax collection remedies afforded by law.

(8) Collection authority and procedures prescribed in this chapter apply to collections under this section.

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

(a) "Chief executive" means: The president of a corporation; or for other entities or organizations other than corporations or if the corporation does not have a president as one of its officers, the highest ranking executive manager or administrator in charge of the management of the company or organization.

(b) "Chief financial officer" means: The treasurer of a corporation; or for entities or organizations other than corporations or if a corporation does not have a treasurer as one of its officers, the highest senior manager who is responsible for overseeing the financial activities of the entire company or organization.

(c) "Limited liability business entity" means a type of business entity that generally shields its owners from personal liability for the debts, obligations, and liabilities of the entity, or a business entity that is managed or owned in whole or in part by an entity that generally shields its owners from personal liability for the debts, obligations, and liabilities of the entity. Limited liability business entities include corporations, limited liability companies, limited liability partnerships, trusts, general partnerships and joint ventures in which one or more of the partners or parties are also limited liability business entities, and limited partnerships in which one or more of the general partners are also limited liability business entities.

(d) "Manager" has the same meaning as in RCW 25.15.006.

(e) "Member" has the same meaning as in RCW 25.15.006, except that the term only includes members of member-managed limited liability companies.

(f) "Officer" means any officer or assistant officer of a corporation, including the president, vice president, secretary, and treasurer.

(g)(i) "Responsible individual" includes any current or former officer, manager, member, partner, or trustee of a limited liability business entity with an unpaid tax warrant issued by the department.

(ii) "Responsible individual" also includes any current or former employee or other individual, but only if the individual had the responsibility or duty to remit payment of the limited liability business entity's unpaid trust fund tax liability reflected in a tax warrant issued by the department.

(iii) Whenever any taxpayer has one or more limited liability business entities as a member, manager, or partner, "responsible individual" also includes any current and former officers, members, or managers of the limited liability business entity or entities or of any other limited liability business entity involved directly in the management of the taxpayer. For purposes of this subsection (9)(g)(iii), "taxpayer" means a limited liability business entity with an unpaid tax warrant issued against it by the department.

(h) "Trust fund taxes" means taxes collected from purchasers and held in trust under RCW 82.08.050 or 82.25.010, including taxes imposed under RCW 82.08.020, 82.08.150, 82.25.010, and 82.51.010.

(i) "Willfully fails to pay or to cause to be paid" means that the failure was the result of an intentional, conscious, and voluntary course of action.

NEW SECTION. **Sec.**  The following acts or parts of acts are each repealed:

(1)RCW 82.25.060 (Invoice requirements—Rules—Liability) and 2019 c 445 s 112;

(2)RCW 82.25.085 (Manufacturer's representatives) and 2019 c 445 s 117; and

(3)RCW 82.25.105 (Tax credit—Sold outside state—Returned, destroyed products—Sold to United States or an Indian tribal organization) and 2019 c 445 s 121.

NEW SECTION. **Sec.**  This act takes effect January 1, 2023.

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