

CERTIFICATION OF ENROLLMENT
ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1873

66th Legislature
2019 Regular Session

Passed by the House April 28, 2019
Yeas 56 Nays 42

Speaker of the House of Representatives

Passed by the Senate April 28, 2019
Yeas 35 Nays 13

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1873** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1873

AS AMENDED BY THE SENATE

Passed Legislature - 2019 Regular Session

State of Washington

66th Legislature

2019 Regular Session

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

READ FIRST TIME 04/25/19.

1 AN ACT Relating to the taxation of vapor products as tobacco
2 products; amending RCW 66.08.145, 66.44.010, 82.24.510, 82.24.550,
3 82.26.060, 82.26.080, 82.26.150, 82.26.220, 82.32.300, 70.345.010,
4 70.345.030, 70.345.090, 43.06.450, 43.348.080, and 82.26.020; adding
5 new sections to chapter 43.06 RCW; adding a new section to chapter
6 82.08 RCW; adding a new section to chapter 82.12 RCW; adding a new
7 section to chapter 82.32 RCW; adding a new chapter to Title 82 RCW;
8 creating new sections; repealing RCW 43.348.900; prescribing
9 penalties; and providing an effective date.

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

11 **Part I**

12 **Tax on Vapor Products**

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

16 (1) "Accessible container" means a container that is intended to
17 be opened. The term does not mean a closed cartridge or closed
18 container that is not intended to be opened such as a disposable e-
19 cigarette.

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

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

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

7 (5) "Distributor" mean any person:

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

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

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

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

19 (6) "Indian country" has the same meaning as provided in RCW
20 82.24.010.

21 (7) "Manufacturer" has the same meaning as provided in RCW
22 70.345.010.

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

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

38 (10) "Place of business" means any place where vapor products are
39 sold or where vapor products are manufactured, stored, or kept for

1 the purpose of sale, including any vessel, vehicle, airplane, or
2 train.

3 (11) "Retail outlet" has the same meaning as provided in RCW
4 70.345.010.

5 (12) "Retailer" has the same meaning as provided in RCW
6 70.345.010.

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

8 (14) "Taxpayer" means a person liable for the tax imposed by this
9 chapter.

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

22 (a) The term does not include:

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

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

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

32 (b) For purposes of this subsection (15):

33 (i) "Cigarette" has the same meaning as provided in RCW
34 82.24.010; and

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

1 NEW SECTION. **Sec. 102.** (1)(a) There is levied and collected a
2 tax upon the sale, use, consumption, handling, possession, or
3 distribution of all vapor products in this state as follows:

4 (i) All vapor products other than those taxed under (a)(ii) of
5 this subsection are taxed at a rate equal to twenty-seven cents per
6 milliliter of solution, regardless of whether it contains nicotine,
7 and a proportionate tax at the like rate on all fractional parts of a
8 milliliter thereof.

9 (ii) Any accessible container of solution, regardless of whether
10 it contains nicotine, that is greater than five milliliters, is taxed
11 at a rate equal to nine cents per milliliter of solution and a
12 proportionate tax at the like rate on all fractional parts of a
13 milliliter thereof.

14 (b) The tax in this section must be imposed based on the volume
15 of the solution as listed by the manufacturer.

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

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

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

30 (i) Fifty percent into the Andy Hill cancer research endowment
31 fund match transfer account created in RCW 43.348.080; and

32 (ii) Fifty percent into the foundational public health services
33 account created in section 103 of this act.

34 (b) The funding provided under this subsection is intended to
35 supplement and not supplant general fund investments in cancer
36 research and foundational public health services.

37 NEW SECTION. **Sec. 103.** The foundational public health services
38 account is created in the state treasury. Half of all of the moneys
39 collected from the tax imposed on vapor products under RCW 66.44.010

1 must be deposited into the account. Moneys in the account may be
2 spent only after appropriation. Moneys in the account are to be used
3 for the following purposes:

4 (1) To fund foundational health services. In the 2019-2021
5 biennium, at least twelve million dollars of the funds deposited into
6 the account must be appropriated for this purpose. Beginning in the
7 2021-2023 biennium, fifty percent of the funds deposited into the
8 account, but not less than twelve million dollars each biennium, are
9 to be used for this purpose;

10 (2) To fund tobacco, vapor product, and nicotine control and
11 prevention, and other substance use prevention and education.
12 Beginning in the 2021-2023 biennium, seventeen percent of the funds
13 deposited into the account are to be used for this purpose;

14 (3) To support increased access and training of public health
15 professionals at public health programs at accredited public
16 institutions of higher education in Washington. Beginning in the
17 2021-2023 biennium, five percent of the funds deposited into the
18 account are to be used for this purpose;

19 (4) To fund enforcement by the state liquor and cannabis board of
20 the provisions of this chapter to prevent sales of vapor products to
21 minors and related provisions for control of marketing and product
22 safety, provided that no more than eight percent of the funds
23 deposited into the account may be appropriated for these enforcement
24 purposes.

25 NEW SECTION. **Sec. 104.** 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. 105.** The tax imposed by section 102 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.

36 NEW SECTION. **Sec. 106.** (1) Every distributor must keep at each
37 place of business complete and accurate records for that place of

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

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

12 (3) At any time during usual business hours the department,
13 board, or its duly authorized agents or employees may enter any place
14 of business of a distributor, without a search warrant, and inspect
15 the premises, the records required to be kept under this chapter, and
16 the vapor products contained therein, to determine whether or not all
17 the provisions of this chapter are being fully complied with. If the
18 department, board, or any of its agents or employees are denied free
19 access or are hindered or interfered with in making such examination,
20 the registration certificate issued under RCW 82.32.030 of the
21 distributor at such premises are subject to revocation by the
22 department, and any licenses issued under chapter 70.345, 82.26, or
23 82.24 RCW are subject to suspension or revocation by the board.

24 NEW SECTION. **Sec. 107.** Every person required to be licensed
25 under chapter 70.345 RCW who sells vapor products to persons other
26 than the ultimate consumer must render with each sale itemized
27 invoices showing the seller's name and address, the purchaser's name
28 and address, the date of sale, and all prices. The person must
29 preserve legible copies of all such invoices for five years from the
30 date of sale.

31 NEW SECTION. **Sec. 108.** (1) Every retailer must procure itemized
32 invoices of all vapor products purchased. The invoices must show the
33 seller's name and address, the date of purchase, and all prices and
34 discounts.

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

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

13 NEW SECTION. **Sec. 109.** (1)(a) Where vapor products upon which
14 the tax imposed by this chapter has been reported and paid are
15 shipped or transported outside this state by the distributor to a
16 person engaged in the business of selling vapor products, to be sold
17 by that person, or are returned to the manufacturer by the
18 distributor or destroyed by the distributor, or are sold by the
19 distributor to the United States or any of its agencies or
20 instrumentalities, or are sold by the distributor to any Indian
21 tribal organization, credit of such tax may be made to the
22 distributor in accordance with rules prescribed by the department.

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

25 (i) "Indian distributor" means a federally recognized Indian
26 tribe or tribal entity that would otherwise meet the definition of
27 "distributor" under section 101 of this act, if federally recognized
28 Indian tribes and tribal entities were not excluded from the
29 definition of "person" in section 101 of this act.

30 (ii) "Indian retailer" means a federally recognized Indian tribe
31 or tribal entity that would otherwise meet the definition of
32 "retailer" under section 101 of this act, if federally recognized
33 Indian tribes and tribal entities were not excluded from the
34 definition of "person" in section 101 of this act.

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

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

4 NEW SECTION. **Sec. 110.** All of the provisions contained in
5 chapter 82.32 RCW not inconsistent with the provisions of this
6 chapter have full force and application with respect to taxes imposed
7 under the provisions of this chapter.

8 NEW SECTION. **Sec. 111.** The department must authorize, as duly
9 authorized agents, enforcement officers of the board to enforce
10 provisions of this chapter. These officers are not employees of the
11 department.

12 NEW SECTION. **Sec. 112.** (1) The department may by rule establish
13 the invoice detail required under section 106 of this act for a
14 distributor and for those invoices required to be provided to
15 retailers under section 108 of this act.

16 (2) If a retailer fails to keep invoices as required under
17 section 108 of this act, the retailer is liable for the tax owed on
18 any uninvoiced vapor products but not penalties and interest, except
19 as provided in subsection (3) of this section.

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

24 NEW SECTION. **Sec. 113.** (1) No person may transport or cause to
25 be transported in this state vapor products for sale other than: (a)
26 A licensed distributor under chapter 70.345 RCW, or a manufacturer's
27 representative authorized to sell or distribute vapor products in
28 this state under chapter 70.345 RCW; (b) a licensed retailer under
29 chapter 70.345 RCW; (c) a seller with a valid delivery sale license
30 under chapter 70.345 RCW; or (d) a person who has given notice to the
31 board in advance of the commencement of transportation.

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

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

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

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

11 NEW SECTION. **Sec. 114.** The board must compile and maintain a
12 current record of the names of all distributors, retailers, and
13 delivery sales licenses under chapter 70.345 RCW and the status of
14 their license or licenses. The information must be updated on a
15 monthly basis and published on the board's official internet web
16 site. This information is not subject to the confidentiality
17 provisions of RCW 82.32.330 and must be disclosed to manufacturers,
18 distributors, retailers, and the general public upon request.

19 NEW SECTION. **Sec. 115.** (1) No person engaged in or conducting
20 business as a distributor or retailer in this state may:

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

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

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

34 (i) Notice of the transportation has been given as required under
35 section 113 of this act;

36 (ii) The person transporting the vapor products actually
37 possesses invoices or delivery tickets showing the true name and
38 address of the consignor or seller, the true name and address of the

1 consignee or purchaser, and the quantity and brands of vapor products
2 being transported; and

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

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

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

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

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

17 NEW SECTION. **Sec. 116.** (1) A retailer that obtains vapor
18 products from an unlicensed distributor or any other person that is
19 not licensed under chapter 70.345 RCW must be licensed both as a
20 retailer and a distributor and is liable for the tax imposed under
21 section 102 of this act with respect to the vapor products acquired
22 from the unlicensed person that are held for sale, handling, or
23 distribution in this state. For the purposes of this subsection,
24 "person" includes both persons defined in this act and any person
25 immune from state taxation, such as the United States or its
26 instrumentalities, and federally recognized Indian tribes and
27 enrolled tribal members, conducting business within Indian country.

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

31 NEW SECTION. **Sec. 117.** A manufacturer that has manufacturer's
32 representatives who sell or distribute the manufacturer's vapor
33 products in this state must provide the board a list of the names and
34 addresses of all such representatives and must ensure that the list
35 provided to the board is kept current. A manufacturer's
36 representative is not authorized to distribute or sell vapor products
37 in this state unless the manufacturer that hired the representative
38 has a valid distributor's license under chapter 70.345 RCW and that

1 manufacturer provides the board a current list of all of its
2 manufacturer's representatives as required by this section. A
3 manufacturer's representative must carry a copy of the distributor's
4 license of the manufacturer that hired the representative at all
5 times when selling or distributing the manufacturer's vapor products.

6 NEW SECTION. **Sec. 118.** (1) Any vapor products in the possession
7 of a person selling vapor products in this state acting as a
8 distributor or retailer and who is not licensed as required under
9 chapter 70.345 RCW, or a person who is selling vapor products in
10 violation of RCW 82.24.550(6), may be seized without a warrant by any
11 agent of the department, agent of the board, or law enforcement
12 officer of this state. Any vapor products seized under this
13 subsection are deemed forfeited.

14 (2) Any vapor products in the possession of a person who is not a
15 licensed distributor, delivery seller, manufacturer's representative,
16 or retailer and who transports vapor products for sale without having
17 provided notice to the board required under section 113 of this act,
18 or without invoices or delivery tickets showing the true name and
19 address of the consignor or seller, the true name and address of the
20 consignee or purchaser, and the quantity and brands of vapor products
21 being transported may be seized and are subject to forfeiture.

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

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

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

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

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

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

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

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

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

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

22 NEW SECTION. **Sec. 119.** (1) In all cases of seizure of any vapor
23 products made subject to forfeiture under this chapter, the
24 department or board must proceed as provided in RCW 82.24.135.

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

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

32 (b) Sell the vapor products at public auction to the highest
33 bidder after due advertisement. Before delivering any of the goods to
34 the successful bidder, the department or board must require the
35 purchaser to pay the proper amount of any tax due. The proceeds of
36 the sale must be first applied to the payment of all proper expenses
37 of any investigation leading to the seizure and of the proceedings
38 for forfeiture and sale, including expenses of seizure, maintenance
39 of custody, advertising, and court costs. The balance of the proceeds

1 and all money must be deposited in the general fund of the state.
2 Proper expenses of investigation include costs incurred by any law
3 enforcement agency or any federal, state, or local agency.

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

11 NEW SECTION. **Sec. 120.** When the department or the board has
12 good reason to believe that any of the vapor products taxed under
13 this chapter are being kept, sold, offered for sale, or given away in
14 violation of the provisions of this chapter, it may make affidavit of
15 facts describing the place or thing to be searched, before any judge
16 of any court in this state, and the judge must issue a search warrant
17 directed to the sheriff, any deputy, police officer, or duly
18 authorized agent of the department or the board commanding him or her
19 diligently to search any building, room in a building, place, or
20 vehicle as may be designated in the affidavit and search warrant, and
21 to seize the vapor products and hold them until disposed of by law.

22 NEW SECTION. **Sec. 121.** (1)(a) Where vapor products upon which
23 the tax imposed by this chapter has been reported and paid are
24 shipped or transported outside this state by the distributor to a
25 person engaged in the business of selling vapor products, to be sold
26 by that person, or are returned to the manufacturer by the
27 distributor or destroyed by the distributor, or are sold by the
28 distributor to the United States or any of its agencies or
29 instrumentalities, or are sold by the distributor to any Indian
30 tribal organization, credit of such tax may be made to the
31 distributor in accordance with rules prescribed by the department.

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

34 (i) "Indian distributor" means a federally recognized Indian
35 tribe or tribal entity that would otherwise meet the definition of
36 "distributor" under section 101 of this act, if federally recognized
37 Indian tribes and tribal entities were not excluded from the
38 definition of "person" in section 101 of this act.

1 (ii) "Indian retailer" means a federally recognized Indian tribe
2 or tribal entity that would otherwise meet the definition of
3 "retailer" under section 101 of this act, if federally recognized
4 Indian tribes and tribal entities were not excluded from the
5 definition of "person" in section 101 of this act.

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

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

14 NEW SECTION. **Sec. 122.** (1) Preexisting inventories of vapor
15 products are subject to the tax imposed in section 102 of this act.
16 All retailers and other distributors must report the tax due under
17 section 102 of this act on preexisting inventories of vapor products
18 on a form, as prescribed by the department, on or before October 31,
19 2019, and the tax due on such preexisting inventories must be paid on
20 or before January 31, 2020.

21 (2) Reports under subsection (1) of this section not filed with
22 the department by October 31, 2019, are subject to a late filing
23 penalty equal to the greater of two hundred fifty dollars or ten
24 percent of the tax due under section 102 of this act on the
25 taxpayer's preexisting inventories.

26 (3) The department must notify the taxpayer of the amount of tax
27 due under section 102 of this act on preexisting inventories, which
28 is subject to applicable penalties under RCW 82.32.090 (2) through
29 (7) if unpaid after January 31, 2020. Amounts due in accordance with
30 this section are not considered to be substantially underpaid for the
31 purposes of RCW 82.32.090(2).

32 (4) Interest, at the rate provided in RCW 82.32.050(2), must be
33 computed daily beginning February 1, 2020, on any remaining tax due
34 under section 102 of this act on preexisting inventories until paid.

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

38 (a) Does not sell vapor products other than to ultimate
39 consumers; and

1 (b) Does not meet the definition of "distributor" in section 101
2 of this act other than with respect to the sale of that retailer's
3 preexisting inventory of vapor products.

4 (6) Taxes may not be collected under section 102 of this act from
5 consumers with respect to any vapor products acquired before the
6 effective date of this section.

7 (7) For purposes of this section, "preexisting inventory" means
8 an inventory of vapor products located in this state as of the moment
9 that section 102 of this act takes effect and held by a distributor
10 for sale, handling, or distribution in this state.

11 Part II

12 Conforming Amendments

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

15 (1) The liquor and cannabis board may issue subpoenas in
16 connection with any investigation, hearing, or proceeding for the
17 production of books, records, and documents held under this chapter
18 or chapters 70.155, 70.158, 70.345, 82.24, (~~and~~) 82.26 ((RCW)), and
19 82.--- RCW (the new chapter created in section 408 of this act), and
20 books and records of common carriers as defined in RCW 81.80.010, or
21 vehicle rental agencies relating to the transportation or possession
22 of cigarettes, vapor products, or other tobacco products.

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

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

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

34 (1) All county and municipal peace officers are hereby charged
35 with the duty of investigating and prosecuting all violations of this
36 title, and the penal laws of this state relating to the manufacture,
37 importation, transportation, possession, distribution and sale of

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

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

19 (3) In addition to the other duties under this section, the board
20 (~~shall~~) must enforce chapters 82.24 (~~and~~), 82.26 ((RCW)), and
21 82.--- RCW (the new chapter created in section 408 of this act).

22 (4) The board may appoint and employ, assign to duty and fix the
23 compensation of, officers to be designated as liquor enforcement
24 officers. Such liquor enforcement officers (~~shall~~) have the power,
25 under the supervision of the board, to enforce the penal provisions
26 of this title and the penal laws of this state relating to the
27 manufacture, importation, transportation, possession, distribution
28 and sale of liquor. They (~~shall~~) have the power and authority to
29 serve and execute all warrants and process of law issued by the
30 courts in enforcing the penal provisions of this title or of any
31 penal law of this state relating to the manufacture, importation,
32 transportation, possession, distribution and sale of liquor, and the
33 provisions of chapters 82.24 (~~and~~), 82.26 ((RCW)), and 82.--- RCW
34 (the new chapter created in section 408 of this act). They (~~shall~~)
35 have the power to arrest without a warrant any person or persons
36 found in the act of violating any of the penal provisions of this
37 title or of any penal law of this state relating to the manufacture,
38 importation, transportation, possession, distribution and sale of
39 liquor, and the provisions of chapters 82.24 (~~and~~), 82.26 ((RCW)),
40 and 82.--- RCW (the new chapter created in section 408 of this act).

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

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

4 (a) A wholesaler's license.

5 (b) A retailer's license.

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

26 (3) No person may qualify for a wholesaler's license or a
27 retailer's license under this section without first undergoing a
28 criminal background check. The background check must be performed by
29 the board and must disclose any criminal conduct within the previous
30 five years in any state, tribal, or federal jurisdiction in the
31 United States, its territories, or possessions. A person who
32 possesses a valid license on July 22, 2001, is subject to this
33 subsection and subsection (2) of this section beginning on the date
34 of the person's business license expiration under chapter 19.02 RCW,
35 and thereafter. If the applicant or licensee also has a license
36 issued under chapter 66.24 (~~(\oplus)~~), 82.26, or 70.345 RCW, the
37 background check done under the authority of chapter 66.24 (~~(\oplus)~~),
38 82.26, or 70.345 RCW satisfies the requirements of this section.

39 (4) Each such license expires on the business license expiration
40 date, and each such license must be continued annually if the

1 licensee has paid the required fee and complied with all the
2 provisions of this chapter and the rules of the board made pursuant
3 thereto.

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

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

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

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

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

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

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

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

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

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

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

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

21 (a) "Tobacco products" has the same meaning as provided in RCW
22 82.26.010; and

23 (b) "Vapor products" has the same meaning as provided in section
24 101 of this act.

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

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

33 (2) These records ((shall)) must show the names and addresses of
34 purchasers, the inventory of all tobacco products, and other
35 pertinent papers and documents relating to the purchase, sale, or
36 disposition of tobacco products. All invoices and other records
37 required by this section to be kept ((shall)) must be preserved for a
38 period of five years from the date of the invoices or other documents
39 or the date of the entries appearing in the records.

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

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

16 (1) Every retailer (~~shall~~) must procure itemized invoices of
17 all tobacco products purchased. The invoices (~~shall~~) must show the
18 seller's name and address, the date of purchase, and all prices and
19 discounts.

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

25 (3) At any time during usual business hours the department,
26 board, or its duly authorized agents or employees may enter any
27 retail outlet without a search warrant, and inspect the premises for
28 invoices required to be kept under this section and the tobacco
29 products contained in the retail outlet, to determine whether or not
30 all the provisions of this chapter are being fully complied with. If
31 the department, board, or any of its agents or employees, are denied
32 free access or are hindered or interfered with in making the
33 inspection, the registration certificate issued under RCW 82.32.030
34 of the retailer at the premises is subject to revocation, and any
35 licenses issued under this chapter or chapter 82.24 or 70.345 RCW are
36 subject to suspension or revocation by the department.

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

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

3 (a) A distributor's license; and

4 (b) A retailer's license.

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

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

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

1 (5) Each license and any other evidence of the license required
2 under this chapter must be exhibited in each place of business for
3 which it is issued and in the manner required for the display of a
4 business license.

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

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

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

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

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

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

36 (6) A person whose license has been suspended or revoked may not
37 sell tobacco products, vapor products, or cigarettes or permit
38 tobacco products, vapor products, or cigarettes to be sold during the
39 period of suspension or revocation on the premises occupied by the

1 person or upon other premises controlled by the person or others or
2 in any other manner or form.

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

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

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

16 (1) The administration of this and chapters 82.04 through 82.27
17 RCW of this title is vested in the department (~~(of revenue which~~
18 ~~shall)), which must prescribe forms and rules of procedure for the~~
19 determination of the taxable status of any person, for the making of
20 returns and for the ascertainment, assessment and collection of taxes
21 and penalties imposed thereunder.

22 (2) The department (~~(of revenue shall)~~) must make and publish
23 rules and regulations, not inconsistent therewith, necessary to
24 enforce provisions of this chapter and chapters 82.02 through 82.23B
25 and 82.27 RCW, and the liquor (~~(control)~~) and cannabis board
26 (~~(shall)~~) must make and publish rules necessary to enforce chapters
27 82.24 (~~(and)~~), 82.26 (RCW), and 82.--- RCW (the new chapter created
28 in section 408 of this act), which (~~(shall have)~~) has the same force
29 and effect as if specifically included therein, unless declared
30 invalid by the judgment of a court of record not appealed from.

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

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

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

3 The definitions in this section apply throughout this chapter
4 unless the context clearly requires otherwise.

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

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

9 (3) "Child care facility" has the same meaning as provided in RCW
10 70.140.020.

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

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

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

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

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

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

30 ~~(a) Sells vapor products to persons other than ultimate~~
31 ~~consumers; or~~

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

35 meaning as in section 101 of this act.
36 (8) "Liquid nicotine container" means a package from which
37 nicotine in a solution or other form is accessible through normal and
38 foreseeable use by a consumer and that is used to hold soluble
39 nicotine in any concentration. "Liquid nicotine container" does not
40 include closed system nicotine containers.

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

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

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

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

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

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

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

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

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

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

33 (18) "Self-service display" means a display that contains vapor
34 products and is located in an area that is openly accessible to
35 customers and from which customers can readily access such products
36 without the assistance of a salesperson. A display case that holds
37 vapor products behind locked doors does not constitute a self-service
38 display.

39 (19) "Vapor product" means any noncombustible product that may
40 contain nicotine and that employs a heating element, power source,

1 electronic circuit, or other electronic, chemical, or mechanical
2 means, regardless of shape or size, that can be used to produce vapor
3 or aerosol from a solution or other substance.

4 (a) "Vapor product" includes any electronic cigarette, electronic
5 cigar, electronic cigarillo, electronic pipe, or similar product or
6 device and any vapor cartridge or other container that may contain
7 nicotine in a solution or other form that is intended to be used with
8 or in an electronic cigarette, electronic cigar, electronic
9 cigarillo, electronic pipe, or similar product or device.

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

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

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

18 (1)(a) No person may engage in or conduct business as a retailer,
19 distributor, or delivery seller in this state without a valid license
20 issued under this chapter, except as otherwise provided by law. Any
21 person who sells vapor products to ultimate consumers by a means
22 other than delivery sales must obtain a retailer's license under this
23 chapter. Any person who (~~sells vapor products to persons other than~~
24 ~~ultimate consumers or who~~) meets the definition of distributor under
25 this chapter must obtain a distributor's license under this chapter.
26 Any person who conducts delivery sales of vapor products must obtain
27 a delivery sale license.

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

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

37 (3) Any person licensed under this chapter as a distributor, any
38 person licensed under this chapter as a retailer, and any person
39 licensed under this chapter as a delivery seller may not operate in

1 any other capacity unless the additional appropriate license is first
2 secured, except as otherwise provided by law. A violation of this
3 subsection is a misdemeanor.

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

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

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

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

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

25 (3) A delivery sale licensee must provide notice on its mail
26 order or internet sales forms of the minimum age required for the
27 legal sale of vapor products in Washington state as provided by RCW
28 70.345.140.

29 (4) A delivery sale licensee must not accept a purchase or order
30 from any person without first obtaining the full name, birth date,
31 and residential address of that person and verifying this information
32 through an independently operated third-party database or aggregate
33 of databases, which includes data from government sources, that are
34 regularly used by government and businesses for the purpose of age
35 and identity verification and authentication.

36 (5) A delivery sale licensee must accept payment only through a
37 credit or debit card issued in the purchaser's own name. The licensee
38 must verify that the card is issued to the same person identified

1 through identity and age verification procedures in subsection (4) of
2 this section.

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

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

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

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

28 ~~((9))~~ (10) In addition to or in lieu of any other civil or
29 criminal remedy provided by law, a person who has violated this
30 section is subject to a civil penalty of up to five thousand dollars
31 for each violation. The attorney general, acting in the name of the
32 state, may seek recovery of the penalty in a civil action in superior
33 court.

34 ~~((10))~~ (11) The attorney general may seek an injunction in
35 superior court to restrain a threatened or actual violation of this
36 section and to compel compliance with this section.

37 ~~((11))~~ (12) Any violation of this section is not reasonable in
38 relation to the development and preservation of business and is an
39 unfair and deceptive act or practice and an unfair method of
40 competition in the conduct of trade or commerce in violation of RCW

1 19.86.020. Standing to bring an action to enforce RCW 19.86.020 for
2 violation of this section lies solely with the attorney general.
3 Remedies provided by chapter 19.86 RCW are cumulative and not
4 exclusive.

5 ~~((12))~~ (13)(a) In any action brought under this section, the
6 state is entitled to recover, in addition to other relief, the costs
7 of investigation, expert witness fees, costs of the action, and
8 reasonable attorneys' fees.

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

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

16 ~~((14))~~ (15) A licensee who violates this section is subject to
17 license suspension or revocation by the board.

18 ~~((15))~~ (16) The board may adopt by rule additional requirements
19 for mail or internet sales.

20 ~~((16))~~ (17) The board must not adopt rules prohibiting internet
21 sales.

22 Part III

23 Tribal Compacting

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

26 The legislature intends to further the government-to-government
27 relationship between the state of Washington and Indians in the state
28 of Washington by authorizing the governor to enter into contracts
29 concerning the sale of cigarettes and vapor products. The legislature
30 finds that these cigarette tax and vapor product tax contracts will
31 provide a means to promote economic development, provide needed
32 revenues for tribal governments and Indian persons, and enhance
33 enforcement of the state's cigarette tax ~~((law))~~ and vapor product
34 tax, ultimately saving the state money and reducing conflict. In
35 addition, it is the intent of the legislature that the negotiations
36 and the ensuing contracts ~~((shall))~~ have no impact on the state's
37 share of the proceeds under the master settlement agreement entered
38 into on November 23, 1998, by the state. Chapter 235, Laws of 2001

1 (~~does~~) and this act do not constitute a grant of taxing authority
2 to any Indian tribe nor (~~does it~~) do they provide precedent for the
3 taxation of non-Indians on fee land.

4 NEW SECTION. Sec. 302. A new section is added to chapter 43.06
5 RCW to read as follows:

6 (1) The governor may enter into vapor product tax contracts
7 concerning the sale of vapor products. All vapor product tax
8 contracts must meet the requirements for vapor product tax contracts
9 under this section.

10 (2) Vapor product tax contracts must be in regard to retail sales
11 in which Indian retailers make delivery and physical transfer of
12 possession of the vapor products from the seller to the buyer within
13 Indian country, and are not in regard to transactions by non-Indian
14 retailers. In addition, contracts may address the legal age of sale
15 for vapor products pursuant to section 11, chapter 15, Laws of 2019.

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

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

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

25 (b) Out-of-state wholesalers or manufacturers who, although not
26 licensed to do business in the state of Washington, agree to comply
27 with the terms of the vapor product tax contract, are certified to
28 the state as having so agreed, and do in fact so comply. However, the
29 state may in its sole discretion exercise its administrative and
30 enforcement powers over such wholesalers or manufacturers to the
31 extent permitted by law;

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

34 (d) A tribal manufacturer.

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

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

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

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

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

10 (10) Information received by the state or open to state review
11 under the terms of a contract is subject to the provisions of RCW
12 82.32.330.

13 (11) It is the intent of the legislature that the liquor and
14 cannabis board and the department of revenue continue the division of
15 duties and shared authority under chapter 82.--- RCW (the new chapter
16 created in section 408 of this act) and therefore the liquor and
17 cannabis board is responsible for enforcement activities that come
18 under the terms of chapter 82.--- RCW (the new chapter created in
19 section 408 of this act).

20 (12) Each vapor product tax contract must include a procedure for
21 notifying the other party that a violation has occurred, a procedure
22 for establishing whether a violation has in fact occurred, an
23 opportunity to correct such violation, and a provision providing for
24 termination of the contract should the violation fail to be resolved
25 through this process, such termination subject to mediation should
26 the terms of the contract so allow. A contract must provide for
27 termination of the contract if resolution of a dispute does not occur
28 within twenty-four months from the time notification of a violation
29 has occurred. Intervening violations do not extend this time period.
30 In addition, the contract must include provisions delineating the
31 respective roles and responsibilities of the tribe, the department of
32 revenue, and the liquor and cannabis board.

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

35 (a) "Essential government services" means services such as tribal
36 administration, public facilities, fire, police, public health,
37 education, job services, sewer, water, environmental and land use,
38 transportation, utility services, and economic development.

39 (b) "Indian country" has the same meaning as provided in RCW
40 82.24.010.

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

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

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

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

7 (d) "Indian tribe" or "tribe" means a federally recognized Indian
8 tribe located within the geographical boundaries of the state of
9 Washington.

10 (e) "Vapor products" has the same meaning as provided in section
11 101 of this act.

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

14 (1) The governor is authorized to enter into vapor product tax
15 contracts with federally recognized Indian tribes located within the
16 geographical boundaries of the state of Washington. Each contract
17 adopted under this section must provide that the tribal vapor product
18 tax rate be one hundred percent of the state vapor product tax and
19 state and local sales and use taxes. The tribal vapor product tax is
20 in lieu of the state vapor product tax and state and local sales and
21 use taxes, as provided in section 302(3) of this act.

22 (2) A vapor product tax contract under this section is subject to
23 section 302 of this act and is separate from a cigarette tax contract
24 subject to RCW 43.06.455 or 43.06.466.

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

27 (1) The governor may enter into a vapor product tax agreement
28 with the Puyallup Tribe of Indians concerning the sale of vapor
29 products, subject to the limitations in this section. The legislature
30 intends to address the uniqueness of the Puyallup Indian reservation
31 and its selling environment through pricing and compliance
32 strategies, rather than through the imposition of equivalent taxes.
33 The governor may delegate the authority to negotiate a vapor product
34 tax agreement with the Puyallup Tribe to the department of revenue.
35 The department of revenue must consult with the liquor and cannabis
36 board during the negotiations. An agreement under this section is
37 separate from an agreement under RCW 43.06.465.

1 (2) Any agreement must require the tribe to impose a tribal vapor
2 product tax with a tax rate that is ninety percent of the state vapor
3 product tax. This tribal tax is in lieu of the combined state and
4 local sales and use taxes and the state vapor product tax, and as
5 such these state taxes are not imposed during the term of the
6 agreement on any transaction governed by the agreement. The tribal
7 vapor product tax must increase or decrease at the time of any
8 increase or decrease in the state vapor product tax so as to remain
9 at a level that is ninety percent of the rate of the state vapor
10 product tax.

11 (3) The agreement must include a provision requiring the tribe to
12 transmit thirty percent of the tribal tax revenue on all vapor
13 products sales to the state. The funds must be transmitted to the
14 state treasurer on a quarterly basis for deposit by the state
15 treasurer into the general fund. The remaining tribal tax revenue
16 must be used for essential government services, as that term is
17 defined in section 302 of this act.

18 (4) The agreement is limited to retail sales in which Indian
19 retailers make delivery and physical transfer of possession of the
20 vapor products from the seller to the buyer within Indian country,
21 and are not in regard to transactions by non-Indian retailers. In
22 addition, agreements may address the legal age of sale for vapor
23 products pursuant to section 11, chapter 15, Laws of 2019.

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

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

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

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

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

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

1 (c) The agreement must include provisions for sharing of
2 information among the tribe, the department of revenue, and the
3 liquor and cannabis board.

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

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

9 (9) The agreement must include provisions to resolve disputes
10 using a nonjudicial process, such as mediation, and must include a
11 dispute resolution protocol. The protocol must include a procedure
12 for notifying the other party that a violation has occurred, a
13 procedure for establishing whether a violation has in fact occurred,
14 an opportunity to correct such violation, and a provision providing
15 for termination of the agreement should the violation fail to be
16 resolved through this process, such termination subject to mediation
17 should the terms of the agreement so allow. An agreement must provide
18 for termination of the agreement if resolution of a dispute does not
19 occur within twenty-four months from the time notification of a
20 violation has occurred. Intervening violations do not extend this
21 time period.

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

24 (11) It is the intent of the legislature that the liquor and
25 cannabis board and the department of revenue continue the division of
26 duties and shared authority under chapter 82.--- RCW (the new chapter
27 created in section 408 of this act).

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

30 (a) "Indian country" has the same meaning as provided in RCW
31 82.24.010.

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

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

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

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

39 (d) "Vapor products" has the same meaning as provided in section
40 101 of this act.

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

3 (1) The tax levied by RCW 82.08.020 does not apply to sales of
4 vapor products by an Indian retailer during the effective period of a
5 vapor product tax contract subject to section 303 of this act or a
6 vapor product tax agreement under section 304 of this act.

7 (2) The definitions in section 302 of this act apply to this
8 section.

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

11 (1) The provisions of this chapter do not apply in respect to the
12 use of vapor products sold by an Indian retailer during the effective
13 period of a vapor product tax contract subject to section 303 of this
14 act or a vapor product tax agreement under section 304 of this act.

15 (2) The definitions in section 302 of this act apply to this
16 section.

17 **Sec. 307.** 2019 c 15 s 11 (uncodified) is amended to read as
18 follows:

19 In recognition of the sovereign authority of tribal governments,
20 the governor may seek government-to-government consultations with
21 federally recognized Indian tribes regarding raising the minimum
22 legal age of sale in compacts entered into pursuant to RCW 43.06.455,
23 43.06.465, (~~and~~) 43.06.466, and sections 302 through 304 of this
24 act. The office of the governor shall report to the appropriate
25 committees of the legislature regarding the status of such
26 consultations no later than December 1, 2020.

27 **Part IV**

28 **Miscellaneous Provisions**

29 NEW SECTION. **Sec. 401.** A new section is added to chapter 82.32
30 RCW to read as follows:

31 (1) By October 15, 2020, and by each October 15th thereafter, the
32 department must estimate any increase in state general fund revenue
33 collections for the immediately preceding fiscal year resulting from
34 the taxes imposed in chapter . . ., Laws of 2019 (this act). The
35 department must promptly notify the state treasurer of these
36 estimated amounts.

1 (2) Beginning November 1, 2020, and by each November 1st
2 thereafter, the state treasurer must transfer from the general fund
3 the estimated amount determined by the department under subsection
4 (1) of this section for the immediately preceding fiscal year as
5 follows:

6 (a) Fifty percent into the Andy Hill cancer research endowment
7 fund match transfer account created in RCW 43.348.080; and

8 (b) Fifty percent into the foundational public health services
9 account created in section 103 of this act.

10 (3) The department may not make any adjustments to an estimate
11 under subsection (1) of this section after the state treasurer makes
12 the corresponding distribution under subsection (2) of this section
13 based on the department's estimate.

14 NEW SECTION. **Sec. 402.** RCW 43.348.900 (Expiration of chapter)
15 and 2015 3rd sp.s. c 34 s 10 are each repealed.

16 **Sec. 403.** RCW 43.348.080 and 2018 c 4 s 8 are each amended to
17 read as follows:

18 (1) The Andy Hill cancer research endowment fund match transfer
19 account is created in the custody of the ~~((state treasurer as a~~
20 ~~nonappropriated account to be used solely and exclusively for the~~
21 ~~program created in RCW 43.348.040. The purpose of the account is to~~
22 ~~provide matching funds for the fund and administrative costs.~~
23 ~~Expenditures to fund or reimburse the program administrator are not~~
24 ~~subject to the requirements of subsection (4) of this section.~~

25 ~~(2) Revenues to the account must consist of deposits into the~~
26 ~~account, legislative appropriations, and any gifts, grants, or~~
27 ~~donations received by the department for this purpose.)) state~~
28 treasury to be used solely and exclusively for the program created in
29 RCW 43.348.040. Moneys in the account may be spent only after
30 appropriation. The purpose of the account is to provide matching
31 funds for the fund and administrative costs. Expenditures to fund or
32 reimburse the program administrator are not subject to the
33 requirements of subsection (4) of this section.

34 ~~((3))~~ (2) The legislature must appropriate a state match, up to
35 a maximum of ten million dollars annually, beginning July 1, 2016,
36 and each July 1st following the end of the fiscal year from tax
37 collections and penalties generated from enforcement of state taxes
38 on cigarettes and other tobacco products by the state liquor and

1 cannabis board or other federal, state or local law or tax
2 enforcement agency, as determined by the department of revenue. Tax
3 collections include any cigarette tax, other tobacco product tax, and
4 retail sales and use tax. Any amounts deposited into this account
5 from the tax imposed under section 102 of this act in excess of the
6 cap provided in this subsection must be deposited into the
7 foundational public health services account created in section 103 of
8 this act.

9 ~~((4) Expenditures, in the form of matching funds, from the~~
10 ~~account may be made only upon receipt of proof from the program~~
11 ~~administrator of nonstate or private contributions to the fund for~~
12 ~~the program. Expenditures, in the form of matching funds, may not~~
13 ~~exceed the total amount of nonstate or private contributions.~~

14 ~~(5) Only the director of the department or the director's~~
15 ~~designee may authorize expenditures from the Andy Hill cancer~~
16 ~~research endowment fund match transfer account. Such authorization~~
17 ~~must be made as soon as practicable following receipt of proof as~~
18 ~~required under subsection (4) of this section.~~

19 ~~(6) The department must enter into an appropriate agreement with~~
20 ~~the program administrator to demonstrate exchange of consideration~~
21 ~~for the matching funds.))~~

22 (3) Revenues to the account must consist of deposits into the
23 account, taxes imposed on vapor products under section 102 of this
24 act, legislative appropriations, and any gifts, grants, or donations
25 received by the department for this purpose.

26 (4) Each fiscal biennium, the legislature must appropriate to the
27 department of commerce such amounts as estimated to be the balance of
28 the account to provide state matching funds.

29 (5) Expenditures, in the form of matching funds, from the account
30 may be made only upon receipt of proof from the program administrator
31 of nonstate or private contributions to the fund for the program.
32 Expenditures, in the form of matching funds, may not exceed the total
33 amount of nonstate or private contributions.

34 (6) The department must enter into an appropriate agreement with
35 the program administrator to demonstrate exchange of consideration
36 for the matching funds.

37 **Sec. 404.** RCW 82.26.020 and 2010 1st sp.s. c 22 s 5 are each
38 amended to read as follows:

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

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

7 (b) For all tobacco products except those covered under separate
8 provisions of this subsection, ninety-five percent of the taxable
9 sales price. The tax imposed on a product under this subsection must
10 be reduced by fifty percent if that same product is issued a modified
11 risk tobacco product order by the secretary of the United States
12 department of health and human services pursuant to Title 21 U.S.C.
13 Sec. 387k(g)(1), or by twenty-five percent if that same product is
14 issued a modified risk tobacco product order by the secretary of the
15 United States department of health and human services pursuant to
16 Title 21 U.S.C. Sec. 387k(g)(2). The tax reduction applies during the
17 period the modified risk tobacco product order is in effect;

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

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

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

29 (d) For little cigars, an amount per cigar equal to the cigarette
30 tax under chapter 82.24 RCW.

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

39 (3) The moneys collected under this section must be deposited
40 into the state general fund.

1 NEW SECTION. **Sec. 405.** The provisions of RCW 82.32.805 and
2 82.32.808 do not apply to this act.

3 NEW SECTION. **Sec. 406.** If any provision of this act or its
4 application to any person or circumstance is held invalid, the
5 remainder of the act or the application of the provision to other
6 persons or circumstances is not affected.

7 NEW SECTION. **Sec. 407.** If any part of this act is found to be
8 in conflict with federal requirements that are a prescribed condition
9 to the allocation of federal funds to the state, the conflicting part
10 of this act is inoperative solely to the extent of the conflict and
11 with respect to the agencies directly affected, and this finding does
12 not affect the operation of the remainder of this act in its
13 application to the agencies concerned. Rules adopted under this act
14 must meet federal requirements that are a necessary condition to the
15 receipt of federal funds by the state.

16 NEW SECTION. **Sec. 408.** Part I of this act constitutes a new
17 chapter in Title 82 RCW.

18 NEW SECTION. **Sec. 409.** This act takes effect October 1, 2019.

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