

---

**SUBSTITUTE HOUSE BILL 2795**

---

**State of Washington**

**63rd Legislature**

**2014 Regular Session**

**By** House Finance (originally sponsored by Representatives Carlyle, Hunter, Freeman, Ryu, Tharinger, Bergquist, Pollet, Senn, Van De Wege, Roberts, S. Hunt, and Moscoso)

READ FIRST TIME 03/07/14.

1       AN ACT Relating to investing in education by clarifying laws  
2 relating to tobacco substitutes; amending RCW 26.28.080, 70.155.010,  
3 and 82.26.190; reenacting and amending RCW 82.26.010; adding new  
4 sections to chapter 82.26 RCW; creating a new section; prescribing  
5 penalties; and providing an effective date.

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

7       **Sec. 1.** RCW 26.28.080 and 2013 c 47 s 1 are each amended to read  
8 as follows:

9       (1) Every person who sells or gives, or permits to be sold or  
10 given, to any person under the age of eighteen years any (~~eigar,~~  
11 ~~cigarette, cigarette paper or wrapper, tobacco in any form, or a~~  
12 ~~vapor~~) tobacco product is guilty of a gross misdemeanor.

13       (2) It (~~shall be no~~) is not a defense to a prosecution for a  
14 violation of this section that the person acted, or was believed by the  
15 defendant to act, as agent or representative of another.

16       (3)(a) For the purposes of this section, (~~"vapor product" means a~~  
17 ~~noncombustible tobacco derived product containing nicotine that employs~~  
18 ~~a mechanical heating element, battery, or circuit, regardless of shape~~  
19 ~~or size, that can be used to heat a liquid nicotine solution contained~~

1 ~~in cartridges. Vapor product does not include any product that is~~  
2 ~~regulated by the United States food and drug administration under~~  
3 ~~chapter V of the federal food, drug, and cosmetic act))~~ "tobacco  
4 product" means:

5 (i) Any product containing, made, or derived from tobacco or  
6 nicotine that is intended for human consumption, whether chewed,  
7 smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by  
8 any other means; and

9 (ii) Any electronic device that can be used to deliver nicotine or  
10 other substances to the person inhaling from the device, including, but  
11 not limited to, an electronic cigarette, cigar, pipe, or hookah.

12 (b) Notwithstanding any provisions of (a)(i) and (ii) of this  
13 subsection to the contrary, "tobacco product" includes any component,  
14 part, or accessory of a tobacco product whether or not it is sold  
15 separately.

16 (c) Except for electronic cigarettes, "tobacco product" does not  
17 include any product that has been approved by the United States food  
18 and drug administration for tobacco cessation or other therapeutic  
19 purposes where such product is marketed and sold solely for such an  
20 approved purpose. At such time electronic cigarettes are approved by  
21 the United States food and drug administration for smoking cessation or  
22 other therapeutic purposes, "tobacco product" does not include an  
23 electronic cigarette that has been prescribed by a licensed physician  
24 and purchased at a pharmacy.

25 **Sec. 2.** RCW 70.155.010 and 2009 c 278 s 1 are each amended to read  
26 as follows:

27 The definitions (~~set forth~~) in this section and RCW 82.24.010  
28 (~~shall~~) apply (~~to~~) throughout this chapter(~~. In addition, for the~~  
29 ~~purposes of this chapter,~~) unless (~~otherwise required by~~) the  
30 context(~~of~~) clearly requires otherwise.

31 (1) "Board" means the Washington state liquor control board.

32 (2) "Internet" means any computer network, telephonic network, or  
33 other electronic network.

34 (3) "Minor" refers to an individual who is less than eighteen years  
35 old.

36 (4) "Sample" means a tobacco product distributed to members of the

1 general public at no cost or at nominal cost for product promotion  
2 purposes.

3 (5) "Sampling" means the distribution of samples to members of the  
4 public.

5 (6)(a) "Tobacco product" means ((a product that contains tobacco  
6 and is intended for human use, including any product defined in RCW  
7 82.24.010(2) or 82.26.010(1), except that for the purposes of RCW  
8 70.155.140 only, "tobacco product" does not include cigars defined in  
9 RCW 82.26.010 as to which one thousand units weigh more than three  
10 pounds)) :

11 (i) Any product containing, made, or derived from tobacco or  
12 nicotine that is intended for human consumption, whether chewed,  
13 smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by  
14 any other means, including, but not limited to, any product defined in  
15 RCW 82.24.010(2) or 82.26.010(21)(a); and

16 (ii) Any electronic device that can be used to deliver nicotine or  
17 other substances to the person inhaling from the device, including, but  
18 not limited to, an electronic cigarette, cigar, pipe, or hookah.

19 (b) Notwithstanding any provisions of (a)(i) and (ii) of this  
20 subsection to the contrary, "tobacco product" includes any component,  
21 part, or accessory of a tobacco product whether or not it is sold  
22 separately.

23 (c) Except for electronic cigarettes, "tobacco product" does not  
24 include any product that has been approved by the United States food  
25 and drug administration for tobacco cessation or other therapeutic  
26 purposes where such product is marketed and sold solely for such an  
27 approved purpose.

28 (d) At such time electronic cigarettes are approved by the United  
29 States food and drug administration for smoking cessation or other  
30 therapeutic purposes, "tobacco product" does not include an electronic  
31 cigarette that has been prescribed by a licensed physician and  
32 purchased at a pharmacy.

33 (e) Except for the purposes of RCW 70.155.140 only, "tobacco  
34 product" does not include cigars defined in RCW 82.26.010 as to which  
35 one thousand units weigh more than three pounds.

36 **Sec. 3.** RCW 82.26.010 and 2010 1st sp.s. c 22 s 4 are each  
37 reenacted and amended to read as follows:

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

3 (1) "Actual price" means the total amount of consideration for  
4 which tobacco products are sold, valued in money, whether received in  
5 money or otherwise, including any charges by the seller necessary to  
6 complete the sale such as charges for delivery, freight,  
7 transportation, or handling.

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

10 (3) "Board" means the liquor control board.

11 (4) "Business" means any trade, occupation, activity, or enterprise  
12 engaged in for the purpose of selling or distributing tobacco products  
13 in this state.

14 (5) "Cigar" means a roll for smoking that is of any size or shape  
15 and that is made wholly or in part of tobacco, irrespective of whether  
16 the tobacco is pure or flavored, adulterated or mixed with any other  
17 ingredient, if the roll has a wrapper made wholly or in greater part of  
18 tobacco. "Cigar" does not include a cigarette.

19 (6) "Cigarette" has the same meaning as in RCW 82.24.010.

20 (7) "Department" means the department of revenue.

21 (8) "Distributor" means (a) any person engaged in the business of  
22 selling tobacco products in this state who brings, or causes to be  
23 brought, into this state from without the state any tobacco products  
24 for sale, (b) any person who makes, manufactures, fabricates, or stores  
25 tobacco products in this state for sale in this state, (c) any person  
26 engaged in the business of selling tobacco products without this state  
27 who ships or transports tobacco products to retailers in this state, to  
28 be sold by those retailers, (d) any person engaged in the business of  
29 selling tobacco products in this state who handles for sale any tobacco  
30 products that are within this state but upon which tax has not been  
31 imposed.

32 (9) "Indian country" means the same as defined in chapter 82.24  
33 RCW.

34 (10) "Little cigar" means a cigar that has a cellulose acetate  
35 integrated filter.

36 (11) "Manufacturer" means a person who manufactures and sells  
37 tobacco products.

1 (12) "Manufacturer's representative" means a person hired by a  
2 manufacturer to sell or distribute the manufacturer's tobacco products,  
3 and includes employees and independent contractors.

4 (13) "Moist snuff" means tobacco that is finely cut, ground, or  
5 powdered; is not for smoking; and is intended to be placed in the oral,  
6 but not the nasal, cavity.

7 (14) "Person" means any individual, receiver, administrator,  
8 executor, assignee, trustee in bankruptcy, trust, estate, firm,  
9 copartnership, joint venture, club, company, joint stock company,  
10 business trust, municipal corporation, the state and its departments  
11 and institutions, political subdivision of the state of Washington,  
12 corporation, limited liability company, association, society, any group  
13 of individuals acting as a unit, whether mutual, cooperative,  
14 fraternal, nonprofit, or otherwise. The term excludes any person  
15 immune from state taxation, including the United States or its  
16 instrumentalities, and federally recognized Indian tribes and enrolled  
17 tribal members, conducting business within Indian country.

18 (15) "Place of business" means any place where tobacco products are  
19 sold or where tobacco products are manufactured, stored, or kept for  
20 the purpose of sale, including any vessel, vehicle, airplane, train, or  
21 vending machine.

22 (16) "Retail outlet" means each place of business from which  
23 tobacco products are sold to consumers.

24 (17) "Retailer" means any person engaged in the business of selling  
25 tobacco products to ultimate consumers.

26 (18)(a) "Sale" means any transfer, exchange, or barter, in any  
27 manner or by any means whatsoever, for a consideration, and includes  
28 and means all sales made by any person.

29 (b) The term "sale" includes a gift by a person engaged in the  
30 business of selling tobacco products, for advertising, promoting, or as  
31 a means of evading the provisions of this chapter.

32 (19)(a) "Taxable sales price" means:

33 (i) In the case of a taxpayer that is not affiliated with the  
34 manufacturer, distributor, or other person from whom the taxpayer  
35 purchased tobacco products, the actual price for which the taxpayer  
36 purchased the tobacco products;

37 (ii) In the case of a taxpayer that purchases tobacco products from  
38 an affiliated manufacturer, affiliated distributor, or other affiliated

1 person, and that sells those tobacco products to unaffiliated  
2 distributors, unaffiliated retailers, or ultimate consumers, the actual  
3 price for which that taxpayer sells those tobacco products to  
4 unaffiliated distributors, unaffiliated retailers, or ultimate  
5 consumers;

6 (iii) In the case of a taxpayer that sells tobacco products only to  
7 affiliated distributors or affiliated retailers, the price, determined  
8 as nearly as possible according to the actual price, that other  
9 distributors sell similar tobacco products of like quality and  
10 character to unaffiliated distributors, unaffiliated retailers, or  
11 ultimate consumers;

12 (iv) In the case of a taxpayer that is a manufacturer selling  
13 tobacco products directly to ultimate consumers, the actual price for  
14 which the taxpayer sells those tobacco products to ultimate consumers;

15 (v) In the case of a taxpayer that has acquired tobacco products  
16 under a sale as defined in subsection (18)(b) of this section, the  
17 price, determined as nearly as possible according to the actual price,  
18 that the taxpayer or other distributors sell the same tobacco products  
19 or similar tobacco products of like quality and character to  
20 unaffiliated distributors, unaffiliated retailers, or ultimate  
21 consumers; or

22 (vi) In any case where (a)(i) through (v) of this subsection do not  
23 apply, the price, determined as nearly as possible according to the  
24 actual price, that the taxpayer or other distributors sell the same  
25 tobacco products or similar tobacco products of like quality and  
26 character to unaffiliated distributors, unaffiliated retailers, or  
27 ultimate consumers.

28 (b) For purposes of (a)(i) and (ii) of this subsection only,  
29 "person" includes both persons as defined in subsection (14) of this  
30 section and any person immune from state taxation, including the United  
31 States or its instrumentalities, and federally recognized Indian tribes  
32 and enrolled tribal members, conducting business within Indian country.

33 (c) The department may adopt rules regarding the determination of  
34 taxable sales price under this subsection.

35 (20) "Taxpayer" means a person liable for the tax imposed by this  
36 chapter.

37 (21) "Tobacco products" means:

1       (a) Any product, regardless of form, other than cigarettes, that  
2 contains tobacco and is intended for human consumption or placement in  
3 the oral or nasal cavity or absorption into the human body by any other  
4 means, including: Cigars, cheroots, stogies, periques, granulated,  
5 plug cut, crimp cut, ready rubbed, and other smoking tobacco, snuff,  
6 snuff flour, cavendish, plug and twist tobacco, fine-cut and other  
7 chewing tobaccos, shorts, refuse scraps, clippings, cuttings and  
8 sweepings of tobacco, and other kinds and forms of tobacco, prepared in  
9 such manner as to be suitable for chewing or smoking in a pipe or  
10 otherwise, or both for chewing and smoking(, and any other product,  
11 regardless of form, that contains tobacco and is intended for human  
12 consumption or placement in the oral or nasal cavity or absorption into  
13 the human body by any other means, but does not include cigarettes as  
14 defined in RCW 82.24.010.); and

15       (b) A tobacco substitute.

16       (22) "Tobacco substitute" means any product containing nicotine,  
17 but not containing tobacco, that is intended for human consumption,  
18 whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed,  
19 or ingested by any other means.

20       (23) Except for electronic cigarettes, "tobacco substitute" does  
21 not include any product that has been approved by the United States  
22 food and drug administration for tobacco cessation or other medical  
23 purposes. At such time electronic cigarettes are approved by the  
24 United States food and drug administration for smoking cessation or  
25 other therapeutic purposes, "tobacco substitute" does not include an  
26 electronic cigarette that has been prescribed by a licensed physician  
27 and purchased at a pharmacy.

28       (24) "Unaffiliated distributor" means a distributor that is not  
29 affiliated with the manufacturer, distributor, or other person from  
30 whom the distributor has purchased tobacco products.

31       ((+23)) (25) "Unaffiliated retailer" means a retailer that is not  
32 affiliated with the manufacturer, distributor, or other person from  
33 whom the retailer has purchased tobacco products.

34       NEW SECTION. Sec. 4. A new section is added to chapter 82.26 RCW  
35 to read as follows:

36       For purposes of the tax imposed under RCW 82.26.020, no deduction

1 from the taxable sales price is allowed for the value of nontobacco  
2 products that are sold together with tobacco products for one  
3 nonitemized price:

4 (1) To the taxpayer, and the taxable sales price is required to be  
5 determined in accordance with RCW 82.26.010(19)(a)(i); or

6 (2) By the taxpayer, and the taxable sales price is required to be  
7 determined in accordance with RCW 82.26.010(19)(a)(ii), (iii), (iv),  
8 (v), or (vi).

9 **Sec. 5.** RCW 82.26.190 and 2009 c 154 s 6 are each amended to read  
10 as follows:

11 (1)(a) No person may engage in or conduct business as a distributor  
12 or retailer in this state after September 30, 2005, without a valid  
13 license issued under this chapter, except as otherwise provided by law.  
14 Any person who sells tobacco products to persons other than ultimate  
15 consumers or who meets the definition of distributor under RCW  
16 82.26.010(~~(+3)~~) (8)(d) must obtain a distributor's license under this  
17 chapter. Any person who sells tobacco products to ultimate consumers  
18 must obtain a retailer's license under this chapter.

19 (b) A violation of this subsection (1) is punishable as a class C  
20 felony according to chapter 9A.20 RCW.

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

23 (i) Refuse to allow the department or the board, on demand, to make  
24 a full inspection of any place of business where any of the tobacco  
25 products taxed under this chapter are sold, stored, or handled, or  
26 otherwise hinder or prevent such inspection;

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

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

36 (b) No person, other than a licensed distributor or retailer, may



1 transport tobacco products for sale in this state for which the taxes  
2 imposed under this chapter have not been paid unless:

3 (i) Notice of the transportation has been given as required under  
4 RCW 82.26.140;

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

10 (iii) The tobacco products are consigned to or purchased by a  
11 person in this state who is licensed under this chapter.

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

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

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

21 **Sec. 6.** RCW 82.26.020 and 2010 1st sp.s. c 22 s 5 are each amended  
22 to read as follows:

23 (1) There is levied and collected a tax upon the sale, handling, or  
24 distribution of all tobacco products in this state at the following  
25 rate:

26 (a) For cigars except little cigars, ninety-five percent of the  
27 taxable sales price of cigars, not to exceed sixty-five cents per  
28 cigar;

29 (b) For all tobacco products except those covered under separate  
30 provisions of this subsection, ninety-five percent of the taxable sales  
31 price;

32 (c) For moist snuff, as established in this subsection (1)(c) and  
33 computed on the net weight listed by the manufacturer:

34 (i) On each single unit consumer-sized can or package whose net  
35 weight is one and two-tenths ounces or less, a rate per single unit  
36 that is equal to the greater of 2.526 dollars or eighty-three and one-

1 half percent of the cigarette tax under chapter 82.24 RCW multiplied by  
2 twenty; or

3 (ii) On each single unit consumer-sized can or package whose net  
4 weight is more than one and two-tenths ounces, a proportionate tax at  
5 the rate established in (c)(i) of this subsection (1) on each ounce or  
6 fractional part of an ounce; (~~and~~)

7 (d) For tobacco substitutes, seventy-five percent of the taxable  
8 sales price; and

9 (e) For little cigars, an amount per cigar equal to the cigarette  
10 tax under chapter 82.24 RCW.

11 (2) Taxes under this section must be imposed at the time the  
12 distributor (a) brings, or causes to be brought, into this state from  
13 without the state tobacco products for sale, (b) makes, manufactures,  
14 fabricates, or stores tobacco products in this state for sale in this  
15 state, (c) ships or transports tobacco products to retailers in this  
16 state, to be sold by those retailers, or (d) handles for sale any  
17 tobacco products that are within this state but upon which tax has not  
18 been imposed.

19 (3) Except as otherwise provided in this chapter, the moneys  
20 collected under this section must be deposited into the state general  
21 fund.

22 NEW SECTION. Sec. 7. (1) Sections 3 and 4 of this act apply only  
23 with respect to tax liability incurred under chapter 82.26 RCW on and  
24 after the effective date of this section, for the sale, handling, or  
25 distribution of tobacco products, including preexisting inventories of  
26 tobacco substitutes.

27 (2) Preexisting inventories of tobacco substitutes are subject to  
28 the tax imposed in RCW 82.26.020. All retailers and other distributors  
29 must report the tax due under RCW 82.26.020 on preexisting inventories  
30 of tobacco substitutes on the taxpayer's excise tax return for a  
31 reporting period that includes tax liability accruing on and after July  
32 1, 2014, consistent with the taxpayer's regular tax reporting  
33 frequency.

34 (3) A retailer required to comply with subsection (2) of this  
35 section is not required to obtain a distributor's license as otherwise  
36 required under chapter 82.26 RCW as long as the retailer (a) does not  
37 sell tobacco products other than to ultimate consumers, and (b) does

1 not meet the definition of distributor in RCW 82.26.010(8)(d) other  
2 than with respect to the sale of that retailer's preexisting inventory  
3 of tobacco substitutes.

4 (4) For purposes of this section:

5 (a) The definitions in RCW 82.26.010 apply; and

6 (b) "Preexisting inventory" means an inventory of tobacco  
7 substitutes located in this state as of the moment that section 4 of  
8 this act takes effect and held by a distributor for sale, handling, or  
9 distribution in this state.

10 NEW SECTION. **Sec. 8.** A new section is added to chapter 82.26 RCW  
11 to read as follows:

12 Taxes collected under this chapter on the sale, handling, or  
13 distribution of tobacco substitutes must be deposited in the education  
14 legacy trust account. The department must establish a separate  
15 reporting code for taxes collected under this chapter with respect to  
16 such products.

17 NEW SECTION. **Sec. 9.** Sections 3 through 8 of this act take effect  
18 July 1, 2014.

--- END ---