
HOUSE BILL 1645

State of Washington

64th Legislature

2015 Regular Session

By Representatives Pollet, Harris, Carlyle, Cody, Johnson, Tharinger, Robinson, Lytton, Kagi, Ryu, S. Hunt, Farrell, Moscoso, Riccelli, McBride, and Jinkins; by request of Governor Inslee and Attorney General

Read first time 01/26/15. Referred to Committee on Commerce & Gaming.

1 AN ACT Relating to youth substance use prevention associated with
2 tobacco and drug delivery e-cigarettes and vapor products; amending
3 RCW 26.28.080, 28A.210.310, 70.155.010, 70.155.020, 70.155.030,
4 70.155.050, 70.155.070, 70.155.080, 70.155.090, 70.155.100,
5 70.155.110, 70.155.120, 70.155.130, 70.155.140, 66.08.145, 66.44.010,
6 82.24.510, 82.24.530, 82.24.550, 82.26.060, 82.26.080, 82.26.150,
7 82.26.170, 82.26.220, 82.32.300, and 43.06.450; adding new sections
8 to chapter 70.155 RCW; adding new sections to chapter 43.06 RCW;
9 adding a new section to chapter 82.08 RCW; adding a new section to
10 chapter 82.12 RCW; adding a new chapter to Title 82 RCW; creating new
11 sections; prescribing penalties; providing an effective date; and
12 providing an expiration date.

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

14 **PART I**
15 **Findings**

16 NEW SECTION. **Sec. 101.** (1) The legislature finds that the use
17 of vapor inhalation products, such as e-cigarettes, e-devices, and
18 vape pens, has risen at an alarming rate both among adults and youth.
19 Vapor products pose a serious public health risk because of the
20 addictiveness of nicotine, the impact of nicotine on fetal

1 development and adolescent brain development, the risk of liquid
2 nicotine poisoning, and exposure to carcinogens and other toxic
3 chemicals. Specifically, the legislature finds:

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

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

24 (i) Most vapor products contain nicotine, a fast-acting drug that
25 the United States surgeon general has found to be as addictive as
26 cocaine and heroin. For young people in particular, vapor products
27 may act as a gateway to cigarettes or other combustible tobacco
28 products, which are the leading cause of preventable disease,
29 disability, and death. Studies are confirming this trend; one in five
30 middle school students who had tried e-cigarettes had never tried
31 conventional cigarettes.

32 (ii) While the health impacts of vapor products are still being
33 studied, studies have found that many vapor products contain
34 carcinogens and toxic chemicals, including cadmium, formaldehyde, and
35 lead. Depending on the type of device, the vapor may also contain
36 metals and other materials from the device components.

37 (iii) Vapor products have some of the same negative health
38 impacts on developing fetuses and infants as combustible tobacco
39 products, including preterm delivery, stillbirth, problems feeding,
40 delayed physical and mental development, impaired learning, and

1 memory loss. During adolescence, exposure to nicotine may have
2 lasting consequences for brain development.

3 (iv) When ingested or absorbed through the skin, even small
4 amounts of liquid nicotine may be toxic or even fatal to children. In
5 Washington, poison center calls related to e-cigarettes have
6 increased from two in 2010 to one hundred forty-four in the first
7 nine months of 2014, ninety-seven of which involved children. Of the
8 calls involving children, eighty-four percent were one to three years
9 old.

10 (v) There is no scientific evidence that vapor products are an
11 effective long-term smoking cessation aid. People who use vapor
12 products often continue to use combustible tobacco products. In
13 addition, e-cigarettes may renormalize smoking behavior and serve as
14 a reinitiation to smoking by former smokers.

15 (c) Vapor products are particularly appealing to young people, in
16 part because they are widely available, have a high-technology
17 design, and are marketed with fruit and candy flavors, like bubble
18 gum and cotton candy. E-cigarette advertisements use celebrities and
19 appear on television, the internet, and social media.

20 (d) Vapor products are largely unregulated today. Because of
21 federal inaction, consumers do not have access to information about
22 the contents of the vapor products they use, including the
23 concentration of nicotine and other potentially harmful chemicals. An
24 analysis performed by the food and drug administration found that the
25 quality control processes used to manufacture e-cigarettes were
26 inconsistent or nonexistent and that cartridges labeled as having no
27 nicotine did have low levels of nicotine present.

28 (e) Existing regulatory efforts aimed at alcohol and cigarettes
29 provide models for reducing the availability and appeal of vapor
30 products to youth. Because of the appeal of sweetened products to
31 young people, flavored cigarettes are banned at the federal level,
32 and two major cities have banned flavored tobacco products. Studies
33 have shown that smokers who are seventeen years old are three times
34 as likely to use flavored cigarettes as smokers over the age of
35 twenty-five. Documents obtained during litigation against the tobacco
36 industry reveal that tobacco companies have used fruit, candy, and
37 alcohol flavors as a way to target youth. Tobacco industry documents
38 state that "sweetness can impart a different delivery taste dimension
39 which younger adults may be receptive to," that it is "a well known
40 fact that teenagers like sweet products," and that flavored products

1 would have appeal "in the under 35 age group, especially in the 14-24
2 group." The tobacco industry uses flavored products as a "graduation
3 strategy" to encourage new users to start with products with lower
4 levels of nicotine and progress to products with higher levels of
5 nicotine.

6 (f) Several countries, including Canada and Mexico, prohibit the
7 sale of e-cigarettes, and in the face of federal inaction, states and
8 municipalities in the United States have begun enacting laws to
9 restrict access to vapor products. For example, most states prohibit
10 the sale of vapor products to minors, and several counties in
11 Washington have enacted ordinances that comprehensively regulate the
12 sale and use of electronic smoking devices in their jurisdictions.

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

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

29 (2) The legislature finds, therefore, that this act is necessary
30 to protect the public health, safety, and welfare by providing
31 consumers with information about products that are potentially
32 dangerous, reducing youth access to addictive nicotine products, and
33 preventing nicotine poisonings of children.

34 **Youth Access to Vapor Products**

35 **Sec. 102.** RCW 26.28.080 and 2013 c 47 s 1 are each amended to
36 read as follows:

37 (1) (~~Every~~) A person who sells or gives, or permits to be sold
38 or given, to (~~any~~) a person under the age of eighteen years any

1 cigar, cigarette, cigarette paper or wrapper, tobacco in any form, or
2 a vapor product is guilty of a gross misdemeanor.

3 (2) It (~~shall be no~~) is not a defense to a prosecution for a
4 violation of this section that the person acted, or was believed by
5 the defendant to act, as agent or representative of another.

6 (3) For the purposes of this section, "vapor product" (~~means a~~
7 ~~noncombustible tobacco derived product containing nicotine that~~
8 ~~employs a mechanical heating element, battery, or circuit, regardless~~
9 ~~of shape or size, that can be used to heat a liquid nicotine solution~~
10 ~~contained in cartridges. Vapor product does not include any product~~
11 ~~that is regulated by the United States food and drug administration~~
12 ~~under chapter V of the federal food, drug, and cosmetic act~~) has the
13 same meaning as provided in RCW 70.155.010.

14 **Sec. 103.** RCW 28A.210.310 and 1997 c 9 s 1 are each amended to
15 read as follows:

16 (1) To protect children in the public schools of this state from
17 exposure to the addictive substance of nicotine, each school district
18 board of directors (~~shall~~) must have a written policy mandating a
19 prohibition on the use of all tobacco products and vapor products on
20 public school property.

21 (2) The policy in subsection (1) of this section (~~shall~~) must
22 include, but not be limited to, a requirement that students and
23 school personnel be notified of the prohibition, the posting of signs
24 prohibiting the use of tobacco products and vapor products, sanctions
25 for students and school personnel who violate the policy, and a
26 requirement that school district personnel enforce the prohibition.
27 Enforcement policies adopted in the school board policy (~~shall be~~)
28 are in addition to the enforcement provisions in RCW 70.160.070.

29 (3) For purposes of this section, "vapor product" means any: (a)
30 Device that employs a battery or other mechanism to heat a solution
31 or substance to produce a vapor or aerosol intended for inhalation;
32 (b) cartridge or container of a solution or substance intended to be
33 used with or in such a device or to refill such a device; or (c)
34 solution or substance intended for use in such a device, including,
35 but not limited to, concentrated nicotine. "Vapor product" includes
36 any electronic cigarettes, electronic nicotine delivery systems,
37 electronic cigars, electronic cigarillos, electronic pipes, vape
38 pens, or similar products or devices, as well as any parts that can
39 be used to build such products or devices. "Vapor product" does not

1 include any drug, device, or combination product approved for sale by
2 the United States food and drug administration that is marketed and
3 sold for such approved purpose.

4 **Sec. 104.** RCW 70.155.010 and 2009 c 278 s 1 are each amended to
5 read as follows:

6 The definitions ~~((set forth))~~ in this section and RCW 82.24.010
7 ~~((shall apply to this chapter. In addition, for the purposes of this~~
8 ~~chapter, unless otherwise required by the context:))~~ apply throughout
9 this chapter unless the context clearly requires otherwise.

10 (1) "Board" means the Washington state liquor control board.

11 (2) "Characterizing flavor" means a distinguishable taste or
12 smell related to fruit, chocolate, vanilla, honey, candy, cocoa, or
13 dessert that emanates from or is imparted by a vapor product or the
14 vapor or aerosol emitted by the vapor product at any time prior to,
15 during, or after the use of a vapor product. "Characterizing flavor"
16 does not include flavors related to menthol, wintergreen, or mint.

17 (3) "Concentrated nicotine" means any solution or substance with
18 a nicotine concentration greater than ten milligrams per milliliter.

19 (4) "Department" means the department of health.

20 (5) "Distributor" means a distributor as defined in RCW 82.26.010
21 or section 201 of this act.

22 (6) "Flavored vapor product" means a vapor product that imparts
23 or from which emanates a characterizing flavor.

24 (7) "Internet" means any computer network, telephonic network, or
25 other electronic network.

26 ~~((3))~~ (8) "Manufacturer" means any person, including but not
27 limited to a repacker or relabeler, who manufactures, fabricates,
28 assembles, processes, or labels a vapor product or who imports a
29 finished vapor product for sale or distribution into the United
30 States. Manufacturer includes any retail establishment that mixes, or
31 permits customers to mix, flavors or solutions.

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

34 ~~((4))~~ (10) "Packaging" means a pack, box, carton, wrapping, or
35 container of any kind in which a vapor product is sold or offered for
36 sale to a consumer.

37 (11) "Person" means any natural person, partnership, firm, joint
38 stock company, corporation, or other legal entity, including an
39 employee of any such entity.

1 (12) "Retailer" means any person engaged in the business of
2 selling tobacco products or vapor products to ultimate consumers.

3 (13) "Sale" means any transfer, exchange, or barter, in any
4 manner or by any means, for consideration, and includes all sales
5 made by any person. "Sale" includes a gift by a person engaged in the
6 business of selling tobacco products or vapor products for
7 advertising, promoting, or as a means of evading the provisions of
8 this chapter.

9 (14) "Sample" means a tobacco product distributed to members of
10 the general public at no cost or at nominal cost for product
11 promotion purposes.

12 ~~((+5))~~ (15) "Sampling" means the distribution of samples to
13 members of the public.

14 ~~((+6))~~ (16) "Tobacco product" means a product that contains
15 tobacco and is intended for human use, including any product defined
16 in RCW 82.24.010(2) or 82.26.010(~~((+1))~~) (21), except that for the
17 purposes of RCW 70.155.140 only, "tobacco product" does not include
18 cigars defined in RCW 82.26.010 as to which one thousand units weigh
19 more than three pounds.

20 (17) "Vapor product" means any: (a) Device that employs a battery
21 or other mechanism to heat a solution or substance to produce a vapor
22 or aerosol intended for inhalation; (b) cartridge or container of a
23 solution or substance intended to be used with or in such a device or
24 to refill such a device; or (c) solution or substance intended for
25 use in such a device, including, but not limited to, concentrated
26 nicotine. "Vapor product" includes any electronic cigarettes,
27 electronic nicotine delivery systems, electronic cigars, electronic
28 cigarillos, electronic pipes, vape pens, or similar products or
29 devices, as well as any parts that can be used to build such products
30 or devices. "Vapor product" does not include any drug, device, or
31 combination product approved for sale by the United States food and
32 drug administration that is marketed and sold for such approved
33 purpose.

34 **Sec. 105.** RCW 70.155.020 and 1993 c 507 s 3 are each amended to
35 read as follows:

36 A person who holds a license issued under RCW 82.24.520 ~~((or))~~,
37 82.24.530 ~~((shall))~~, or section 215 of this act must:

38 (1) Display the license or a copy in a prominent location at the
39 outlet for which the license is issued; and

1 (2)(a) Display a sign concerning the prohibition of tobacco
2 product and vapor product sales to minors.

3 (b) Such sign (~~(shall)~~) must:

4 (~~(a)~~) (i) Be posted so that it is clearly visible to anyone
5 purchasing tobacco products or vapor products from the licensee;

6 (~~(b)~~) (ii) Be designed and produced by the department of health
7 to read: "THE SALE OF TOBACCO PRODUCTS AND VAPOR PRODUCTS TO PERSONS
8 UNDER AGE 18 IS STRICTLY PROHIBITED BY STATE LAW. IF YOU ARE UNDER
9 18, YOU COULD BE PENALIZED FOR PURCHASING A TOBACCO PRODUCT OR A
10 VAPOR PRODUCT; PHOTO ID REQUIRED"; and

11 (~~(c)~~) (iii) Be provided free of charge by the (~~(liquor~~
12 ~~control)~~) board.

13 NEW SECTION. Sec. 106. A new section is added to chapter 70.155
14 RCW to read as follows:

15 A person who holds a license issued under section 215 of this act
16 must conduct the business and maintain the premises in compliance
17 with Titles 9 and 9A RCW and chapter 69.50 RCW.

18 **Sec. 107.** RCW 70.155.030 and 1994 c 202 s 1 are each amended to
19 read as follows:

20 Unless preempted by federal law, no person (~~(shall)~~) may sell or
21 permit to be sold any tobacco product or vapor product through any
22 device that mechanically dispenses tobacco products or vapor products
23 unless the device is located fully within premises from which minors
24 are prohibited or in industrial worksites where minors are not
25 employed and not less than ten feet from all entrance or exit ways to
26 and from each premises. The board (~~(shall)~~) must adopt rules that
27 allow an exception to the requirement that a device be located not
28 less than ten feet from all entrance or exit ways to and from a
29 premises if it is architecturally impractical for the device to be
30 located not less than ten feet from all entrance and exit ways.

31 **Sec. 108.** RCW 70.155.050 and 2006 c 14 s 3 are each amended to
32 read as follows:

33 (1) Unless preempted by federal law, no person may engage in the
34 business of sampling tobacco products or vapor products.

35 (2) A violation of this section is a misdemeanor.

1 **Sec. 109.** RCW 70.155.070 and 1993 c 507 s 8 are each amended to
2 read as follows:

3 No person (~~shall~~) may give or distribute vapor products,
4 cigarettes, or other tobacco products to a person by a coupon if such
5 coupon is redeemed in any manner that does not require an in-person
6 transaction in a retail store.

7 NEW SECTION. **Sec. 110.** A new section is added to chapter 70.155
8 RCW to read as follows:

9 (1) The department must adopt a rule regulating the labeling and
10 advertisement of vapor products.

11 (a) The rule must require a manufacturer that sells, offers for
12 sale, or distributes a vapor product to label the vapor product with
13 a: (i) Disclosure of the nicotine content of the vapor product,
14 measured in milligrams per milliliter and verified by an independent
15 laboratory certified by the board; and (ii) warning regarding the
16 harmful effects of nicotine.

17 (b) In addition, the rule must require a manufacturer that
18 advertises a vapor product to include in any advertisement a: (i)
19 Disclosure of the nicotine content of the vapor product, measured in
20 milligrams per milliliter and verified by an independent laboratory
21 certified by the board; and (ii) warning regarding the harmful
22 effects of nicotine.

23 (c) If, following the study required by section 124(1) of this
24 act, the department determines that vapor product constituents or
25 ingredients or vapor product aerosol constituents other than nicotine
26 pose a risk of harm to human health, the department must require the
27 warnings described in (a) and (b) of this subsection to include
28 information related to such harmful constituents or ingredients.

29 (2) The board must: (a) Designate criteria and a process for
30 certifying independent laboratories that are authorized to perform
31 testing of nicotine content; and (b) coordinate with the department
32 to provide informational materials and programs to enable vapor
33 product manufacturers to meet the requirements of the rule adopted by
34 the department.

35 NEW SECTION. **Sec. 111.** A new section is added to chapter 70.155
36 RCW to read as follows:

1 (1) No person may offer a tobacco product or a vapor product for
2 sale in an open, unsecured display that is accessible to the public
3 without the intervention of a store employee.

4 (2) This section does not apply to a person licensed under RCW
5 82.24.520, 82.24.530, or section 215 of this act if the person
6 ensures that minors are not present or permitted to enter the
7 premises.

8 NEW SECTION. **Sec. 112.** A new section is added to chapter 70.155
9 RCW to read as follows:

10 (1) Unless preempted by federal law, any substance intended for
11 use in a vapor product that is sold at retail in this state must
12 satisfy the child-resistant effectiveness standards under 16 C.F.R.
13 Sec. 1700, as it existed on the effective date of this section, or
14 such subsequent date as may be provided by the board by rule,
15 consistent with the purposes of this section.

16 (2) A manufacturer that knowingly sells or distributes a
17 substance intended for use in a vapor product that does not satisfy
18 the requirements of this section is guilty of a class C felony.

19 NEW SECTION. **Sec. 113.** A new section is added to chapter 70.155
20 RCW to read as follows:

21 (1) A person may not sell, offer for sale, or possess with intent
22 to sell or offer for sale any flavored vapor product within the
23 state.

24 (2) A vapor product is presumed to be a flavored vapor product
25 if:

26 (a) A manufacturer or any of the manufacturer's agents or
27 employees have made a public statement or claim that the vapor
28 product has or produces a characterizing flavor including, but not
29 limited to, text or images on the product's label or packaging that
30 is used explicitly or implicitly to communicate information about the
31 flavor, taste, aroma, or smell of a vapor product; or

32 (b) A manufacturer or any of the manufacturer's agents or
33 employees have taken actions directed to consumers that would
34 reasonably be expected to result in consumers believing that the
35 vapor product imparts a characterizing flavor.

36 (3) A vapor product retailer must maintain on the premises the
37 original labeling and packaging provided by the manufacturer for all
38 vapor products that are sold or offered for sale by the establishment

1 separately from the original packaging designed for retail sale to
2 the consumer. The original labeling and packaging from which the
3 contents are sold separately must be maintained during such time as
4 the contents of the package are offered for sale and may be disposed
5 of upon the sale of the entire contents of such package.

6 NEW SECTION. **Sec. 114.** A new section is added to chapter 70.155
7 RCW to read as follows:

8 A person may not sell, offer for sale, or possess with intent to
9 sell or offer for sale any vapor product within the state that
10 contains a substance that increases the absorption of nicotine or
11 other psychoactive chemicals, as determined by the department.

12 **Sec. 115.** RCW 70.155.080 and 2002 c 175 s 47 are each amended to
13 read as follows:

14 (1) A person under the age of eighteen who purchases or attempts
15 to purchase, possesses, or obtains or attempts to obtain cigarettes
16 (~~(or)~~), tobacco products, or vapor products commits a class 3 civil
17 infraction under chapter 7.80 RCW and is subject to a fine as set out
18 in chapter 7.80 RCW or participation in up to four hours of community
19 restitution, or both. The court may also require participation in a
20 (~~(smoking)~~) cessation program. This provision does not apply if a
21 person under the age of eighteen, with parental authorization, is
22 participating in a controlled purchase as part of a (~~(liquor~~
23 ~~control)~~) board, law enforcement, or local health department
24 activity.

25 (2) Municipal and district courts within the state have
26 jurisdiction for enforcement of this section.

27 **Sec. 116.** RCW 70.155.090 and 2006 c 14 s 4 are each amended to
28 read as follows:

29 (1) Where there may be a question of a person's right to purchase
30 or obtain tobacco products by reason of age, the retailer or agent
31 thereof(~~(, shall)~~) must require the purchaser to present any one of
32 the following officially issued identification that shows the
33 purchaser's age and bears his or her signature and photograph: (a)
34 (~~(Liquor control authority card of identification of a state or~~
35 ~~province of Canada; (b))~~) Driver's license, instruction permit, or
36 identification card of a state or province of Canada; ((e)) (b)
37 "identocard" issued by the Washington state department of licensing

1 under chapter 46.20 RCW; ~~((d))~~ (c) United States military
2 identification; ~~((e))~~ (d) passport; ~~((f))~~ (e) enrollment card,
3 issued by the governing authority of a federally recognized Indian
4 tribe located in Washington, that incorporates security features
5 comparable to those implemented by the department of licensing for
6 Washington drivers' licenses. At least ninety days prior to
7 implementation of an enrollment card under this subsection, the
8 appropriate tribal authority ~~((shall))~~ must give notice to the board.
9 The board ~~((shall))~~ must publish and communicate to licensees
10 regarding the implementation of each new enrollment card; or ~~((g))~~
11 (f) merchant marine identification card issued by the United States
12 coast guard.

13 (2) It is a defense to a prosecution under RCW 26.28.080 that the
14 person making a sale reasonably relied on any of the officially
15 issued identification as defined in subsection (1) of this section.
16 The ~~((liquor control))~~ board ~~((shall))~~ must waive the suspension or
17 revocation of a license if the licensee clearly establishes that he
18 or she acted in good faith to prevent violations and a violation
19 occurred despite the licensee's exercise of due diligence.

20 **Sec. 117.** RCW 70.155.100 and 2006 c 14 s 5 are each amended to
21 read as follows:

22 (1) The ~~((liquor control))~~ board may suspend or revoke a
23 retailer's license issued under RCW 82.24.510(1)(b) or section
24 215(1)(b) of this act held by a business at any location, or may
25 impose a monetary penalty as set forth in subsection (2) of this
26 section, if the ~~((liquor control))~~ board finds that the licensee has
27 violated RCW 26.28.080, 70.155.020(~~(, 70.155.030, 70.155.040,~~
28 ~~70.155.050, 70.155.070, or 70.155.090))~~ through 70.155.070,
29 70.155.090, sections 111 through 114 of this act, or 21 C.F.R. Sec.
30 1140.14 as it exists on the effective date of this section.

31 (2) The sanctions that the ~~((liquor control))~~ board may impose
32 against a person licensed under RCW ~~((82.24.530))~~ 82.24.510(1)(b) or
33 section 215(1)(b) of this act based upon one or more findings under
34 subsection (1) of this section may not exceed the following:

35 (a) For violations of RCW 26.28.080 ~~((or))~~, 70.155.020, sections
36 112 through 114 of this act, or 21 C.F.R. Sec. 1140.14, and for
37 violations of RCW 70.155.040 occurring on the licensed premises:

38 (i) A monetary penalty of ~~((one))~~ two hundred dollars for the
39 first violation within any ~~((two))~~ three-year period;

1 (ii) A monetary penalty of ~~((three))~~ six hundred dollars for the
2 second violation within any ~~((two))~~ three-year period;

3 (iii) A monetary penalty of ~~((one))~~ two thousand dollars and
4 suspension of the license for a period of six months for the third
5 violation within any ~~((two))~~ three-year period;

6 (iv) A monetary penalty of ~~((one))~~ three thousand ~~((five
7 hundred))~~ dollars and suspension of the license for a period of
8 twelve months for the fourth violation within any ~~((two))~~ three-year
9 period;

10 (v) Revocation of the license with no possibility of
11 reinstatement for a period of five years for the fifth or more
12 violation within any ~~((two))~~ three-year period;

13 (b) For violations of section 106 of this act, suspension or
14 revocation of the license;

15 (c) For violations of RCW 70.155.030, a monetary penalty in the
16 amount of ~~((one))~~ two hundred dollars for each day upon which such
17 violation occurred;

18 ~~((c) For violations of RCW 70.155.040 occurring on the licensed~~
19 ~~premises;~~

20 ~~(i) A monetary penalty of one hundred dollars for the first~~
21 ~~violation within any two-year period;~~

22 ~~(ii) A monetary penalty of three hundred dollars for the second~~
23 ~~violation within any two-year period;~~

24 ~~(iii) A monetary penalty of one thousand dollars and suspension~~
25 ~~of the license for a period of six months for the third violation~~
26 ~~within any two-year period;~~

27 ~~(iv) A monetary penalty of one thousand five hundred dollars and~~
28 ~~suspension of the license for a period of twelve months for the~~
29 ~~fourth violation within any two-year period;~~

30 ~~(v) Revocation of the license with no possibility of~~
31 ~~reinstatement for a period of five years for the fifth or more~~
32 ~~violation within any two-year period;))~~

33 (d) For violations of RCW 70.155.050 or section 111 of this act,
34 a monetary penalty in the amount of ~~((three))~~ six hundred dollars for
35 each violation;

36 (e) For violations of RCW 70.155.070, a monetary penalty in the
37 amount of ~~((one))~~ two thousand dollars for each violation.

38 (3) The ~~((liquor control))~~ board may impose a monetary penalty
39 upon any person other than a licensed cigarette or vapor product
40 retailer if the ~~((liquor control))~~ board finds that the person has

1 violated RCW 26.28.080, 70.155.020(~~(, 70.155.030, 70.155.040,~~
2 ~~70.155.050, 70.155.070, or 70.155.090))~~ through 70.155.070,
3 70.155.090, or sections 111 through 114 of this act.

4 (4) The monetary penalty that the (~~liquor control~~) board may
5 impose based upon one or more findings under subsection (3) of this
6 section may not exceed the following:

7 (a) For violations of RCW 26.28.080 (~~or 70.155.020, fifty~~),
8 70.155.020, or sections 112 through 114 of this act, one hundred
9 dollars for the first violation and (~~one~~) two hundred dollars for
10 each subsequent violation;

11 (b) For violations of RCW 70.155.030, (~~one~~) two hundred dollars
12 for each day upon which such violation occurred;

13 (c) For violations of RCW 70.155.040, (~~one~~) two hundred dollars
14 for each violation;

15 (d) For violations of RCW 70.155.050 or section 111 of this act,
16 (~~three~~) six hundred dollars for each violation;

17 (e) For violations of RCW 70.155.070, (~~one~~) two thousand
18 dollars for each violation.

19 (5) The (~~liquor control~~) board may develop and offer a class
20 for retail clerks and use this class in lieu of a monetary penalty
21 for the clerk's first violation.

22 (6) The (~~liquor control~~) board may issue a cease and desist
23 order to any person who is found by the (~~liquor control~~) board to
24 have violated or intending to violate the provisions of this chapter,
25 RCW 26.28.080 (~~or~~), 82.24.500, or section 215 of this act,
26 requiring such person to cease specified conduct that is in
27 violation. The issuance of a cease and desist order (~~shall~~) does
28 not preclude the imposition of other sanctions authorized by this
29 statute or any other provision of law.

30 (7) The (~~liquor control~~) board may seek injunctive relief to
31 enforce the provisions of RCW 26.28.080 (~~or~~), 82.24.500, section
32 215 of this act, or this chapter. The (~~liquor control~~) board may
33 initiate legal action to collect civil penalties imposed under this
34 chapter if the same have not been paid within thirty days after
35 imposition of such penalties. In any action filed by the (~~liquor~~
36 control) board under this chapter, the court may, in addition to any
37 other relief, award the (~~liquor control~~) board reasonable
38 attorneys' fees and costs.

1 (8) All proceedings under subsections (1) through (6) of this
2 section (~~shall~~) must be conducted in accordance with chapter 34.05
3 RCW.

4 (9) The (~~liquor control~~) board may reduce or waive either the
5 penalties or the suspension or revocation of a license, or both, as
6 set forth in this chapter where the elements of proof are inadequate
7 or where there are mitigating circumstances. Mitigating circumstances
8 may include, but are not limited to, an exercise of due diligence by
9 a retailer. Further, the board may exceed penalties set forth in this
10 chapter based on aggravating circumstances.

11 **Sec. 118.** RCW 70.155.110 and 1993 c 507 s 12 are each amended to
12 read as follows:

13 (1) The (~~liquor control~~) board (~~shall~~) must, in addition to
14 the board's other powers and authorities, have the authority to
15 enforce the provisions of this chapter and RCW 26.28.080(~~(4) and~~),
16 82.24.500, and section 215 of this act. The (~~liquor control~~) board
17 (~~shall have~~) has full power to revoke or suspend the license of any
18 retailer (~~(or)~~), distributor, or wholesaler in accordance with the
19 provisions of RCW 70.155.100.

20 (2) The (~~liquor control~~) board and the board's (~~authorized~~
21 ~~agents~~) enforcement officers or employees (~~shall~~) have full power
22 and authority to enter any place of business where tobacco products
23 or vapor products are sold for the purpose of enforcing the
24 provisions of this chapter.

25 (3) For the purpose of enforcing the provisions of this chapter
26 and RCW 26.28.080(~~(4) and~~), 82.24.500, and section 215 of this act,
27 a peace officer or enforcement officer of the (~~liquor control~~)
28 board who has reasonable grounds to believe a person observed by the
29 officer purchasing, attempting to purchase, or in possession of
30 tobacco products or vapor products is under the age of eighteen years
31 of age, may detain such person for a reasonable period of time and in
32 such a reasonable manner as is necessary to determine the person's
33 true identity and date of birth. Further, tobacco products or vapor
34 products possessed by persons under the age of eighteen years of age
35 are considered contraband and may be seized by a peace officer or
36 enforcement officer of the (~~liquor control~~) board.

37 (4) The (~~liquor control~~) board may work with local county
38 health departments or districts and local law enforcement agencies to
39 conduct random, unannounced(~~(7)~~) inspections to assure compliance.

1 **Sec. 119.** RCW 70.155.120 and 1993 c 507 s 13 are each amended to
2 read as follows:

3 (1) The youth tobacco and vapor products prevention account is
4 created in the state treasury. All fees collected pursuant to RCW
5 82.24.520 (~~and~~), 82.24.530, and section 215 of this act and funds
6 collected by the (~~liquor control~~) board from the imposition of
7 monetary penalties (~~and samplers' fees shall~~) must be deposited
8 into this account, except that ten percent of all such fees and
9 penalties (~~shall~~) must be deposited in the state general fund.

10 (2) Moneys appropriated from the youth tobacco and vapor products
11 prevention account to the department (~~of health shall~~) must be used
12 by the department (~~of health~~) for implementation of this chapter,
13 including collection and reporting of data regarding enforcement and
14 the extent to which access to tobacco products and vapor products by
15 youth has been reduced.

16 (3) The department (~~of health shall~~) must enter into
17 interagency agreements with the (~~liquor control~~) board to pay the
18 costs incurred, up to thirty percent of available funds, in carrying
19 out its enforcement responsibilities under this chapter. Such
20 agreements (~~shall~~) must set forth standards of enforcement,
21 consistent with the funding available, so as to reduce the extent to
22 which tobacco products and vapor products are available to
23 individuals under the age of eighteen. The agreements (~~shall~~) must
24 also set forth requirements for data reporting by the (~~liquor~~
25 ~~control~~) board regarding its enforcement activities.

26 (4) The department of health and the department of revenue
27 (~~shall~~) must enter into an interagency agreement for payment of the
28 cost of administering the tobacco and vapor product retailer
29 licensing system and for the provision of quarterly documentation of
30 tobacco and vapor product wholesaler, retailer, and vending machine
31 names and locations.

32 (5) The department (~~of health shall~~) must, within up to seventy
33 percent of available funds, provide grants to local health
34 departments or other local community agencies to develop and
35 implement coordinated tobacco and vapor product intervention
36 strategies to prevent and reduce (~~tobacco~~) use by youth.

37 **Sec. 120.** RCW 70.155.130 and 1993 c 507 s 14 are each amended to
38 read as follows:

1 (1) This chapter preempts political subdivisions from adopting or
2 enforcing requirements for the licensure and regulation of tobacco
3 product promotions and sales within retail stores, except that
4 political subdivisions that have adopted ordinances prohibiting
5 sampling by January 1, 1993, may continue to enforce these
6 ordinances. No political subdivision may:

7 (~~(1)~~) (a) Impose fees or license requirements on retail
8 businesses for possessing or selling cigarettes or tobacco products,
9 other than general business taxes or license fees not primarily
10 levied on tobacco products; or

11 (~~(2)~~) (b) Regulate or prohibit activities related to tobacco
12 products that are covered by RCW 70.155.020 through 70.155.080. This
13 chapter does not otherwise preempt political subdivisions from
14 adopting ordinances regulating the sale, purchase, use, or promotion
15 of tobacco products not inconsistent with chapter 507, Laws of 1993.

16 (2) Nothing in this chapter preempts a political subdivision from
17 imposing additional restrictions on the sale, purchase, use, or
18 promotion of vapor products.

19 **Sec. 121.** RCW 70.155.140 and 2009 c 278 s 2 are each amended to
20 read as follows:

21 (1) A person may not:

22 (a) Ship or transport, or cause to be shipped or transported, any
23 tobacco product or vapor product ordered or purchased by mail or
24 through the internet to anyone in this state other than a licensed
25 wholesaler, distributor, or retailer; or

26 (b) With knowledge or reason to know of the violation, provide
27 substantial assistance to a person who is in violation of this
28 section.

29 (2) This section does not prohibit shipping, selling, or
30 transporting, or causing to be sold, shipped, or transported,
31 concentrated nicotine ordered or purchased by mail or through the
32 internet to a person who:

33 (a) Is engaged in business in this state;

34 (b) Has a documented commercial or industrial need for
35 concentrated nicotine that is not related to the sale, distribution,
36 or manufacture of vapor products; and

37 (c) Receives a waiver from the board.

1 (3)(a) A person who knowingly violates subsection (1) of this
2 section is guilty of a class C felony, except that the maximum fine
3 that may be imposed is five thousand dollars.

4 (b) In addition to or in lieu of any other civil or criminal
5 remedy provided by law, a person who has violated subsection (1) of
6 this section is subject to a civil penalty of up to five thousand
7 dollars for each violation. The attorney general, acting in the name
8 of the state, may seek recovery of the penalty in a civil action in
9 superior court. For purposes of this subsection, each shipment or
10 transport of tobacco products or vapor products constitutes a
11 separate violation.

12 (~~(3)~~) (4) The attorney general may seek an injunction in
13 superior court to restrain a threatened or actual violation of
14 subsection (1) of this section and to compel compliance with
15 subsection (1) of this section.

16 (~~(4)~~) (5) Any violation of subsection (1) of this section is
17 not reasonable in relation to the development and preservation of
18 business and is an unfair and deceptive act or practice and an unfair
19 method of competition in the conduct of trade or commerce in
20 violation of RCW 19.86.020. Standing to bring an action to enforce
21 RCW 19.86.020 for violation of subsection (1) of this section lies
22 solely with the attorney general. Remedies provided by chapter 19.86
23 RCW are cumulative and not exclusive.

24 (~~(5)~~) (6)(a) In any action brought under this section, the
25 state is entitled to recover, in addition to other relief, the costs
26 of investigation, expert witness fees, costs of the action, and
27 reasonable attorneys' fees.

28 (b) If a court determines that a person has violated subsection
29 (1) of this section, the court (~~shall~~) must order any profits,
30 gain, gross receipts, or other benefit from the violation to be
31 disgorged and paid to the state treasurer for deposit in the general
32 fund.

33 (~~(6)~~) (7) Unless otherwise expressly provided, the penalties or
34 remedies, or both, under this section are in addition to any other
35 penalties and remedies available under any other law of this state.

36 NEW SECTION. Sec. 122. A new section is added to chapter 70.155
37 RCW to read as follows:

38 The department may adopt rules to implement and enforce the
39 requirements of this chapter.

1 NEW SECTION. **Sec. 123.** A new section is added to chapter 70.155
2 RCW to read as follows:

3 The board may adopt rules to implement and enforce the
4 requirements of this chapter.

5 NEW SECTION. **Sec. 124.** (1) The department of health and the
6 liquor control board must study whether the label and disclosure
7 required by section 110 of this act should include information
8 regarding harmful vapor product constituents or vapor product aerosol
9 constituents other than nicotine. The department and the board must
10 submit a report with findings and recommendations to the governor and
11 the appropriate committees of the legislature by December 1, 2016.

12 (2) By December 1, 2016, the department of health must submit a
13 report to the governor and the appropriate committees of the
14 legislature recommending whether the sale of vapor products with
15 flavors other than those prohibited under section 113 of this act,
16 such as menthol, mint, and wintergreen, should be prohibited.

17 (3) This section expires January 1, 2017.

18 **PART II**

19 **Tax on Vapor Products**

20 NEW SECTION. **Sec. 201.** The definitions in this section apply
21 throughout this chapter unless the context clearly requires
22 otherwise.

23 (1) "Actual price" means the total amount of consideration for
24 which vapor products are sold, valued in money, whether received in
25 money or otherwise, including: (a) Any charges by the seller
26 necessary to complete the sale such as charges for delivery, freight,
27 transportation, or handling; and (b) in the case of a taxpayer
28 importing vapor products into the state, any expenses of the taxpayer
29 or any person affiliated with the taxpayer that are necessary to
30 complete the importation, such as delivery, freight, transportation,
31 federal taxes, or handling of the product.

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

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

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

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

2 (6) "Distributor" means: (a) Any person engaged in the business
3 of selling vapor products in this state who brings, or causes to be
4 brought, into this state from without the state any vapor products
5 for sale; (b) any person who makes, manufactures, fabricates, or
6 stores vapor products in this state for sale in this state; (c) any
7 person engaged in the business of selling vapor products without this
8 state who ships or transports vapor products to retailers in this
9 state, to be sold by those retailers; and (d) any person engaged in
10 the business of selling vapor products in this state who handles for
11 sale any vapor products that are within this state but upon which tax
12 has not been imposed.

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

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

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

20 (10) "Person" means: Any individual, receiver, administrator,
21 executor, assignee, trustee in bankruptcy, trust, estate, firm,
22 copartnership, joint venture, club, company, joint stock company,
23 business trust, municipal corporation, corporation, limited liability
24 company, association, or society; the state and its departments and
25 institutions; any political subdivision of the state of Washington;
26 and any group of individuals acting as a unit, whether mutual,
27 cooperative, fraternal, nonprofit, or otherwise. "Person" does not
28 include any person immune from state taxation, including the United
29 States or its instrumentalities, and federally recognized Indian
30 tribes and enrolled tribal members, conducting business within Indian
31 country.

32 (11) "Place of business" means any place where vapor products are
33 sold or where vapor products are manufactured, stored, or kept for
34 the purpose of sale, including any vessel, vehicle, airplane, or
35 train.

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

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

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

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

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

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

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

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

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

28 (v) In the case of a taxpayer that has acquired vapor products
29 under a sale as defined in subsection (14)(b) of this section, the
30 price, determined as nearly as possible according to the actual
31 price, that the taxpayer or other distributors sell the same vapor
32 products or similar vapor products of like quality and character to
33 unaffiliated distributors, unaffiliated retailers, or ultimate
34 consumers;

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

37 (vii) In any case where (a)(i) through (vi) of this subsection do
38 not apply, the price, determined as nearly as possible according to
39 the actual price, that the taxpayer or other distributors sell the
40 same vapor products or similar vapor products of like quality and

1 character to unaffiliated distributors, unaffiliated retailers, or
2 ultimate consumers.

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

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

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

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

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

29 (19)(a) "Vapor product" means any noncombustible product that
30 employs a mechanical heating element, battery, or electronic circuit
31 regardless of shape or size that can be used to produce vapor from a
32 liquid solution or other substance, including an electronic
33 cigarette, electronic cigar, electronic cigarillo, electronic pipe,
34 or similar product or device. "Vapor product" includes: (i) Any
35 liquid solution or other substance in a cartridge or other container
36 that is capable of being used with or in a vapor product to produce
37 vapor; and (ii) any related accessories or equipment specifically
38 designed or marketed to be used with a vapor product.

39 (b) "Vapor product" does not include: (i) Any drug, device, or
40 combination product approved for sale by the United States food and

1 drug administration that is marketed and sold for such approved
2 purpose; or (ii) any product meeting the definition of marijuana,
3 useable marijuana, marijuana concentrates, marijuana-infused
4 products, cigarette, or tobacco products.

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

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

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

10 (iii) "Tobacco products" has the same meaning as in RCW
11 82.26.010.

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

19 (b) If the seller can identify by reasonable and verifiable
20 standards the portion of the selling price attributable to the vapor
21 products from its books and records that are kept in the regular
22 course of business for other purposes including, but not limited to,
23 nontax purposes, the tax imposed by this section only applies to that
24 portion of the selling price of the product attributable to the vapor
25 products.

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

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

38 (3) The moneys collected under this section must be deposited as
39 follows: (a) Ninety percent into the state general fund; and (b) ten

1 percent into the essential public health services account created in
2 section 203 of this act.

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

4 NEW SECTION. **Sec. 203.** (1) The essential public health services
5 account is created in the state treasury. The revenue from the tax
6 collected under section 202 of this act must be deposited into the
7 account. Moneys in the account may be spent only after appropriation
8 to the department of health. The department must use the moneys in
9 the account for each of the three following purposes: (a) To fund
10 essential governmental public health services; (b) to fund tobacco
11 control and prevention and other substance use prevention and
12 education; and (c) to use to strengthen and support public health
13 system capabilities, including accredited higher education public
14 health programs.

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

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

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

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

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

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

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

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

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

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

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

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

28 (b) For purposes of this subsection, the following definitions
29 apply:

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

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

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

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

13 NEW SECTION. **Sec. 212.** The department must authorize, as duly
14 authorized agents, enforcement officers of the liquor control board
15 to enforce provisions of this chapter. These officers are not
16 employees of the department.

17 NEW SECTION. **Sec. 213.** (1) The department may by rule establish
18 the invoice detail required under section 207 of this act for a
19 distributor under section 201(6)(d) of this act and for those
20 invoices required to be provided to retailers under section 208 of
21 this act.

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

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

30 NEW SECTION. **Sec. 214.** (1) No person may transport or cause to
31 be transported in this state vapor products for sale other than: (a)
32 A licensed distributor in the distributor's own vehicle, a
33 manufacturer's representative authorized to sell or distribute vapor
34 products in this state under section 221 of this act, or a licensed
35 retailer in the retailer's own vehicle; or (b) a person who has given
36 notice to the board in advance of the commencement of transportation.

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

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

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

- 15 (a) A distributor's license; and
16 (b) A retailer's license.

17 (2) Application for the licenses must be made through the
18 business licensing system under chapter 19.02 RCW. The board may
19 adopt rules regarding the regulation of the licenses. The board may
20 refuse to issue any license under this chapter if the board has
21 reasonable cause to believe that the applicant has willfully withheld
22 information requested for the purpose of determining the eligibility
23 of the applicant to receive a license, or if the board has reasonable
24 cause to believe that information submitted in the application is
25 false or misleading or is not made in good faith. In addition, for
26 the purpose of reviewing an application for a distributor's license
27 or retailer's license and for considering the denial, suspension, or
28 revocation of any such license, the board may consider criminal
29 conduct of the applicant, including an administrative violation
30 history record with the board and a criminal history record
31 information check within the previous five years, in any state,
32 tribal, or federal jurisdiction in the United States, its
33 territories, or possessions, and the provisions of RCW 9.95.240 and
34 chapter 9.96A RCW do not apply to such cases. The board may, in its
35 discretion, issue or refuse to issue the distributor's license or
36 retailer's license, subject to the provisions of section 222 of this
37 act.

38 (3) No person may qualify for a distributor's license or a
39 retailer's license under this section without first undergoing a

1 criminal background check. The background check must be performed by
2 the board and must disclose any criminal conduct within the previous
3 five years in any state, tribal, or federal jurisdiction in the
4 United States, its territories, or possessions. If the applicant or
5 licensee also has a license issued under chapter 66.24, 82.24, or
6 82.26 RCW, the background check done under the authority of chapter
7 66.24, 82.24, or 82.26 RCW satisfies the requirements of this
8 subsection.

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

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

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

23 NEW SECTION. **Sec. 216.** A fee of six hundred fifty dollars must
24 accompany each distributor's license application or license renewal
25 application. If a distributor sells or intends to sell vapor products
26 at two or more places of business, whether established or temporary,
27 a separate license with a license fee of one hundred fifteen dollars
28 is required for each additional place of business.

29 NEW SECTION. **Sec. 217.** A fee of two hundred fifty dollars must
30 accompany each retailer's license application or license renewal
31 application. A separate license is required for each separate
32 location at which the retailer operates.

33 NEW SECTION. **Sec. 218.** The board must compile and maintain a
34 current record of the names of all distributors and retailers
35 licensed under this chapter and the status of their license or
36 licenses. The information must be updated on a monthly basis and
37 published on the board's official internet web site. This information

1 is not subject to the confidentiality provisions of RCW 82.32.330 and
2 must be disclosed to manufacturers, distributors, retailers, and the
3 general public upon request.

4 NEW SECTION. **Sec. 219.** (1)(a) No person may engage in or
5 conduct business as a distributor or retailer in this state without a
6 valid license issued under this chapter, except as otherwise provided
7 by law. Any person who sells vapor products to persons other than
8 ultimate consumers or who meets the definition of "distributor" under
9 section 201(6)(d) of this act must obtain a distributor's license
10 under this chapter. Any person who sells vapor products to ultimate
11 consumers must obtain a retailer's license under this chapter.

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

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

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

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

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

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

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

34 (ii) The person transporting the vapor products actually
35 possesses invoices or delivery tickets showing the true name and
36 address of the consignor or seller, the true name and address of the
37 consignee or purchaser, and the quantity and brands of vapor products
38 being transported; and

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

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

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

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

12 NEW SECTION. **Sec. 220.** (1) A retailer that obtains vapor
13 products from an unlicensed distributor or any other person that is
14 not licensed under this chapter must be licensed both as a retailer
15 and a distributor under this chapter and is liable for the tax
16 imposed under section 202 of this act with respect to the vapor
17 products acquired from the unlicensed person that are held for sale,
18 handling, or distribution in this state. For the purposes of this
19 subsection, "person" includes both persons defined in section 201(10)
20 of this act and any person immune from state taxation, such as the
21 United States or its instrumentalities, and federally recognized
22 Indian tribes and enrolled tribal members, conducting business within
23 Indian country.

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

27 NEW SECTION. **Sec. 221.** A manufacturer that has manufacturer's
28 representatives who sell or distribute the manufacturer's vapor
29 products in this state must provide the board a list of the names and
30 addresses of all such representatives and must ensure that the list
31 provided to the board is kept current. A manufacturer's
32 representative is not authorized to distribute or sell vapor products
33 in this state unless the manufacturer that hired the representative
34 has a valid distributor's license under this chapter and that
35 manufacturer provides the board a current list of all of its
36 manufacturer's representatives as required by this section. A
37 manufacturer's representative must carry a copy of the distributor's

1 license of the manufacturer that hired the representative at all
2 times when selling or distributing the manufacturer's vapor products.

3 NEW SECTION. **Sec. 222.** (1) The board must enforce this chapter.
4 The board may adopt, amend, and repeal rules necessary to enforce
5 this chapter.

6 (2) The department may adopt, amend, and repeal rules necessary
7 to administer this chapter. The board may revoke or suspend the
8 distributor's or retailer's license of any distributor or retailer of
9 vapor products in the state upon sufficient cause showing a violation
10 of this chapter or upon the failure of the licensee to comply with
11 any of the rules adopted under it.

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

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

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

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

1 (7) Any determination and order by the board, and any order of
2 suspension or revocation by the board of the license or licenses
3 issued under this chapter, or refusal to reinstate a license or
4 licenses after revocation is reviewable by an appeal to the superior
5 court of Thurston county. The superior court must review the order or
6 ruling of the board and may hear the matter de novo, having due
7 regard to the provisions of this chapter and the duties imposed upon
8 the board.

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

12 NEW SECTION. **Sec. 223.** (1) Any vapor products in the possession
13 of a person selling vapor products in this state acting as a
14 distributor or retailer and who is not licensed as required under
15 section 219 of this act, or a person who is selling vapor products in
16 violation of section 222(6) of this act, may be seized without a
17 warrant by any agent of the department, agent of the board, or law
18 enforcement officer of this state. Any vapor products seized under
19 this subsection are deemed forfeited.

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

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

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

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

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

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

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

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

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

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

25 NEW SECTION. **Sec. 224.** (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. 225.** 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. 226.** The taxes imposed by this chapter do not
26 apply to the sale, use, consumption, handling, possession, or
27 distribution of vapor products by an Indian retailer during the
28 effective period of a vapor product tax contract subject to section
29 303 of this act.

30 NEW SECTION. **Sec. 227.** (1) Preexisting inventories of vapor
31 products are subject to the tax imposed in section 202 of this act.
32 All retailers and other distributors must report the tax due under
33 section 202 of this act on preexisting inventories of vapor products
34 on the taxpayer's excise tax return for a reporting period that
35 includes tax liability accruing on and after October 1, 2015,
36 consistent with the taxpayer's regular tax reporting frequency.

1 (2) A retailer required to comply with subsection (1) of this
2 section is not required to obtain a distributor's license as
3 otherwise required under this chapter as long as the retailer: (a)
4 Does not sell vapor products other than to ultimate consumers; and
5 (b) does not meet the definition of "distributor" in section
6 201(6)(d) of this act other than with respect to the sale of that
7 retailer's preexisting inventory of vapor products.

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

11 (4) For purposes of this section:

12 (a) The definitions in section 201 of this act apply; and

13 (b) "Preexisting inventory" means an inventory of vapor products
14 located in this state as of the moment that section 202 of this act
15 takes effect and held by a distributor for sale, handling, or
16 distribution in this state.

17 **Sec. 228.** 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. 229.** 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. 230.** 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. 231.** RCW 82.24.530 and 2012 2nd sp.s. c 4 s 12 are each
16 amended to read as follows:

17 A fee of (~~(ninety-three)~~) two hundred fifty dollars must
18 accompany each retailer's license application or license renewal
19 application. A separate license is required for each separate
20 location at which the retailer operates. A fee of thirty additional
21 dollars for each vending machine must accompany each application or
22 renewal for a license issued to a retail dealer operating a cigarette
23 vending machine. An additional fee of ninety-three dollars (~~(shall)~~)
24 must accompany each application or renewal for a license issued to a
25 retail dealer operating a cigarette-making machine.

26 **Sec. 232.** RCW 82.24.550 and 2009 c 154 s 2 are each amended to
27 read as follows:

28 (1) The board (~~(shall)~~) must enforce the provisions of this
29 chapter. The board may adopt, amend, and repeal rules necessary to
30 enforce and administer the provisions of this chapter.

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

37 (3) A license (~~(shall)~~) may not be suspended or revoked except
38 upon notice to the licensee and after a hearing as prescribed by the

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

11 (4) Any licenses issued under chapter 82.26 or 82.-- RCW (the new
12 chapter created in section 403 of this act) to a person whose license
13 or licenses have been suspended or revoked under this section
14 (~~shall~~) 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 from the date of revocation of the license or licenses. The license
19 or licenses may be approved by the board if it appears to the
20 satisfaction of the board that the licensee will comply with the
21 provisions of this chapter and the rules adopted under this chapter.

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

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 (~~shall~~) must be reviewable by an appeal
32 to the superior court of Thurston county. The superior court
33 (~~shall~~) must review the order or ruling of the board and may hear
34 the matter de novo, having due regard to the provisions of this
35 chapter and the duties imposed upon 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.

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

1 **Sec. 233.** RCW 82.26.060 and 2009 c 154 s 3 are each amended to
2 read as follows:

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

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

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

30 **Sec. 234.** RCW 82.26.080 and 2005 c 180 s 5 are each amended to
31 read as follows:

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

36 (2) The retailer (~~shall~~) must keep at each retail outlet copies
37 of complete, accurate, and legible invoices for that retail outlet or
38 place of business. All invoices required to be kept under this

1 section (~~shall~~) must be preserved for five years from the date of
2 purchase.

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

16 **Sec. 235.** RCW 82.26.150 and 2013 c 144 s 52 are each amended to
17 read as follows:

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

20 (a) A distributor's license; and

21 (b) A retailer's license.

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

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

3 (3) No person may qualify for a distributor's license or a
4 retailer's license under this section without first undergoing a
5 criminal background check. The background check must be performed by
6 the board and must disclose any criminal conduct within the previous
7 five years in any state, tribal, or federal jurisdiction in the
8 United States, its territories, or possessions. If the applicant or
9 licensee also has a license issued under chapter 66.24 (~~($\text{\textcircled{e}}$)~~), 82.24,
10 or 82.-- RCW (the new chapter created in section 403 of this act),
11 the background check done under the authority of chapter 66.24
12 (~~($\text{\textcircled{e}}$)~~), 82.24, or 82.-- RCW (the new chapter created in section 403
13 of this act) satisfies the requirements of this section.

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

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

23 **Sec. 236.** RCW 82.26.170 and 2005 c 180 s 13 are each amended to
24 read as follows:

25 (1) A fee of (~~($\text{\textcircled{e}}$)~~) two hundred fifty dollars (~~($\text{\textcircled{e}}$)~~)
26 must accompany each retailer's license application or license renewal
27 application. A separate license is required for each separate
28 location at which the retailer operates.

29 (2) The fee imposed under subsection (1) of this section does not
30 apply to any person applying for a retailer's license or for renewal
31 of a retailer's license if the person has a valid retailer's license
32 under RCW 82.24.510 for the place of business associated with the
33 retailer's license application or renewal application.

34 **Sec. 237.** RCW 82.26.220 and 2009 c 154 s 8 are each amended to
35 read as follows:

36 (1) The board (~~($\text{\textcircled{e}}$)~~) must enforce this chapter. The board may
37 adopt, amend, and repeal rules necessary to enforce and administer
38 this chapter.

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

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

19 (4) Any licenses issued under chapter 82.24 or 82.-- RCW (the new
20 chapter created in section 403 of this act) to a person whose license
21 or licenses have been suspended or revoked under this section
22 (~~shall~~) must also be suspended or revoked during the period of
23 suspension or revocation under this section.

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

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

36 (7) Any determination and order by the board, and any order of
37 suspension or revocation by the board of the license or licenses
38 issued under this chapter, or refusal to reinstate a license or
39 licenses after revocation is reviewable by an appeal to the superior
40 court of Thurston county. The superior court (~~shall~~) must review

1 the order or ruling of the board and may hear the matter de novo,
2 having due regard to the provisions of this chapter and the duties
3 imposed upon the board.

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

7 **Sec. 238.** RCW 82.32.300 and 1997 c 420 s 9 are each amended to
8 read as follows:

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

15 (2) The department of revenue (~~(shall)~~) must make and publish
16 rules and regulations, not inconsistent therewith, necessary to
17 enforce provisions of this chapter and chapters 82.02 through 82.23B
18 and 82.27 RCW, and the liquor control board (~~(shall)~~) must make and
19 publish rules necessary to enforce chapters 82.24 (~~(and)~~), 82.26, and
20 82.-- RCW (the new chapter created in section 403 of this act), which
21 (~~(shall)~~) must have the same force and effect as if specifically
22 included therein, unless declared invalid by the judgment of a court
23 of record not appealed from.

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

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

32 **PART III**
33 **Tribal Compacting**

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

36 The legislature intends to further the government-to-government
37 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. 302. 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 under the age of eighteen years.

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

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

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

37 (b) Out-of-state wholesalers or manufacturers who, although not
38 licensed to do business in the state of Washington, agree to comply
39 with the terms of the vapor product tax contract, are certified to

1 the state as having so agreed, and who do in fact so comply. However,
2 the state may in its sole discretion exercise its administrative and
3 enforcement powers over such wholesalers or manufacturers to the
4 extent permitted by law;

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

7 (d) A tribal manufacturer.

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

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

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

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

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

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

25 (11) It is the intent of the legislature that the liquor control
26 board and the department of revenue continue the division of duties
27 and shared authority under chapter 82.-- RCW (the new chapter created
28 in section 403 of this act) and therefore the liquor control board is
29 responsible for enforcement activities that come under the terms of
30 chapter 82.-- RCW (the new chapter created in section 403 of this
31 act).

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

1 has occurred. Intervening violations do not extend this time period.
2 In addition, the contract must include provisions delineating the
3 respective roles and responsibilities of the tribe, the department of
4 revenue, and the liquor control board.

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

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

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

12 (c) "Indian retailer" or "retailer" means: (i) A retailer wholly
13 owned and operated by an Indian tribe; (ii) a business wholly owned
14 and operated by a tribal member and licensed by the tribe; or (iii) a
15 business owned and operated by the Indian person or persons in whose
16 name the land is held in trust;

17 (d) "Indian tribe" or "tribe" means a federally recognized Indian
18 tribe located within the geographical boundaries of the state of
19 Washington; and

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

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

24 (1) The governor is authorized to enter into vapor product tax
25 contracts with federally recognized Indian tribes located within the
26 geographical boundaries of the state of Washington, except the
27 Puyallup Tribe of Indians. Each contract adopted under this section
28 must provide that the tribal vapor product tax rate be one hundred
29 percent of the state vapor product tax and state and local sales and
30 use taxes. The tribal vapor product tax is in lieu of the state vapor
31 product tax and state and local sales and use taxes, as provided in
32 section 302(3) of this act.

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

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

37 (1) The governor may enter into a vapor product tax agreement
38 with the Puyallup Tribe of Indians concerning the sale of vapor

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

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

19 (3) The agreement must include a provision requiring the tribe to
20 transmit thirty percent of the tribal tax revenue on all vapor
21 products sales to the state. The funds must be transmitted to the
22 state treasurer on a quarterly basis for deposit by the state
23 treasurer into the general fund. The remaining tribal tax revenue
24 must be used for essential government services, as that term is
25 defined in section 302 of this act.

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

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

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

37 (c) The agreement must include a provision to assure the price
38 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 control 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 control 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 control
36 board and the department of revenue continue the division of duties
37 and shared authority under chapter 82.-- RCW (the new chapter created
38 in section 403 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 chapter
2 82.24 RCW.

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 in section 201 of
11 this act.

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

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

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

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

24 NEW SECTION. **Sec. 307.** The taxes imposed by this chapter do not
25 apply to the sale, use, consumption, handling, possession, or
26 distribution of vapor products by an Indian retailer during the
27 effective period of a vapor product tax contract subject to section
28 303 of this act or a vapor product tax agreement under section 304 of
29 this act.

30 **PART IV**

31 **Miscellaneous Provisions**

32 NEW SECTION. **Sec. 401.** If any provision of this act or its
33 application to any person or circumstance is held invalid, the
34 remainder of the act or the application of the provision to other
35 persons or circumstances is not affected.

1 NEW SECTION. **Sec. 402.** If any part of this act is found to be
2 in conflict with federal requirements that are a prescribed condition
3 to the allocation of federal funds to the state, the conflicting part
4 of this act is inoperative solely to the extent of the conflict and
5 with respect to the agencies directly affected, and this finding does
6 not affect the operation of the remainder of this act in its
7 application to the agencies concerned. Rules adopted under this act
8 must meet federal requirements that are a necessary condition to the
9 receipt of federal funds by the state.

10 NEW SECTION. **Sec. 403.** Sections 201 through 227 and 307 of this
11 act constitute a new chapter in Title 82 RCW.

12 NEW SECTION. **Sec. 404.** This act takes effect October 1, 2015.

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