
HOUSE BILL 1550

State of Washington

67th Legislature

2021 Regular Session

By Representatives Pollet and Cody

1 AN ACT Relating to preventing nicotine addiction with an emphasis
2 on youth and persons under 21 years of age and the funding of
3 prevention, cessation, and public health services through the
4 taxation of vapor and tobacco products containing nicotine; amending
5 RCW 82.04.440, 82.25.005, 82.25.010, 82.25.015, 82.25.020, 82.25.075,
6 82.25.060, 82.25.080, and 82.32.145; reenacting and amending RCW
7 70.155.120; adding a new section to chapter 82.04 RCW; adding new
8 sections to chapter 82.25 RCW; creating a new section; and providing
9 effective dates.

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

11 NEW SECTION. **Sec. 1.** (1) The legislature makes the following
12 findings:

13 (a) Nicotine is a highly addictive substance, particularly for
14 children and youth under 21 years of age, whose brains are still
15 developing. The 2019 national youth tobacco survey found that about
16 27 percent of high school students reported current use of electronic
17 cigarettes and, among electronic cigarette users, about one-third
18 reported using electronic cigarettes on 20 or more of the preceding
19 30 days. Washington state healthy youth survey data is similar,
20 including 30 percent of 12th graders using e-cigarettes and vapor
21 products. Many of those vapor products have very high nicotine

1 levels, increasing youth addiction, in addition to numerous
2 ingredients with well documented potential health effects identified
3 in a formal health impact review by the state board of health;

4 (b) Early research from Stanford University school of medicine
5 indicates that teenagers and young adults that vape are five to seven
6 times more likely to be infected with COVID-19 compared to those who
7 do not use vapor products;

8 (c) While the long-term health effects of vapor products are
9 unknown, current data suggests they are harmful to human health.
10 Vapor products have been shown to impair lung function in several
11 ways, such as by inhibiting ciliary beating, impairing immune
12 function, and causing toxicity to epithelial cells;

13 (d) Youth and young adults who use vapor products are far more
14 likely to begin smoking tobacco cigarettes than those who do not
15 vape;

16 (e) The health and economic costs on the state of Washington and
17 its residents from addiction to tobacco products are well documented.
18 The centers for disease control reports that cigarette smoking is
19 responsible for one in five deaths annually nationwide and overall
20 mortality among smokers is about three times higher than similar
21 people who never smoked;

22 (f) Consumers often use vapor products interchangeably with
23 cigarettes or other tobacco products. Nicotine is the common
24 denominator; creating and sustaining addiction across Washington
25 state. A meta-analysis by the American public health association
26 found that vaping was not associated with increased smoking
27 cessation, and further research shows most people who vape continue
28 to use tobacco concurrently;

29 (g) Washington state grants preferential business and occupation
30 tax treatment to encourage manufacturing of useful substances or
31 products in Washington. Cigarette, vapor, and tobacco manufacturers
32 have benefited from this preference despite the high health effects
33 and costs on the state government from their products;

34 (h) In 2019, the legislature enacted a vapor products tax based
35 on milliliters of liquid in each product which was intended to both
36 reduce youth access by raising the price of many youth-attractive
37 vapor products and to dedicate the funding to a foundational public
38 health services account for: Nicotine and substance use prevention,
39 cessation, enforcement, and education; and public health services.
40 The structure of the tax as enacted, however, did not significantly

1 raise the price of very low-cost sealed vapor products that are very
2 popular with youth under 21 years of age and fueling the epidemic of
3 youth vaping and nicotine addiction. Nor did the structure of the tax
4 provide the expected significant funding for the foundational public
5 health services account; and

6 (i) The tobacco and vape industries have specifically targeted
7 marketing toward Black, indigenous, people of color, LGBTQ, and other
8 marginalized communities. As a result, these communities experience
9 higher rates of nicotine use and resulting health disparities.

10 (2) Therefore, the legislature intends to protect the health of
11 youth and young adults in Washington state by:

12 (a) Changing from a per milliliter tax to a more effective vapor
13 product tax structure using an excise tax that will have a greater
14 deterrent effect on purchases made by persons under the age of 21
15 while being more fair to stores that limit entry and purchases to
16 adults over 21 years of age and increase the price of presealed high
17 nicotine products that are heavily used by youth under 21 years of
18 age;

19 (b) Stopping rewarding and encouraging manufacturers of nicotine
20 addicting vapor and tobacco products through preferential tax rates
21 for products that are amongst the deadliest products sold to
22 Washington residents and which impose tremendous economic burdens on
23 the state's health care systems;

24 (c) Discouraging the manufacture, processing, and distribution of
25 nicotine addicting vapor and tobacco products and have them bear an
26 increased share of the costs they cause on the state through a
27 business and occupation tax surcharge;

28 (d) Significantly improving funding for programs that prevent and
29 reduce nicotine addiction amongst youth and populations or
30 communities that have disparately high nicotine addiction and use of
31 tobacco or vapor products, and related educational and foundational
32 public health services programs;

33 (e) Providing other means of reducing youth addiction to nicotine
34 and access to nicotine products; and

35 (f) Adjusting the distribution of the foundational public health
36 services account to include an emphasis on community-based strategies
37 addressing health inequity.

38 NEW SECTION. **Sec. 2.** A new section is added to chapter 82.04
39 RCW to read as follows:

1 (1) Beginning with business activities occurring on or after
2 October 1, 2021, a vapor products surcharge is imposed as follows:

3 (a) Upon every person engaging within this state in business as a
4 manufacturer of vapor products or as a processor of vapor products
5 for hire, in addition to the tax imposed under RCW 82.04.240, a
6 surcharge equal to the value of the manufactured or processed vapor
7 products, including by-products, multiplied by the rate of 4.4
8 percent;

9 (b) Upon every person engaging within this state in business as a
10 vapor product distributor as defined in RCW 82.25.005, in addition to
11 the tax imposed under RCW 82.04.240, a surcharge equal to the gross
12 proceeds of sales of the vapor products multiplied by the rate of 4.4
13 percent.

14 (2) Beginning with business activities occurring on or after
15 October 1, 2021, a tobacco products surcharge is imposed as follows:

16 (a) Upon every person engaging within this state in business as a
17 manufacturer of tobacco products or as a processor of tobacco
18 products for hire, in addition to the tax imposed under RCW
19 82.04.240, a surcharge equal to the value of the manufactured or
20 processed tobacco products, including by-products, multiplied by the
21 rate of 4.4 percent;

22 (b) Upon every person engaging within this state in business as a
23 tobacco product distributor licensed under RCW 82.26.190, in addition
24 to the tax imposed under RCW 82.04.240, a surcharge equal to the
25 gross proceeds of sales of tobacco products multiplied by the rate of
26 4.4 percent.

27 (3) The money collected under this section must be deposited into
28 the foundational public health services account created in RCW
29 82.25.015.

30 (4) As provided in RCW 82.04.440, a multiple activities tax
31 credit is available for a person who is engaged in business as both a
32 manufacturer or processor for hire and as a distributor of vapor
33 products or tobacco products.

34 (5) For purposes of this section:

35 (a) "Processor of tobacco products for hire" means a person who
36 would be a manufacturer of tobacco products except the person
37 performs labor on materials owned by another person.

38 (b) "Processor of vapor products for hire" means any person who
39 would be a manufacturer of vapor products except the person performs
40 labor on materials owned by another person.

1 (c) "Tobacco products" has the same meaning as in RCW 82.26.010.

2 (d) "Vapor product" has the same meaning as in RCW 82.25.005.

3 **Sec. 3.** RCW 82.04.440 and 2011 c 2 s 205 are each amended to
4 read as follows:

5 (1) Every person engaged in activities that are subject to tax
6 under two or more provisions of RCW 82.04.230 through 82.04.298,
7 inclusive, is taxable under each provision applicable to those
8 activities.

9 (2) Persons taxable under RCW 82.04.2909(2), 82.04.250,
10 82.04.270, 82.04.294(2), or 82.04.260 (1)(b), (c), or (d), (4), (11),
11 or (12) with respect to selling products in this state, including
12 those persons who are also taxable under RCW 82.04.261, are allowed a
13 credit against those taxes for any (a) manufacturing taxes paid with
14 respect to the manufacturing of products so sold in this state,
15 and/or (b) extracting taxes paid with respect to the extracting of
16 products so sold in this state or ingredients of products so sold in
17 this state. Extracting taxes taken as credit under subsection (3) of
18 this section may also be taken under this subsection, if otherwise
19 allowable under this subsection. The amount of the credit may not
20 exceed the tax liability arising under this chapter with respect to
21 the sale of those products.

22 (3) Persons taxable as manufacturers under RCW 82.04.240 or
23 82.04.260 (1)(b) or (12), including those persons who are also
24 taxable under RCW 82.04.261, are allowed a credit against those taxes
25 for any extracting taxes paid with respect to extracting the
26 ingredients of the products so manufactured in this state. The amount
27 of the credit may not exceed the tax liability arising under this
28 chapter with respect to the manufacturing of those products.

29 (4) Persons taxable under RCW 82.04.230, 82.04.240,
30 82.04.2909(1), 82.04.294(1), 82.04.2404, or 82.04.260 (1), (2), (4),
31 (11), or (12), including those persons who are also taxable under RCW
32 82.04.261, with respect to extracting or manufacturing products in
33 this state are allowed a credit against those taxes for any (i) gross
34 receipts taxes paid to another state with respect to the sales of the
35 products so extracted or manufactured in this state, (ii)
36 manufacturing taxes paid with respect to the manufacturing of
37 products using ingredients so extracted in this state, or (iii)
38 manufacturing taxes paid with respect to manufacturing activities
39 completed in another state for products so manufactured in this

1 state. The amount of the credit may not exceed the tax liability
2 arising under this chapter with respect to the extraction or
3 manufacturing of those products.

4 (5) Persons taxable as manufacturers or processors for hire under
5 section 2 (1)(a) or (2)(a) of this act are allowed a credit against
6 those taxes for taxes on the distribution of the products under
7 section 2 (1)(b) or (2)(b) of this act. The amount of the credit
8 allowed in this subsection (5) may not exceed the tax liability
9 arising under section 2 of this act with respect to the
10 manufacturing, processing for hire, or distribution of those
11 products.

12 (6) For the purpose of this section:

13 (a) "Gross receipts tax" means a tax:

14 (i) Which is imposed on or measured by the gross volume of
15 business, in terms of gross receipts or in other terms, and in the
16 determination of which the deductions allowed would not constitute
17 the tax an income tax or value added tax; and

18 (ii) Which is also not, pursuant to law or custom, separately
19 stated from the sales price.

20 (b) "State" means (i) the state of Washington, (ii) a state of
21 the United States other than Washington, or any political subdivision
22 of such other state, (iii) the District of Columbia, and (iv) any
23 foreign country or political subdivision thereof.

24 (c) "Manufacturing tax" means a gross receipts tax imposed on the
25 act or privilege of engaging in business as a manufacturer, and
26 includes (i) the taxes imposed in RCW 82.04.240, 82.04.2404,
27 82.04.2909(1), 82.04.260 (1), (2), (4), (11), and (12), and
28 82.04.294(1); (ii) the tax imposed under RCW 82.04.261 on persons who
29 are engaged in business as a manufacturer; and (iii) similar gross
30 receipts taxes paid to other states.

31 (d) "Extracting tax" means a gross receipts tax imposed on the
32 act or privilege of engaging in business as an extractor, and
33 includes (i) the tax imposed on extractors in RCW 82.04.230 and
34 82.04.260(12); (ii) the tax imposed under RCW 82.04.261 on persons
35 who are engaged in business as an extractor; and (iii) similar gross
36 receipts taxes paid to other states.

37 (e) "Business," "manufacturer," "extractor," and other terms used
38 in this section have the meanings given in RCW 82.04.020 through
39 (~~82.04.212~~ [~~82.04.217~~]) 82.04.217, notwithstanding the use of those
40 terms in the context of describing taxes imposed by other states.

1 **Sec. 4.** RCW 82.25.005 and 2019 c 445 s 101 are each amended to
2 read as follows:

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

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

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

11 ((3)) (2) "Board" means the Washington state liquor and
12 cannabis board.

13 ((4)) (3) "Business" means any trade, occupation, activity, or
14 enterprise engaged in selling or distributing vapor products in this
15 state.

16 ((5)) (4) "Distributor" (~~mean[s]~~) means any person:

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

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

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

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

28 ((6)) (5) "Indian country" has the same meaning as provided in
29 RCW 82.24.010.

30 ((7)) (6) "Manufacturer" has the same meaning as provided in
31 RCW 70.345.010.

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

35 (9)) (7) "Person" means: Any individual, receiver,
36 administrator, executor, assignee, trustee in bankruptcy, trust,
37 estate, firm, copartnership, joint venture, club, company, joint
38 stock company, business trust, municipal corporation, corporation,
39 limited liability company, association, or society; the state and its
40 departments and institutions; any political subdivision of the state

1 of Washington; and any group of individuals acting as a unit, whether
2 mutual, cooperative, fraternal, nonprofit, or otherwise. Except as
3 provided otherwise in this chapter, "person" does not include any
4 person immune from state taxation, including the United States or its
5 instrumentalities, and federally recognized Indian tribes and
6 enrolled tribal members, conducting business within Indian country.

7 ~~((10))~~ (8) "Place of business" means any place where vapor
8 products are sold or where vapor products are manufactured, stored,
9 or kept for the purpose of sale, including any vessel, vehicle,
10 airplane, or train.

11 ~~((11))~~ (9) "Retail outlet" has the same meaning as provided in
12 RCW 70.345.010.

13 ~~((12))~~ (10) "Retailer" has the same meaning as provided in RCW
14 70.345.010.

15 ~~((13))~~ (11) "Sale" has the same meaning as provided in RCW
16 70.345.010.

17 ~~((14))~~ (12) "Taxpayer" means a person liable for the tax
18 imposed by this chapter.

19 ~~((15))~~ (13) "Vapor product" means any noncombustible product
20 containing a solution or other consumable substance, regardless of
21 whether it contains nicotine, which employs a mechanical heating
22 element, battery, or electronic circuit regardless of shape or size
23 that can be used to produce vapor from the solution or other
24 substance, including an electronic cigarette, electronic cigar,
25 electronic cigarillo, electronic pipe, or similar product or device.
26 The term also includes any cartridge or other container of liquid
27 nicotine, solution, or other consumable substance, regardless of
28 whether it contains nicotine, that is intended to be used with or in
29 a device that can be used to deliver aerosolized or vaporized
30 nicotine to a person inhaling from the device and is sold for such
31 purpose.

32 (a) The term does not include:

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

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

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

4 (b) For purposes of this subsection (~~((15))~~) (13):

5 (i) "Cigarette" has the same meaning as provided in RCW
6 82.24.010; and

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

10 **Sec. 5.** RCW 82.25.010 and 2019 c 445 s 102 are each amended to
11 read as follows:

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

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

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

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

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

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

1 (3)(a)) vapor product excise tax equal to 45 percent of the
2 selling price on each retail sale in this state of vapor products.
3 This tax is separate and in addition to general state and local sales
4 and use taxes that apply to retail sales of tangible personal
5 property, and is not part of the total retail price to which general
6 state and local sales and use taxes apply. The tax must be separately
7 itemized from the state and local retail sales tax on the sales
8 receipt provided to the buyer.

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

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

16 (i) ((Fifty percent into the Andy Hill cancer research endowment
17 fund match transfer account created in RCW 43.348.080; and

18 (ii) Fifty percent into the foundational public health services
19 account created in RCW 82.25.015)) The first \$25,000,000 into the
20 foundational public health services account created in RCW 82.25.015;

21 (ii) Fifty percent of the next \$10,000,000 into the Andy Hill
22 cancer research endowment fund match transfer account created in RCW
23 43.348.080; and

24 (iii) All remaining funds into the foundational public health
25 services account created in RCW 82.25.015.

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

29 (3) The tax imposed by this section must be paid by the buyer to
30 the seller. Each seller must collect from the buyer the full amount
31 of the tax payable on each taxable sale. The tax collected as
32 required by this section is deemed to be held in trust by the seller
33 until paid to the department. If any seller fails to collect the tax
34 imposed in this section or, having collected the tax, fails to pay it
35 as prescribed by the department, whether such failure is the result
36 of the seller's own acts or the result of acts or conditions beyond
37 the seller's control, the seller is, nevertheless, personally liable
38 to the state for the amount of the tax.

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

1 (a) "Product" means vapor products.

2 (b) "Retail sale" has the meaning provided in RCW 82.08.010.

3 (c) "Selling price" has the meaning provided in RCW 82.08.010,
4 except that when a product is sold under circumstances where the
5 total amount of consideration paid for the product is not indicative
6 of its true value, "selling price" means the true value of the
7 product sold.

8 (d) "True value" means market value based on sales at comparable
9 locations in this state of the same or similar product of like
10 quality and character sold under comparable conditions of sale to
11 comparable purchasers. However, in the absence of such sales of the
12 same or similar product, true value means the value of the product
13 sold as determined by all of the seller's direct and indirect costs
14 attributable to the product.

15 **Sec. 6.** RCW 82.25.015 and 2019 c 445 s 103 are each amended to
16 read as follows:

17 The foundational public health services account is created in the
18 state treasury. (~~Half of all of the moneys collected from the tax~~
19 ~~imposed on vapor products under RCW 66.44.010)) Except as otherwise
20 provided in RCW 82.25.010, money collected from the tax imposed on
21 vapor products under RCW 82.25.010 must be deposited into the
22 account. Money collected from the vapor and tobacco products
23 surcharge under section 2 of this act must be deposited into the
24 account. Moneys in the account may be spent only after appropriation.
25 Moneys in the account are to be used for the following purposes:~~

26 (1) To fund foundational health services. In the 2019-2021
27 biennium, at least twelve million dollars of the funds deposited into
28 the account must be appropriated for this purpose. Beginning in the
29 2021-2023 biennium, fifty percent of the funds deposited into the
30 account, but not less than twelve million dollars each biennium, are
31 to be used for this purpose;

32 (2) To fund tobacco, vapor product, and nicotine control,
33 cessation, and prevention, and other substance use prevention and
34 education with an emphasis on community-based strategies, including
35 programs that consider the disparate impacts of nicotine addiction on
36 specific populations, including youth and racial or other
37 disparities. Beginning in the 2021-2023 biennium, seventeen percent
38 of the funds deposited into the account are to be used for this
39 purpose;

1 (3) To support increased access and training of public health
2 professionals at public health programs at accredited public
3 institutions of higher education in Washington. Beginning in the
4 2021-2023 biennium, five percent of the funds deposited into the
5 account are to be used for this purpose;

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

12 **Sec. 7.** RCW 70.155.120 and 2019 c 415 s 979 and 2019 c 15 s 10
13 are each reenacted and amended to read as follows:

14 (1) The youth tobacco and vapor products prevention account is
15 created in the state treasury. All fees collected pursuant to RCW
16 82.24.520, 82.24.530, 82.26.160, and 82.26.170 and funds collected by
17 the liquor and cannabis board from the imposition of monetary
18 penalties shall be deposited into this account, except that ten
19 percent of all such fees and penalties shall be deposited in the
20 state general fund.

21 (2) Moneys appropriated from the youth tobacco and vapor products
22 prevention account to the department of health shall be used by the
23 department of health for implementation of this chapter, including
24 collection and reporting of data regarding enforcement and the extent
25 to which access to tobacco products and vapor products by youth has
26 been reduced.

27 (3) The department of health shall enter into interagency
28 agreements with the liquor and cannabis board to pay the costs
29 incurred, up to thirty percent of available funds, in carrying out
30 its enforcement responsibilities under this chapter. Such agreements
31 shall set forth standards of enforcement, consistent with the funding
32 available, so as to reduce the extent to which tobacco products and
33 vapor products are available to individuals under the age of twenty-
34 one. The agreements shall also set forth requirements for data
35 reporting by the liquor and cannabis board regarding its enforcement
36 activities. During the 2019-2021 fiscal biennium, the department of
37 health shall pay the costs incurred, up to twenty-three percent of
38 available funds, in carrying out its enforcement responsibilities.

1 (4) The department of health, the liquor and cannabis board, and
2 the department of revenue shall enter into an interagency agreement
3 for payment of the cost of administering the tobacco retailer
4 licensing system and for the provision of quarterly documentation of
5 tobacco wholesaler, retailer, and vending machine names and
6 locations.

7 (5) The department of health shall, within up to seventy percent
8 of available funds, provide grants to local health departments or
9 other local community agencies to develop and implement coordinated
10 tobacco and vapor product intervention strategies to prevent and
11 reduce tobacco and vapor product use by youth with an emphasis on
12 community-based strategies addressing health inequity and racial
13 disparities. During the 2019-2021 fiscal biennium, the department of
14 health shall, within up to seventy-seven percent of available funds,
15 provide grants to local health departments or other local community
16 agencies to develop and implement coordinated tobacco and vapor
17 product intervention strategies to prevent and reduce tobacco and
18 vapor product use by youth with an emphasis on community-based
19 strategies addressing health inequity and racial disparities.

20 **Sec. 8.** RCW 82.25.020 and 2019 c 445 s 104 are each amended to
21 read as follows:

22 It is the intent and purpose of this chapter to levy a tax on all
23 vapor products sold(~~(7)~~) or used(~~(7, consumed, handled, possessed, or~~
24 ~~distributed)~~) within this state. It is the further intent and purpose
25 of this chapter to impose the tax only once on all vapor products in
26 this state. Nothing in this chapter may be construed to exempt any
27 person taxable under any other law or under any other tax imposed
28 under this title.

29 **Sec. 9.** RCW 82.25.075 and 2019 c 445 s 115 are each amended to
30 read as follows:

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

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

37 (b) Fail to produce on demand of the department or the board all
38 invoices of all the vapor products taxed under this chapter within

1 five years prior to such demand unless the person can show by
2 satisfactory proof that the nonproduction of the invoices was due to
3 causes beyond the person's control.

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

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

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

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

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

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

23 ~~((4))~~ (3) The penalties provided in this section are in
24 addition to any other penalties provided by law for violating the
25 provisions of this chapter or the rules adopted under this chapter.

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

29 **Sec. 10.** RCW 82.25.060 and 2019 c 445 s 112 are each amended to
30 read as follows:

31 ~~((1))~~ The department may by rule establish the invoice detail
32 required under RCW 82.25.030 for a distributor and for those invoices
33 required to be provided to retailers under RCW 82.25.040.

34 ~~((2) If a retailer fails to keep invoices as required under RCW~~
35 ~~82.25.040, the retailer is liable for the tax owed on any uninvoiced~~
36 ~~vapor products but not penalties and interest, except as provided in~~
37 ~~subsection (3) of this section.~~

38 ~~(3) If the department finds that the nonpayment of tax by the~~
39 ~~retailer was willful or if in the case of a second or plural~~

1 ~~nonpayment of tax by the retailer, penalties and interest must be~~
2 ~~assessed in accordance with chapter 82.32 RCW.))~~

3 **Sec. 11.** RCW 82.25.080 and 2019 c 445 s 116 are each amended to
4 read as follows:

5 (1) A retailer that obtains vapor products from an unlicensed
6 distributor or any other person that is not licensed under chapter
7 70.345 RCW must be licensed both as a retailer and a distributor
8 ~~((and is liable for the tax imposed under RCW 82.25.010 with respect~~
9 ~~to the vapor products acquired from the unlicensed person that are~~
10 ~~held for sale, handling, or distribution in this state)).~~ For the
11 purposes of this subsection, "person" includes both persons defined
12 in chapter 445, Laws of 2019 and any person immune from state
13 taxation, such as the United States or its instrumentalities, and
14 federally recognized Indian tribes and enrolled tribal members,
15 conducting business within Indian country.

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

19 NEW SECTION. **Sec. 12.** A new section is added to chapter 82.25
20 RCW to read as follows:

21 (1) The legislature intends to create a tax credit so that vapor
22 products taxed at the wholesale level under the law as it existed
23 immediately before the effective date of this section are not also
24 taxed in a retail sale under the provisions of this act.

25 (2) Except as provided in subsection (3) of this section, a tax
26 credit is established and available to distributors with respect to
27 vapor products:

28 (a) In their possession on the effective date of this section on
29 which tax was paid to the state by the distributor pursuant to the
30 law as it existed immediately before the effective date of this
31 section; or

32 (b) Returned to the distributor by a retailer, other purchaser,
33 or consignee, on or after the effective date of this section, if tax
34 on the vapor products was previously paid by the distributor to the
35 state pursuant to the law as it existed immediately before the
36 effective date of this section.

37 (3) Nothing in this section authorizes a tax credit for vapor
38 products that are expired, destroyed, unsellable, or that are not

1 held for sale by the distributor and intended to ultimately be sold
2 by a licensee at retail.

3 (4) Credit allowed under this section must be determined based on
4 the tax rate in effect for the period for which the tax imposed by
5 this chapter, for which a credit is sought, was paid.

6 (5) To be eligible for a tax credit under this section, a
7 distributor shall apply for the credit to the department on a form
8 and in a manner required by the department. The department may
9 establish requirements related to distributors documenting and
10 claiming a tax credit pursuant to this section in order to determine
11 eligibility.

12 NEW SECTION. **Sec. 13.** A new section is added to chapter 82.25
13 RCW to read as follows:

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

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

19 (a) "Bundled transaction" means:

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

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

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

34 NEW SECTION. **Sec. 14.** A new section is added to chapter 82.25
35 RCW to read as follows:

36 (1) The taxes imposed by this chapter do not apply to the sale of
37 vapor products by an Indian retailer during the effective date of a

1 vapor product tax contract subject to RCW 43.06.510 or a vapor
2 product tax agreement under RCW 43.06.515.

3 (2) The definitions in RCW 43.06.505 apply to this section.

4 **Sec. 15.** RCW 82.32.145 and 2020 c 301 s 6 are each amended to
5 read as follows:

6 (1) Whenever the department has issued a warrant under RCW
7 82.32.210 for the collection of unpaid trust fund taxes from a
8 limited liability business entity and that business entity has been
9 terminated, dissolved, or abandoned, or is insolvent, the department
10 may pursue collection of the entity's unpaid trust fund taxes,
11 including penalties and interest on those taxes, against any or all
12 of the responsible individuals. For purposes of this subsection,
13 "insolvent" means the condition that results when the sum of the
14 entity's debts exceeds the fair market value of its assets. The
15 department may presume that an entity is insolvent if the entity
16 refuses to disclose to the department the nature of its assets and
17 liabilities.

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

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

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

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

1 liability business entity's taxes to the department but was not the
2 chief executive or chief financial officer.

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

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

12 (6) Any person having been issued a notice of assessment under
13 this section is entitled to the appeal procedures under RCW
14 82.32.160, 82.32.170, 82.32.180, 82.32.190, and 82.32.200.

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

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

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

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

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

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

1 also limited liability business entities, and limited partnerships in
2 which one or more of the general partners are also limited liability
3 business entities.

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

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

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

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

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

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

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

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

33 NEW SECTION. **Sec. 16.** If any provision of this act or its
34 application to any person or circumstance is held invalid, the
35 remainder of the act or the application of the provision to other
36 persons or circumstances is not affected.

37 NEW SECTION. **Sec. 17.** (1) Sections 2 and 3 of this act take
38 effect October 1, 2021.

1 (2) Sections 4 through 16 of this act take effect January 1,
2 2022.

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