
SENATE BILL 5986

State of Washington

66th Legislature

2019 Regular Session

By Senators Braun, Keiser, Kuderer, and Van De Wege

Read first time 03/15/19. Referred to Committee on Ways & Means.

1 AN ACT Relating to establishing a tax on vapor and heated tobacco
2 products to fund cancer research and support local public health;
3 amending RCW 66.08.145, 66.44.010, 82.24.510, 82.24.550, 82.26.060,
4 82.26.080, 82.26.150, 82.26.220, 82.32.300, 70.345.010, 70.345.030,
5 70.345.090, 82.24.010, and 82.26.020; reenacting and amending RCW
6 82.26.010; adding a new chapter to Title 82 RCW; creating a new
7 section; and prescribing penalties.

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

9 **Part I**

10 **Tax on Vapor Products**

11 NEW SECTION. **Sec. 101.** The definitions in this section apply
12 throughout this chapter unless the context clearly requires
13 otherwise.

14 (1) "Actual price" means the total amount of consideration for
15 which vapor products are sold, valued in money, whether received in
16 money or otherwise, including: (a) Any charges by the seller
17 necessary to complete the sale such as charges for delivery, freight,
18 transportation, or handling; and (b) in the case of a taxpayer
19 importing vapor products into the state, any expenses of the taxpayer
20 or any person affiliated with the taxpayer that are necessary to

1 complete the importation, such as delivery, freight, transportation,
2 federal taxes, or handling of the product.

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

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

6 (4) "Business" means any trade, occupation, activity, or
7 enterprise engaged in selling or distributing vapor products in this
8 state.

9 (5) "Distributor" mean any person:

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

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

15 (c) Engaged in the business of selling vapor products outside
16 this state who ships or transports vapor products to retailers or
17 consumers in this state; or

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

21 (6) "Indian country" has the same meaning as provided in RCW
22 82.24.010.

23 (7) "Manufacturer" has the same meaning as provided in RCW
24 70.345.010.

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

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

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

5 (11) "Retail outlet" has the same meaning as provided in RCW
6 70.345.010.

7 (12) "Retailer" has the same meaning as provided in RCW
8 70.345.010.

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

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

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

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

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

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

31 (v) In the case of a taxpayer that has acquired vapor products
32 under a sale as defined in RCW 70.345.010(16)(b), the price,
33 determined as nearly as possible according to the actual price, that
34 the taxpayer or other distributors sell the same vapor products or
35 similar vapor products of like quality and character to unaffiliated
36 distributors, unaffiliated retailers, or ultimate consumers;

37 (vi) In cases where section 102(2)(b) of this act applies, the
38 value of the article used as defined in RCW 82.12.010; or

39 (vii) In any case where (a)(i) through (vi) of this subsection do
40 not apply, the price, determined as nearly as possible according to

1 the actual price, that the taxpayer or other distributors sell the
2 same vapor products or similar vapor products of like quality and
3 character to unaffiliated distributors, unaffiliated retailers, or
4 ultimate consumers.

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

10 (c) In any case where the taxable sales price is not indicative
11 of a vapor product's true value at the time and place of the taxable
12 event as provided in section 102(2)(a) of this act, "taxable sales
13 price" means the true value of the vapor product as determined by the
14 department. For purposes of this subsection, "true value" means
15 market value based on sales at comparable locations in this state of
16 the same or similar vapor product of like quality and character sold
17 under comparable conditions of sale by comparable sellers to
18 comparable purchasers.

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

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

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

27 (18) "Vapor product" means any noncombustible product containing
28 a solution or other consumable substance, regardless of whether it
29 contains nicotine, which employs a mechanical heating element,
30 battery, or electronic circuit regardless of shape or size that can
31 be used to produce vapor from the solution or other substance,
32 including an electronic cigarette, electronic cigar, electronic
33 cigarillo, electronic pipe, or similar product or device.

34 (a) The term does not include:

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

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

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

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

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

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

10 NEW SECTION. **Sec. 102.** (1) There is levied and collected a tax
11 upon the sale, use, consumption, handling, possession, or
12 distribution of all vapor products in this state in an amount equal
13 to 5 cents per milliliter of solution or other consumable substance,
14 regardless of whether it contains nicotine, and a proportionate tax
15 at the like rate on all fractional parts of a milliliter thereof. The
16 tax on vapor products shall be imposed based on the volume of the
17 solution as listed by the manufacturer.

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

26 (b) The tax imposed under this section must also be collected by
27 the department from the consumer of vapor products where the tax
28 imposed under this section was not paid by the distributor on such
29 vapor products.

30 (3) (a) The moneys collected under this section must be deposited
31 as follows:

32 (a) Fifty percent into the Andy Hill cancer research fund created
33 in RCW 43.348.060; and

34 (b) Fifty percent into the foundational public health services
35 account created in section 104 of this act.

36 NEW SECTION. **Sec. 103.** (1) (a) Except as provided in (b) of this
37 subsection, a bundled transaction that includes a vapor product is

1 subject to the tax imposed under this chapter on the entire selling
2 price of the bundled transaction.

3 (b) If the selling price is attributable to products that are
4 taxable and products that are not taxable under this chapter, the
5 portion of the price attributable to the nontaxable products are
6 subject to the tax imposed by this chapter unless the seller can
7 identify by reasonable and verifiable standards the portion that is
8 not subject to tax from its books and records that are kept in the
9 regular course of business for other purposes including, but not
10 limited to, nontax purposes.

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

13 (a) "Bundled transaction" means:

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

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

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

28 NEW SECTION. **Sec. 104.** (1) The foundational public health
29 services account is created in the state treasury. Fifty percent of
30 revenues from the tax collected under section 102 of this act must be
31 deposited into the account.

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

1 NEW SECTION. **Sec. 105.** It is the intent and purpose of this
2 chapter to levy a tax on all vapor products sold, used, consumed,
3 handled, possessed, or distributed within this state. It is the
4 further intent and purpose of this chapter to impose the tax only
5 once on all vapor products in this state. Nothing in this chapter may
6 be construed to exempt any person taxable under any other law or
7 under any other tax imposed under this title.

8 NEW SECTION. **Sec. 106.** (1) The tax imposed by section 102 of
9 this act does not apply with respect to any vapor products which
10 under the Constitution and laws of the United States may not be made
11 the subject of taxation by this state.

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

14 **Part II**
15 **Conforming Amendments**

16 **Sec. 201.** RCW 66.08.145 and 2016 sp.s. c 38 s 29 are each
17 amended to read as follows:

18 (1) The liquor and cannabis board may issue subpoenas in
19 connection with any investigation, hearing, or proceeding for the
20 production of books, records, and documents held under this chapter
21 or chapters 70.155, 70.158, 70.345, 82.24, (~~and~~) 82.26 ((RCW)), and
22 82.--- RCW (the new chapter created in section 403 of this act), and
23 books and records of common carriers as defined in RCW 81.80.010, or
24 vehicle rental agencies relating to the transportation or possession
25 of cigarettes, vapor products, or other tobacco products.

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

28 (3) If any person is served a subpoena from the board for the
29 production of records, documents, and books, and fails or refuses to
30 obey the subpoena for the production of records, documents, and books
31 when required to do so, the person is subject to proceedings for
32 contempt, and the board may institute contempt of court proceedings
33 in the superior court of Thurston county or in the county in which
34 the person resides.

35 **Sec. 202.** RCW 66.44.010 and 1998 c 18 s 1 are each amended to
36 read as follows:

1 (1) All county and municipal peace officers are hereby charged
2 with the duty of investigating and prosecuting all violations 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, and all fines imposed for violations of this title and the
6 penal laws of this state relating to the manufacture, importation,
7 transportation, possession, distribution and sale of liquor (~~shall~~)
8 belong to the county, city or town wherein the court imposing the
9 fine is located, and (~~shall~~) must be placed in the general fund for
10 payment of the salaries of those engaged in the enforcement of the
11 provisions of this title and the penal laws of this state relating to
12 the manufacture, importation, transportation, possession,
13 distribution and sale of liquor(~~PROVIDED, That~~). However, all
14 fees, fines, forfeitures and penalties collected or assessed by a
15 district court because of the violation of a state law (~~shall~~) must
16 be remitted as provided in chapter 3.62 RCW as now exists or is later
17 amended.

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

23 (3) In addition to the other duties under this section, the board
24 (~~shall~~) must enforce chapters 82.24 (~~and~~), 82.26 ((RCW)), and
25 82.--- RCW (the new chapter created in section 403 of this act).

26 (4) The board may appoint and employ, assign to duty and fix the
27 compensation of, officers to be designated as liquor enforcement
28 officers. Such liquor enforcement officers (~~shall~~) have the power,
29 under the supervision of the board, to enforce the penal provisions
30 of this title and the penal laws of this state relating to the
31 manufacture, importation, transportation, possession, distribution
32 and sale of liquor. They (~~shall~~) have the power and authority to
33 serve and execute all warrants and process of law issued by the
34 courts in enforcing the penal provisions of this title or of any
35 penal law of this state relating to the manufacture, importation,
36 transportation, possession, distribution and sale of liquor, and the
37 provisions of chapters 82.24 (~~and~~), 82.26 ((RCW)) , and 82.--- RCW
38 (the new chapter created in section 403 of this act). They (~~shall~~)
39 have the power to arrest without a warrant any person or persons
40 found in the act of violating any of the penal provisions of this

1 title or of any penal law of this state relating to the manufacture,
2 importation, transportation, possession, distribution and sale of
3 liquor, and the provisions of chapters 82.24 (~~and~~), 82.26 (~~RCW~~),
4 and 82.--- RCW (the new chapter created in section 403 of this act).

5 **Sec. 203.** RCW 82.24.510 and 2013 c 144 s 50 are each amended to
6 read as follows:

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

8 (a) A wholesaler's license.

9 (b) A retailer's license.

10 (2) Application for the licenses must be made through the
11 business licensing system under chapter 19.02 RCW. The board must
12 adopt rules regarding the regulation of the licenses. The board may
13 refrain from the issuance of any license under this chapter if the
14 board has reasonable cause to believe that the applicant has
15 willfully withheld information requested for the purpose of
16 determining the eligibility of the applicant to receive a license, or
17 if the board has reasonable cause to believe that information
18 submitted in the application is false or misleading or is not made in
19 good faith. In addition, for the purpose of reviewing an application
20 for a wholesaler's license or retailer's license and for considering
21 the denial, suspension, or revocation of any such license, the board
22 may consider any prior criminal conduct of the applicant, including
23 an administrative violation history record with the board and a
24 criminal history record information check within the previous five
25 years, in any state, tribal, or federal jurisdiction in the United
26 States, its territories, or possessions, and the provisions of RCW
27 9.95.240 and chapter 9.96A RCW do not apply to such cases. The board
28 may, in its discretion, grant or refuse the wholesaler's license or
29 retailer's license, subject to the provisions of RCW 82.24.550.

30 (3) No person may qualify for a wholesaler's license or a
31 retailer's license under this section without first undergoing a
32 criminal background check. The background check must be performed by
33 the board and must disclose any criminal conduct within the previous
34 five years in any state, tribal, or federal jurisdiction in the
35 United States, its territories, or possessions. A person who
36 possesses a valid license on July 22, 2001, is subject to this
37 subsection and subsection (2) of this section beginning on the date
38 of the person's business license expiration under chapter 19.02 RCW,
39 and thereafter. If the applicant or licensee also has a license

1 issued under chapter 66.24 (~~(66.24)~~), 82.26, or 70.345 RCW, the
2 background check done under the authority of chapter 66.24 (~~(66.24)~~),
3 82.26, or 70.345 RCW satisfies the requirements of this section.

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

9 (5) Each license and any other evidence of the license that the
10 board requires must be exhibited in each place of business for which
11 it is issued and in the manner required for the display of a business
12 license.

13 **Sec. 204.** RCW 82.24.550 and 2015 c 86 s 307 are each amended to
14 read as follows:

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

18 (2) The department may adopt, amend, and repeal rules necessary
19 to administer the provisions of this chapter. The board may revoke or
20 suspend the license or permit of any wholesale or retail cigarette
21 dealer in the state upon sufficient cause appearing of the violation
22 of this chapter or upon the failure of such licensee to comply with
23 any of the provisions of this chapter.

24 (3) A license may not be suspended or revoked except upon notice
25 to the licensee and after a hearing as prescribed by the board. The
26 board, upon finding that the licensee has failed to comply with any
27 provision of this chapter or any rule adopted under this chapter,
28 must, in the case of the first offense, suspend the license or
29 licenses of the licensee for a period of not less than thirty
30 consecutive business days, and, in the case of a second or further
31 offense, must suspend the license or licenses for a period of not
32 less than ninety consecutive business days nor more than twelve
33 months, and, in the event the board finds the licensee has been
34 guilty of willful and persistent violations, it may revoke the
35 license or licenses.

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

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

7 (6) A person whose license has been suspended or revoked may not
8 sell cigarettes, vapor products, or tobacco products or permit
9 cigarettes, vapor products, or tobacco products to be sold during the
10 period of such suspension or revocation on the premises occupied by
11 the person or upon other premises controlled by the person or others
12 or in any other manner or form whatever.

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

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

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

25 (a) "Tobacco products" has the same meaning as provided in RCW
26 82.26.010; and

27 (b) "Vapor products" has the same meaning as provided in section
28 101 of this act.

29 **Sec. 205.** RCW 82.26.060 and 2009 c 154 s 3 are each amended to
30 read as follows:

31 (1) Every distributor ((shall)) must keep at each place of
32 business complete and accurate records for that place of business,
33 including itemized invoices, of tobacco products held, purchased,
34 manufactured, brought in or caused to be brought in from without the
35 state, or shipped or transported to retailers in this state, and of
36 all sales of tobacco products made.

37 (2) These records ((shall)) must show the names and addresses of
38 purchasers, the inventory of all tobacco products, and other
39 pertinent papers and documents relating to the purchase, sale, or

1 disposition of tobacco products. All invoices and other records
2 required by this section to be kept (~~shall~~) must be preserved for a
3 period of five years from the date of the invoices or other documents
4 or the date of the entries appearing in the records.

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

18 **Sec. 206.** RCW 82.26.080 and 2005 c 180 s 5 are each amended to
19 read as follows:

20 (1) Every retailer (~~shall~~) must procure itemized invoices of
21 all tobacco products purchased. The invoices (~~shall~~) must show the
22 seller's name and address, the date of purchase, and all prices and
23 discounts.

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

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

1 licenses issued under this chapter or chapter 82.24 or 70.345 RCW are
2 subject to suspension or revocation by the department.

3 **Sec. 207.** RCW 82.26.150 and 2013 c 144 s 52 are each amended to
4 read as follows:

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

7 (a) A distributor's license; and

8 (b) A retailer's license.

9 (2) Application for the licenses must be made through the
10 business licensing system under chapter 19.02 RCW. The board may
11 adopt rules regarding the regulation of the licenses. The board may
12 refuse to issue any license under this chapter if the board has
13 reasonable cause to believe that the applicant has willfully withheld
14 information requested for the purpose of determining the eligibility
15 of the applicant to receive a license, or if the board has reasonable
16 cause to believe that information submitted in the application is
17 false or misleading or is not made in good faith. In addition, for
18 the purpose of reviewing an application for a distributor's license
19 or retailer's license and for considering the denial, suspension, or
20 revocation of any such license, the board may consider criminal
21 conduct of the applicant, including an administrative violation
22 history record with the board and a criminal history record
23 information check within the previous five years, in any state,
24 tribal, or federal jurisdiction in the United States, its
25 territories, or possessions, and the provisions of RCW 9.95.240 and
26 chapter 9.96A RCW do not apply to such cases. The board may, in its
27 discretion, issue or refuse to issue the distributor's license or
28 retailer's license, subject to the provisions of RCW 82.26.220.

29 (3) No person may qualify for a distributor's license or a
30 retailer's license under this section without first undergoing a
31 criminal background check. The background check must be performed by
32 the board and must disclose any criminal conduct within the previous
33 five years in any state, tribal, or federal jurisdiction in the
34 United States, its territories, or possessions. If the applicant or
35 licensee also has a license issued under chapter 66.24 (~~(e)~~) 82.24
36 or 70.345 RCW, the background check done under the authority of
37 chapter 66.24, 70.345, or 82.24 RCW satisfies the requirements of
38 this section.

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

6 (5) Each license and any other evidence of the license required
7 under this chapter must be exhibited in each place of business for
8 which it is issued and in the manner required for the display of a
9 business license.

10 **Sec. 208.** RCW 82.26.220 and 2015 c 86 s 308 are each amended to
11 read as follows:

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

14 (2) The department may adopt, amend, and repeal rules necessary
15 to administer this chapter. The board may revoke or suspend the
16 distributor's or retailer's license of any distributor or retailer of
17 tobacco products in the state upon sufficient cause showing a
18 violation of this chapter or upon the failure of the licensee to
19 comply with any of the rules adopted under it.

20 (3) A license may not be suspended or revoked except upon notice
21 to the licensee and after a hearing as prescribed by the board. The
22 board, upon finding that the licensee has failed to comply with any
23 provision of this chapter or of any rule adopted under it, must, in
24 the case of the first offense, suspend the license or licenses of the
25 licensee for a period of not less than thirty consecutive business
26 days, and in the case of a second or further offense, suspend the
27 license or licenses for a period of not less than ninety consecutive
28 business days but not more than twelve months, and in the event the
29 board finds the licensee has been guilty of willful and persistent
30 violations, it may revoke the license or licenses.

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

35 (5) Any person whose license or licenses have been revoked under
36 this section may reapply to the board at the expiration of one year
37 of the license or licenses. The license or licenses may be approved
38 by the board if it appears to the satisfaction of the board that the

1 licensee will comply with the provisions of this chapter and the
2 rules adopted under it.

3 (6) A person whose license has been suspended or revoked may not
4 sell tobacco products, vapor products, or cigarettes or permit
5 tobacco products, vapor products, or cigarettes to be sold during the
6 period of suspension or revocation on the premises occupied by the
7 person or upon other premises controlled by the person or others or
8 in any other manner or form.

9 (7) Any determination and order by the board, and any order of
10 suspension or revocation by the board of the license or licenses
11 issued under this chapter, or refusal to reinstate a license or
12 licenses after revocation is reviewable by an appeal to the superior
13 court of Thurston county. The superior court must review the order or
14 ruling of the board and may hear the matter de novo, having due
15 regard to the provisions of this chapter and the duties imposed upon
16 the board.

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

20 **Sec. 209.** RCW 82.32.300 and 1997 c 420 s 9 are each amended to
21 read as follows:

22 (1) The administration of this and chapters 82.04 through 82.27
23 RCW of this title is vested in the department (~~(of revenue which~~
24 ~~shall))~~, which must prescribe forms and rules of procedure for the
25 determination of the taxable status of any person, for the making of
26 returns and for the ascertainment, assessment and collection of taxes
27 and penalties imposed thereunder.

28 (2) The department (~~(of revenue shall)~~) must make and publish
29 rules and regulations, not inconsistent therewith, necessary to
30 enforce provisions of this chapter and chapters 82.02 through 82.23B
31 and 82.27 RCW, and the liquor (~~(control)~~) and cannabis board
32 (~~(shall)~~) must make and publish rules necessary to enforce chapters
33 82.24 (~~(and)~~), 82.26 (RCW), and 82.--- RCW (the new chapter created
34 in section 403 of this act), which (~~(shall have)~~) has the same force
35 and effect as if specifically included therein, unless declared
36 invalid by the judgment of a court of record not appealed from.

37 (3) The department may employ such clerks, specialists, and other
38 assistants as are necessary. Salaries and compensation of such

1 employees (~~shall~~) must be fixed by the department and (~~shall be~~)
2 charged to the proper appropriation for the department.

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

7 **Sec. 210.** RCW 70.345.010 and 2016 sp.s. c 38 s 4 are each
8 amended to read as follows:

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

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

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

15 (3) "Child care facility" has the same meaning as provided in RCW
16 70.140.020.

17 (4) "Closed system nicotine container" means a sealed, prefilled,
18 and disposable container of nicotine in a solution or other form in
19 which such container is inserted directly into an electronic
20 cigarette, electronic nicotine delivery system, or other similar
21 product, if the nicotine in the container is inaccessible through
22 customary or reasonably foreseeable handling or use, including
23 reasonably foreseeable ingestion or other contact by children.

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

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

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

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

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

36 ~~(a) Sells vapor products to persons other than ultimate~~
37 ~~consumers; or~~

38 ~~(b) Is engaged in the business of selling vapor products in this~~
39 ~~state and who brings, or causes to be brought, into this state from~~

1 ~~outside of the state any vapor products for sale))~~ has the same
2 meaning as in section 101 of this act.

3 (8) "Liquid nicotine container" means a package from which
4 nicotine in a solution or other form is accessible through normal and
5 foreseeable use by a consumer and that is used to hold soluble
6 nicotine in any concentration. "Liquid nicotine container" does not
7 include closed system nicotine containers.

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

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

12 (11) "Person" means any individual, receiver, administrator,
13 executor, assignee, trustee in bankruptcy, trust, estate, firm,
14 copartnership, joint venture, club, company, joint stock company,
15 business trust, municipal corporation, the state and its departments
16 and institutions, political subdivision of the state of Washington,
17 corporation, limited liability company, association, society, any
18 group of individuals acting as a unit, whether mutual, cooperative,
19 fraternal, nonprofit, or otherwise.

20 (12) "Place of business" means any place where vapor products are
21 sold or where vapor products are manufactured, stored, or kept for
22 the purpose of sale.

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

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

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

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

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

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

1 (18) "Self-service display" means a display that contains vapor
2 products and is located in an area that is openly accessible to
3 customers and from which customers can readily access such products
4 without the assistance of a salesperson. A display case that holds
5 vapor products behind locked doors does not constitute a self-service
6 display.

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

12 (a) "Vapor product" includes any electronic cigarette, electronic
13 cigar, electronic cigarillo, electronic pipe, or similar product or
14 device and any vapor cartridge or other container that may contain
15 nicotine in a solution or other form that is intended to be used with
16 or in an electronic cigarette, electronic cigar, electronic
17 cigarillo, electronic pipe, or similar product or device.

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

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

24 **Sec. 211.** RCW 70.345.030 and 2016 sp.s. c 38 s 6 are each
25 amended to read as follows:

26 (1)(a) No person may engage in or conduct business as a retailer,
27 distributor, or delivery seller in this state without a valid license
28 issued under this chapter, except as otherwise provided by law. Any
29 person who sells vapor products to ultimate consumers by a means
30 other than delivery sales must obtain a retailer's license under this
31 chapter. Any person who (~~sells vapor products to persons other than~~
32 ~~ultimate consumers or who~~) meets the definition of distributor under
33 this chapter must obtain a distributor's license under this chapter.
34 Any person who conducts delivery sales of vapor products must obtain
35 a delivery sale license.

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

38 (2) No person engaged in or conducting business as a retailer,
39 distributor, or delivery seller in this state may refuse to allow the

1 enforcement officers of the board, on demand, to make full inspection
2 of any place of business or vehicle where any of the vapor products
3 regulated under this chapter are sold, stored, transported, or
4 handled, or otherwise hinder or prevent such inspection. A person who
5 violates this subsection is guilty of a gross misdemeanor.

6 (3) Any person licensed under this chapter as a distributor, any
7 person licensed under this chapter as a retailer, and any person
8 licensed under this chapter as a delivery seller may not operate in
9 any other capacity unless the additional appropriate license is first
10 secured, except as otherwise provided by law. A violation of this
11 subsection is a misdemeanor.

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

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

21 **Sec. 212.** RCW 70.345.090 and 2016 sp.s. c 38 s 17 are each
22 amended to read as follows:

23 (1) No person may conduct a delivery sale or otherwise ship or
24 transport, or cause to be shipped or transported, any vapor product
25 ordered or purchased by mail or through the internet to any person
26 unless such seller has a valid delivery sale license as required
27 under this chapter.

28 (2) No person may conduct a delivery sale or otherwise ship or
29 transport, or cause to be shipped or transported, any vapor product
30 ordered or purchased by mail or through the internet to any person
31 under the minimum age required for the legal sale of vapor products
32 as provided under RCW 70.345.140.

33 (3) A delivery sale licensee must provide notice on its mail
34 order or internet sales forms of the minimum age required for the
35 legal sale of vapor products in Washington state as provided by RCW
36 70.345.140.

37 (4) A delivery sale licensee must not accept a purchase or order
38 from any person without first obtaining the full name, birth date,
39 and residential address of that person and verifying this information

1 through an independently operated third-party database or aggregate
2 of databases, which includes data from government sources, that are
3 regularly used by government and businesses for the purpose of age
4 and identity verification and authentication.

5 (5) A delivery sale licensee must accept payment only through a
6 credit or debit card issued in the purchaser's own name. The licensee
7 must verify that the card is issued to the same person identified
8 through identity and age verification procedures in subsection (4) of
9 this section.

10 (6) Before a delivery sale licensee delivers an initial purchase
11 to any person, the licensee must verify the identity and delivery
12 address of the purchaser by mailing or shipping to the purchaser a
13 notice of sale and certification form confirming that the addressee
14 is in fact the person placing the order. The purchaser must return
15 the signed certification form to the licensee before the initial
16 shipment of product. Certification forms are not required for repeat
17 customers. In the alternative, before a seller delivers an initial
18 purchase to any person, the seller must first obtain from the
19 prospective customer an electronic certification, such as by email,
20 that includes a declaration that, at a minimum, the prospective
21 customer is over the minimum age required for the legal sale of a
22 vapor product, and the credit or debit card used for payment has been
23 issued in the purchaser's name.

24 (7) A delivery sale licensee must include on shipping documents a
25 clear and conspicuous statement which includes, at a minimum, that
26 the package contains vapor products, Washington law prohibits sales
27 to those under the minimum age established by this chapter, and
28 violations may result in sanctions to both the licensee and the
29 purchaser.

30 (8)(a) A delivery sale licensee must collect the tax imposed
31 under RCW 82.08.020 and chapter 82.--- RCW (the new chapter created
32 in section 403 of this act) on sales of vapor products to consumers
33 in Washington.

34 (b) For purposes of this subsection (8), "vapor products" has the
35 same meaning as provided in section 101 of this act.

36 (9) A person who knowingly violates this section is guilty of a
37 class C felony, except that the maximum fine that may be imposed is
38 five thousand dollars.

39 ~~((9))~~ (10) In addition to or in lieu of any other civil or
40 criminal remedy provided by law, a person who has violated this

1 section is subject to a civil penalty of up to five thousand dollars
2 for each violation. The attorney general, acting in the name of the
3 state, may seek recovery of the penalty in a civil action in superior
4 court.

5 ~~((10))~~ (11) The attorney general may seek an injunction in
6 superior court to restrain a threatened or actual violation of this
7 section and to compel compliance with this section.

8 ~~((11))~~ (12) Any violation of this section is not reasonable in
9 relation to the development and preservation of business and is an
10 unfair and deceptive act or practice and an unfair method of
11 competition in the conduct of trade or commerce in violation of RCW
12 19.86.020. Standing to bring an action to enforce RCW 19.86.020 for
13 violation of this section lies solely with the attorney general.
14 Remedies provided by chapter 19.86 RCW are cumulative and not
15 exclusive.

16 ~~((12))~~ (13) (a) In any action brought under this section, the
17 state is entitled to recover, in addition to other relief, the costs
18 of investigation, expert witness fees, costs of the action, and
19 reasonable attorneys' fees.

20 (b) If a court determines that a person has violated this
21 section, the court shall order any profits, gain, gross receipts, or
22 other benefit from the violation to be disgorged and paid to the
23 state treasurer for deposit in the general fund.

24 ~~((13))~~ (14) Unless otherwise expressly provided, the penalties
25 or remedies, or both, under this section are in addition to any other
26 penalties and remedies available under any other law of this state.

27 ~~((14))~~ (15) A licensee who violates this section is subject to
28 license suspension or revocation by the board.

29 ~~((15))~~ (16) The board may adopt by rule additional requirements
30 for mail or internet sales.

31 ~~((16))~~ (17) The board must not adopt rules prohibiting internet
32 sales.

33 Part III

34 Heated Tobacco Products

35 **Sec. 301.** RCW 82.24.010 and 2012 2nd sp.s. c 4 s 1 are each
36 amended to read as follows:

37 Unless the context clearly requires otherwise, the definitions in
38 this section apply throughout this chapter:

- 1 (1) "Board" means the state liquor ((~~control~~)) and cannabis
2 board.
- 3 (2) "Cigarette" means any roll for smoking made wholly or in part
4 of tobacco, irrespective of size or shape and irrespective of the
5 tobacco being flavored, adulterated, or mixed with any other
6 ingredient, where such roll has a wrapper or cover made of paper or
7 any material, except where such wrapper is wholly or in the greater
8 part made of natural leaf tobacco in its natural state. "Cigarette"
9 includes a roll-your-own cigarette, but does not include a heated
10 tobacco product as defined in RCW 82.26.010.
- 11 (3) "Cigarette paper" means any paper or any other material
12 except tobacco, prepared for use as a cigarette wrapper.
- 13 (4) "Cigarette tube" means cigarette paper made into a hollow
14 cylinder for use in making cigarettes.
- 15 (5) "Commercial cigarette-making machine" means a machine that is
16 operated in a retail establishment and that is capable of being
17 loaded with loose tobacco, cigarette paper or tubes, and any other
18 components related to the production of roll-your-own cigarettes,
19 including filters.
- 20 (6) "Indian tribal organization" means a federally recognized
21 Indian tribe, or tribal entity, and includes an Indian wholesaler or
22 retailer that is owned by an Indian who is an enrolled tribal member
23 conducting business under tribal license or similar tribal approval
24 within Indian country. For purposes of this chapter "Indian country"
25 is defined in the manner set forth in 18 U.S.C. Sec. 1151.
- 26 (7) "Precollection obligation" means the obligation of a seller
27 otherwise exempt from the tax imposed by this chapter to collect the
28 tax from that seller's buyer.
- 29 (8) "Retailer" means every person, other than a wholesaler, who
30 purchases, sells, offers for sale or distributes any one or more of
31 the articles taxed herein, irrespective of quantity or amount, or the
32 number of sales, and all persons operating under a retailer's
33 registration certificate.
- 34 (9) "Retail selling price" means the ordinary, customary or usual
35 price paid by the consumer for each package of cigarettes, less the
36 tax levied by this chapter and less any similar tax levied by this
37 state.
- 38 (10) "Roll-your-own cigarettes" means cigarettes produced by a
39 commercial cigarette-making machine.

1 (11) "Stamp" means the stamp or stamps by use of which the tax
2 levy under this chapter is paid or identification is made of those
3 cigarettes with respect to which no tax is imposed.

4 (12) "Wholesaler" means every person who purchases, sells, or
5 distributes any one or more of the articles taxed herein to retailers
6 for the purpose of resale only.

7 (13) The meaning attributed, in chapter 82.04 RCW, to the words
8 "person," "sale," "business" and "successor" applies equally in this
9 chapter.

10 **Sec. 302.** RCW 82.26.010 and 2010 1st sp.s. c 22 s 4 are each
11 reenacted and amended to read as follows:

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

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

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

21 (3) "Board" means the state liquor ((~~control~~)) and cannabis
22 board.

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

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

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

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

33 (8) "Distributor" means (a) any person engaged in the business of
34 selling tobacco products in this state who brings, or causes to be
35 brought, into this state from without the state any tobacco products
36 for sale, (b) any person who makes, manufactures, fabricates, or
37 stores tobacco products in this state for sale in this state, (c) any
38 person engaged in the business of selling tobacco products without
39 this state who ships or transports tobacco products to retailers in

1 this state, to be sold by those retailers, (d) any person engaged in
2 the business of selling tobacco products in this state who handles
3 for sale any tobacco products that are within this state but upon
4 which tax has not been imposed.

5 (9) "Heated tobacco product" means a product containing tobacco
6 that produces an inhalable aerosol by:

7 (a) Heating the tobacco by means of an electronic device without
8 combustion of the tobacco; or

9 (b) Heat generated from a combustion source that only or
10 primarily heats rather than burns the tobacco.

11 (10) "Indian country" means the same as defined in chapter 82.24
12 RCW.

13 ~~((10))~~ (11) "Little cigar" means a cigar that has a cellulose
14 acetate integrated filter.

15 ~~((11))~~ (12) "Manufacturer" means a person who manufactures and
16 sells tobacco products.

17 ~~((12))~~ (13) "Manufacturer's representative" means a person
18 hired by a manufacturer to sell or distribute the manufacturer's
19 tobacco products, and includes employees and independent contractors.

20 ~~((13))~~ (14) "Moist snuff" means tobacco that is finely cut,
21 ground, or powdered; is not for smoking; and is intended to be placed
22 in the oral, but not the nasal, cavity.

23 ~~((14))~~ (15) "Person" means any individual, receiver,
24 administrator, executor, assignee, trustee in bankruptcy, trust,
25 estate, firm, copartnership, joint venture, club, company, joint
26 stock company, business trust, municipal corporation, the state and
27 its departments and institutions, political subdivision of the state
28 of Washington, corporation, limited liability company, association,
29 society, any group of individuals acting as a unit, whether mutual,
30 cooperative, fraternal, nonprofit, or otherwise. The term excludes
31 any person immune from state taxation, including the United States or
32 its instrumentalities, and federally recognized Indian tribes and
33 enrolled tribal members, conducting business within Indian country.

34 ~~((15))~~ (16) "Place of business" means any place where tobacco
35 products are sold or where tobacco products are manufactured, stored,
36 or kept for the purpose of sale, including any vessel, vehicle,
37 airplane, train, or vending machine.

38 ~~((16))~~ (17) "Retail outlet" means each place of business from
39 which tobacco products are sold to consumers.

1 (~~(17)~~) (18) "Retailer" means any person engaged in the business
2 of selling tobacco products to ultimate consumers.

3 (~~(18)~~) (19)(a) "Sale" means any transfer, exchange, or barter,
4 in any manner or by any means whatsoever, for a consideration, and
5 includes and means all sales made by any person.

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

9 (~~(19)~~) (20)(a) "Taxable sales price" means:

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

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

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

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

31 (v) In the case of a taxpayer that has acquired tobacco products
32 under a sale as defined in subsection (~~(18)~~) (19)(b) of this
33 section, the price, determined as nearly as possible according to the
34 actual price, that the taxpayer or other distributors sell the same
35 tobacco products or similar tobacco products of like quality and
36 character to unaffiliated distributors, unaffiliated retailers, or
37 ultimate consumers; or

38 (vi) In any case where (a)(i) through (v) of this subsection do
39 not apply, the price, determined as nearly as possible according to
40 the actual price, that the taxpayer or other distributors sell the

1 same tobacco products or similar tobacco products of like quality and
2 character to unaffiliated distributors, unaffiliated retailers, or
3 ultimate consumers.

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

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

12 ~~((20))~~ (21) "Taxpayer" means a person liable for the tax
13 imposed by this chapter.

14 ~~((21))~~ (22) "Tobacco products" means cigars, cheroots, stogies,
15 periques, granulated, plug cut, crimp cut, ready rubbed, and other
16 smoking tobacco, snuff, snuff flour, cavendish, plug and twist
17 tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps,
18 clippings, cuttings and sweepings of tobacco, and other kinds and
19 forms of tobacco, prepared in such manner as to be suitable for
20 chewing or smoking in a pipe or otherwise, or both for chewing and
21 smoking, and any other product, regardless of form, that contains
22 tobacco and is intended for human consumption or placement in the
23 oral or nasal cavity or absorption into the human body by any other
24 means, but does not include cigarettes as defined in RCW 82.24.010.

25 ~~((22))~~ (23) "Unaffiliated distributor" means a distributor that
26 is not affiliated with the manufacturer, distributor, or other person
27 from whom the distributor has purchased tobacco products.

28 ~~((23))~~ (24) "Unaffiliated retailer" means a retailer that is
29 not affiliated with the manufacturer, distributor, or other person
30 from whom the retailer has purchased tobacco products.

31 **Sec. 303.** RCW 82.26.020 and 2010 1st sp.s. c 22 s 5 are each
32 amended to read as follows:

33 (1) There is levied and collected a tax upon the sale, handling,
34 or distribution of all tobacco products in this state at the
35 following rate:

36 (a) For cigars except little cigars, ninety-five percent of the
37 taxable sales price of cigars, not to exceed sixty-five cents per
38 cigar;

1 (b) For all tobacco products except those covered under separate
2 provisions of this subsection, ninety-five percent of the taxable
3 sales price;

4 (c) For moist snuff, as established in this subsection (1)(c) and
5 computed on the net weight listed by the manufacturer:

6 (i) On each single unit consumer-sized can or package whose net
7 weight is one and two-tenths ounces or less, a rate per single unit
8 that is equal to the greater of 2.526 dollars or eighty-three and
9 one-half percent of the cigarette tax under chapter 82.24 RCW
10 multiplied by twenty; or

11 (ii) On each single unit consumer-sized can or package whose net
12 weight is more than one and two-tenths ounces, a proportionate tax at
13 the rate established in (c)(i) of this subsection (1) on each ounce
14 or fractional part of an ounce; (~~and~~)

15 (d) For little cigars, an amount per cigar equal to the cigarette
16 tax under chapter 82.24 RCW (~~(-~~
17 ~~2-))~~); and

18 (e) For heated tobacco products, forty cents per ounce of
19 tobacco, plus a proportionate tax at the like rate on any fractional
20 parts of a gram. The tax on heated tobacco products is imposed based
21 on the net weight of tobacco as listed by the manufacturer.

22 (2) Any tax imposed under this chapter must be reduced by fifty
23 percent for any product as to which a modified risk tobacco product
24 order has been issued by the secretary of the United States
25 department of health and human services pursuant to Title 21 U.S.C.
26 Sec. 387k(g)(1).

27 (3) Taxes under this section must be imposed at the time the
28 distributor (a) brings, or causes to be brought, into this state from
29 without the state tobacco products for sale, (b) makes, manufactures,
30 fabricates, or stores tobacco products in this state for sale in this
31 state, (c) ships or transports tobacco products to retailers in this
32 state, to be sold by those retailers, or (d) handles for sale any
33 tobacco products that are within this state but upon which tax has
34 not been imposed.

35 ~~((3) The moneys collected under this section must be deposited~~
36 ~~into the state general fund.))~~ (4)(a) Except as provided in (b) of
37 this subsection, the moneys collected under this section must be
38 deposited into the state general fund.

1 (b) The moneys collected on heated tobacco products under
2 subsections (1)(e) and (2) of this section must be deposited as
3 follows:

4 (i) Fifty percent into the Andy Hill cancer research fund created
5 in RCW 43.348.060; and

6 (ii) Fifty percent into the foundational public health services
7 account created in section 104 of this act.

8 **Part IV**

9 **Miscellaneous Provisions**

10 NEW SECTION. Sec. 401. If any provision of this act or its
11 application to any person or circumstance is held invalid, the
12 remainder of the act or the application of the provision to other
13 persons or circumstances is not affected.

14 NEW SECTION. Sec. 402. If any part of this act is found to be
15 in conflict with federal requirements that are a prescribed condition
16 to the allocation of federal funds to the state, the conflicting part
17 of this act is inoperative solely to the extent of the conflict and
18 with respect to the agencies directly affected, and this finding does
19 not affect the operation of the remainder of this act in its
20 application to the agencies concerned. Rules adopted under this act
21 must meet federal requirements that are a necessary condition to the
22 receipt of federal funds by the state.

23 NEW SECTION. Sec. 403. Part I of this act constitutes a new
24 chapter in Title 82 RCW.

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