AN ACT Relating to clarifying laws relating to tobacco substitutes; amending RCW 26.28.080, 70.155.010, and 82.26.190; reenacting and amending RCW 82.26.010; adding a new section to chapter 82.26 RCW; creating a new section; prescribing penalties; and providing an effective date.

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

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

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

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

(3)(a) For the purposes of this section, ("vapor product" means a noncombustible tobacco derived product containing nicotine that employs a mechanical heating element, battery, or circuit, regardless of shape or size, that can be used to heat a liquid nicotine solution contained...
in cartridges. Vapor product does not include any product that is regulated by the United States food and drug administration under chapter V of the federal food, drug, and cosmetic act) "tobacco product" means:

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

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

(b) Notwithstanding any provisions of (a)(i) and (ii) of this subsection to the contrary, "tobacco product" includes any component, part, or accessory of a tobacco product whether or not it is sold separately. "Tobacco product" does not include any product that has been approved by the United States food and drug administration for tobacco cessation or other therapeutic purposes where such product is marketed and sold solely for such an approved purpose.

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

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

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

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

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

(4) "Sample" means a tobacco product distributed to members of the general public at no cost or at nominal cost for product promotion purposes.

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

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

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

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

(b) Notwithstanding any provisions of (a)(i) and (ii) of this
subsection to the contrary, "tobacco product" includes any component,
part, or accessory of a tobacco product whether or not it is sold
separately. "Tobacco product" does not include any product that has
been approved by the United States food and drug administration for
tobacco cessation or other therapeutic purposes where such product is
marketed and sold solely for such an approved purpose.

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

Sec. 3. 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 liquor control 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:

(a) Any product, regardless of form, other than cigarettes, that contains 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, including: 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 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.); and

(b) A tobacco substitute.
"Tobacco substitute" means any product containing nicotine, but not containing tobacco, that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, that has not been approved by the United States food and drug administration for tobacco cessation or other medical purposes.

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

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

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

For purposes of the tax imposed under RCW 82.26.020, no deduction from the taxable sales price is allowed for the value of nontobacco products that are sold together with tobacco products for one nonitemized price:

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

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

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

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

(b) A violation of this subsection (1) is punishable as a class C felony according to chapter 9A.20 RCW.
(2)(a) No person engaged in or conducting business as a distributor or retailer in this state may:

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

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

(iii) Fail to produce on demand of the department or the board all invoices of all the tobacco 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.

(b) No person, other than a licensed distributor or retailer, may transport tobacco 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 82.26.140;

(ii) The person transporting the tobacco 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 tobacco products being transported; and

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

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

(3) Any person licensed under this chapter as a distributor, and any person licensed under this chapter as a retailer, ((shall)) 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.
NEW SECTION. Sec. 6. (1) Sections 3 and 4 of this act apply only with respect to tax liability incurred under chapter 82.26 RCW on and after the effective date of this section, for the sale, handling, or distribution of tobacco products, including preexisting inventories of tobacco substitutes.

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

(3) A retailer required to comply with subsection (2) of this section is not required to obtain a distributor's license as otherwise required under chapter 82.26 RCW as long as the retailer (a) does not sell tobacco products other than to ultimate consumers, and (b) does not meet the definition of distributor in RCW 82.26.010(8)(d) other than with respect to the sale of that retailer's preexisting inventory of tobacco substitutes.

(4) For purposes of this section:

(a) The definitions in RCW 82.26.010 apply; and

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

NEW SECTION. Sec. 7. Sections 3 through 6 of this act take effect July 1, 2014.

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