
HOUSE BILL 2165

State of Washington 65th Legislature 2017 Regular Session

By Representatives Harris, Cody, Pollet, Doglio, Kagi, Ryu, and Slatter

Read first time 03/15/17. Referred to Committee on Finance.

1 AN ACT Relating to vapor products, e-cigarettes, and nicotine
2 products taxation; amending RCW 66.08.145, 66.44.010, 82.24.510,
3 82.24.550, 82.26.060, 82.26.080, 82.26.150, 82.26.220, 82.32.300, and
4 43.06.450; adding new sections to chapter 43.06 RCW; adding a new
5 section to chapter 82.08 RCW; adding a new section to chapter 82.12
6 RCW; adding a new chapter to Title 82 RCW; creating new sections;
7 prescribing penalties; and providing an effective date.

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

9 **Part I**
10 **Findings**

11 NEW SECTION. **Sec. 101.** (1) The legislature finds that the use
12 of vapor inhalation products, such as e-cigarettes, e-devices, and
13 vape pens, has risen at an alarming rate both among adults and youth.
14 Vapor products pose a serious public health risk because of the
15 addictiveness of nicotine, the impact of nicotine on fetal
16 development and adolescent brain development, the risk of liquid
17 nicotine poisoning, and exposure to carcinogens and other toxic
18 chemicals. The legislature finds that the nicotine in these vapor
19 products is almost exclusively processed or derived from tobacco and
20 that the products are intended for human consumption in the oral or

1 nasal cavity or absorption into the human body. Therefore, the
2 legislature finds that these vapor products, including electronic
3 cigarettes and other products are "tobacco products" as defined in
4 RCW 82.26.010. Although these products have been documented as being
5 interchangeably used by consumers with cigarettes or other tobacco
6 products, and there is nicotine produced or derived from tobacco in
7 the product intended for human consumption and absorption into the
8 human body, the manufacturers, wholesalers, and retailers have not
9 been paying the tax levied on tobacco products pursuant to chapter
10 82.26 RCW. The legislature intends to transition from no tobacco or
11 cigarette tax having been paid on these products to adopting a
12 specific tax rate for vapor products in this act. Adoption of this
13 specific tax will resolve claims of nonpayment of tobacco product
14 taxes pursuant to chapter 82.26 RCW. The legislature believes that
15 vapor products containing nicotine have always been subject to
16 taxation pursuant to chapter 82.26 RCW, and passage of this act may
17 not be interpreted as an indication otherwise.

18 (2) Specifically, the legislature finds that:

19 (a) Vapor products are battery-operated devices with cartridges
20 or refillable tanks that contain a mixture of various liquids, such
21 as propylene glycol, glycerol, nicotine, and chemical flavorings. The
22 devices atomize the liquid mixture, producing a vapor that the user
23 inhales;

24 (b) Vapor products are heavily promoted as being far less costly
25 than consuming the equivalent nicotine through cigarettes, with one
26 industry estimate that vapor products are over eighty percent less
27 expensive. Legislative testimony has indicated that refillable
28 nicotine liquid and disposable e-cigarettes are as low as ten and
29 twenty percent of the cost of a pack of cigarettes in Washington. For
30 Washington residents, industry promotions note thousands of dollars
31 in individual savings annually, compared to smoking cigarettes, due
32 in part to consumers and retailers of vapor products not paying the
33 taxes which the state places on cigarettes or other tobacco products;

34 (c) The sale of vapor products has rapidly increased over the
35 past several years. Nationally, the percentage of middle school and
36 high school students who have used vapor products more than doubled
37 from 2011 to 2012. The December 2016 report by the centers for
38 disease control finds that sixteen percent of high school students
39 nationwide are using e-cigarettes or vapor products. The legislature
40 finds that vapor products are heavily promoted to attract youth to

1 purchase them, with concomitant addiction to nicotine. Research shows
2 that most young e-cigarette and vapor product users also smoke
3 cigarettes, and that the attraction and low cost availability of
4 vapor products is mitigating the positive benefits from the decline
5 in cigarette use among youth;

6 (d) In Washington, the 2014 healthy youth survey found that
7 almost twenty-three percent of twelfth graders had used an e-
8 cigarette in the past month. These rates are alarming because an
9 overwhelming majority of smokers begin smoking and become addicted to
10 nicotine as teenagers, and the equipment used may be sold and used
11 interchangeably for marijuana and nicotine. Current law in Washington
12 prohibits the sale of vapor products containing nicotine to minors,
13 but given the availability of vapor products online and equipment
14 sold separately at retail stores, this law is difficult to enforce;

15 (e) The low cost of e-cigarettes and nicotine liquids for vapor
16 products, particularly compared to cigarettes, is a key factor in
17 youth access and use. E-cigarettes are advertised as saving smokers
18 thousands of dollars. One survey of adult users has shown that the
19 low price of e-cigarettes compared to other tobacco products is a key
20 reason for their use, and youth are even more sensitive to price than
21 adults. Increasing the price of vapor products will decrease youth
22 access and addiction, just as raising taxes on cigarettes to
23 discourage youth and adult smoking decreased youth access and
24 addiction; and

25 (f) Public health infrastructure and enforcement to prevent youth
26 access to tobacco and vapor products in Washington will benefit from
27 the investment of tax revenues and fees established or increased by
28 this act.

29 (3) The legislature finds, therefore, that this act is necessary
30 to protect the public health, safety, and welfare by providing
31 consumers with information about products that are potentially
32 dangerous, providing support for programs that reduce youth access to
33 addictive nicotine products, preventing nicotine poisonings of
34 children, and providing support for many essential public health
35 services and educational programs for which needs and cost are
36 increased due to increased consumption of vapor products.

1 **Part II**

2 **Tax on Vapor Products**

3 NEW SECTION. **Sec. 201.** The definitions in this section apply
4 throughout this chapter unless the context clearly requires
5 otherwise.

6 (1) "Actual price" means the total amount of consideration for
7 which vapor products are sold, valued in money, whether received in
8 money or otherwise, including: (a) Any charges by the seller
9 necessary to complete the sale such as charges for delivery, freight,
10 transportation, or handling; and (b) in the case of a taxpayer
11 importing vapor products into the state, any expenses of the taxpayer
12 or any person affiliated with the taxpayer that are necessary to
13 complete the importation, such as delivery, freight, transportation,
14 federal taxes, or handling of the product.

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

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

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

21 (5) "Distributor" has the same meaning as provided in RCW
22 70.345.010.

23 (6) "Indian country" has the same meaning as provided in RCW
24 82.24.010.

25 (7) "Manufacturer" has the same meaning as provided in RCW
26 70.345.010.

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

30 (9) "Person" means: Any individual, receiver, administrator,
31 executor, assignee, trustee in bankruptcy, trust, estate, firm,
32 copartnership, joint venture, club, company, joint stock company,
33 business trust, municipal corporation, corporation, limited liability
34 company, association, or society; the state and its departments and
35 institutions; any political subdivision of the state of Washington;
36 and any group of individuals acting as a unit, whether mutual,
37 cooperative, fraternal, nonprofit, or otherwise. Except as provided
38 otherwise in this chapter, "person" does not include any person
39 immune from state taxation, including the United States or its

1 instrumentalities, and federally recognized Indian tribes and
2 enrolled tribal members, conducting business within Indian country.

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

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

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

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

12 (14)(a) "Taxable sales price" means:

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

17 (ii) In the case of a taxpayer that purchases vapor products from
18 an affiliated manufacturer, affiliated distributor, or other
19 affiliated person, and that sells those vapor products to
20 unaffiliated distributors, unaffiliated retailers, or ultimate
21 consumers, the actual price for which that taxpayer sells those vapor
22 products to unaffiliated distributors, unaffiliated retailers, or
23 ultimate consumers;

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

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

33 (v) In the case of a taxpayer that has acquired vapor products
34 under a sale, the price, determined as nearly as possible according
35 to the actual price, that the taxpayer or other distributors sell the
36 same vapor products or similar vapor products of like quality and
37 character to unaffiliated distributors, unaffiliated retailers, or
38 ultimate consumers;

39 (vi) In cases where section 202(2)(b) of this act applies, the
40 value of the article used as defined in RCW 82.12.010; or

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

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

12 (c) In any case where the taxable sales price is not indicative
13 of a vapor product's true value at the time and place of the taxable
14 event as provided in section 202(2)(a) of this act, "taxable sales
15 price" means the true value of the vapor product as determined by the
16 department. For purposes of this subsection, "true value" means
17 market value based on sales at comparable locations in this state of
18 the same or similar vapor product of like quality and character sold
19 under comparable conditions of sale by comparable sellers to
20 comparable purchasers.

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

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

26 (17) "Unaffiliated retailer" means a retailer that is not
27 affiliated with the manufacturer, distributor, or other person from
28 whom the retailer has purchased vapor products.

29 (18) "Vapor product" has the same meaning as provided in RCW
30 70.345.010.

31 NEW SECTION. **Sec. 202.** (1) There is levied and collected a tax
32 upon the sale, use, consumption, handling, possession, or
33 distribution of all vapor products in this state equal to sixty
34 percent of the taxable sales price.

35 (2)(a) The tax under this section must be collected at the time
36 the distributor: (i) Brings, or causes to be brought, into this state
37 from without the state vapor products for sale; (ii) makes,
38 manufactures, fabricates, or stores vapor products in this state for
39 sale in this state; (iii) ships or transports vapor products to

1 retailers in this state, to be sold by those retailers; or (iv)
2 handles for sale any vapor products that are within this state but
3 upon which tax has not been imposed.

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

8 (3)(a) The legislature intends for the revenues generated by the
9 tax imposed under this section to help offset lost revenue from any
10 legislation that raises the legal smoking age. Therefore, until the
11 end of fiscal year 2020, one hundred percent of the moneys collected
12 under this section must be deposited into the state general fund.

13 (b) Beginning in fiscal year 2021, the moneys collected under
14 this section must be deposited as follows:

15 (i) Sixty percent into the state general fund; and

16 (ii) Forty percent into the essential public health services
17 account created in section 204 of this act.

18 NEW SECTION. **Sec. 203.** (1)(a) Except as provided in (b) of this
19 subsection, a bundled transaction that includes a vapor product is
20 subject to the tax imposed under this chapter on the entire selling
21 price of the bundled transaction.

22 (b) If the selling price is attributable to products that are
23 taxable and products that are not taxable under this chapter, the
24 portion of the price attributable to the nontaxable products are
25 subject to the tax imposed by this chapter unless the seller can
26 identify by reasonable and verifiable standards the portion that is
27 not subject to tax from its books and records that are kept in the
28 regular course of business for other purposes including, but not
29 limited to, nontax purposes.

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

32 (a) "Bundled transaction" means:

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

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

1 depending on the inclusion of the vapor product provided free of
2 charge.

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

8 NEW SECTION. **Sec. 204.** (1) The essential public health services
9 account is created in the state treasury. As specified in section 202
10 of this act, forty percent of revenues from the tax collected under
11 section 202 of this act must be deposited into the account beginning
12 in fiscal year 2021. Moneys in the account may be spent only after
13 appropriation to the department of health. The department of health
14 must use the moneys in the account for each of the four following
15 purposes: (a) To fund foundational health services; (b) to fund
16 tobacco, vapor product, and nicotine control and prevention, and
17 other substance use prevention and education; (c) at least ten
18 percent of funds deposited must be used to support increased access
19 and training of public health professionals at public health programs
20 at accredited public institutions of higher education in Washington;
21 and (d) enforcement by the board of the provisions of chapter 70.345
22 RCW, provided that no more than 12.5 percent of the funds deposited
23 into the account created in this section may be utilized and
24 distributed by the department to the board for these enforcement
25 purposes.

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

33 NEW SECTION. **Sec. 205.** It is the intent and purpose of this
34 chapter to levy a tax on all vapor products sold, used, consumed,
35 handled, possessed, or distributed within this state. It is the
36 further intent and purpose of this chapter to impose the tax only
37 once on all vapor products in this state. Nothing in this chapter may

1 be construed to exempt any person taxable under any other law or
2 under any other tax imposed under this title.

3 NEW SECTION. **Sec. 206.** (1) The tax imposed by section 202 of
4 this act does not apply with respect to any vapor products which
5 under the Constitution and laws of the United States may not be made
6 the subject of taxation by this state.

7 (2) The provisions of RCW 82.32.805 and 82.32.808 do not apply to
8 this section.

9 NEW SECTION. **Sec. 207.** (1) Every distributor must keep at each
10 place of business complete and accurate records for that place of
11 business, including itemized invoices, of vapor products held,
12 purchased, manufactured, brought in or caused to be brought in from
13 without the state, or shipped or transported to retailers in this
14 state, and of all sales of vapor products made.

15 (2) These records must show the names and addresses of
16 purchasers, the inventory of all vapor products, and other pertinent
17 papers and documents relating to the purchase, sale, or disposition
18 of vapor products. All invoices and other records required by this
19 section to be kept must be preserved for a period of five years from
20 the date of the invoices or other documents or the date of the
21 entries appearing in the records.

22 (3) At any time during usual business hours the department,
23 board, or its duly authorized agents or employees may enter any place
24 of business of a distributor, without a search warrant, and inspect
25 the premises, the records required to be kept under this chapter, and
26 the vapor products contained therein, to determine whether or not all
27 the provisions of this chapter are being fully complied with. If the
28 department, board, or any of its agents or employees are denied free
29 access or are hindered or interfered with in making such examination,
30 the registration certificate issued under RCW 82.32.030 of the
31 distributor at such premises are subject to revocation by the
32 department, and any licenses issued under chapter 70.345, 82.26, or
33 82.24 RCW are subject to suspension or revocation by the board.

34 NEW SECTION. **Sec. 208.** Every person required to be licensed
35 under chapter 70.345 RCW who sells vapor products to persons other
36 than the ultimate consumer must render with each sale itemized
37 invoices showing the seller's name and address, the purchaser's name

1 and address, the date of sale, and all prices. The person must
2 preserve legible copies of all such invoices for five years from the
3 date of sale.

4 NEW SECTION. **Sec. 209.** (1) Every retailer must procure itemized
5 invoices of all vapor products purchased. The invoices must show the
6 seller's name and address, the date of purchase, and all prices and
7 discounts.

8 (2) The retailer must keep at each retail outlet copies of
9 complete, accurate, and legible invoices for that retail outlet or
10 place of business. All invoices required to be kept under this
11 section must be preserved for five years from the date of purchase.

12 (3) At any time during usual business hours the department,
13 board, or its duly authorized agents or employees may enter any
14 retail outlet without a search warrant, and inspect the premises for
15 invoices required to be kept under this section and the vapor
16 products contained in the retail outlet, to determine whether or not
17 all the provisions of this chapter are being fully complied with. If
18 the department, board, or any of its agents or employees are denied
19 free access or are hindered or interfered with in making the
20 inspection, the registration certificate issued under RCW 82.32.030
21 of the retailer at the premises is subject to revocation by the
22 department, and any licenses issued under chapter 70.345, 82.26, or
23 82.24 RCW are subject to suspension or revocation by the board.

24 NEW SECTION. **Sec. 210.** (1)(a) Where vapor products upon which
25 the tax imposed by this chapter has been reported and paid are
26 shipped or transported outside this state by the distributor to a
27 person engaged in the business of selling vapor products, to be sold
28 by that person, or are returned to the manufacturer by the
29 distributor or destroyed by the distributor, or are sold by the
30 distributor to the United States or any of its agencies or
31 instrumentalities, or are sold by the distributor to any Indian
32 tribal organization, credit of such tax may be made to the
33 distributor in accordance with rules prescribed by the department.

34 (b) For purposes of this subsection (1), the following
35 definitions apply:

36 (i) "Indian distributor" means a federally recognized Indian
37 tribe or tribal entity that would otherwise meet the definition of
38 "distributor" under section 201 of this act, if federally recognized

1 Indian tribes and tribal entities were not excluded from the
2 definition of "person" in section 201 of this act.

3 (ii) "Indian retailer" means a federally recognized Indian tribe
4 or tribal entity that would otherwise meet the definition of
5 "retailer" under section 201 of this act, if federally recognized
6 Indian tribes and tribal entities were not excluded from the
7 definition of "person" in section 201 of this act.

8 (iii) "Indian tribal organization" means a federally recognized
9 Indian tribe, or tribal entity, and includes an Indian distributor or
10 retailer that is owned by an Indian who is an enrolled tribal member
11 conducting business under tribal license or similar tribal approval
12 within Indian country.

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

16 (3) The provisions of RCW 82.32.805 and 82.32.808 do not apply to
17 this section.

18 NEW SECTION. **Sec. 211.** All of the provisions contained in
19 chapter 82.32 RCW not inconsistent with the provisions of this
20 chapter have full force and application with respect to taxes imposed
21 under the provisions of this chapter.

22 NEW SECTION. **Sec. 212.** The department must authorize, as duly
23 authorized agents, enforcement officers of the board to enforce
24 provisions of this chapter. These officers are not employees of the
25 department.

26 NEW SECTION. **Sec. 213.** (1) The department may by rule establish
27 the invoice detail required under section 207 of this act for a
28 distributor and for those invoices required to be provided to
29 retailers under section 209 of this act.

30 (2) If a retailer fails to keep invoices as required under
31 section 209 of this act, the retailer is liable for the tax owed on
32 any uninvoiced vapor products but not penalties and interest, except
33 as provided in subsection (3) of this section.

34 (3) If the department finds that the nonpayment of tax by the
35 retailer was willful or if in the case of a second or plural
36 nonpayment of tax by the retailer, penalties and interest must be
37 assessed in accordance with chapter 82.32 RCW.

1 NEW SECTION. **Sec. 214.** (1) No person may transport or cause to
2 be transported in this state vapor products for sale other than: (a)
3 A licensed distributor under chapter 70.345 RCW, or a manufacturer's
4 representative authorized to sell or distribute vapor products in
5 this state under chapter 70.345 RCW; (b) a licensed retailer under
6 chapter 70.345 RCW; (c) a seller with a valid delivery sale license
7 under chapter 70.345 RCW; or (d) a person who has given notice to the
8 board in advance of the commencement of transportation.

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

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

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

24 NEW SECTION. **Sec. 215.** The board must compile and maintain a
25 current record of the names of all distributors, retailers, and
26 delivery sales licenses under chapter 70.345 RCW and the status of
27 their license or licenses. The information must be updated on a
28 monthly basis and published on the board's official internet web
29 site. This information is not subject to the confidentiality
30 provisions of RCW 82.32.330 and must be disclosed to manufacturers,
31 distributors, retailers, and the general public upon request.

32 NEW SECTION. **Sec. 216.** (1) No person engaged in or conducting
33 business as a distributor or retailer in this state may:

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

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

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

10 (i) Notice of the transportation has been given as required under
11 section 214 of this act;

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

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

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

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

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

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

31 NEW SECTION. **Sec. 217.** (1) A retailer that obtains vapor
32 products from an unlicensed distributor or any other person that is
33 not licensed under chapter 70.345 RCW must be licensed both as a
34 retailer and a distributor and is liable for the tax imposed under
35 section 202 of this act with respect to the vapor products acquired
36 from the unlicensed person that are held for sale, handling, or
37 distribution in this state. For the purposes of this subsection,
38 "person" includes both persons defined in this act and any person
39 immune from state taxation, such as the United States or its

1 instrumentalities, and federally recognized Indian tribes and
2 enrolled tribal members, conducting business within Indian country.

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

6 NEW SECTION. **Sec. 218.** A manufacturer that has manufacturer's
7 representatives who sell or distribute the manufacturer's vapor
8 products in this state must provide the board a list of the names and
9 addresses of all such representatives and must ensure that the list
10 provided to the board is kept current. A manufacturer's
11 representative is not authorized to distribute or sell vapor products
12 in this state unless the manufacturer that hired the representative
13 has a valid distributor's license under chapter 70.345 RCW and that
14 manufacturer provides the board a current list of all of its
15 manufacturer's representatives as required by this section. A
16 manufacturer's representative must carry a copy of the distributor's
17 license of the manufacturer that hired the representative at all
18 times when selling or distributing the manufacturer's vapor products.

19 NEW SECTION. **Sec. 219.** (1) Any vapor products in the possession
20 of a person selling vapor products in this state acting as a
21 distributor or retailer and who is not licensed as required under
22 chapter 70.345 RCW, or a person who is selling vapor products in
23 violation of RCW 82.24.550(6), may be seized without a warrant by any
24 agent of the department, agent of the board, or law enforcement
25 officer of this state. Any vapor products seized under this
26 subsection are deemed forfeited.

27 (2) Any vapor products in the possession of a person who is not a
28 licensed distributor or retailer and who transports vapor products
29 for sale without having provided notice to the board required under
30 section 214 of this act, or without invoices or delivery tickets
31 showing the true name and address of the consignor or seller, the
32 true name and address of the consignee or purchaser, and the quantity
33 and brands of vapor products being transported may be seized and are
34 subject to forfeiture.

35 (3) All conveyances, including aircraft, vehicles, or vessels
36 that are used, or intended for use to transport, or in any manner to
37 facilitate the transportation, for the purpose of sale or receipt of

1 vapor products under subsection (2) of this section, may be seized
2 and are subject to forfeiture except:

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

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

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

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

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

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

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

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

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

37 NEW SECTION. **Sec. 220.** (1) In all cases of seizure of any vapor
38 products made subject to forfeiture under this chapter, the
39 department or board must proceed as provided in RCW 82.24.135.

1 (2) When vapor products are forfeited under this chapter, the
2 department or board may:

3 (a) Retain the property for official use or upon application by
4 any law enforcement agency of this state, another state, or the
5 District of Columbia, or of the United States for the exclusive use
6 of enforcing this chapter or the laws of any other state or the
7 District of Columbia or of the United States; or

8 (b) Sell the vapor products at public auction to the highest
9 bidder after due advertisement. Before delivering any of the goods to
10 the successful bidder, the department or board must require the
11 purchaser to pay the proper amount of any tax due. The proceeds of
12 the sale must be first applied to the payment of all proper expenses
13 of any investigation leading to the seizure and of the proceedings
14 for forfeiture and sale, including expenses of seizure, maintenance
15 of custody, advertising, and court costs. The balance of the proceeds
16 and all money must be deposited in the general fund of the state.
17 Proper expenses of investigation include costs incurred by any law
18 enforcement agency or any federal, state, or local agency.

19 (3) The department or the board may return any property seized
20 under the provisions of this chapter when it is shown that there was
21 no intention to violate the provisions of this chapter. When any
22 property is returned under this section, the department or the board
23 may return the property to the parties from whom they were seized if
24 and when such parties have paid the proper amount of tax due under
25 this chapter.

26 NEW SECTION. **Sec. 221.** When the department or the board has
27 good reason to believe that any of the vapor products taxed under
28 this chapter are being kept, sold, offered for sale, or given away in
29 violation of the provisions of this chapter, it may make affidavit of
30 facts describing the place or thing to be searched, before any judge
31 of any court in this state, and the judge must issue a search warrant
32 directed to the sheriff, any deputy, police officer, or duly
33 authorized agent of the department or the board commanding him or her
34 diligently to search any building, room in a building, place, or
35 vehicle as may be designated in the affidavit and search warrant, and
36 to seize the vapor products and hold them until disposed of by law.

37 NEW SECTION. **Sec. 222.** (1) Preexisting inventories of vapor
38 products are subject to the tax imposed in section 202 of this act.

1 All retailers and other distributors must report the tax due under
2 section 202 of this act on preexisting inventories of vapor products
3 on a form, as prescribed by the department, on or before October 31,
4 2017.

5 (2) A retailer required to comply with subsection (1) of this
6 section is not required to obtain a distributor license as otherwise
7 required under chapter 70.345 RCW as long as the retailer:

8 (a) Does not sell vapor products other than to ultimate
9 consumers; and

10 (b) Does not meet the definition of "distributor" in section 201
11 of this act other than with respect to the sale of that retailer's
12 preexisting inventory of vapor products.

13 (3) Taxes may not be collected under section 202(2)(c) of this
14 act from consumers with respect to any vapor products acquired before
15 the effective date of this section.

16 (4) For purposes of this section, "preexisting inventory" means
17 an inventory of vapor products located in this state as of the moment
18 that section 202 of this act takes effect and held by a distributor
19 for sale, handling, or distribution in this state.

20 NEW SECTION. **Sec. 223.** (1) The taxes imposed by this chapter do
21 not apply to the sale, use, consumption, handling, possession, or
22 distribution of vapor products by an Indian retailer during the
23 effective period of a vapor product tax contract subject to section
24 403 of this act or a vapor product tax agreement under section 404 of
25 this act.

26 (2) The definitions in section 402 of this act apply to this
27 section.

28 **Part III**
29 **Conforming Amendments**

30 **Sec. 301.** RCW 66.08.145 and 2016 sp.s. c 38 s 29 are each
31 amended to read as follows:

32 (1) The liquor and cannabis board may issue subpoenas in
33 connection with any investigation, hearing, or proceeding for the
34 production of books, records, and documents held under this chapter
35 or chapters 70.155, 70.158, 70.345, 82.24, (~~and~~) 82.26 (~~RCW~~), and
36 82.--- RCW (the new chapter created in section 503 of this act), and
37 books and records of common carriers as defined in RCW 81.80.010, or

1 vehicle rental agencies relating to the transportation or possession
2 of cigarettes or other tobacco products.

3 (2) The liquor and cannabis board may designate individuals
4 authorized to sign subpoenas.

5 (3) If any person is served a subpoena from the board for the
6 production of records, documents, and books, and fails or refuses to
7 obey the subpoena for the production of records, documents, and books
8 when required to do so, the person is subject to proceedings for
9 contempt, and the board may institute contempt of court proceedings
10 in the superior court of Thurston county or in the county in which
11 the person resides.

12 **Sec. 302.** RCW 66.44.010 and 1998 c 18 s 1 are each amended to
13 read as follows:

14 (1) All county and municipal peace officers are hereby charged
15 with the duty of investigating and prosecuting all violations of this
16 title, and the penal laws of this state relating to the manufacture,
17 importation, transportation, possession, distribution and sale of
18 liquor, and all fines imposed for violations of this title and the
19 penal laws of this state relating to the manufacture, importation,
20 transportation, possession, distribution and sale of liquor (~~shall~~)
21 belong to the county, city or town wherein the court imposing the
22 fine is located, and (~~shall~~) must be placed in the general fund for
23 payment of the salaries of those engaged in the enforcement of the
24 provisions of this title and the penal laws of this state relating to
25 the manufacture, importation, transportation, possession,
26 distribution and sale of liquor(~~:-PROVIDED, That~~). However, all
27 fees, fines, forfeitures and penalties collected or assessed by a
28 district court because of the violation of a state law (~~shall~~) must
29 be remitted as provided in chapter 3.62 RCW as now exists or is later
30 amended.

31 (2) In addition to any and all other powers granted, the board
32 (~~shall have~~) has the power to enforce the penal provisions of this
33 title and the penal laws of this state relating to the manufacture,
34 importation, transportation, possession, distribution and sale of
35 liquor.

36 (3) In addition to the other duties under this section, the board
37 (~~shall~~) must enforce chapters 82.24 (~~and~~), 82.26 (~~RCW~~), and
38 82.--- RCW (the new chapter created in section 503 of this act).

1 (4) The board may appoint and employ, assign to duty and fix the
2 compensation of, officers to be designated as liquor enforcement
3 officers. Such liquor enforcement officers (~~shall~~) have the power,
4 under the supervision of the board, to enforce the penal provisions
5 of this title and the penal laws of this state relating to the
6 manufacture, importation, transportation, possession, distribution
7 and sale of liquor. They (~~shall~~) have the power and authority to
8 serve and execute all warrants and process of law issued by the
9 courts in enforcing the penal provisions of this title or of any
10 penal law of this state relating to the manufacture, importation,
11 transportation, possession, distribution and sale of liquor, and the
12 provisions of chapters 82.24 (~~and~~), 82.26 ((RCW)) , and 82.--- RCW
13 (the new chapter created in section 503 of this act). They (~~shall~~)
14 have the power to arrest without a warrant any person or persons
15 found in the act of violating any of the penal provisions of this
16 title or of any penal law of this state relating to the manufacture,
17 importation, transportation, possession, distribution and sale of
18 liquor, and the provisions of chapters 82.24 (~~and~~), 82.26 ((RCW)),
19 and 82.--- RCW (the new chapter created in section 503 of this act).

20 **Sec. 303.** RCW 82.24.510 and 2013 c 144 s 50 are each amended to
21 read as follows:

22 (1) The licenses issuable under this chapter are as follows:

23 (a) A wholesaler's license.

24 (b) A retailer's license.

25 (2) Application for the licenses must be made through the
26 business licensing system under chapter 19.02 RCW. The board must
27 adopt rules regarding the regulation of the licenses. The board may
28 refrain from the issuance of any license under this chapter if the
29 board has reasonable cause to believe that the applicant has
30 willfully withheld information requested for the purpose of
31 determining the eligibility of the applicant to receive a license, or
32 if the board has reasonable cause to believe that information
33 submitted in the application is false or misleading or is not made in
34 good faith. In addition, for the purpose of reviewing an application
35 for a wholesaler's license or retailer's license and for considering
36 the denial, suspension, or revocation of any such license, the board
37 may consider any prior criminal conduct of the applicant, including
38 an administrative violation history record with the board and a
39 criminal history record information check within the previous five

1 years, in any state, tribal, or federal jurisdiction in the United
2 States, its territories, or possessions, and the provisions of RCW
3 9.95.240 and chapter 9.96A RCW do not apply to such cases. The board
4 may, in its discretion, grant or refuse the wholesaler's license or
5 retailer's license, subject to the provisions of RCW 82.24.550.

6 (3) No person may qualify for a wholesaler's license or a
7 retailer's license under this section without first undergoing a
8 criminal background check. The background check must be performed by
9 the board and must disclose any criminal conduct within the previous
10 five years in any state, tribal, or federal jurisdiction in the
11 United States, its territories, or possessions. A person who
12 possesses a valid license on July 22, 2001, is subject to this
13 subsection and subsection (2) of this section beginning on the date
14 of the person's business license expiration under chapter 19.02 RCW,
15 and thereafter. If the applicant or licensee also has a license
16 issued under chapter 66.24 ((~~or~~)), 82.26, or 70.345 RCW, the
17 background check done under the authority of chapter 66.24 ((~~or~~)),
18 82.26, or 70.345 RCW satisfies the requirements of this section.

19 (4) Each such license expires on the business license expiration
20 date, and each such license must be continued annually if the
21 licensee has paid the required fee and complied with all the
22 provisions of this chapter and the rules of the board made pursuant
23 thereto.

24 (5) Each license and any other evidence of the license that the
25 board requires must be exhibited in each place of business for which
26 it is issued and in the manner required for the display of a business
27 license.

28 **Sec. 304.** RCW 82.24.550 and 2015 c 86 s 307 are each amended to
29 read as follows:

30 (1) The board must enforce the provisions of this chapter. The
31 board may adopt, amend, and repeal rules necessary to enforce the
32 provisions of this chapter.

33 (2) The department may adopt, amend, and repeal rules necessary
34 to administer the provisions of this chapter. The board may revoke or
35 suspend the license or permit of any wholesale or retail cigarette
36 dealer in the state upon sufficient cause appearing of the violation
37 of this chapter or upon the failure of such licensee to comply with
38 any of the provisions of this chapter.

1 (3) A license may not be suspended or revoked except upon notice
2 to the licensee and after a hearing as prescribed by the board. The
3 board, upon finding that the licensee has failed to comply with any
4 provision of this chapter or any rule adopted under this chapter,
5 must, in the case of the first offense, suspend the license or
6 licenses of the licensee for a period of not less than thirty
7 consecutive business days, and, in the case of a second or further
8 offense, must suspend the license or licenses for a period of not
9 less than ninety consecutive business days nor more than twelve
10 months, and, in the event the board finds the licensee has been
11 guilty of willful and persistent violations, it may revoke the
12 license or licenses.

13 (4) Any licenses issued under chapter 82.26 or 70.345 RCW to a
14 person whose license or licenses have been suspended or revoked under
15 this section must also be suspended or revoked during the period of
16 suspension or revocation under this section.

17 (5) Any person whose license or licenses have been revoked under
18 this section may reapply to the board at the expiration of one year
19 from the date of revocation of the license or licenses. The license
20 or licenses may be approved by the board if it appears to the
21 satisfaction of the board that the licensee will comply with the
22 provisions of this chapter and the rules adopted under this chapter.

23 (6) A person whose license has been suspended or revoked may not
24 sell cigarettes or tobacco products or permit cigarettes or tobacco
25 products to be sold during the period of such suspension or
26 revocation on the premises occupied by the person or upon other
27 premises controlled by the person or others or in any other manner or
28 form whatever.

29 (7) Any determination and order by the board, and any order of
30 suspension or revocation by the board of the license or licenses
31 issued under this chapter, or refusal to reinstate a license or
32 licenses after revocation is reviewable by an appeal to the superior
33 court of Thurston county. The superior court must review the order or
34 ruling of the board and may hear the matter de novo, having due
35 regard to the provisions of this chapter and the duties imposed upon
36 the board.

37 (8) If the board makes an initial decision to deny a license or
38 renewal, or suspend or revoke a license, the applicant may request a
39 hearing subject to the applicable provisions under Title 34 RCW.

1 (9) For purposes of this section, "tobacco products" has the same
2 meaning as in RCW 82.26.010.

3 **Sec. 305.** RCW 82.26.060 and 2009 c 154 s 3 are each amended to
4 read as follows:

5 (1) Every distributor (~~shall~~) must keep at each place of
6 business complete and accurate records for that place of business,
7 including itemized invoices, of tobacco products held, purchased,
8 manufactured, brought in or caused to be brought in from without the
9 state, or shipped or transported to retailers in this state, and of
10 all sales of tobacco products made.

11 (2) These records (~~shall~~) must show the names and addresses of
12 purchasers, the inventory of all tobacco products, and other
13 pertinent papers and documents relating to the purchase, sale, or
14 disposition of tobacco products. All invoices and other records
15 required by this section to be kept (~~shall~~) must be preserved for a
16 period of five years from the date of the invoices or other documents
17 or the date of the entries appearing in the records.

18 (3) At any time during usual business hours the department,
19 board, or its duly authorized agents or employees, may enter any
20 place of business of a distributor, without a search warrant, and
21 inspect the premises, the records required to be kept under this
22 chapter, and the tobacco products contained therein, to determine
23 whether or not all the provisions of this chapter are being fully
24 complied with. If the department, board, or any of its agents or
25 employees, are denied free access or are hindered or interfered with
26 in making such examination, the registration certificate issued under
27 RCW 82.32.030 of the distributor at such premises (~~shall be~~) is
28 subject to revocation, and any licenses issued under this chapter or
29 chapter 82.24 or 70.345 RCW are subject to suspension or revocation,
30 by the department or board.

31 **Sec. 306.** RCW 82.26.080 and 2005 c 180 s 5 are each amended to
32 read as follows:

33 (1) Every retailer (~~shall~~) must procure itemized invoices of
34 all tobacco products purchased. The invoices (~~shall~~) must show the
35 seller's name and address, the date of purchase, and all prices and
36 discounts.

37 (2) The retailer (~~shall~~) must keep at each retail outlet copies
38 of complete, accurate, and legible invoices for that retail outlet or

1 place of business. All invoices required to be kept under this
2 section (~~shall~~) must be preserved for five years from the date of
3 purchase.

4 (3) At any time during usual business hours the department,
5 board, or its duly authorized agents or employees may enter any
6 retail outlet without a search warrant, and inspect the premises for
7 invoices required to be kept under this section and the tobacco
8 products contained in the retail outlet, to determine whether or not
9 all the provisions of this chapter are being fully complied with. If
10 the department, board, or any of its agents or employees, are denied
11 free access or are hindered or interfered with in making the
12 inspection, the registration certificate issued under RCW 82.32.030
13 of the retailer at the premises is subject to revocation, and any
14 licenses issued under this chapter or chapter 82.24 or 70.345 RCW are
15 subject to suspension or revocation by the department.

16 **Sec. 307.** RCW 82.26.150 and 2013 c 144 s 52 are each amended to
17 read as follows:

18 (1) The licenses issuable by the board under this chapter are as
19 follows:

20 (a) A distributor's license; and

21 (b) A retailer's license.

22 (2) Application for the licenses must be made through the
23 business licensing system under chapter 19.02 RCW. The board may
24 adopt rules regarding the regulation of the licenses. The board may
25 refuse to issue any license under this chapter if the board has
26 reasonable cause to believe that the applicant has willfully withheld
27 information requested for the purpose of determining the eligibility
28 of the applicant to receive a license, or if the board has reasonable
29 cause to believe that information submitted in the application is
30 false or misleading or is not made in good faith. In addition, for
31 the purpose of reviewing an application for a distributor's license
32 or retailer's license and for considering the denial, suspension, or
33 revocation of any such license, the board may consider criminal
34 conduct of the applicant, including an administrative violation
35 history record with the board and a criminal history record
36 information check within the previous five years, in any state,
37 tribal, or federal jurisdiction in the United States, its
38 territories, or possessions, and the provisions of RCW 9.95.240 and
39 chapter 9.96A RCW do not apply to such cases. The board may, in its

1 discretion, issue or refuse to issue the distributor's license or
2 retailer's license, subject to the provisions of RCW 82.26.220.

3 (3) No person may qualify for a distributor's license or a
4 retailer's license under this section without first undergoing a
5 criminal background check. The background check must be performed by
6 the board and must disclose any criminal conduct within the previous
7 five years in any state, tribal, or federal jurisdiction in the
8 United States, its territories, or possessions. If the applicant or
9 licensee also has a license issued under chapter 66.24 (~~(e)~~), 82.24,
10 or 70.345 RCW, the background check done under the authority of
11 chapter 66.24 or 82.24 RCW satisfies the requirements of this
12 section.

13 (4) Each license issued under this chapter expires on the
14 business license expiration date. The license must be continued
15 annually if the licensee has paid the required fee and complied with
16 all the provisions of this chapter and the rules of the board adopted
17 pursuant to this chapter.

18 (5) Each license and any other evidence of the license required
19 under this chapter must be exhibited in each place of business for
20 which it is issued and in the manner required for the display of a
21 business license.

22 **Sec. 308.** RCW 82.26.220 and 2015 c 86 s 308 are each amended to
23 read as follows:

24 (1) The board must enforce this chapter. The board may adopt,
25 amend, and repeal rules necessary to enforce this chapter.

26 (2) The department may adopt, amend, and repeal rules necessary
27 to administer this chapter. The board may revoke or suspend the
28 distributor's or retailer's license of any distributor or retailer of
29 tobacco products in the state upon sufficient cause showing a
30 violation of this chapter or upon the failure of the licensee to
31 comply with any of the rules adopted under it.

32 (3) A license may not be suspended or revoked except upon notice
33 to the licensee and after a hearing as prescribed by the board. The
34 board, upon finding that the licensee has failed to comply with any
35 provision of this chapter or of any rule adopted under it, must, in
36 the case of the first offense, suspend the license or licenses of the
37 licensee for a period of not less than thirty consecutive business
38 days, and in the case of a second or further offense, suspend the
39 license or licenses for a period of not less than ninety consecutive

1 business days but not more than twelve months, and in the event the
2 board finds the licensee has been guilty of willful and persistent
3 violations, it may revoke the license or licenses.

4 (4) Any licenses issued under chapter 82.24 or 70.345 RCW to a
5 person whose license or licenses have been suspended or revoked under
6 this section must also be suspended or revoked during the period of
7 suspension or revocation under this section.

8 (5) Any person whose license or licenses have been revoked under
9 this section may reapply to the board at the expiration of one year
10 of the license or licenses. The license or licenses may be approved
11 by the board if it appears to the satisfaction of the board that the
12 licensee will comply with the provisions of this chapter and the
13 rules adopted under it.

14 (6) A person whose license has been suspended or revoked may not
15 sell tobacco products or cigarettes or permit tobacco products or
16 cigarettes to be sold during the period of suspension or revocation
17 on the premises occupied by the person or upon other premises
18 controlled by the person or others or in any other manner or form.

19 (7) Any determination and order by the board, and any order of
20 suspension or revocation by the board of the license or licenses
21 issued under this chapter, or refusal to reinstate a license or
22 licenses after revocation is reviewable by an appeal to the superior
23 court of Thurston county. The superior court must review the order or
24 ruling of the board and may hear the matter de novo, having due
25 regard to the provisions of this chapter and the duties imposed upon
26 the board.

27 (8) If the board makes an initial decision to deny a license or
28 renewal, or suspend or revoke a license, the applicant may request a
29 hearing subject to the applicable provisions under Title 34 RCW.

30 **Sec. 309.** RCW 82.32.300 and 1997 c 420 s 9 are each amended to
31 read as follows:

32 (1) The administration of this and chapters 82.04 through 82.27
33 RCW of this title is vested in the department (~~(of revenue which~~
34 ~~shall)), which must prescribe forms and rules of procedure for the
35 determination of the taxable status of any person, for the making of
36 returns and for the ascertainment, assessment and collection of taxes
37 and penalties imposed thereunder.~~

38 (2) The department (~~(of revenue shall)~~) must make and publish
39 rules and regulations, not inconsistent therewith, necessary to

1 enforce provisions of this chapter and chapters 82.02 through 82.23B
2 and 82.27 RCW, and the liquor ~~((control))~~ and cannabis board
3 ~~((shall))~~ must make and publish rules necessary to enforce chapters
4 82.24 ~~((and))~~, 82.26 ~~((RCW))~~, and 82.--- RCW (the new chapter created
5 in section 503 of this act), which ~~((shall have))~~ has the same force
6 and effect as if specifically included therein, unless declared
7 invalid by the judgment of a court of record not appealed from.

8 (3) The department may employ such clerks, specialists, and other
9 assistants as are necessary. Salaries and compensation of such
10 employees ~~((shall))~~ must be fixed by the department and ~~((shall be))~~
11 charged to the proper appropriation for the department.

12 (4) The department ~~((shall))~~ must exercise general supervision of
13 the collection of taxes and, in the discharge of such duty, may
14 institute and prosecute such suits or proceedings in the courts as
15 may be necessary and proper.

16 **Part IV**
17 **Tribal Compacting**

18 **Sec. 401.** RCW 43.06.450 and 2001 c 235 s 1 are each amended to
19 read as follows:

20 The legislature intends to further the government-to-government
21 relationship between the state of Washington and Indians in the state
22 of Washington by authorizing the governor to enter into contracts
23 concerning the sale of cigarettes and vapor products. The legislature
24 finds that these cigarette tax and vapor product tax contracts will
25 provide a means to promote economic development, provide needed
26 revenues for tribal governments and Indian persons, and enhance
27 enforcement of the state's cigarette tax ~~((law))~~ and vapor product
28 tax, ultimately saving the state money and reducing conflict. In
29 addition, it is the intent of the legislature that the negotiations
30 and the ensuing contracts ~~((shall))~~ have no impact on the state's
31 share of the proceeds under the master settlement agreement entered
32 into on November 23, 1998, by the state. Chapter 235, Laws of 2001
33 ~~((does))~~ and this act do not constitute a grant of taxing authority
34 to any Indian tribe nor ~~((does it))~~ do they provide precedent for the
35 taxation of non-Indians on fee land.

36 NEW SECTION. **Sec. 402.** A new section is added to chapter 43.06
37 RCW to read as follows:

1 (1) The governor may enter into vapor product tax contracts
2 concerning the sale of vapor products. All vapor product tax
3 contracts must meet the requirements for vapor product tax contracts
4 under this section.

5 (2) Vapor product tax contracts must be in regard to retail sales
6 in which Indian retailers make delivery and physical transfer of
7 possession of the vapor products from the seller to the buyer within
8 Indian country, and are not in regard to transactions by non-Indian
9 retailers. In addition, contracts must provide that retailers may not
10 sell or give, or permit to be sold or given, vapor products to any
11 person who is under the state legal age for the purchase of vapor
12 products.

13 (3) A vapor product tax contract with a tribe must provide for a
14 tribal vapor product tax in lieu of all state vapor product taxes and
15 state and local sales and use taxes on sales of vapor products in
16 Indian country by Indian retailers. The tribe may allow an exemption
17 for sales to tribal members.

18 (4) Vapor product tax contracts must provide that retailers must
19 purchase vapor products only from:

20 (a) Wholesalers or manufacturers licensed to do business in the
21 state of Washington;

22 (b) Out-of-state wholesalers or manufacturers who, although not
23 licensed to do business in the state of Washington, agree to comply
24 with the terms of the vapor product tax contract, are certified to
25 the state as having so agreed, and do in fact so comply. However, the
26 state may in its sole discretion exercise its administrative and
27 enforcement powers over such wholesalers or manufacturers to the
28 extent permitted by law;

29 (c) A tribal wholesaler that purchases only from a wholesaler or
30 manufacturer described in (a), (b), or (d) of this subsection; and

31 (d) A tribal manufacturer.

32 (5) Vapor product tax contracts must be for renewable periods of
33 no more than eight years.

34 (6) Vapor product tax contracts must include provisions for
35 compliance, such as transport and notice requirements, inspection
36 procedures, recordkeeping, and audit requirements.

37 (7) Tax revenue retained by a tribe must be used for essential
38 government services. Use of tax revenue for subsidization of vapor
39 products and food retailers is prohibited.

1 (8) The vapor product tax contract may include provisions to
2 resolve disputes using a nonjudicial process, such as mediation.

3 (9) The governor may delegate the power to negotiate vapor
4 product tax contracts to the department of revenue. The department of
5 revenue must consult with the liquor and cannabis board during the
6 negotiations.

7 (10) Information received by the state or open to state review
8 under the terms of a contract is subject to the provisions of RCW
9 82.32.330.

10 (11) It is the intent of the legislature that the liquor and
11 cannabis board and the department of revenue continue the division of
12 duties and shared authority under chapter 82.--- RCW (the new chapter
13 created in section 503 of this act) and therefore the liquor and
14 cannabis board is responsible for enforcement activities that come
15 under the terms of chapter 82.--- RCW (the new chapter created in
16 section 503 of this act).

17 (12) Each vapor product tax contract must include a procedure for
18 notifying the other party that a violation has occurred, a procedure
19 for establishing whether a violation has in fact occurred, an
20 opportunity to correct such violation, and a provision providing for
21 termination of the contract should the violation fail to be resolved
22 through this process, such termination subject to mediation should
23 the terms of the contract so allow. A contract must provide for
24 termination of the contract if resolution of a dispute does not occur
25 within twenty-four months from the time notification of a violation
26 has occurred. Intervening violations do not extend this time period.
27 In addition, the contract must include provisions delineating the
28 respective roles and responsibilities of the tribe, the department of
29 revenue, and the liquor and cannabis board.

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

32 (a) "Essential government services" means services such as tribal
33 administration, public facilities, fire, police, public health,
34 education, job services, sewer, water, environmental and land use,
35 transportation, utility services, and economic development.

36 (b) "Indian country" has the same meaning as provided in RCW
37 82.24.010.

38 (c) "Indian retailer" or "retailer" means:

39 (i) A retailer wholly owned and operated by an Indian tribe;

1 (ii) A business wholly owned and operated by a tribal member and
2 licensed by the tribe; or

3 (iii) A business owned and operated by the Indian person or
4 persons in whose name the land is held in trust.

5 (d) "Indian tribe" or "tribe" means a federally recognized Indian
6 tribe located within the geographical boundaries of the state of
7 Washington.

8 (e) "Vapor products" has the same meaning as provided in section
9 201 of this act.

10 NEW SECTION. **Sec. 403.** A new section is added to chapter 43.06
11 RCW to read as follows:

12 (1) The governor is authorized to enter into vapor product tax
13 contracts with federally recognized Indian tribes located within the
14 geographical boundaries of the state of Washington, except the
15 Puyallup Tribe of Indians. Each contract adopted under this section
16 must provide that the tribal vapor product tax rate be one hundred
17 percent of the state vapor product tax and state and local sales and
18 use taxes. The tribal vapor product tax is in lieu of the state vapor
19 product tax and state and local sales and use taxes, as provided in
20 section 402(3) of this act.

21 (2) A vapor product tax contract under this section is subject to
22 section 402 of this act.

23 NEW SECTION. **Sec. 404.** A new section is added to chapter 43.06
24 RCW to read as follows:

25 (1) The governor may enter into a vapor product tax agreement
26 with the Puyallup Tribe of Indians concerning the sale of vapor
27 products, subject to the limitations in this section. The legislature
28 intends to address the uniqueness of the Puyallup Indian reservation
29 and its selling environment through pricing and compliance
30 strategies, rather than through the imposition of equivalent taxes.
31 The governor may delegate the authority to negotiate a vapor product
32 tax agreement with the Puyallup Tribe to the department of revenue.
33 The department of revenue must consult with the liquor and cannabis
34 board during the negotiations.

35 (2) Any agreement must require the tribe to impose a tribal vapor
36 product tax with a tax rate that is ninety percent of the state vapor
37 product tax. This tribal tax is in lieu of the combined state and
38 local sales and use taxes and the state vapor product tax, and as

1 such these state taxes are not imposed during the term of the
2 agreement on any transaction governed by the agreement. The tribal
3 vapor product tax must increase or decrease at the time of any
4 increase or decrease in the state vapor product tax so as to remain
5 at a level that is ninety percent of the rate of the state vapor
6 product tax.

7 (3) The agreement must include a provision requiring the tribe to
8 transmit thirty percent of the tribal tax revenue on all vapor
9 products sales to the state. The funds must be transmitted to the
10 state treasurer on a quarterly basis for deposit by the state
11 treasurer into the general fund. The remaining tribal tax revenue
12 must be used for essential government services, as that term is
13 defined in section 402 of this act.

14 (4) The agreement is limited to retail sales in which Indian
15 retailers make delivery and physical transfer of possession of the
16 vapor products from the seller to the buyer within Indian country,
17 and are not in regard to transactions by non-Indian retailers. In
18 addition, agreements must provide that retailers may not sell or
19 give, or permit to be sold or given, vapor products to any person who
20 is under the state legal age for the purchase of vapor products.

21 (5)(a) The agreement must include a provision to price and sell
22 the vapor products so that the retail selling price is not less than
23 the price paid by the retailer for the vapor products.

24 (b) The tribal tax is in addition to the retail selling price.

25 (c) The agreement must include a provision to assure the price
26 paid to the retailer includes the tribal tax.

27 (d) If the tribe is acting as a distributor to tribal retailers,
28 the retail selling price must not be less than the price the tribe
29 paid for such vapor products plus the tribal tax.

30 (6)(a) The agreement must include provisions regarding
31 enforcement and compliance by the tribe in regard to enrolled tribal
32 members who sell vapor products and must describe the individual and
33 joint responsibilities of the tribe, the department of revenue, and
34 the liquor and cannabis board.

35 (b) The agreement must include provisions for tax administration
36 and compliance, such as transport and notice requirements, inspection
37 procedures, recordkeeping, and audit requirements.

38 (c) The agreement must include provisions for sharing of
39 information among the tribe, the department of revenue, and the
40 liquor and cannabis board.

1 (7) The agreement must provide that retailers must purchase vapor
2 products only from distributors or manufacturers licensed to do
3 business in the state of Washington.

4 (8) The agreement must be for a renewable period of no more than
5 eight years.

6 (9) The agreement must include provisions to resolve disputes
7 using a nonjudicial process, such as mediation, and must include a
8 dispute resolution protocol. The protocol must include a procedure
9 for notifying the other party that a violation has occurred, a
10 procedure for establishing whether a violation has in fact occurred,
11 an opportunity to correct such violation, and a provision providing
12 for termination of the agreement should the violation fail to be
13 resolved through this process, such termination subject to mediation
14 should the terms of the agreement so allow. An agreement must provide
15 for termination of the agreement if resolution of a dispute does not
16 occur within twenty-four months from the time notification of a
17 violation has occurred. Intervening violations do not extend this
18 time period.

19 (10) Information received by the state or open to state review
20 under the terms of an agreement is subject to RCW 82.32.330.

21 (11) It is the intent of the legislature that the liquor and
22 cannabis board and the department of revenue continue the division of
23 duties and shared authority under chapter 82.--- RCW (the new chapter
24 created in section 503 of this act).

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

27 (a) "Indian country" has the same meaning as provided in RCW
28 82.24.010.

29 (b) "Indian retailer" or "retailer" means:

30 (i) A retailer wholly owned and operated by an Indian tribe; or

31 (ii) A business wholly owned and operated by an enrolled tribal
32 member and licensed by the tribe.

33 (c) "Indian tribe" or "tribe" means the Puyallup Tribe of
34 Indians, which is a federally recognized Indian tribe located within
35 the geographical boundaries of the state of Washington.

36 (d) "Vapor products" has the same meaning as provided in section
37 201 of this act.

38 NEW SECTION. **Sec. 405.** A new section is added to chapter 82.08
39 RCW to read as follows:

1 (1) The tax levied by RCW 82.08.020 does not apply to sales of
2 vapor products by an Indian retailer during the effective period of a
3 vapor product tax contract subject to section 403 of this act or a
4 vapor product tax agreement under section 404 of this act.

5 (2) The definitions in section 402 of this act apply to this
6 section.

7 NEW SECTION. **Sec. 406.** A new section is added to chapter 82.12
8 RCW to read as follows:

9 (1) The provisions of this chapter do not apply in respect to the
10 use of vapor products sold by an Indian retailer during the effective
11 period of a vapor product tax contract subject to section 403 of this
12 act or a vapor product tax agreement under section 404 of this act.

13 (2) The definitions in section 402 of this act apply to this
14 section.

15 **Part V**

16 **Miscellaneous Provisions**

17 NEW SECTION. **Sec. 501.** If any provision of this act or its
18 application to any person or circumstance is held invalid, the
19 remainder of the act or the application of the provision to other
20 persons or circumstances is not affected.

21 NEW SECTION. **Sec. 502.** If any part of this act is found to be
22 in conflict with federal requirements that are a prescribed condition
23 to the allocation of federal funds to the state, the conflicting part
24 of this act is inoperative solely to the extent of the conflict and
25 with respect to the agencies directly affected, and this finding does
26 not affect the operation of the remainder of this act in its
27 application to the agencies concerned. Rules adopted under this act
28 must meet federal requirements that are a necessary condition to the
29 receipt of federal funds by the state.

30 NEW SECTION. **Sec. 503.** Part II of this act constitutes a new
31 chapter in Title 82 RCW.

32 NEW SECTION. **Sec. 504.** This act takes effect October 1, 2017.

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