H-2262.1

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**HOUSE BILL 2144**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State of Washington 65th Legislature 2017 Regular Session**

**By** Representatives Pollet, Cody, Ryu, Robinson, Jinkins, Kagi, and Peterson

AN ACT Relating to the taxation of vapor products; reenacting and amending RCW 82.26.010; adding a new section to chapter 82.26 RCW; and creating a new section.

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

NEW SECTION. **Sec.**  The legislature finds that the nicotine in vapor products such as electronic cigarettes, electronic devices, and vape pens is almost exclusively processed or derived from tobacco and that the products are intended for human consumption in the oral or nasal cavity or absorption into the human body. Therefore, the legislature finds that these vapor products, including electronic cigarettes and other products are "tobacco products" as defined in RCW 82.26.010(21). Although these products have been documented as being interchangeably used by consumers with cigarettes or other tobacco products, and there is nicotine produced or derived from tobacco in the products intended for human consumption and absorption into the human body, the manufacturers, wholesalers, and retailers have not been paying the tax levied on tobacco products pursuant to chapter 82.26 RCW on these products. The legislature intends to clarify that the tax on tobacco products applies to electronic cigarettes, electronic devices, vape pens, and other vaping products, despite the fact that no tobacco or cigarette tax has been previously paid on these products to date. Recognition of the application of this tax going forward will resolve claims of nonpayment of tobacco product taxes pursuant to chapter 82.26 RCW. The legislature believes that vapor products containing nicotine have always been subject to taxation pursuant to chapter 82.26 RCW, and passage of this act may not be interpreted as any indication otherwise.

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

(1) The essential public health services account is created in the state treasury. As specified in chapter . . ., Laws of 2017 (House Bill No. . . . (H-2267/17)), forty percent of the moneys collected from the tax imposed by chapter . . ., Laws of 2017 (House Bill No. . . . (H-2267/17)) must be deposited into the account. Moneys in the account may be spent only after appropriation to the department. The department of health must use the moneys in the account for each of the four following purposes:

(a) To fund foundational health services;

(b) To fund tobacco, vapor product, nicotine control and prevention, and other substance use prevention and education;

(c) At least ten 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 in Washington; and

(d) 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 12.5 percent of the funds deposited into the account established by this section may be utilized and distributed by the department of health to the state liquor and cannabis board for these enforcement purposes.

(2) To determine the funding for foundational health services pursuant to subsection (1)(a) of this section, the department of health and representatives of local health jurisdictions must work together to: (a) Arrive at a mutually acceptable allocation and distribution of funds from the account; and (b) determine the best accountability measures to ensure efficient and effective use of funds, emphasizing use of shared services when appropriate.

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

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

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

(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 state liquor ((~~control~~)) and cannabis board.

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

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

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

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

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

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

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

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

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

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

(14) "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, the state and its departments and institutions, political subdivision of the state of Washington, corporation, limited liability company, association, society, any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise. The term excludes 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.

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

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

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

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

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

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

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

(ii) In the case of a taxpayer that purchases tobacco products from an affiliated manufacturer, affiliated distributor, or other affiliated person, and that sells those tobacco products to unaffiliated distributors, unaffiliated retailers, or ultimate consumers, the actual price for which that taxpayer sells those tobacco products to unaffiliated distributors, unaffiliated retailers, or ultimate consumers;

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

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

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

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

(b) For purposes of (a)(i) and (ii) of this subsection only, "person" includes both persons as defined in subsection (14) of this section and 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.

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

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

(21) "Tobacco products" means cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking, and any other product, regardless of form, that contains tobacco or contains nicotine derived from tobacco and is intended for human consumption or placement in the oral or nasal cavity or absorption into the human body by any other means, but does not include cigarettes as defined in RCW 82.24.010. "Tobacco products" includes any product containing a solution or other consumable substance that contains tobacco or nicotine derived from tobacco that employs a mechanical heating element, battery, or electronic circuit that can be used to produce vapor from the solution or other substance.

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

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

**--- END ---**