



1 (a) Vapor products are battery-operated devices with cartridges  
2 or refillable tanks that contain a mixture of various liquids, such  
3 as propylene glycol, glycerol, nicotine, and chemical flavorings. The  
4 devices atomize the liquid mixture, producing a vapor that the user  
5 inhales.

6 (b) Vapor products are widely available online and in retail  
7 stores. The sale of vapor products has rapidly increased over the  
8 past several years, and by 2017, their sales margins are predicted to  
9 surpass cigarettes. Nationally, the percentage of middle school and  
10 high school students who have used vapor products more than doubled  
11 from 2011 to 2012. By 2014, seventeen percent of twelfth graders had  
12 tried e-cigarettes. In Washington, the 2014 healthy youth survey  
13 found that almost twenty-three percent of twelfth graders had used an  
14 e-cigarette in the past month. These rates are alarming because an  
15 overwhelming majority of smokers begin smoking and become addicted to  
16 nicotine as teenagers, and the equipment used may be sold and used  
17 interchangeably for marijuana and nicotine. Current law in Washington  
18 prohibits the sale of vapor products containing nicotine to minors,  
19 but given the availability of vapor products online and equipment  
20 sold separately at retail stores, this law is difficult to enforce.

21 (c) The low cost of e-cigarettes and nicotine liquids for vapor  
22 products, particularly compared to cigarettes, is a key factor in  
23 youth access and use. Legislative testimony has indicated that  
24 refillable nicotine liquid and disposable e-cigarettes are as low as  
25 ten and twenty percent of the cost of a pack of cigarettes in  
26 Washington. E-cigarettes are advertised as saving smokers thousands  
27 of dollars. One survey of adult users has shown that the low price of  
28 e-cigarettes compared to other tobacco products is a key reason for  
29 their use, and youth are even more sensitive to price than  
30 adults. Increasing the price of vapor products will decrease youth  
31 access and addiction, just as raising taxes on cigarettes to  
32 discourage youth and adult smoking decreased youth access and  
33 addiction.

34 (d) Public health infrastructure and enforcement to prevent youth  
35 access to tobacco and vapor products in Washington will benefit from  
36 the investment of tax revenues and fees established or increased by  
37 this act.

38 (2) The legislature finds, therefore, that this act is necessary  
39 to protect the public health, safety, and welfare by providing  
40 consumers with information about products that are potentially

1 dangerous, reducing youth access to addictive nicotine products, and  
2 preventing nicotine poisonings of children.

3 **PART II**

4 **Tax on Vapor Products**

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

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

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

19 (3) "Board" means the liquor control board.

20 (4) "Business" means any trade, occupation, activity, or  
21 enterprise engaged in for the purpose of selling or distributing  
22 vapor products in this state.

23 (5) "Department" means the department of revenue.

24 (6) "Distributor" means: (a) Any person engaged in the business  
25 of selling vapor products in this state who brings, or causes to be  
26 brought, into this state from without the state any vapor products  
27 for sale; (b) any person who makes, manufactures, fabricates, or  
28 stores vapor products in this state for sale in this state; (c) any  
29 person engaged in the business of selling vapor products without this  
30 state who ships or transports vapor products to retailers in this  
31 state, to be sold by those retailers; and (d) any person engaged in  
32 the business of selling vapor products in this state who handles for  
33 sale any vapor products that are within this state but upon which tax  
34 has not been imposed.

35 (7) "Indian country" means the same as defined in chapter 82.24  
36 RCW.

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

1 (9) "Manufacturer's representative" means a person hired by a  
2 manufacturer to sell or distribute the manufacturer's vapor products  
3 and includes employees and independent contractors.

4 (10) "Person" means: Any individual, receiver, administrator,  
5 executor, assignee, trustee in bankruptcy, trust, estate, firm,  
6 copartnership, joint venture, club, company, joint stock company,  
7 business trust, municipal corporation, corporation, limited liability  
8 company, association, or society; the state and its departments and  
9 institutions; any political subdivision of the state of Washington;  
10 and any group of individuals acting as a unit, whether mutual,  
11 cooperative, fraternal, nonprofit, or otherwise. "Person" does not  
12 include any person immune from state taxation, including the United  
13 States or its instrumentalities, and federally recognized Indian  
14 tribes and enrolled tribal members, conducting business within Indian  
15 country.

16 (11) "Place of business" means any place where vapor products are  
17 sold or where vapor products are manufactured, stored, or kept for  
18 the purpose of sale, including any vessel, vehicle, airplane, or  
19 train.

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

22 (13) "Retailer" means any person engaged in the business of  
23 selling vapor products to ultimate consumers.

24 (14)(a) "Sale" means any transfer, exchange, or barter, in any  
25 manner or by any means whatsoever, for a consideration, and includes  
26 and means all sales made by any person.

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

30 (15)(a) "Taxable sales price" means:

31 (i) In the case of a taxpayer that is not affiliated with the  
32 manufacturer, distributor, or other person from whom the taxpayer  
33 purchased vapor products, the actual price for which the taxpayer  
34 purchased the vapor products;

35 (ii) In the case of a taxpayer that purchases vapor products from  
36 an affiliated manufacturer, affiliated distributor, or other  
37 affiliated person, and that sells those vapor products to  
38 unaffiliated distributors, unaffiliated retailers, or ultimate  
39 consumers, the actual price for which that taxpayer sells those vapor

1 products to unaffiliated distributors, unaffiliated retailers, or  
2 ultimate consumers;

3 (iii) In the case of a taxpayer that sells vapor products only to  
4 affiliated distributors or affiliated retailers, the price,  
5 determined as nearly as possible according to the actual price, that  
6 other distributors sell similar vapor products of like quality and  
7 character to unaffiliated distributors, unaffiliated retailers, or  
8 ultimate consumers;

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

12 (v) In the case of a taxpayer that has acquired vapor products  
13 under a sale as defined in subsection (14)(b) of this section, the  
14 price, determined as nearly as possible according to the actual  
15 price, that the taxpayer or other distributors sell the same vapor  
16 products or similar vapor products of like quality and character to  
17 unaffiliated distributors, unaffiliated retailers, or ultimate  
18 consumers;

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

21 (vii) In any case where (a)(i) through (vi) of this subsection do  
22 not apply, the price, determined as nearly as possible according to  
23 the actual price, that the taxpayer or other distributors sell the  
24 same vapor products or similar vapor products of like quality and  
25 character to unaffiliated distributors, unaffiliated retailers, or  
26 ultimate consumers.

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

33 (c) In any case where the taxable sales price is not indicative  
34 of a vapor product's true value at the time and place of the taxable  
35 event as provided in section 202(2)(a) of this act, "taxable sales  
36 price" means the true value of the vapor product as determined by the  
37 department. For purposes of this subsection, "true value" means  
38 market value based on sales at comparable locations in this state of  
39 the same or similar vapor product of like quality and character sold  
40 under comparable conditions of sale by comparable sellers to

1 comparable purchasers. However, in the absence of such comparable  
2 sales, true value means the value of the vapor product as determined  
3 by all of the taxpayer's direct and indirect costs attributable to  
4 the vapor product.

5 (16) "Taxpayer" means a person liable for the tax imposed by this  
6 chapter.

7 (17) "Unaffiliated distributor" means a distributor that is not  
8 affiliated with the manufacturer, distributor, or other person from  
9 whom the distributor has purchased vapor products.

10 (18) "Unaffiliated retailer" means a retailer that is not  
11 affiliated with the manufacturer, distributor, or other person from  
12 whom the retailer has purchased vapor products.

13 (19)(a) "Vapor product" means any noncombustible product  
14 containing a solution or other consumable substance, regardless of  
15 whether it contains nicotine, that employs a mechanical heating  
16 element, battery, or electronic circuit regardless of shape or size  
17 that can be used to produce vapor from the solution or other  
18 substance, including an electronic cigarette, electronic cigar,  
19 electronic cigarillo, electronic pipe, or similar product or device.  
20 The term also includes any cartridge or other container of solution  
21 or other consumable substance, regardless of whether it contains  
22 nicotine, that is intended to be used with or in a vapor product to  
23 produce vapor and is sold for such purpose.

24 (b) The term does not include:

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

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

31 (iii) Any product that meets the definition of marijuana, useable  
32 marijuana, marijuana concentrates, marijuana-infused products,  
33 cigarette, or tobacco products.

34 (c) For purposes of this subsection (19):

35 (i) "Cigarette" has the same meaning as in RCW 82.24.010.

36 (ii) "Marijuana," "useable marijuana," "marijuana concentrates,"  
37 and "marijuana-infused products" have the same meaning as in RCW  
38 69.50.101.

39 (iii) "Tobacco products" has the same meaning as in RCW  
40 82.26.010.

1        NEW SECTION.    **Sec. 202.**    (1)(a) There is levied and collected a  
2 tax upon the sale, use, consumption, handling, possession, or  
3 distribution of all vapor products in this state equal to forty-five  
4 percent of the taxable sales price. If the vapor product is sold  
5 together with products not taxable under this chapter for one price,  
6 the tax imposed by this section applies to the entire selling price  
7 of the product, except as provided in (b) of this subsection.

8        (b) If the seller can identify by reasonable and verifiable  
9 standards the portion of the selling price attributable to the vapor  
10 products from its books and records that are kept in the regular  
11 course of business for other purposes including, but not limited to,  
12 nontax purposes, the tax imposed by this section only applies to that  
13 portion of the selling price of the product attributable to the vapor  
14 products.

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

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

27        (3) The moneys collected under this section must be deposited as  
28 follows: (a) Sixty percent into the state general fund; and (b) forty  
29 percent into the essential public health services account created in  
30 section 203 of this act.

31        (4) The department may adopt rules to implement this section.

32        NEW SECTION.    **Sec. 203.**    (1) The essential public health services  
33 account is created in the state treasury. The revenue from the tax  
34 collected under section 202 of this act must be deposited into the  
35 account. Moneys in the account may be spent only after appropriation  
36 to the department of health. The department must use the moneys in  
37 the account for each of the four following purposes: (a) To fund  
38 essential governmental public health services; (b) to fund tobacco  
39 control and prevention and other substance use prevention and

1 education; (c) to use to strengthen and support public health system  
2 capabilities, including accredited higher education public health  
3 programs; and (d) enforcement by the liquor control board of the  
4 provisions of House Bill No. 1645 (Z-0382/15) to prevent sales of e-  
5 cigarettes and vapor products to minors and related provisions for  
6 control of marketing and product safety, provided that no more than  
7 12.5 percent of the funds deposited into the account established by  
8 this section may be utilized and distributed by the department to the  
9 liquor control board for these enforcement purposes.

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

18 NEW SECTION. **Sec. 204.** See RCW 82.32.805 for the expiration  
19 date of new tax preferences for the tax imposed under this chapter.

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

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

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



1 (2) These records must show the names and addresses of  
2 purchasers, the inventory of all vapor products, and other pertinent  
3 papers and documents relating to the purchase, sale, or disposition  
4 of vapor products. All invoices and other records required by this  
5 section to be kept must be preserved for a period of five years from  
6 the date of the invoices or other documents or the date of the  
7 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 vapor 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 are subject to  
18 revocation by the department, and any licenses issued under this  
19 chapter or chapter 82.26 or 82.24 RCW are subject to suspension or  
20 revocation by the board.

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

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

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

36 (3) At any time during usual business hours the department,  
37 board, or its duly authorized agents or employees may enter any  
38 retail outlet without a search warrant, and inspect the premises for

1 invoices required to be kept under this section and the vapor  
2 products contained in the retail outlet, to determine whether or not  
3 all the provisions of this chapter are being fully complied with. If  
4 the department, board, or any of its agents or employees are denied  
5 free access or are hindered or interfered with in making the  
6 inspection, the registration certificate issued under RCW 82.32.030  
7 of the retailer at the premises is subject to revocation by the  
8 department, and any licenses issued under this chapter or chapter  
9 82.26 or 82.24 RCW are subject to suspension or revocation by the  
10 board.

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

21 (b) For purposes of this subsection, the following definitions  
22 apply:

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

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

33 (iii) "Indian tribal organization" means a federally recognized  
34 Indian tribe, or tribal entity, and includes an Indian distributor or  
35 retailer that is owned by an Indian who is an enrolled tribal member  
36 conducting business under tribal license or similar tribal approval  
37 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 NEW SECTION. **Sec. 211.** All of the provisions contained in  
5 chapter 82.32 RCW not inconsistent with the provisions of this  
6 chapter have full force and application with respect to taxes imposed  
7 under the provisions of this chapter.

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

12 NEW SECTION. **Sec. 213.** (1) The department may by rule establish  
13 the invoice detail required under section 207 of this act for a  
14 distributor under section 201(6)(d) of this act and for those  
15 invoices required to be provided to retailers under section 208 of  
16 this act.

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

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

25 NEW SECTION. **Sec. 214.** (1) No person may transport or cause to  
26 be transported in this state vapor products for sale other than: (a)  
27 A licensed distributor in the distributor's own vehicle, a  
28 manufacturer's representative authorized to sell or distribute vapor  
29 products in this state under section 219 of this act, or a licensed  
30 retailer in the retailer's own vehicle; or (b) a person who has given  
31 notice to the board in advance of the commencement of transportation.

32 (2) When transporting vapor products for sale, the person must  
33 have in his or her actual possession, or cause to have in the actual  
34 possession of those persons transporting such vapor products on his  
35 or her behalf, invoices or delivery tickets for the vapor products,  
36 which must show the true name and address of the consignor or seller,

1 the true name and address of the consignee or purchaser, and the  
2 quantity and brands of the vapor products being transported.

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

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

11 NEW SECTION. **Sec. 215.** (1) The licenses issuable by the board  
12 under this chapter are as follows:

13 (a) A distributor's license; and

14 (b) A retailer's license.

15 (2) Application for the licenses must be made through the  
16 business licensing system under chapter 19.02 RCW. The board may  
17 adopt rules regarding the regulation of the licenses. The board may  
18 refuse to issue any license under this chapter if the board has  
19 reasonable cause to believe that the applicant has willfully withheld  
20 information requested for the purpose of determining the eligibility  
21 of the applicant to receive a license, or if the board has reasonable  
22 cause to believe that information submitted in the application is  
23 false or misleading or is not made in good faith. In addition, for  
24 the purpose of reviewing an application for a distributor's license  
25 or retailer's license and for considering the denial, suspension, or  
26 revocation of any such license, the board may consider criminal  
27 conduct of the applicant, including an administrative violation  
28 history record with the board and a criminal history record  
29 information check within the previous five years, in any state,  
30 tribal, or federal jurisdiction in the United States, its  
31 territories, or possessions, and the provisions of RCW 9.95.240 and  
32 chapter 9.96A RCW do not apply to such cases. The board may, in its  
33 discretion, issue or refuse to issue the distributor's license or  
34 retailer's license, subject to the provisions of section 220 of this  
35 act.

36 (3) No person may qualify for a distributor's license or a  
37 retailer's license under this section without first undergoing a  
38 criminal background check. The background check must be performed by  
39 the board and must disclose any criminal conduct within the previous

1 five years in any state, tribal, or federal jurisdiction in the  
2 United States, its territories, or possessions. If the applicant or  
3 licensee also has a license issued under chapter 66.24, 82.24, or  
4 82.26 RCW, the background check done under the authority of chapter  
5 66.24, 82.24, or 82.26 RCW satisfies the requirements of this  
6 subsection.

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

12 (5) Each license and any other evidence of the license required  
13 under this chapter must be exhibited in each place of business for  
14 which it is issued and in the manner required for the display of a  
15 business license.

16 (6) License issuances and renewals are subject to board authority  
17 and the rules adopted under the board including, but not limited to,  
18 rights of cities, towns, county legislative authorities, the public,  
19 churches, schools, and public institutions that object to or prevent  
20 issuance of licenses.

21 NEW SECTION. **Sec. 216.** The board must compile and maintain a  
22 current record of the names of all distributors and retailers  
23 licensed under this chapter and the status of their license or  
24 licenses. The information must be updated on a monthly basis and  
25 published on the board's official internet web site. This information  
26 is not subject to the confidentiality provisions of RCW 82.32.330 and  
27 must be disclosed to manufacturers, distributors, retailers, and the  
28 general public upon request.

29 NEW SECTION. **Sec. 217.** (1)(a) No person may engage in or  
30 conduct business as a distributor or retailer in this state without a  
31 valid license issued under this chapter, except as otherwise provided  
32 by law. Any person who sells vapor products to persons other than  
33 ultimate consumers or who meets the definition of "distributor" under  
34 section 201(6)(d) of this act must obtain a distributor's license  
35 under this chapter. Any person who sells vapor products to ultimate  
36 consumers must obtain a retailer's license under this chapter.

37 (b) A violation of this subsection (1) is punishable as a class C  
38 felony according to chapter 9A.20 RCW.

1 (2)(a) No person engaged in or conducting business as a  
2 distributor or retailer in this state may:

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

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

11 (iii) Fail to produce on demand of the department or the board  
12 all invoices of all the vapor products taxed under this chapter  
13 within five years prior to such demand unless the person can show by  
14 satisfactory proof that the nonproduction of the invoices was due to  
15 causes beyond the person's control.

16 (b) No person, other than a licensed distributor or retailer, may  
17 transport vapor products for sale in this state for which the taxes  
18 imposed under this chapter have not been paid unless:

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

21 (ii) The person transporting the vapor products actually  
22 possesses invoices or delivery tickets showing the true name and  
23 address of the consignor or seller, the true name and address of the  
24 consignee or purchaser, and the quantity and brands of vapor products  
25 being transported; and

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

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

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

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

37 (5) This section does not apply to a motor carrier or freight  
38 forwarder as defined in 49 U.S.C. 13102 or an air carrier as defined  
39 in 49 U.S.C. 40102.

1        NEW SECTION.     **Sec. 218.**     (1) A retailer that obtains vapor  
2 products from an unlicensed distributor or any other person that is  
3 not licensed under this chapter must be licensed both as a retailer  
4 and a distributor under this chapter and is liable for the tax  
5 imposed under section 202 of this act with respect to the vapor  
6 products acquired from the unlicensed person that are held for sale,  
7 handling, or distribution in this state. For the purposes of this  
8 subsection, "person" includes both persons defined in section 201(10)  
9 of this act and any person immune from state taxation, such as the  
10 United States or its instrumentalities, and federally recognized  
11 Indian tribes and enrolled tribal members, conducting business within  
12 Indian country.

13        (2) Every distributor licensed under this chapter may sell vapor  
14 products to retailers located in Washington only if the retailer has  
15 a current retailer's license under this chapter.

16        NEW SECTION.     **Sec. 219.**     A manufacturer that has manufacturer's  
17 representatives who sell or distribute the manufacturer's vapor  
18 products in this state must provide the board a list of the names and  
19 addresses of all such representatives and must ensure that the list  
20 provided to the board is kept current. A manufacturer's  
21 representative is not authorized to distribute or sell vapor products  
22 in this state unless the manufacturer that hired the representative  
23 has a valid distributor's license under this chapter and that  
24 manufacturer provides the board a current list of all of its  
25 manufacturer's representatives as required by this section. A  
26 manufacturer's representative must carry a copy of the distributor's  
27 license of the manufacturer that hired the representative at all  
28 times when selling or distributing the manufacturer's vapor products.

29        NEW SECTION.     **Sec. 220.**     (1) The board must enforce this chapter.  
30 The board may adopt, amend, and repeal rules necessary to enforce  
31 this chapter.

32        (2) The department may adopt, amend, and repeal rules necessary  
33 to administer this chapter. The board may revoke or suspend the  
34 distributor's or retailer's license of any distributor or retailer of  
35 vapor products in the state upon sufficient cause showing a violation  
36 of this chapter or upon the failure of the licensee to comply with  
37 any of the rules adopted under it.

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

12 (4) Any licenses issued under chapter 82.24 or 82.26 RCW to a  
13 person whose license or licenses have been suspended or revoked under  
14 this section must also be suspended or revoked during the period of  
15 suspension or revocation under this section.

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

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

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

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



1        NEW SECTION.    **Sec. 221.**    (1) Any vapor products in the possession  
2 of a person selling vapor products in this state acting as a  
3 distributor or retailer and who is not licensed as required under  
4 section 217 of this act, or a person who is selling vapor products in  
5 violation of section 220(6) of this act, may be seized without a  
6 warrant by any agent of the department, agent of the board, or law  
7 enforcement officer of this state. Any vapor products seized under  
8 this subsection are deemed forfeited.

9        (2) Any vapor products in the possession of a person who is not a  
10 licensed distributor or retailer and who transports vapor products  
11 for sale without having provided notice to the board required under  
12 section 214 of this act, or without invoices or delivery tickets  
13 showing the true name and address of the consignor or seller, the  
14 true name and address of the consignee or purchaser, and the quantity  
15 and brands of vapor products being transported may be seized and are  
16 subject to forfeiture.

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

22        (a) A conveyance used by any person as a common or contract  
23 carrier having in actual possession invoices or delivery tickets  
24 showing the true name and address of the consignor or seller, the  
25 true name of the consignee or purchaser, and the quantity and brands  
26 of the vapor products transported, unless it appears that the owner  
27 or other person in charge of the conveyance is a consenting party or  
28 privy to a violation of this chapter;

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

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

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

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

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

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

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

14 (7) This section does not apply to a motor carrier or freight  
15 forwarder as defined in 49 U.S.C. 13102 or an air carrier as defined  
16 in 49 U.S.C. 40102.

17 NEW SECTION. **Sec. 222.** (1) In all cases of seizure of any vapor  
18 products made subject to forfeiture under this chapter, the  
19 department or board must proceed as provided in RCW 82.24.135.

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

22 (a) Retain the property for official use or upon application by  
23 any law enforcement agency of this state, another state, or the  
24 District of Columbia, or of the United States for the exclusive use  
25 of enforcing this chapter or the laws of any other state or the  
26 District of Columbia or of the United States; or

27 (b) Sell the vapor products at public auction to the highest  
28 bidder after due advertisement. Before delivering any of the goods to  
29 the successful bidder, the department or board must require the  
30 purchaser to pay the proper amount of any tax due. The proceeds of  
31 the sale must be first applied to the payment of all proper expenses  
32 of any investigation leading to the seizure and of the proceedings  
33 for forfeiture and sale, including expenses of seizure, maintenance  
34 of custody, advertising, and court costs. The balance of the proceeds  
35 and all money must be deposited in the general fund of the state.  
36 Proper expenses of investigation include costs incurred by any law  
37 enforcement agency or any federal, state, or local agency.

38 (3) The department or the board may return any property seized  
39 under the provisions of this chapter when it is shown that there was

1 no intention to violate the provisions of this chapter. When any  
2 property is returned under this section, the department or the board  
3 may return the property to the parties from whom they were seized if  
4 and when such parties have paid the proper amount of tax due under  
5 this chapter.

6 NEW SECTION. **Sec. 223.** When the department or the board has  
7 good reason to believe that any of the vapor products taxed under  
8 this chapter are being kept, sold, offered for sale, or given away in  
9 violation of the provisions of this chapter, it may make affidavit of  
10 facts describing the place or thing to be searched, before any judge  
11 of any court in this state, and the judge must issue a search warrant  
12 directed to the sheriff, any deputy, police officer, or duly  
13 authorized agent of the department or the board commanding him or her  
14 diligently to search any building, room in a building, place, or  
15 vehicle as may be designated in the affidavit and search warrant, and  
16 to seize the vapor products and hold them until disposed of by law.

17 **Sec. 224.** RCW 66.08.145 and 2007 c 221 s 1 are each amended to  
18 read as follows:

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

27 (2) The liquor control board may designate individuals authorized  
28 to sign subpoenas.

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

36 **Sec. 225.** RCW 66.44.010 and 1998 c 18 s 1 are each amended to  
37 read as follows:

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

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

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

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

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

5 **Sec. 226.** RCW 82.24.510 and 2013 c 144 s 50 are each amended to  
6 read as follows:

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

8 (a) A wholesaler's license.

9 (b) A retailer's license.

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

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

1 issued under chapter 66.24 (~~(~~or~~)~~), 82.26, or 82.-- RCW (the new  
2 chapter created in section 403 of this act), the background check  
3 done under the authority of chapter 66.24 (~~(~~or~~)~~), 82.26, or 82.-- RCW  
4 (the new chapter created in section 403 of this act) satisfies the  
5 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. 227.** 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 82.-- RCW (the new  
39 chapter created in section 403 of this act) to a person whose license

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

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

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

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

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

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

29 **Sec. 228.** RCW 82.26.060 and 2009 c 154 s 3 are each amended to  
30 read as follows:

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

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

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

5 (3) At any time during usual business hours the department,  
6 board, or its duly authorized agents or employees, may enter any  
7 place of business of a distributor, without a search warrant, and  
8 inspect the premises, the records required to be kept under this  
9 chapter, and the tobacco products contained therein, to determine  
10 whether or not all the provisions of this chapter are being fully  
11 complied with. If the department, board, or any of its agents or  
12 employees, are denied free access or are hindered or interfered with  
13 in making such examination, the registration certificate issued under  
14 RCW 82.32.030 of the distributor at such premises (~~shall be~~) is  
15 subject to revocation, and any licenses issued under this chapter or  
16 chapter 82.24 or 82.-- RCW (the new chapter created in section 403 of  
17 this act) are subject to suspension or revocation, by the department  
18 or board.

19 **Sec. 229.** RCW 82.26.080 and 2005 c 180 s 5 are each amended to  
20 read as follows:

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

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

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



1 licenses issued under this chapter or chapter 82.24 or 82.-- RCW (the  
2 new chapter created in section 403 of this act) are subject to  
3 suspension or revocation by the department.

4 **Sec. 230.** RCW 82.26.150 and 2013 c 144 s 52 are each amended to  
5 read as follows:

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

8 (a) A distributor's license; and

9 (b) A retailer's license.

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

30 (3) No person may qualify for a distributor's license or a  
31 retailer's license under this section without first undergoing a  
32 criminal background check. The background check must be performed by  
33 the board and must disclose any criminal conduct within the previous  
34 five years in any state, tribal, or federal jurisdiction in the  
35 United States, its territories, or possessions. If the applicant or  
36 licensee also has a license issued under chapter 66.24 (~~(e)~~) 82.24,  
37 or 82.-- RCW (the new chapter created in section 403 of this act),  
38 the background check done under the authority of chapter 66.24

1 (~~or~~), 82.24, or 82.-- RCW (the new chapter created in section 403  
2 of this act) satisfies the requirements of 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. 231.** 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 82.-- RCW (the new  
34 chapter created in section 403 of this act) to a person whose license  
35 or licenses have been suspended or revoked under this section must  
36 also be suspended or revoked during the period of suspension or  
37 revocation under this section.

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

1 of the license or licenses. The license or licenses may be approved  
2 by the board if it appears to the satisfaction of the board that the  
3 licensee will comply with the provisions of this chapter and the  
4 rules adopted under it.

5 (6) A person whose license has been suspended or revoked may not  
6 sell tobacco products or cigarettes or permit tobacco products or  
7 cigarettes to be sold during the period of suspension or revocation  
8 on the premises occupied by the person or upon other premises  
9 controlled by the person or others or 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. 232.** 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 board (~~(shall)~~) must make and  
33 publish rules necessary to enforce chapters 82.24 (~~(and)~~), 82.26, and  
34 82.-- RCW (the new chapter created in section 403 of this act), which  
35 (~~(shall)~~) must have the same force and effect as if specifically  
36 included therein, unless declared invalid by the judgment of a court  
37 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~~)  
2 must be 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 **PART III**  
8 **Tribal Compacting**

9 **Sec. 301.** RCW 43.06.450 and 2001 c 235 s 1 are each amended to  
10 read as follows:

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

27 NEW SECTION. **Sec. 302.** A new section is added to chapter 43.06  
28 RCW to read as follows:

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

33 (2) Vapor product tax contracts must be in regard to retail sales  
34 in which Indian retailers make delivery and physical transfer of  
35 possession of the vapor products from the seller to the buyer within  
36 Indian country, and are not in regard to transactions by non-Indian  
37 retailers. In addition, contracts must provide that retailers may not

1 sell or give, or permit to be sold or given, vapor products to any  
2 person under the age of eighteen years.

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

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

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

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

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

21 (d) A tribal manufacturer.

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

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

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

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

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

36 (10) Information received by the state or open to state review  
37 under the terms of a contract is subject to the provisions of RCW  
38 82.32.330.

39 (11) It is the intent of the legislature that the liquor control  
40 board and the department of revenue continue the division of duties

1 and shared authority under chapter 82.-- RCW (the new chapter created  
2 in section 403 of this act) and therefore the liquor control board is  
3 responsible for enforcement activities that come under the terms of  
4 chapter 82.-- RCW (the new chapter created in section 403 of this  
5 act).

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

19 (13) For purposes of this section and sections 303 and 305  
20 through 307 of this act:

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

25 (b) "Indian country" has the same meaning as in RCW 82.24.010;

26 (c) "Indian retailer" or "retailer" means: (i) A retailer wholly  
27 owned and operated by an Indian tribe; (ii) a business wholly owned  
28 and operated by a tribal member and licensed by the tribe; or (iii) a  
29 business owned and operated by the Indian person or persons in whose  
30 name the land is held in trust;

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

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

36 NEW SECTION. **Sec. 303.** A new section is added to chapter 43.06  
37 RCW to read as follows:

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

1 geographical boundaries of the state of Washington, except the  
2 Puyallup Tribe of Indians. Each contract adopted under this section  
3 must provide that the tribal vapor product tax rate be one hundred  
4 percent of the state vapor product tax and state and local sales and  
5 use taxes. The tribal vapor product tax is in lieu of the state vapor  
6 product tax and state and local sales and use taxes, as provided in  
7 section 302(3) of this act.

8 (2) A vapor product tax contract under this section is subject to  
9 section 302 of this act.

10 NEW SECTION. **Sec. 304.** A new section is added to chapter 43.06  
11 RCW to read as follows:

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

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

32 (3) The agreement must include a provision requiring the tribe to  
33 transmit thirty percent of the tribal tax revenue on all vapor  
34 products sales to the state. The funds must be transmitted to the  
35 state treasurer on a quarterly basis for deposit by the state  
36 treasurer into the general fund. The remaining tribal tax revenue  
37 must be used for essential government services, as that term is  
38 defined in section 302 of this act.

1 (4) The agreement is limited to retail sales in which Indian  
2 retailers make delivery and physical transfer of possession of the  
3 vapor products from the seller to the buyer within Indian country,  
4 and are not in regard to transactions by non-Indian retailers. In  
5 addition, agreements must provide that retailers may not sell or  
6 give, or permit to be sold or given, vapor products to any person  
7 under the age of eighteen years.

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

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

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

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

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

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

25 (c) The agreement must include provisions for sharing of  
26 information among the tribe, the department of revenue, and the  
27 liquor control board.

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

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

33 (9) The agreement must include provisions to resolve disputes  
34 using a nonjudicial process, such as mediation, and must include a  
35 dispute resolution protocol. The protocol must include a procedure  
36 for notifying the other party that a violation has occurred, a  
37 procedure for establishing whether a violation has in fact occurred,  
38 an opportunity to correct such violation, and a provision providing  
39 for termination of the agreement should the violation fail to be  
40 resolved through this process, such termination subject to mediation



1 should the terms of the agreement so allow. An agreement must provide  
2 for termination of the agreement if resolution of a dispute does not  
3 occur within twenty-four months from the time notification of a  
4 violation has occurred. Intervening violations do not extend this  
5 time period.

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

8 (11) It is the intent of the legislature that the liquor control  
9 board and the department of revenue continue the division of duties  
10 and shared authority under chapter 82.-- RCW (the new chapter created  
11 in section 403 of this act).

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

14 (a) "Indian country" has the same meaning as provided in chapter  
15 82.24 RCW.

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

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

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

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

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

25 NEW SECTION. **Sec. 305.** A new section is added to chapter 82.08  
26 RCW to read as follows:

27 The tax levied by RCW 82.08.020 does not apply to sales of vapor  
28 products by an Indian retailer during the effective period of a vapor  
29 product tax contract subject to section 303 of this act or a vapor  
30 product tax agreement under section 304 of this act.

31 NEW SECTION. **Sec. 306.** A new section is added to chapter 82.12  
32 RCW to read as follows:

33 The provisions of this chapter do not apply in respect to the use  
34 of vapor products sold by an Indian retailer during the effective  
35 period of a vapor product tax contract subject to section 303 of this  
36 act or a vapor product tax agreement under section 304 of this act.

