
SUBSTITUTE HOUSE BILL 1873

State of Washington

66th Legislature

2019 Regular Session

By House Finance (originally sponsored by Representatives Pollet, Harris, Cody, Robinson, Tarleton, Frame, Bergquist, Ryu, Kilduff, Macri, Stonier, Dolan, Orwall, Doglio, Senn, Stanford, Appleton, Callan, Wylie, Peterson, Valdez, Walen, Leavitt, Kloba, and Lovick)

READ FIRST TIME 03/19/19.

1 AN ACT Relating to the taxation of vapor products as tobacco
2 products; amending RCW 66.08.145, 66.44.010, 82.24.510, 82.24.550,
3 82.26.060, 82.26.080, 82.26.150, 82.26.220, 82.32.300, 70.345.010,
4 70.345.030, and 43.06.450; adding new sections to chapter 43.06 RCW;
5 adding a new section to chapter 82.08 RCW; adding a new section to
6 chapter 82.12 RCW; adding a new chapter to Title 82 RCW; creating new
7 sections; prescribing penalties; and providing an effective date.

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

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Part I
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. Although these products have been documented as being
19 interchangeably used by consumers with cigarettes or other tobacco
20 products, and there is nicotine produced or derived from tobacco in

1 the product intended for human consumption and absorption into the
2 human body, the manufacturers, wholesalers, and retailers have not
3 been paying the tax levied on tobacco products pursuant to chapter
4 82.26 RCW. The legislature intends to transition from no tobacco or
5 cigarette tax having been paid on these products to adopting a
6 specific tax rate for vapor products in this act. Adoption of this
7 specific tax will resolve claims of nonpayment of tobacco product
8 taxes pursuant to chapter 82.26 RCW. The legislature believes that
9 vapor products containing nicotine have always been subject to
10 taxation pursuant to chapter 82.26 RCW, and passage of this act may
11 not be interpreted as an indication otherwise.

12 (2) Specifically, the legislature finds that:

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

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

28 (c) The sale of vapor products has rapidly increased over the
29 past several years. Nationally, the percentage of middle school and
30 high school students who have used vapor products more than doubled
31 from 2011 to 2012. The December 2016 report by the centers for
32 disease control finds that sixteen percent of high school students
33 nationwide are using e-cigarettes or vapor products. The legislature
34 finds that vapor products are heavily promoted to attract youth to
35 purchase them, with concomitant addiction to nicotine. Research shows
36 that most young e-cigarette and vapor product users also smoke
37 cigarettes, and that the attraction and low cost availability of
38 vapor products is mitigating the positive benefits from the decline
39 in cigarette use among youth;

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

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

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

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

33 **Part II**

34 **Tax on Vapor Products**

35 NEW SECTION. **Sec. 201.** The definitions in this section apply
36 throughout this chapter unless the context clearly requires
37 otherwise.

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

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

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

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

16 (5) "Distributor" mean any person:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (v) In the case of a taxpayer that has acquired vapor products
38 under a sale as defined in RCW 70.345.010(16)(b), the price,
39 determined as nearly as possible according to the actual price, that
40 the taxpayer or other distributors sell the same vapor products or

1 similar vapor products of like quality and character to unaffiliated
2 distributors, unaffiliated retailers, or ultimate consumers;

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

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

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

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

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

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

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

33 (18) "Vapor product" means any noncombustible product containing
34 a solution or other consumable substance, regardless of whether it
35 contains nicotine, which employs a mechanical heating element,
36 battery, or electronic circuit regardless of shape or size that can
37 be used to produce vapor from the solution or other substance,
38 including an electronic cigarette, electronic cigar, electronic
39 cigarillo, electronic pipe, or similar product or device. The term
40 also includes any cartridge or other container of solution or other

1 consumable substance, regardless of whether it contains nicotine,
2 that is intended to be used with or in a vapor product to produce
3 vapor and is sold for such purpose.

4 (a) The term does not include:

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

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

11 (iii) Any product that meets the definition of marijuana, useable
12 marijuana, marijuana concentrates, marijuana-infused products,
13 cigarette, or tobacco products.

14 (b) For purposes of this subsection (18):

15 (i) "Cigarette" has the same meaning as provided in RCW
16 82.24.010; and

17 (ii) "Marijuana," "useable marijuana," "marijuana concentrates,"
18 and "marijuana-infused products" have the same meaning as provided in
19 RCW 69.50.101.

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

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

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

36 (3)(a) The legislature intends for the revenues generated by the
37 tax imposed under this section to fund foundational public health
38 services, tobacco, vapor product, and other substance abuse

1 prevention, and expanded access to training of public health
2 professionals.

3 (b) In the 2019-2021 biennium, seventy-five percent of the moneys
4 collected from the tax imposed under this section must be deposited
5 into the essential public health services account.

6 (c) Beginning in the 2021-2023 biennium and thereafter, sixty
7 percent of the moneys collected from the tax imposed under this
8 chapter must be deposited into the essential public health services
9 account.

10 NEW SECTION. **Sec. 203.** (1) A bundled transaction that includes
11 a vapor product is subject to the tax imposed under this chapter on
12 the entire selling price of the bundled transaction.

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

15 (a) "Bundled transaction" means:

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

20 (ii) A vapor product provided free of charge with the required
21 purchase of another product. A vapor product is provided free of
22 charge if the sales price of the product purchased does not vary
23 depending on the inclusion of the vapor product provided free of
24 charge.

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

30 NEW SECTION. **Sec. 204.** (1) The essential public health services
31 account is created in the state treasury. In the 2019-2021 biennium,
32 seventy-five percent of the moneys collected from the tax imposed
33 under section 202 of this act must be deposited into the account.
34 Beginning in the 2021-2023 biennium and thereafter, sixty percent of
35 the moneys collected from the tax imposed under section 202 of this
36 act must be deposited into the account. Moneys in the account may be
37 spent only after appropriation to the department of health. The

1 department of health must use the moneys in the account for each of
2 the four following purposes:

3 (a) To fund foundational health services, with a minimum of
4 thirty-three percent of the funds deposited into the account to be
5 used for this purpose;

6 (b) To fund tobacco, vapor product, and nicotine control and
7 prevention, and other substance use prevention and education, with a
8 minimum of thirty-three percent of the funds deposited into the
9 account to be used for this purpose. In spending funds under this
10 subsection (1)(b), the department must follow best practices for
11 comprehensive tobacco control programs as described by the centers
12 for disease control;

13 (c) At least ten percent of funds deposited must be used to
14 support increased access and training of public health professionals
15 at public health programs at accredited public institutions of higher
16 education in Washington; and

17 (d) To fund enforcement by the state liquor and cannabis board of
18 the provisions of this chapter to prevent sales of vapor products to
19 minors and related provisions for control of marketing and product
20 safety, provided that no more than twelve and one-half percent of the
21 funds deposited into the account established by this section may be
22 utilized and distributed by the department of health to the state
23 liquor and cannabis board for these enforcement purposes.

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

31 NEW SECTION. **Sec. 205.** It is the intent and purpose of this
32 chapter to levy a tax on all vapor products sold, used, consumed,
33 handled, possessed, or distributed within this state. It is the
34 further intent and purpose of this chapter to impose the tax only
35 once on all vapor products in this state. Nothing in this chapter may
36 be construed to exempt any person taxable under any other law or
37 under any other tax imposed under this title.

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

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

11 (2) These records must show the names and addresses of
12 purchasers, the inventory of all vapor products, and other pertinent
13 papers and documents relating to the purchase, sale, or disposition
14 of vapor products. All invoices and other records required by this
15 section to be kept must be preserved for a period of five years from
16 the date of the invoices or other documents or the date of the
17 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 place
20 of business of a distributor, without a search warrant, and inspect
21 the premises, the records required to be kept under this chapter, and
22 the vapor products contained therein, to determine whether or not all
23 the provisions of this chapter are being fully complied with. If the
24 department, board, or any of its agents or employees are denied free
25 access or are hindered or interfered with in making such examination,
26 the registration certificate issued under RCW 82.32.030 of the
27 distributor at such premises is subject to revocation by the
28 department, and any licenses issued under chapter 70.345, 82.26, or
29 82.24 RCW are subject to suspension or revocation by the board.

30 NEW SECTION. **Sec. 208.** Every person required to be licensed
31 under chapter 70.345 RCW who sells vapor products to persons other
32 than the ultimate consumer must render with each sale itemized
33 invoices showing the seller's name and address, the purchaser's name
34 and address, the date of sale, and all prices. The person must
35 preserve legible copies of all such invoices for five years from the
36 date of sale.

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

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

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

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

31 (b) For purposes of this subsection (1), the following
32 definitions apply:

33 (i) "Indian distributor" means a federally recognized Indian
34 tribe or tribal entity that would otherwise meet the definition of
35 "distributor" under section 201 of this act, if federally recognized
36 Indian tribes and tribal entities were not excluded from the
37 definition of "person" in section 201 of this act.

38 (ii) "Indian retailer" means a federally recognized Indian tribe
39 or tribal entity that would otherwise meet the definition of

1 "retailer" under section 201 of this act, if federally recognized
2 Indian tribes and tribal entities were not excluded from the
3 definition of "person" in section 201 of this act.

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

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

12 NEW SECTION. **Sec. 211.** All of the provisions contained in
13 chapter 82.32 RCW not inconsistent with the provisions of this
14 chapter have full force and application with respect to taxes imposed
15 under the provisions of this chapter.

16 NEW SECTION. **Sec. 212.** The department must authorize, as duly
17 authorized agents, enforcement officers of the board to enforce
18 provisions of this chapter. These officers are not employees of the
19 department.

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

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

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

32 NEW SECTION. **Sec. 214.** (1) No person may transport or cause to
33 be transported in this state vapor products for sale other than: (a)
34 A licensed distributor under chapter 70.345 RCW, or a manufacturer's
35 representative authorized to sell or distribute vapor products in
36 this state under chapter 70.345 RCW; (b) a licensed retailer under

1 chapter 70.345 RCW; (c) a seller with a valid delivery sale license
2 under chapter 70.345 RCW; or (d) a person who has given notice to the
3 board in advance of the commencement of transportation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 NEW SECTION. **Sec. 217.** (1) A retailer that obtains vapor
27 products from an unlicensed distributor or any other person that is
28 not licensed under chapter 70.345 RCW must be licensed both as a
29 retailer and a distributor and is liable for the tax imposed under
30 section 202 of this act with respect to the vapor products acquired
31 from the unlicensed person that are held for sale, handling, or
32 distribution in this state. For the purposes of this subsection,
33 "person" includes both persons defined in this act and any person
34 immune from state taxation, such as the United States or its
35 instrumentalities, and federally recognized Indian tribes and
36 enrolled tribal members, conducting business within Indian country.

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

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

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

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

30 (3) All conveyances, including aircraft, vehicles, or vessels
31 that are used, or intended for use to transport, or in any manner to
32 facilitate the transportation, for the purpose of sale or receipt of
33 vapor products under subsection (2) of this section, may be seized
34 and are subject to forfeiture except:

35 (a) A conveyance used by any person as a common or contract
36 carrier having in actual possession invoices or delivery tickets
37 showing the true name and address of the consignor or seller, the
38 true name of the consignee or purchaser, and the quantity and brands
39 of the vapor products transported, unless it appears that the owner

1 or other person in charge of the conveyance is a consenting party or
2 privy to a violation of this chapter;

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

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

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

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

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

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

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

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

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

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

35 (a) Retain the property for official use or upon application by
36 any law enforcement agency of this state, another state, or the
37 District of Columbia, or of the United States for the exclusive use
38 of enforcing this chapter or the laws of any other state or the
39 District of Columbia or of the United States; or

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

12 (3) The department or the board may return any property seized
13 under the provisions of this chapter when it is shown that there was
14 no intention to violate the provisions of this chapter. When any
15 property is returned under this section, the department or the board
16 may return the property to the parties from whom they were seized if
17 and when such parties have paid the proper amount of tax due under
18 this chapter.

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

30 NEW SECTION. **Sec. 222.** (1) Preexisting inventories of vapor
31 products are subject to the tax imposed in section 202 of this act.
32 All retailers and other distributors must report the tax due under
33 section 202 of this act on preexisting inventories of vapor products
34 on a form, as prescribed by the department, on or before October 31,
35 2019, and the tax due on such preexisting inventories must be paid on
36 or before January 31, 2020.

37 (2) Reports under subsection (1) of this section not filed with
38 the department by October 31, 2019, are subject to a late filing

1 penalty equal to the greater of two hundred fifty dollars or ten
2 percent of the tax due under section 202 of this act on the
3 taxpayer's preexisting inventories.

4 (3) The department must notify the taxpayer of the amount of tax
5 due under section 202 of this act on preexisting inventories, which
6 is subject to applicable penalties under RCW 82.32.090 (2) through
7 (7) if unpaid after January 31, 2020. Amounts due in accordance with
8 this section are not considered to be substantially underpaid for the
9 purposes of RCW 82.32.090(2).

10 (4) Interest, at the rate provided in RCW 82.32.050(2), must be
11 computed daily beginning February 1, 2020, on any remaining tax due
12 under section 202 of this act on preexisting inventories until paid.

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

16 (a) Does not sell vapor products other than to ultimate
17 consumers; and

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

21 (6) Taxes may not be collected under section 202(2)(b) of this
22 act from consumers with respect to any vapor products acquired before
23 the effective date of this section.

24 (7) For purposes of this section, "preexisting inventory" means
25 an inventory of vapor products located in this state on the effective
26 date of section 202 of this act and held by a distributor for sale,
27 handling, or distribution in this state.

28 NEW SECTION. **Sec. 223.** (1) The taxes imposed by this chapter do
29 not apply to the sale, use, consumption, handling, possession, or
30 distribution of vapor products by an Indian retailer during the
31 effective period of a vapor product tax contract subject to section
32 403 of this act or a vapor product tax agreement under section 404 of
33 this act.

34 (2) The definitions in section 402 of this act apply to this
35 section.

36 **Part III**
37 **Conforming Amendments**

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

3 (1) The liquor and cannabis board may issue subpoenas in
4 connection with any investigation, hearing, or proceeding for the
5 production of books, records, and documents held under this chapter
6 or chapters 70.155, 70.158, 70.345, 82.24, (~~and~~) 82.26 (~~RCW~~), and
7 82.--- RCW (the new chapter created in section 503 of this act), and
8 books and records of common carriers as defined in RCW 81.80.010, or
9 vehicle rental agencies relating to the transportation or possession
10 of cigarettes, vapor products, or other tobacco products.

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

13 (3) If any person is served a subpoena from the board for the
14 production of records, documents, and books, and fails or refuses to
15 obey the subpoena for the production of records, documents, and books
16 when required to do so, the person is subject to proceedings for
17 contempt, and the board may institute contempt of court proceedings
18 in the superior court of Thurston county or in the county in which
19 the person resides.

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

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

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

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

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

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

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

31 (a) A wholesaler's license.

32 (b) A retailer's license.

33 (2) Application for the licenses must be made through the
34 business licensing system under chapter 19.02 RCW. The board must
35 adopt rules regarding the regulation of the licenses. The board may
36 refrain from the issuance of any license under this chapter if the
37 board has reasonable cause to believe that the applicant has
38 willfully withheld information requested for the purpose of
39 determining the eligibility of the applicant to receive a license, or

1 if the board has reasonable cause to believe that information
2 submitted in the application is false or misleading or is not made in
3 good faith. In addition, for the purpose of reviewing an application
4 for a wholesaler's license or retailer's license and for considering
5 the denial, suspension, or revocation of any such license, the board
6 may consider any prior criminal conduct of the applicant, including
7 an administrative violation history record with the board and a
8 criminal history record information check within the previous five
9 years, in any state, tribal, or federal jurisdiction in the United
10 States, its territories, or possessions, and the provisions of RCW
11 9.95.240 and chapter 9.96A RCW do not apply to such cases. The board
12 may, in its discretion, grant or refuse the wholesaler's license or
13 retailer's license, subject to the provisions of RCW 82.24.550.

14 (3) No person may qualify for a wholesaler's license or a
15 retailer's license under this section without first undergoing a
16 criminal background check. The background check must be performed by
17 the board and must disclose any criminal conduct within the previous
18 five years in any state, tribal, or federal jurisdiction in the
19 United States, its territories, or possessions. A person who
20 possesses a valid license on July 22, 2001, is subject to this
21 subsection and subsection (2) of this section beginning on the date
22 of the person's business license expiration under chapter 19.02 RCW,
23 and thereafter. If the applicant or licensee also has a license
24 issued under chapter 66.24 (~~(\oplus)~~), 82.26, or 70.345 RCW, the
25 background check done under the authority of chapter 66.24 (~~(\oplus)~~),
26 82.26, or 70.345 RCW satisfies the requirements of this section.

27 (4) Each such license expires on the business license expiration
28 date, and each such license must be continued annually if the
29 licensee has paid the required fee and complied with all the
30 provisions of this chapter and the rules of the board made pursuant
31 thereto.

32 (5) Each license and any other evidence of the license that the
33 board requires must be exhibited in each place of business for which
34 it is issued and in the manner required for the display of a business
35 license.

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

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

4 (2) The department may adopt, amend, and repeal rules necessary
5 to administer the provisions of this chapter. The board may revoke or
6 suspend the license or permit of any wholesale or retail cigarette
7 dealer in the state upon sufficient cause appearing of the violation
8 of this chapter or upon the failure of such licensee to comply with
9 any of the provisions of this chapter.

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

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

26 (5) Any person whose license or licenses have been revoked under
27 this section may reapply to the board at the expiration of one year
28 from the date of revocation of the license or licenses. The license
29 or licenses may be approved by the board if it appears to the
30 satisfaction of the board that the licensee will comply with the
31 provisions of this chapter and the rules adopted under this chapter.

32 (6) A person whose license has been suspended or revoked may not
33 sell cigarettes, vapor products, or tobacco products or permit
34 cigarettes, vapor products, or tobacco products to be sold during the
35 period of such suspension or revocation on the premises occupied by
36 the person or upon other premises controlled by the person or others
37 or in any other manner or form whatever.

38 (7) Any determination and order by the board, and any order of
39 suspension or revocation by the board of the license or licenses
40 issued under this chapter, or refusal to reinstate a license or

1 licenses after revocation is reviewable by an appeal to the superior
2 court of Thurston county. The superior court must review the order or
3 ruling of the board and may hear the matter de novo, having due
4 regard to the provisions of this chapter and the duties imposed upon
5 the board.

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

9 (9) For purposes of this section(~~(7)~~):

10 (a) "Tobacco products" has the same meaning as provided in RCW
11 82.26.010; and

12 (b) "Vapor products" has the same meaning as provided in section
13 201 of this act.

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

16 (1) Every distributor (~~shall~~) must keep at each place of
17 business complete and accurate records for that place of business,
18 including itemized invoices, of tobacco products held, purchased,
19 manufactured, brought in or caused to be brought in from without the
20 state, or shipped or transported to retailers in this state, and of
21 all sales of tobacco products made.

22 (2) These records (~~shall~~) must show the names and addresses of
23 purchasers, the inventory of all tobacco products, and other
24 pertinent papers and documents relating to the purchase, sale, or
25 disposition of tobacco products. All invoices and other records
26 required by this section to be kept (~~shall~~) must be preserved for a
27 period of five years from the date of the invoices or other documents
28 or the date of the entries appearing in the records.

29 (3) At any time during usual business hours the department,
30 board, or its duly authorized agents or employees, may enter any
31 place of business of a distributor, without a search warrant, and
32 inspect the premises, the records required to be kept under this
33 chapter, and the tobacco products contained therein, to determine
34 whether or not all the provisions of this chapter are being fully
35 complied with. If the department, board, or any of its agents or
36 employees, are denied free access or are hindered or interfered with
37 in making such examination, the registration certificate issued under
38 RCW 82.32.030 of the distributor at such premises (~~shall be~~) is
39 subject to revocation, and any licenses issued under this chapter or

1 chapter 82.24 or 70.345 RCW are subject to suspension or revocation,
2 by the department or board.

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

5 (1) Every retailer (~~shall~~) must procure itemized invoices of
6 all tobacco products purchased. The invoices (~~shall~~) must show the
7 seller's name and address, the date of purchase, and all prices and
8 discounts.

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

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

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

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

30 (a) A distributor's license; and

31 (b) A retailer's license.

32 (2) Application for the licenses must be made through the
33 business licensing system under chapter 19.02 RCW. The board may
34 adopt rules regarding the regulation of the licenses. The board may
35 refuse to issue any license under this chapter if the board has
36 reasonable cause to believe that the applicant has willfully withheld
37 information requested for the purpose of determining the eligibility
38 of the applicant to receive a license, or if the board has reasonable

1 cause to believe that information submitted in the application is
2 false or misleading or is not made in good faith. In addition, for
3 the purpose of reviewing an application for a distributor's license
4 or retailer's license and for considering the denial, suspension, or
5 revocation of any such license, the board may consider criminal
6 conduct of the applicant, including an administrative violation
7 history record with the board and a criminal history record
8 information check within the previous five years, in any state,
9 tribal, or federal jurisdiction in the United States, its
10 territories, or possessions, and the provisions of RCW 9.95.240 and
11 chapter 9.96A RCW do not apply to such cases. The board may, in its
12 discretion, issue or refuse to issue the distributor's license or
13 retailer's license, subject to the provisions of RCW 82.26.220.

14 (3) No person may qualify for a distributor's license or a
15 retailer's license under this section without first undergoing a
16 criminal background check. The background check must be performed by
17 the board and must disclose any criminal conduct within the previous
18 five years in any state, tribal, or federal jurisdiction in the
19 United States, its territories, or possessions. If the applicant or
20 licensee also has a license issued under chapter 66.24 (~~(e)~~), 82.24,
21 or 70.345 RCW, the background check done under the authority of
22 chapter 66.24, 70.345, or 82.24 RCW satisfies the requirements of
23 this section.

24 (4) Each license issued under this chapter expires on the
25 business license expiration date. The license must be continued
26 annually if the licensee has paid the required fee and complied with
27 all the provisions of this chapter and the rules of the board adopted
28 pursuant to this chapter.

29 (5) Each license and any other evidence of the license required
30 under this chapter must be exhibited in each place of business for
31 which it is issued and in the manner required for the display of a
32 business license.

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

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

37 (2) The department may adopt, amend, and repeal rules necessary
38 to administer this chapter. The board may revoke or suspend the
39 distributor's or retailer's license of any distributor or retailer of

1 tobacco products in the state upon sufficient cause showing a
2 violation of this chapter or upon the failure of the licensee to
3 comply with any of the rules adopted under it.

4 (3) A license may not be suspended or revoked except upon notice
5 to the licensee and after a hearing as prescribed by the board. The
6 board, upon finding that the licensee has failed to comply with any
7 provision of this chapter or of any rule adopted under it, must, in
8 the case of the first offense, suspend the license or licenses of the
9 licensee for a period of not less than thirty consecutive business
10 days, and in the case of a second or further offense, suspend the
11 license or licenses for a period of not less than ninety consecutive
12 business days but not more than twelve months, and in the event the
13 board finds the licensee has been guilty of willful and persistent
14 violations, it may revoke the license or licenses.

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

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

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

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

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

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

6 (1) The administration of this and chapters 82.04 through 82.27
7 RCW of this title is vested in the department (~~(of revenue which~~
8 ~~shall)~~), which must prescribe forms and rules of procedure for the
9 determination of the taxable status of any person, for the making of
10 returns and for the ascertainment, assessment and collection of taxes
11 and penalties imposed thereunder.

12 (2) The department (~~(of revenue shall)~~) must make and publish
13 rules and regulations, not inconsistent therewith, necessary to
14 enforce provisions of this chapter and chapters 82.02 through 82.23B
15 and 82.27 RCW, and the liquor (~~(control)~~) and cannabis board
16 (~~(shall)~~) must make and publish rules necessary to enforce chapters
17 82.24 (~~(and)~~), 82.26 (~~(RCW)~~), and 82.--- RCW (the new chapter created
18 in section 503 of this act), which (~~(shall have)~~) has the same force
19 and effect as if specifically included therein, unless declared
20 invalid by the judgment of a court of record not appealed from.

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

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

29 **Sec. 310.** RCW 70.345.010 and 2016 sp.s. c 38 s 4 are each
30 amended to read as follows:

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

33 (1) "Board" means the Washington state liquor and cannabis board.

34 (2) "Business" means any trade, occupation, activity, or
35 enterprise engaged in for the purpose of selling or distributing
36 vapor products in this state.

37 (3) "Child care facility" has the same meaning as provided in RCW
38 70.140.020.

1 (4) "Closed system nicotine container" means a sealed, prefilled,
2 and disposable container of nicotine in a solution or other form in
3 which such container is inserted directly into an electronic
4 cigarette, electronic nicotine delivery system, or other similar
5 product, if the nicotine in the container is inaccessible through
6 customary or reasonably foreseeable handling or use, including
7 reasonably foreseeable ingestion or other contact by children.

8 (5) "Delivery sale" means any sale of a vapor product to a
9 purchaser in this state where either:

10 (a) The purchaser submits the order for such sale by means of a
11 telephonic or other method of voice transmission, the mails or any
12 other delivery service, or the internet or other online service; or

13 (b) The vapor product is delivered by use of the mails or of a
14 delivery service. The foregoing sales of vapor products constitute a
15 delivery sale regardless of whether the seller is located within or
16 without this state. "Delivery sale" does not include a sale of any
17 vapor product not for personal consumption to a retailer.

18 (6) "Delivery seller" means a person who makes delivery sales.

19 (7) "Distributor" (~~means any person who:~~

20 ~~(a) Sells vapor products to persons other than ultimate~~
21 ~~consumers; or~~

22 ~~(b) Is engaged in the business of selling vapor products in this~~
23 ~~state and who brings, or causes to be brought, into this state from~~
24 ~~outside of the state any vapor products for sale)) has the same~~

25 meaning as in section 201 of this act.
26 (8) "Liquid nicotine container" means a package from which
27 nicotine in a solution or other form is accessible through normal and
28 foreseeable use by a consumer and that is used to hold soluble
29 nicotine in any concentration. "Liquid nicotine container" does not
30 include closed system nicotine containers.

31 (9) "Manufacturer" means a person who manufactures and sells
32 vapor products.

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

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

1 group of individuals acting as a unit, whether mutual, cooperative,
2 fraternal, nonprofit, or otherwise.

3 (12) "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.

6 (13) "Playground" means any public improved area designed,
7 equipped, and set aside for play of six or more children which is not
8 intended for use as an athletic playing field or athletic court,
9 including but not limited to any play equipment, surfacing, fencing,
10 signs, internal pathways, internal land forms, vegetation, and
11 related structures.

12 (14) "Retail outlet" means each place of business from which
13 vapor products are sold to consumers.

14 (15) "Retailer" means any person engaged in the business of
15 selling vapor products to ultimate consumers.

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

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

22 (17) "School" has the same meaning as provided in RCW 70.140.020.

23 (18) "Self-service display" means a display that contains vapor
24 products and is located in an area that is openly accessible to
25 customers and from which customers can readily access such products
26 without the assistance of a salesperson. A display case that holds
27 vapor products behind locked doors does not constitute a self-service
28 display.

29 (19) "Vapor product" means any noncombustible product that may
30 contain nicotine and that employs a heating element, power source,
31 electronic circuit, or other electronic, chemical, or mechanical
32 means, regardless of shape or size, that can be used to produce vapor
33 or aerosol from a solution or other substance.

34 (a) "Vapor product" includes any electronic cigarette, electronic
35 cigar, electronic cigarillo, electronic pipe, or similar product or
36 device and any vapor cartridge or other container that may contain
37 nicotine in a solution or other form that is intended to be used with
38 or in an electronic cigarette, electronic cigar, electronic
39 cigarillo, electronic pipe, or similar product or device.

1 (b) "Vapor product" does not include any product that meets the
2 definition of marijuana, useable marijuana, marijuana concentrates,
3 marijuana-infused products, cigarette, or tobacco products.

4 (c) For purposes of this subsection (19), "marijuana," "useable
5 marijuana," "marijuana concentrates," and "marijuana-infused
6 products" have the same meaning as provided in RCW 69.50.101.

7 **Sec. 311.** RCW 70.345.030 and 2016 sp.s. c 38 s 6 are each
8 amended to read as follows:

9 (1) (a) No person may engage in or conduct business as a retailer,
10 distributor, or delivery seller in this state without a valid license
11 issued under this chapter, except as otherwise provided by law. Any
12 person who sells vapor products to ultimate consumers by a means
13 other than delivery sales must obtain a retailer's license under this
14 chapter. Any person who (~~sells vapor products to persons other than~~
15 ~~ultimate consumers or who~~) meets the definition of distributor under
16 this chapter must obtain a distributor's license under this chapter.
17 Any person who conducts delivery sales of vapor products must obtain
18 a delivery sale license.

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

21 (2) No person engaged in or conducting business as a retailer,
22 distributor, or delivery seller in this state may refuse to allow the
23 enforcement officers of the board, on demand, to make full inspection
24 of any place of business or vehicle where any of the vapor products
25 regulated under this chapter are sold, stored, transported, or
26 handled, or otherwise hinder or prevent such inspection. A person who
27 violates this subsection is guilty of a gross misdemeanor.

28 (3) Any person licensed under this chapter as a distributor, any
29 person licensed under this chapter as a retailer, and any person
30 licensed under this chapter as a delivery seller may not operate in
31 any other capacity unless the additional appropriate license is first
32 secured, except as otherwise provided by law. A violation of this
33 subsection is a misdemeanor.

34 (4) No person engaged in or conducting business as a retailer,
35 distributor, or delivery seller in this state may sell or give, or
36 permit to sell or give, a product that contains any amount of any
37 cannabinoid, synthetic cannabinoid, cathinone, or methcathinone,
38 unless otherwise provided by law. A violation of this subsection (4)
39 is punishable according to RCW 69.50.401.

1 (5) The penalties provided in this section are in addition to any
2 other penalties provided by law for violating the provisions of this
3 chapter or the rules adopted under this chapter.

4 **Part IV**
5 **Tribal Compacting**

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

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

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

26 (1) The governor may enter into vapor product tax contracts
27 concerning the sale of vapor products. All vapor product tax
28 contracts must meet the requirements for vapor product tax contracts
29 under this section.

30 (2) Vapor product tax contracts must be in regard to retail sales
31 in which Indian retailers make delivery and physical transfer of
32 possession of the vapor products from the seller to the buyer within
33 Indian country, and are not in regard to transactions by non-Indian
34 retailers. In addition, contracts must provide that retailers may not
35 sell or give, or permit to be sold or given, vapor products to any
36 person who is under the state legal age for the purchase of vapor
37 products.

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

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

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

10 (b) Out-of-state wholesalers or manufacturers who, although not
11 licensed to do business in the state of Washington, agree to comply
12 with the terms of the vapor product tax contract, are certified to
13 the state as having so agreed, and do in fact so comply. However, the
14 state may in its sole discretion exercise its administrative and
15 enforcement powers over such wholesalers or manufacturers to the
16 extent permitted by law;

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

19 (d) A tribal manufacturer.

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

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

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

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

30 (9) The governor may delegate the power to negotiate vapor
31 product tax contracts to the department of revenue. The department of
32 revenue must consult with the liquor and cannabis board during the
33 negotiations.

34 (10) Information received by the state or open to state review
35 under the terms of a contract is subject to the provisions of RCW
36 82.32.330.

37 (11) It is the intent of the legislature that the liquor and
38 cannabis board and the department of revenue continue the division of
39 duties and shared authority under chapter 82.--- RCW (the new chapter
40 created in section 503 of this act) and therefore the liquor and

1 cannabis board is responsible for enforcement activities that come
2 under the terms of chapter 82.--- RCW (the new chapter created in
3 section 503 of this act).

4 (12) Each vapor product tax contract must include a procedure for
5 notifying the other party that a violation has occurred, a procedure
6 for establishing whether a violation has in fact occurred, an
7 opportunity to correct such violation, and a provision providing for
8 termination of the contract should the violation fail to be resolved
9 through this process, such termination subject to mediation should
10 the terms of the contract so allow. A contract must provide for
11 termination of the contract if resolution of a dispute does not occur
12 within twenty-four months from the time notification of a violation
13 has occurred. Intervening violations do not extend this time period.
14 In addition, the contract must include provisions delineating the
15 respective roles and responsibilities of the tribe, the department of
16 revenue, and the liquor and cannabis board.

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

19 (a) "Essential government services" means services such as tribal
20 administration, public facilities, fire, police, public health,
21 education, job services, sewer, water, environmental and land use,
22 transportation, utility services, and economic development.

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

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

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

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

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

31 (d) "Indian tribe" or "tribe" means a federally recognized Indian
32 tribe located within the geographical boundaries of the state of
33 Washington.

34 (e) "Vapor products" has the same meaning as provided in section
35 201 of this act.

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

38 (1) The governor is authorized to enter into vapor product tax
39 contracts with federally recognized Indian tribes located within the

1 geographical boundaries of the state of Washington. Each contract
2 adopted under this section must provide that the tribal vapor product
3 tax rate be one hundred percent of the state vapor product tax and
4 state and local sales and use taxes. The tribal vapor product tax is
5 in lieu of the state vapor product tax and state and local sales and
6 use taxes, as provided in section 402(3) of this act.

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

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

11 (1) The governor may enter into a vapor product tax agreement
12 with the Puyallup Tribe of Indians concerning the sale of vapor
13 products, subject to the limitations in this section. The legislature
14 intends to address the uniqueness of the Puyallup Indian reservation
15 and its selling environment through pricing and compliance
16 strategies, rather than through the imposition of equivalent taxes.
17 The governor may delegate the authority to negotiate a vapor product
18 tax agreement with the Puyallup Tribe to the department of revenue.
19 The department of revenue must consult with the liquor and cannabis
20 board during the negotiations.

21 (2) Any agreement must require the tribe to impose a tribal vapor
22 product tax with a tax rate that is ninety percent of the state vapor
23 product tax. This tribal tax is in lieu of the combined state and
24 local sales and use taxes and the state vapor product tax, and as
25 such these state taxes are not imposed during the term of the
26 agreement on any transaction governed by the agreement. The tribal
27 vapor product tax must increase or decrease at the time of any
28 increase or decrease in the state vapor product tax so as to remain
29 at a level that is ninety percent of the rate of the state vapor
30 product tax.

31 (3) The agreement must include a provision requiring the tribe to
32 transmit thirty percent of the tribal tax revenue on all vapor
33 products sales to the state. The funds must be transmitted to the
34 state treasurer on a quarterly basis for deposit by the state
35 treasurer into the general fund. The remaining tribal tax revenue
36 must be used for essential government services, as that term is
37 defined in section 402 of this act.

38 (4) The agreement is limited to retail sales in which Indian
39 retailers make delivery and physical transfer of possession of the

1 vapor products from the seller to the buyer within Indian country,
2 and are not in regard to transactions by non-Indian retailers. In
3 addition, agreements must provide that retailers may not sell or
4 give, or permit to be sold or given, vapor products to any person who
5 is under the state legal age for the purchase of vapor products.

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

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

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

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

15 (6) (a) The agreement must include provisions regarding
16 enforcement and compliance by the tribe in regard to enrolled tribal
17 members who sell vapor products and must describe the individual and
18 joint responsibilities of the tribe, the department of revenue, and
19 the liquor and cannabis board.

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

23 (c) The agreement must include provisions for sharing of
24 information among the tribe, the department of revenue, and the
25 liquor and cannabis board.

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

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

31 (9) The agreement must include provisions to resolve disputes
32 using a nonjudicial process, such as mediation, and must include a
33 dispute resolution protocol. The protocol must include a procedure
34 for notifying the other party that a violation has occurred, a
35 procedure for establishing whether a violation has in fact occurred,
36 an opportunity to correct such violation, and a provision providing
37 for termination of the agreement should the violation fail to be
38 resolved through this process, such termination subject to mediation
39 should the terms of the agreement so allow. An agreement must provide
40 for termination of the agreement if resolution of a dispute does not

1 occur within twenty-four months from the time notification of a
2 violation has occurred. Intervening violations do not extend this
3 time period.

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

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

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

12 (a) "Indian country" has the same meaning as provided in RCW
13 82.24.010.

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

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

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

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

21 (d) "Vapor products" has the same meaning as provided in section
22 201 of this act.

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

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

29 (2) The definitions in section 402 of this act apply to this
30 section.

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

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

37 (2) The definitions in section 402 of this act apply to this
38 section.

1 **Part V**

2 **Miscellaneous Provisions**

3 NEW SECTION. **Sec. 501.** If any provision of this act or its
4 application to any person or circumstance is held invalid, the
5 remainder of the act or the application of the provision to other
6 persons or circumstances is not affected.

7 NEW SECTION. **Sec. 502.** If any part of this act is found to be
8 in conflict with federal requirements that are a prescribed condition
9 to the allocation of federal funds to the state, the conflicting part
10 of this act is inoperative solely to the extent of the conflict and
11 with respect to the agencies directly affected, and this finding does
12 not affect the operation of the remainder of this act in its
13 application to the agencies concerned. Rules adopted under this act
14 must meet federal requirements that are a necessary condition to the
15 receipt of federal funds by the state.

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

18 NEW SECTION. **Sec. 504.** The provisions of RCW 82.32.805 and
19 82.32.808 do not apply to this act.

20 NEW SECTION. **Sec. 505.** This act takes effect October 1, 2019.

--- END ---