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SECOND SUBSTITUTE HOUSE BILL 2165

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State of Washington

65th Legislature

2018 Regular Session

By House Finance (originally sponsored by Representatives Harris, Cody, Pollet, Doglio, Kagi, Ryu, and Slatter)

1 AN ACT Relating to vapor products, e-cigarettes, and nicotine  
2 products taxation; amending RCW 66.08.145, 66.44.010, 82.24.510,  
3 82.24.550, 82.26.060, 82.26.080, 82.26.150, 82.26.220, 82.32.300,  
4 70.345.010, 70.345.030, 70.345.090, and 43.06.450; adding new  
5 sections to chapter 43.06 RCW; adding a new section to chapter 82.08  
6 RCW; adding a new section to chapter 82.12 RCW; adding a new chapter  
7 to Title 82 RCW; creating new sections; prescribing penalties; and  
8 providing an effective date.

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

10 **Part I**  
11 **Findings**

12 NEW SECTION. **Sec. 101.** (1) The legislature finds that the use  
13 of vapor inhalation products, such as e-cigarettes, e-devices, and  
14 vape pens, has risen at an alarming rate both among adults and youth.  
15 Vapor products pose a serious public health risk because of the  
16 addictiveness of nicotine, the impact of nicotine on fetal  
17 development and adolescent brain development, the risk of liquid  
18 nicotine poisoning, and exposure to carcinogens and other toxic  
19 chemicals. Although these products have been documented as being  
20 interchangeably used by consumers with cigarettes or other tobacco

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

13 (2) Specifically, the legislature finds that:

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

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

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

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

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

## 32 Part II

### 33 Tax on Vapor Products

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

37 (1) "Actual price" means the total amount of consideration for  
38 which vapor products are sold, valued in money, whether received in

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

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

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

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

14 (5) "Distributor" mean any person:

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

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

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

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

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

28 (7) "Manufacturer" has the same meaning as provided in RCW  
29 70.345.010.

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

33 (9) "Person" means: Any individual, receiver, administrator,  
34 executor, assignee, trustee in bankruptcy, trust, estate, firm,  
35 copartnership, joint venture, club, company, joint stock company,  
36 business trust, municipal corporation, corporation, limited liability  
37 company, association, or society; the state and its departments and  
38 institutions; any political subdivision of the state of Washington;  
39 and any group of individuals acting as a unit, whether mutual,  
40 cooperative, fraternal, nonprofit, or otherwise. Except as provided

1 otherwise in this chapter, "person" does not include any person  
2 immune from state taxation, including the United States or its  
3 instrumentalities, and federally recognized Indian tribes and  
4 enrolled tribal members, conducting business within Indian country.

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

9 (11) "Retail outlet" has the same meaning as provided in RCW  
10 70.345.010.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 that is intended to be used with or in a vapor product to produce  
2 vapor and is sold for such purpose.

3 (a) The term does not include:

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

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

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

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

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

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

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

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

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

35 (3)(a) The legislature intends for the revenues generated by the  
36 tax imposed under this section to help offset lost revenue from any  
37 legislation that raises the legal smoking age. Therefore, until the  
38 end of fiscal year 2021, one hundred percent of the moneys collected  
39 under this section must be deposited into the state general fund.

1 (b) Beginning in fiscal year 2022, the moneys collected under  
2 this section must be deposited as follows:

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

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

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

10 (b) If the selling price is attributable to products that are  
11 taxable and products that are not taxable under this chapter, the  
12 portion of the price attributable to the nontaxable products are  
13 subject to the tax imposed by this chapter unless the seller can  
14 identify by reasonable and verifiable standards the portion that is  
15 not subject to tax from its books and records that are kept in the  
16 regular course of business for other purposes including, but not  
17 limited to, nontax purposes.

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

20 (a) "Bundled transaction" means:

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

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

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

35 NEW SECTION. Sec. 204. (1) The essential public health services  
36 account is created in the state treasury. As specified in section 202  
37 of this act, forty percent of revenues from the tax collected under  
38 section 202 of this act must be deposited into the account beginning



1 in fiscal year 2022. Moneys in the account may be spent only after  
2 appropriation to the department of health. The department of health  
3 must use the moneys in the account for each of the four following  
4 purposes: (a) To fund foundational health services; (b) to fund  
5 tobacco, vapor product, and nicotine control and prevention, and  
6 other substance use prevention and education; (c) at least ten  
7 percent of funds deposited must be used to support increased access  
8 and training of public health professionals at public health programs  
9 at accredited public institutions of higher education in Washington;  
10 and (d) enforcement by the board of the provisions of chapter 70.345  
11 RCW, provided that no more than 12.5 percent of the funds deposited  
12 into the account created in this section may be utilized and  
13 distributed by the department to the board for these enforcement  
14 purposes.

15 (2) To determine the funding for foundational health services  
16 pursuant to subsection (1)(a) of this section, the department of  
17 health and representatives of local health jurisdictions must work  
18 together to: (a) Arrive at a mutually acceptable allocation and  
19 distribution of funds from the account; and (b) determine the best  
20 accountability measures to ensure efficient and effective use of  
21 funds, emphasizing use of shared services where appropriate.

22 NEW SECTION. **Sec. 205.** It is the intent and purpose of this  
23 chapter to levy a tax on all vapor products sold, used, consumed,  
24 handled, possessed, or distributed within this state. It is the  
25 further intent and purpose of this chapter to impose the tax only  
26 once on all vapor products in this state. Nothing in this chapter may  
27 be construed to exempt any person taxable under any other law or  
28 under any other tax imposed under this title.

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

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

35 NEW SECTION. **Sec. 207.** (1) Every distributor must keep at each  
36 place of business complete and accurate records for that place of  
37 business, including itemized invoices, of vapor products held,

1 purchased, manufactured, brought in or caused to be brought in from  
2 without the state, or shipped or transported to retailers in this  
3 state, and of all sales of vapor products made.

4 (2) These records must show the names and addresses of  
5 purchasers, the inventory of all vapor products, and other pertinent  
6 papers and documents relating to the purchase, sale, or disposition  
7 of vapor products. All invoices and other records required by this  
8 section to be kept must be preserved for a period of five years from  
9 the date of the invoices or other documents or the date of the  
10 entries appearing in the records.

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

23 NEW SECTION. **Sec. 208.** Every person required to be licensed  
24 under chapter 70.345 RCW who sells vapor products to persons other  
25 than the ultimate consumer must render with each sale itemized  
26 invoices showing the seller's name and address, the purchaser's name  
27 and address, the date of sale, and all prices. The person must  
28 preserve legible copies of all such invoices for five years from the  
29 date of sale.

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

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

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

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

23 (b) For purposes of this subsection (1), the following  
24 definitions apply:

25 (i) "Indian distributor" means a federally recognized Indian  
26 tribe or tribal entity that would otherwise meet the definition of  
27 "distributor" under section 201 of this act, if federally recognized  
28 Indian tribes and tribal entities were not excluded from the  
29 definition of "person" in section 201 of this act.

30 (ii) "Indian retailer" means a federally recognized Indian tribe  
31 or tribal entity that would otherwise meet the definition of  
32 "retailer" under section 201 of this act, if federally recognized  
33 Indian tribes and tribal entities were not excluded from the  
34 definition of "person" in section 201 of this act.

35 (iii) "Indian tribal organization" means a federally recognized  
36 Indian tribe, or tribal entity, and includes an Indian distributor or  
37 retailer that is owned by an Indian who is an enrolled tribal member  
38 conducting business under tribal license or similar tribal approval  
39 within Indian country.

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

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

6 NEW SECTION. **Sec. 211.** All of the provisions contained in  
7 chapter 82.32 RCW not inconsistent with the provisions of this  
8 chapter have full force and application with respect to taxes imposed  
9 under the provisions of this chapter.

10 NEW SECTION. **Sec. 212.** The department must authorize, as duly  
11 authorized agents, enforcement officers of the board to enforce  
12 provisions of this chapter. These officers are not employees of the  
13 department.

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

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

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

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

34 (2) When transporting vapor products for sale, the person must  
35 have in his or her actual possession, or cause to have in the actual  
36 possession of those persons transporting such vapor products on his

1 or her behalf, invoices or delivery tickets for the vapor products,  
2 which must show the true name and address of the consignor or seller,  
3 the true name and address of the consignee or purchaser, and the  
4 quantity and brands of the vapor products being transported.

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

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

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

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

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

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

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

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

1 (ii) The person transporting the vapor products actually  
2 possesses invoices or delivery tickets showing the true name and  
3 address of the consignor or seller, the true name and address of the  
4 consignee or purchaser, and the quantity and brands of vapor products  
5 being transported; and

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

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

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

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

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

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

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

34 NEW SECTION. **Sec. 218.** A manufacturer that has manufacturer's  
35 representatives who sell or distribute the manufacturer's vapor  
36 products in this state must provide the board a list of the names and  
37 addresses of all such representatives and must ensure that the list  
38 provided to the board is kept current. A manufacturer's

1 representative is not authorized to distribute or sell vapor products  
2 in this state unless the manufacturer that hired the representative  
3 has a valid distributor's license under chapter 70.345 RCW and that  
4 manufacturer provides the board a current list of all of its  
5 manufacturer's representatives as required by this section. A  
6 manufacturer's representative must carry a copy of the distributor's  
7 license of the manufacturer that hired the representative at all  
8 times when selling or distributing the manufacturer's vapor products.

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

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

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

30 (a) A conveyance used by any person as a common or contract  
31 carrier having in actual possession invoices or delivery tickets  
32 showing the true name and address of the consignor or seller, the  
33 true name of the consignee or purchaser, and the quantity and brands  
34 of the vapor products transported, unless it appears that the owner  
35 or other person in charge of the conveyance is a consenting party or  
36 privy to a violation of this chapter;

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

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

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

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

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

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

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

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

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

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

30 (a) Retain the property for official use or upon application by  
31 any law enforcement agency of this state, another state, or the  
32 District of Columbia, or of the United States for the exclusive use  
33 of enforcing this chapter or the laws of any other state or the  
34 District of Columbia or of the United States; or

35 (b) Sell the vapor products at public auction to the highest  
36 bidder after due advertisement. Before delivering any of the goods to  
37 the successful bidder, the department or board must require the  
38 purchaser to pay the proper amount of any tax due. The proceeds of  
39 the sale must be first applied to the payment of all proper expenses



1 of any investigation leading to the seizure and of the proceedings  
2 for forfeiture and sale, including expenses of seizure, maintenance  
3 of custody, advertising, and court costs. The balance of the proceeds  
4 and all money must be deposited in the general fund of the state.  
5 Proper expenses of investigation include costs incurred by any law  
6 enforcement agency or any federal, state, or local agency.

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

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

25 NEW SECTION. **Sec. 222.** (1) Preexisting inventories of vapor  
26 products are subject to the tax imposed in section 202 of this act.  
27 All retailers and other distributors must report the tax due under  
28 section 202 of this act on preexisting inventories of vapor products  
29 on a form, as prescribed by the department, on or before October 31,  
30 2018.

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

34 (a) Does not sell vapor products other than to ultimate  
35 consumers; and

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

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

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

8 NEW SECTION. **Sec. 223.** (1) The taxes imposed by this chapter do  
9 not apply to the sale, use, consumption, handling, possession, or  
10 distribution of vapor products by an Indian retailer during the  
11 effective period of a vapor product tax contract subject to section  
12 403 of this act or a vapor product tax agreement under section 404 of  
13 this act.

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

16 **Part III**  
17 **Conforming Amendments**

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

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

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

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

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

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

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

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

28       (4) The board may appoint and employ, assign to duty and fix the  
29 compensation of, officers to be designated as liquor enforcement  
30 officers. Such liquor enforcement officers (~~shall~~) have the power,  
31 under the supervision of the board, to enforce the penal provisions  
32 of this title and the penal laws of this state relating to the  
33 manufacture, importation, transportation, possession, distribution  
34 and sale of liquor. They (~~shall~~) have the power and authority to  
35 serve and execute all warrants and process of law issued by the  
36 courts in enforcing the penal provisions of this title or of any  
37 penal law of this state relating to the manufacture, importation,  
38 transportation, possession, distribution and sale of liquor, and the  
39 provisions of chapters 82.24 (~~and~~), 82.26 ((RCW)) , and 82.--- RCW  
40 (the new chapter created in section 503 of this act). They (~~shall~~)

1 have the power to arrest without a warrant any person or persons  
2 found in the act of violating any of the penal provisions of this  
3 title or of any penal law of this state relating to the manufacture,  
4 importation, transportation, possession, distribution and sale of  
5 liquor, and the provisions of chapters 82.24 (~~and~~), 82.26 (~~RCW~~),  
6 and 82.--- RCW (the new chapter created in section 503 of this act).

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

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

10 (a) A wholesaler's license.

11 (b) A retailer's license.

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

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

1 of the person's business license expiration under chapter 19.02 RCW,  
2 and thereafter. If the applicant or licensee also has a license  
3 issued under chapter 66.24 ((~~66~~)), 82.26, or 70.345 RCW, the  
4 background check done under the authority of chapter 66.24 ((~~66~~)),  
5 82.26, or 70.345 RCW satisfies the requirements of this section.

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

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

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

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

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

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

38 (4) Any licenses issued under chapter 82.26 or 70.345 RCW to a  
39 person whose license or licenses have been suspended or revoked under

1 this section must also be suspended or revoked during the period of  
2 suspension or revocation under this section.

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

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

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

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

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

27 (a) "Tobacco products" has the same meaning as provided in RCW  
28 82.26.010; and

29 (b) "Vapor products" has the same meaning as provided in section  
30 201 of this act.

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

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

1 (2) These records (~~shall~~) must show the names and addresses of  
2 purchasers, the inventory of all tobacco products, and other  
3 pertinent papers and documents relating to the purchase, sale, or  
4 disposition of tobacco products. All invoices and other records  
5 required by this section to be kept (~~shall~~) must be preserved for a  
6 period of five years from the date of the invoices or other documents  
7 or the date of the entries appearing in the records.

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

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

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

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

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

1 inspection, the registration certificate issued under RCW 82.32.030  
2 of the retailer at the premises is subject to revocation, and any  
3 licenses issued under this chapter or chapter 82.24 or 70.345 RCW are  
4 subject to suspension or revocation by the department.

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

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

9 (a) A distributor's license; and

10 (b) A retailer's license.

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

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



1 chapter 66.24, 70.345, or 82.24 RCW satisfies the requirements of  
2 this section.

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

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

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

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

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

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

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

37 (5) Any person whose license or licenses have been revoked under  
38 this section may reapply to the board at the expiration of one year  
39 of the license or licenses. The license or licenses may be approved

1 by the board if it appears to the satisfaction of the board that the  
2 licensee will comply with the provisions of this chapter and the  
3 rules adopted under it.

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

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

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

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

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

29 (2) The department (~~(of revenue shall))~~ must make and publish  
30 rules and regulations, not inconsistent therewith, necessary to  
31 enforce provisions of this chapter and chapters 82.02 through 82.23B  
32 and 82.27 RCW, and the liquor (~~(control))~~ and cannabis board  
33 (~~(shall))~~ must make and publish rules necessary to enforce chapters  
34 82.24 (~~(and))~~, 82.26 (~~(RCW))~~, and 82.--- RCW (the new chapter created  
35 in section 503 of this act), which (~~(shall have))~~ has the same force  
36 and effect as if specifically included therein, unless declared  
37 invalid by the judgment of a court of record not appealed from.

38 (3) The department may employ such clerks, specialists, and other  
39 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. 310.** 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 201 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. 311.** 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. 312.** 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 503 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 201 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 IV**

34 **Tribal Compacting**

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

37 The legislature intends to further the government-to-government  
38 relationship between the state of Washington and Indians in the state



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

15 NEW SECTION. Sec. 402. A new section is added to chapter 43.06  
16 RCW to read as follows:

17 (1) The governor may enter into vapor product tax contracts  
18 concerning the sale of vapor products. All vapor product tax  
19 contracts must meet the requirements for vapor product tax contracts  
20 under this section.

21 (2) Vapor product tax contracts must be in regard to retail sales  
22 in which Indian retailers make delivery and physical transfer of  
23 possession of the vapor products from the seller to the buyer within  
24 Indian country, and are not in regard to transactions by non-Indian  
25 retailers. In addition, contracts must provide that retailers may not  
26 sell or give, or permit to be sold or given, vapor products to any  
27 person who is under the state legal age for the purchase of vapor  
28 products.

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

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

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

38 (b) Out-of-state wholesalers or manufacturers who, although not  
39 licensed to do business in the state of Washington, agree to comply

1 with the terms of the vapor product tax contract, are certified to  
2 the state as having so agreed, and do in fact so comply. However, the  
3 state may in its sole discretion exercise its administrative and  
4 enforcement powers over such wholesalers or manufacturers to the  
5 extent permitted by law;

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

8 (d) A tribal manufacturer.

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

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

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

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

19 (9) The governor may delegate the power to negotiate vapor  
20 product tax contracts to the department of revenue. The department of  
21 revenue must consult with the liquor and cannabis board during the  
22 negotiations.

23 (10) Information received by the state or open to state review  
24 under the terms of a contract is subject to the provisions of RCW  
25 82.32.330.

26 (11) It is the intent of the legislature that the liquor and  
27 cannabis board and the department of revenue continue the division of  
28 duties and shared authority under chapter 82.--- RCW (the new chapter  
29 created in section 503 of this act) and therefore the liquor and  
30 cannabis board is responsible for enforcement activities that come  
31 under the terms of chapter 82.--- RCW (the new chapter created in  
32 section 503 of this act).

33 (12) Each vapor product tax contract must include a procedure for  
34 notifying the other party that a violation has occurred, a procedure  
35 for establishing whether a violation has in fact occurred, an  
36 opportunity to correct such violation, and a provision providing for  
37 termination of the contract should the violation fail to be resolved  
38 through this process, such termination subject to mediation should  
39 the terms of the contract so allow. A contract must provide for  
40 termination of the contract if resolution of a dispute does not occur

1 within twenty-four months from the time notification of a violation  
2 has occurred. Intervening violations do not extend this time period.  
3 In addition, the contract must include provisions delineating the  
4 respective roles and responsibilities of the tribe, the department of  
5 revenue, and the liquor and cannabis board.

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

8 (a) "Essential government services" means services such as tribal  
9 administration, public facilities, fire, police, public health,  
10 education, job services, sewer, water, environmental and land use,  
11 transportation, utility services, and economic development.

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

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

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

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

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

20 (d) "Indian tribe" or "tribe" means a federally recognized Indian  
21 tribe located within the geographical boundaries of the state of  
22 Washington.

23 (e) "Vapor products" has the same meaning as provided in section  
24 201 of this act.

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

27 (1) The governor is authorized to enter into vapor product tax  
28 contracts with federally recognized Indian tribes located within the  
29 geographical boundaries of the state of Washington. Each contract  
30 adopted under this section must provide that the tribal vapor product  
31 tax rate be one hundred percent of the state vapor product tax and  
32 state and local sales and use taxes. The tribal vapor product tax is  
33 in lieu of the state vapor product tax and state and local sales and  
34 use taxes, as provided in section 402(3) of this act.

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

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

1 (1) The governor may enter into a vapor product tax agreement  
2 with the Puyallup Tribe of Indians concerning the sale of vapor  
3 products, subject to the limitations in this section. The legislature  
4 intends to address the uniqueness of the Puyallup Indian reservation  
5 and its selling environment through pricing and compliance  
6 strategies, rather than through the imposition of equivalent taxes.  
7 The governor may delegate the authority to negotiate a vapor product  
8 tax agreement with the Puyallup Tribe to the department of revenue.  
9 The department of revenue must consult with the liquor and cannabis  
10 board during the negotiations.

11 (2) Any agreement must require the tribe to impose a tribal vapor  
12 product tax with a tax rate that is ninety percent of the state vapor  
13 product tax. This tribal tax is in lieu of the combined state and  
14 local sales and use taxes and the state vapor product tax, and as  
15 such these state taxes are not imposed during the term of the  
16 agreement on any transaction governed by the agreement. The tribal  
17 vapor product tax must increase or decrease at the time of any  
18 increase or decrease in the state vapor product tax so as to remain  
19 at a level that is ninety percent of the rate of the state vapor  
20 product tax.

21 (3) The agreement must include a provision requiring the tribe to  
22 transmit thirty percent of the tribal tax revenue on all vapor  
23 products sales to the state. The funds must be transmitted to the  
24 state treasurer on a quarterly basis for deposit by the state  
25 treasurer into the general fund. The remaining tribal tax revenue  
26 must be used for essential government services, as that term is  
27 defined in section 402 of this act.

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

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

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

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

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

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

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

12 (c) The agreement must include provisions for sharing of  
13 information among the tribe, the department of revenue, and the  
14 liquor and cannabis board.

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

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

20 (9) The agreement must include provisions to resolve disputes  
21 using a nonjudicial process, such as mediation, and must include a  
22 dispute resolution protocol. The protocol must include a procedure  
23 for notifying the other party that a violation has occurred, a  
24 procedure for establishing whether a violation has in fact occurred,  
25 an opportunity to correct such violation, and a provision providing  
26 for termination of the agreement should the violation fail to be  
27 resolved through this process, such termination subject to mediation  
28 should the terms of the agreement so allow. An agreement must provide  
29 for termination of the agreement if resolution of a dispute does not  
30 occur within twenty-four months from the time notification of a  
31 violation has occurred. Intervening violations do not extend this  
32 time period.

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

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

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

1 (a) "Indian country" has the same meaning as provided in RCW  
2 82.24.010.

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

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

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

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

10 (d) "Vapor products" has the same meaning as provided in section  
11 201 of this act.

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

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

18 (2) The definitions in section 402 of this act apply to this  
19 section.

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

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

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

## 28 **Part V**

### 29 **Miscellaneous Provisions**

30 NEW SECTION. **Sec. 501.** If any provision of this act or its  
31 application to any person or circumstance is held invalid, the  
32 remainder of the act or the application of the provision to other  
33 persons or circumstances is not affected.

34 NEW SECTION. **Sec. 502.** If any part of this act is found to be  
35 in conflict with federal requirements that are a prescribed condition

1 to the allocation of federal funds to the state, the conflicting part  
2 of this act is inoperative solely to the extent of the conflict and  
3 with respect to the agencies directly affected, and this finding does  
4 not affect the operation of the remainder of this act in its  
5 application to the agencies concerned. Rules adopted under this act  
6 must meet federal requirements that are a necessary condition to the  
7 receipt of federal funds by the state.

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

10 NEW SECTION. **Sec. 504.** This act takes effect October 1, 2018.

--- END ---