

E2SHB 1873 - S COMM AMD
By Committee on Ways & Means

NOT ADOPTED 04/28/2019

1 Strike everything after the enacting clause and insert the
2 following:

3 **"Part I**
4 **Tax on Vapor Products**

5 NEW SECTION. **Sec. 101.** The definitions in this section apply
6 throughout this chapter unless the context clearly requires
7 otherwise.

8 (1) "Accessible container" means a container that is intended to
9 be opened. The term does not mean a closed cartridge or closed
10 container that is not intended to be opened such as a disposable e-
11 cigarette.

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

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

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

18 (5) "Distributor" mean any person:

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

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

24 (c) Engaged in the business of selling vapor products outside
25 this state who ships or transports vapor products to retailers or
26 consumers in this state; or

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

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

1 (7) "Manufacturer" has the same meaning as provided in RCW
2 70.345.010.

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

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

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

22 (11) "Retail outlet" has the same meaning as provided in RCW
23 70.345.010.

24 (12) "Retailer" has the same meaning as provided in RCW
25 70.345.010.

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

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

29 (15) "Vapor product" means any noncombustible product containing
30 a solution that contains nicotine, which employs a mechanical heating
31 element, battery, or electronic circuit regardless of shape or size
32 that can be used to produce vapor from the solution, including an
33 electronic cigarette, electronic cigar, electronic cigarillo,
34 electronic pipe, or similar product or device. This term also
35 includes liquid nicotine and any solution containing nicotine
36 regardless of the type of cartridge or container in which it is sold.

37 (a) The term does not include:

38 (i) Any product approved by the United States food and drug
39 administration for sale as a tobacco cessation product, medical

1 device, or for other therapeutic purposes when such product is
2 marketed and sold solely for such an approved purpose;

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

5 (iii) Any product that meets the definition of marijuana, useable
6 marijuana, marijuana concentrates, marijuana-infused products,
7 cigarette, or tobacco products.

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

9 (i) "Cigarette" has the same meaning as provided in RCW
10 82.24.010; and

11 (ii) "Marijuana," "useable marijuana," "marijuana concentrates,"
12 and "marijuana-infused products" have the same meaning as provided in
13 RCW 69.50.101.

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

17 (i) All vapor products other than those taxed under (a) (ii) of
18 this subsection are taxed at a rate equal to twenty-four cents per
19 milliliter of liquid nicotine or solution containing nicotine, and a
20 proportionate tax at the like rate on all fractional parts of a
21 milliliter thereof.

22 (ii) Any accessible container of liquid nicotine, or solution
23 containing nicotine, that is greater than five milliliters, is taxed
24 at a rate equal to eight cents per milliliter of liquid or solution
25 and a proportionate tax at the like rate on all fractional parts of a
26 milliliter thereof.

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

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

37 (b) The tax imposed under this section must also be collected by
38 the department from the consumer of vapor products where the tax

1 imposed under this section was not paid by the distributor on such
2 vapor products.

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

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

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

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

12 NEW SECTION. **Sec. 103.** The foundational public health services
13 account is created in the state treasury. Half of all of the moneys
14 collected from the tax imposed on vapor products under RCW 66.44.010
15 and half of all moneys collected on the tax imposed on heated tobacco
16 products under RCW 82.26.020 must be deposited into the account.
17 Moneys in the account may be spent only after appropriation. Moneys
18 in the account are to be used for the following purposes:

19 (1) To fund foundational health services. In the 2019-2021
20 biennium, at least twelve million dollars of the funds deposited into
21 the account must be appropriated for this purpose. Beginning in the
22 2021-2023 biennium, fifty percent of the funds deposited into the
23 account, but not less than twelve million dollars each biennium, are
24 to be used for this purpose;

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

29 (3) To support increased access and training of public health
30 professionals at public health programs at accredited public
31 institutions of higher education in Washington. Beginning in the
32 2021-2023 biennium, five percent of the funds deposited into the
33 account are to be used for this purpose;

34 (4) To fund enforcement by the state liquor and cannabis board of
35 the provisions of this chapter to prevent sales of vapor products to
36 minors and related provisions for control of marketing and product
37 safety, provided that no more than eight percent of the funds
38 deposited into the account may be appropriated for these enforcement
39 purposes.

1 NEW SECTION. **Sec. 104.** It is the intent and purpose of this
2 chapter to levy a tax on all vapor products sold, used, consumed,
3 handled, possessed, or distributed within this state. It is the
4 further intent and purpose of this chapter to impose the tax only
5 once on all vapor products in this state. Nothing in this chapter may
6 be construed to exempt any person taxable under any other law or
7 under any other tax imposed under this title.

8 NEW SECTION. **Sec. 105.** The tax imposed by section 102 of this
9 act does not apply with respect to any vapor products which under the
10 Constitution and laws of the United States may not be made the
11 subject of taxation by this state.

12 NEW SECTION. **Sec. 106.** (1) Every distributor must keep at each
13 place of business complete and accurate records for that place of
14 business, including itemized invoices, of vapor products held,
15 purchased, manufactured, brought in or caused to be brought in from
16 without the state, or shipped or transported to retailers in this
17 state, and of all sales of vapor products made.

18 (2) These records must show the names and addresses of
19 purchasers, the inventory of all vapor products, and other pertinent
20 papers and documents relating to the purchase, sale, or disposition
21 of vapor products. All invoices and other records required by this
22 section to be kept must be preserved for a period of five years from
23 the date of the invoices or other documents or the date of the
24 entries appearing in the records.

25 (3) At any time during usual business hours the department,
26 board, or its duly authorized agents or employees may enter any place
27 of business of a distributor, without a search warrant, and inspect
28 the premises, the records required to be kept under this chapter, and
29 the vapor products contained therein, to determine whether or not all
30 the provisions of this chapter are being fully complied with. If the
31 department, board, or any of its agents or employees are denied free
32 access or are hindered or interfered with in making such examination,
33 the registration certificate issued under RCW 82.32.030 of the
34 distributor at such premises are subject to revocation by the
35 department, and any licenses issued under chapter 70.345, 82.26, or
36 82.24 RCW are subject to suspension or revocation by the board.

1 NEW SECTION. **Sec. 107.** Every person required to be licensed
2 under chapter 70.345 RCW who sells vapor products to persons other
3 than the ultimate consumer must render with each sale itemized
4 invoices showing the seller's name and address, the purchaser's name
5 and address, the date of sale, and all prices. The person must
6 preserve legible copies of all such invoices for five years from the
7 date of sale.

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

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

16 (3) At any time during usual business hours the department,
17 board, or its duly authorized agents or employees may enter any
18 retail outlet without a search warrant, and inspect the premises for
19 invoices required to be kept under this section and the vapor
20 products contained in the retail outlet, to determine whether or not
21 all the provisions of this chapter are being fully complied with. If
22 the department, board, or any of its agents or employees are denied
23 free access or are hindered or interfered with in making the
24 inspection, the registration certificate issued under RCW 82.32.030
25 of the retailer at the premises is subject to revocation by the
26 department, and any licenses issued under chapter 70.345, 82.26, or
27 82.24 RCW are subject to suspension or revocation by the board.

28 NEW SECTION. **Sec. 109.** (1)(a) Where vapor products upon which
29 the tax imposed by this chapter has been reported and paid are
30 shipped or transported outside this state by the distributor to a
31 person engaged in the business of selling vapor products, to be sold
32 by that person, or are returned to the manufacturer by the
33 distributor or destroyed by the distributor, or are sold by the
34 distributor to the United States or any of its agencies or
35 instrumentalities, or are sold by the distributor to any Indian
36 tribal organization, credit of such tax may be made to the
37 distributor in accordance with rules prescribed by the department.

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

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

8 (ii) "Indian retailer" means a federally recognized Indian tribe
9 or tribal entity that would otherwise meet the definition of
10 "retailer" under section 101 of this act, if federally recognized
11 Indian tribes and tribal entities were not excluded from the
12 definition of "person" in section 101 of this act.

13 (iii) "Indian tribal organization" means a federally recognized
14 Indian tribe, or tribal entity, and includes an Indian distributor or
15 retailer that is owned by an Indian who is an enrolled tribal member
16 conducting business under tribal license or similar tribal approval
17 within Indian country.

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

21 NEW SECTION. **Sec. 110.** All of the provisions contained in
22 chapter 82.32 RCW not inconsistent with the provisions of this
23 chapter have full force and application with respect to taxes imposed
24 under the provisions of this chapter.

25 NEW SECTION. **Sec. 111.** The department must authorize, as duly
26 authorized agents, enforcement officers of the board to enforce
27 provisions of this chapter. These officers are not employees of the
28 department.

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

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

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

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

13 (2) When transporting vapor products for sale, the person must
14 have in his or her actual possession, or cause to have in the actual
15 possession of those persons transporting such vapor products on his
16 or her behalf, invoices or delivery tickets for the vapor products,
17 which must show the true name and address of the consignor or seller,
18 the true name and address of the consignee or purchaser, and the
19 quantity and brands of the vapor products being transported.

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

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

28 NEW SECTION. **Sec. 114.** The board must compile and maintain a
29 current record of the names of all distributors, retailers, and
30 delivery sales licenses under chapter 70.345 RCW and the status of
31 their license or licenses. The information must be updated on a
32 monthly basis and published on the board's official internet web
33 site. This information is not subject to the confidentiality
34 provisions of RCW 82.32.330 and must be disclosed to manufacturers,
35 distributors, retailers, and the general public upon request.

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

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

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

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

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

16 (ii) The person transporting the vapor products actually
17 possesses invoices or delivery tickets showing the true name and
18 address of the consignor or seller, the true name and address of the
19 consignee or purchaser, and the quantity and brands of vapor products
20 being transported; and

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

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

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

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

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

35 NEW SECTION. **Sec. 116.** (1) A retailer that obtains vapor
36 products from an unlicensed distributor or any other person that is
37 not licensed under chapter 70.345 RCW must be licensed both as a
38 retailer and a distributor and is liable for the tax imposed under
39 section 102 of this act with respect to the vapor products acquired

1 from the unlicensed person that are held for sale, handling, or
2 distribution in this state. For the purposes of this subsection,
3 "person" includes both persons defined in this act and any person
4 immune from state taxation, such as the United States or its
5 instrumentalities, and federally recognized Indian tribes and
6 enrolled tribal members, conducting business within Indian country.

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

10 NEW SECTION. **Sec. 117.** A manufacturer that has manufacturer's
11 representatives who sell or distribute the manufacturer's vapor
12 products in this state must provide the board a list of the names and
13 addresses of all such representatives and must ensure that the list
14 provided to the board is kept current. A manufacturer's
15 representative is not authorized to distribute or sell vapor products
16 in this state unless the manufacturer that hired the representative
17 has a valid distributor's license under chapter 70.345 RCW and that
18 manufacturer provides the board a current list of all of its
19 manufacturer's representatives as required by this section. A
20 manufacturer's representative must carry a copy of the distributor's
21 license of the manufacturer that hired the representative at all
22 times when selling or distributing the manufacturer's vapor products.

23 NEW SECTION. **Sec. 118.** (1) Any vapor products in the possession
24 of a person selling vapor products in this state acting as a
25 distributor or retailer and who is not licensed as required under
26 chapter 70.345 RCW, or a person who is selling vapor products in
27 violation of RCW 82.24.550(6), may be seized without a warrant by any
28 agent of the department, agent of the board, or law enforcement
29 officer of this state. Any vapor products seized under this
30 subsection are deemed forfeited.

31 (2) Any vapor products in the possession of a person who is not a
32 licensed distributor, delivery seller, manufacturer's representative,
33 or retailer and who transports vapor products for sale without having
34 provided notice to the board required under section 113 of this act,
35 or without invoices or delivery tickets showing the true name and
36 address of the consignor or seller, the true name and address of the
37 consignee or purchaser, and the quantity and brands of vapor products
38 being transported may be seized and are subject to forfeiture.

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

6 (a) A conveyance used by any person as a common or contract
7 carrier having in actual possession invoices or delivery tickets
8 showing the true name and address of the consignor or seller, the
9 true name of the consignee or purchaser, and the quantity and brands
10 of the vapor products transported, unless it appears that the owner
11 or other person in charge of the conveyance is a consenting party or
12 privy to a violation of this chapter;

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

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

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

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

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

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

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

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

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

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

6 (a) Retain the property for official use or upon application by
7 any law enforcement agency of this state, another state, or the
8 District of Columbia, or of the United States for the exclusive use
9 of enforcing this chapter or the laws of any other state or the
10 District of Columbia or of the United States; or

11 (b) Sell the vapor products at public auction to the highest
12 bidder after due advertisement. Before delivering any of the goods to
13 the successful bidder, the department or board must require the
14 purchaser to pay the proper amount of any tax due. The proceeds of
15 the sale must be first applied to the payment of all proper expenses
16 of any investigation leading to the seizure and of the proceedings
17 for forfeiture and sale, including expenses of seizure, maintenance
18 of custody, advertising, and court costs. The balance of the proceeds
19 and all money must be deposited in the general fund of the state.
20 Proper expenses of investigation include costs incurred by any law
21 enforcement agency or any federal, state, or local agency.

22 (3) The department or the board may return any property seized
23 under the provisions of this chapter when it is shown that there was
24 no intention to violate the provisions of this chapter. When any
25 property is returned under this section, the department or the board
26 may return the property to the parties from whom they were seized if
27 and when such parties have paid the proper amount of tax due under
28 this chapter.

29 NEW SECTION. **Sec. 120.** When the department or the board has
30 good reason to believe that any of the vapor products taxed under
31 this chapter are being kept, sold, offered for sale, or given away in
32 violation of the provisions of this chapter, it may make affidavit of
33 facts describing the place or thing to be searched, before any judge
34 of any court in this state, and the judge must issue a search warrant
35 directed to the sheriff, any deputy, police officer, or duly
36 authorized agent of the department or the board commanding him or her
37 diligently to search any building, room in a building, place, or
38 vehicle as may be designated in the affidavit and search warrant, and
39 to seize the vapor products and hold them until disposed of by law.

1 NEW SECTION. **Sec. 121.** (1)(a) Where vapor products upon which
2 the tax imposed by this chapter has been reported and paid are
3 shipped or transported outside this state by the distributor to a
4 person engaged in the business of selling vapor products, to be sold
5 by that person, or are returned to the manufacturer by the
6 distributor or destroyed by the distributor, or are sold by the
7 distributor to the United States or any of its agencies or
8 instrumentalities, or are sold by the distributor to any Indian
9 tribal organization, credit of such tax may be made to the
10 distributor in accordance with rules prescribed by the department.

11 (b) For purposes of this subsection (1), the following
12 definitions apply:

13 (i) "Indian distributor" means a federally recognized Indian
14 tribe or tribal entity that would otherwise meet the definition of
15 "distributor" under section 101 of this act, if federally recognized
16 Indian tribes and tribal entities were not excluded from the
17 definition of "person" in section 101 of this act.

18 (ii) "Indian retailer" means a federally recognized Indian tribe
19 or tribal entity that would otherwise meet the definition of
20 "retailer" under section 101 of this act, if federally recognized
21 Indian tribes and tribal entities were not excluded from the
22 definition of "person" in section 101 of this act.

23 (iii) "Indian tribal organization" means a federally recognized
24 Indian tribe, or tribal entity, and includes an Indian distributor or
25 retailer that is owned by an Indian who is an enrolled tribal member
26 conducting business under tribal license or similar tribal approval
27 within Indian country.

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

31 NEW SECTION. **Sec. 122.** (1) Preexisting inventories of vapor
32 products are subject to the tax imposed in section 102 of this act.
33 All retailers and other distributors must report the tax due under
34 section 102 of this act on preexisting inventories of vapor products
35 on a form, as prescribed by the department, on or before October 31,
36 2019, and the tax due on such preexisting inventories must be paid on
37 or before January 31, 2020.

38 (2) Reports under subsection (1) of this section not filed with
39 the department by October 31, 2019, are subject to a late filing

1 penalty equal to the greater of two hundred fifty dollars or ten
2 percent of the tax due under section 102 of this act on the
3 taxpayer's preexisting inventories.

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

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

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

16 (a) Does not sell vapor products other than to ultimate
17 consumers; and

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

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

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

28 Part II

29 Conforming Amendments

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

32 (1) The liquor and cannabis board may issue subpoenas in
33 connection with any investigation, hearing, or proceeding for the
34 production of books, records, and documents held under this chapter
35 or chapters 70.155, 70.158, 70.345, 82.24, ~~((and))~~ 82.26 ~~((RCW))~~, and
36 82.--- RCW (the new chapter created in section 507 of this act), and
37 books and records of common carriers as defined in RCW 81.80.010, or

1 vehicle rental agencies relating to the transportation or possession
2 of cigarettes, vapor products, or other tobacco products.

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

5 (3) If any person is served a subpoena from the board for the
6 production of records, documents, and books, and fails or refuses to
7 obey the subpoena for the production of records, documents, and books
8 when required to do so, the person is subject to proceedings for
9 contempt, and the board may institute contempt of court proceedings
10 in the superior court of Thurston county or in the county in which
11 the person resides.

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

14 (1) All county and municipal peace officers are hereby charged
15 with the duty of investigating and prosecuting all violations 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, and all fines imposed for violations of this title and the
19 penal laws of this state relating to the manufacture, importation,
20 transportation, possession, distribution and sale of liquor (~~shall~~)
21 belong to the county, city or town wherein the court imposing the
22 fine is located, and (~~shall~~) must be placed in the general fund for
23 payment of the salaries of those engaged in the enforcement of the
24 provisions of this title and the penal laws of this state relating to
25 the manufacture, importation, transportation, possession,
26 distribution and sale of liquor(~~(: PROVIDED, That))~~). However, all
27 fees, fines, forfeitures and penalties collected or assessed by a
28 district court because of the violation of a state law (~~shall~~) must
29 be remitted as provided in chapter 3.62 RCW as now exists or is later
30 amended.

31 (2) In addition to any and all other powers granted, the board
32 (~~shall have~~) has the power to enforce the penal provisions of this
33 title and the penal laws of this state relating to the manufacture,
34 importation, transportation, possession, distribution and sale of
35 liquor.

36 (3) In addition to the other duties under this section, the board
37 (~~shall~~) must enforce chapters 82.24 (~~and~~), 82.26 (~~RCW~~), and
38 82.--- RCW (the new chapter created in section 507 of this act).

1 (4) The board may appoint and employ, assign to duty and fix the
2 compensation of, officers to be designated as liquor enforcement
3 officers. Such liquor enforcement officers (~~shall~~) have the power,
4 under the supervision of the board, to enforce the penal provisions
5 of this title and the penal laws of this state relating to the
6 manufacture, importation, transportation, possession, distribution
7 and sale of liquor. They (~~shall~~) have the power and authority to
8 serve and execute all warrants and process of law issued by the
9 courts in enforcing the penal provisions of this title or of any
10 penal law of this state relating to the manufacture, importation,
11 transportation, possession, distribution and sale of liquor, and the
12 provisions of chapters 82.24 (~~and~~), 82.26 ((RCW)) , and 82.--- RCW
13 (the new chapter created in section 507 of this act). They (~~shall~~)
14 have the power to arrest without a warrant any person or persons
15 found in the act of violating any of the penal provisions of this
16 title or of any penal law of this state relating to the manufacture,
17 importation, transportation, possession, distribution and sale of
18 liquor, and the provisions of chapters 82.24 (~~and~~), 82.26 ((RCW)) ,
19 and 82.--- RCW (the new chapter created in section 507 of this act).

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

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

23 (a) A wholesaler's license.

24 (b) A retailer's license.

25 (2) Application for the licenses must be made through the
26 business licensing system under chapter 19.02 RCW. The board must
27 adopt rules regarding the regulation of the licenses. The board may
28 refrain from the issuance of any license under this chapter if the
29 board has reasonable cause to believe that the applicant has
30 willfully withheld information requested for the purpose of
31 determining the eligibility of the applicant to receive a license, or
32 if the board has reasonable cause to believe that information
33 submitted in the application is false or misleading or is not made in
34 good faith. In addition, for the purpose of reviewing an application
35 for a wholesaler's license or retailer's license and for considering
36 the denial, suspension, or revocation of any such license, the board
37 may consider any prior criminal conduct of the applicant, including
38 an administrative violation history record with the board and a
39 criminal history record information check within the previous five

1 years, in any state, tribal, or federal jurisdiction in the United
2 States, its territories, or possessions, and the provisions of RCW
3 9.95.240 and chapter 9.96A RCW do not apply to such cases. The board
4 may, in its discretion, grant or refuse the wholesaler's license or
5 retailer's license, subject to the provisions of RCW 82.24.550.

6 (3) No person may qualify for a wholesaler's license or a
7 retailer's license under this section without first undergoing a
8 criminal background check. The background check must be performed by
9 the board and must disclose any criminal conduct within the previous
10 five years in any state, tribal, or federal jurisdiction in the
11 United States, its territories, or possessions. A person who
12 possesses a valid license on July 22, 2001, is subject to this
13 subsection and subsection (2) of this section beginning on the date
14 of the person's business license expiration under chapter 19.02 RCW,
15 and thereafter. If the applicant or licensee also has a license
16 issued under chapter 66.24 (~~(0#)~~), 82.26, or 70.345 RCW, the
17 background check done under the authority of chapter 66.24 (~~(0#)~~),
18 82.26, or 70.345 RCW satisfies the requirements of this section.

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

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

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

30 (1) The board must enforce the provisions of this chapter. The
31 board may adopt, amend, and repeal rules necessary to enforce the
32 provisions of this chapter.

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

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

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

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

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

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

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

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

1 (a) "Tobacco products" has the same meaning as provided in RCW
2 82.26.010; and

3 (b) "Vapor products" has the same meaning as provided in section
4 101 of this act.

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

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

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

20 (3) At any time during usual business hours the department,
21 board, or its duly authorized agents or employees, may enter any
22 place of business of a distributor, without a search warrant, and
23 inspect the premises, the records required to be kept under this
24 chapter, and the tobacco products contained therein, to determine
25 whether or not all the provisions of this chapter are being fully
26 complied with. If the department, board, or any of its agents or
27 employees, are denied free access or are hindered or interfered with
28 in making such examination, the registration certificate issued under
29 RCW 82.32.030 of the distributor at such premises (~~shall be~~) is
30 subject to revocation, and any licenses issued under this chapter or
31 chapter 82.24 or 70.345 RCW are subject to suspension or revocation,
32 by the department or board.

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

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

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

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

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

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

- 22 (a) A distributor's license; and
- 23 (b) A retailer's license.

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

1 territories, or possessions, and the provisions of RCW 9.95.240 and
2 chapter 9.96A RCW do not apply to such cases. The board may, in its
3 discretion, issue or refuse to issue the distributor's license or
4 retailer's license, subject to the provisions of RCW 82.26.220.

5 (3) No person may qualify for a distributor's license or a
6 retailer's license under this section without first undergoing a
7 criminal background check. The background check must be performed by
8 the board and must disclose any criminal conduct within the previous
9 five years in any state, tribal, or federal jurisdiction in the
10 United States, its territories, or possessions. If the applicant or
11 licensee also has a license issued under chapter 66.24 (~~(e)~~), 82.24,
12 or 70.345 RCW, the background check done under the authority of
13 chapter 66.24, 70.345, or 82.24 RCW satisfies the requirements of
14 this section.

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

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

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

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

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

34 (3) A license may not be suspended or revoked except upon notice
35 to the licensee and after a hearing as prescribed by the board. The
36 board, upon finding that the licensee has failed to comply with any
37 provision of this chapter or of any rule adopted under it, must, in
38 the case of the first offense, suspend the license or licenses of the
39 licensee for a period of not less than thirty consecutive business

1 days, and in the case of a second or further offense, suspend the
2 license or licenses for a period of not less than ninety consecutive
3 business days but not more than twelve months, and in the event the
4 board finds the licensee has been guilty of willful and persistent
5 violations, it may revoke the license or licenses.

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

10 (5) Any person whose license or licenses have been revoked under
11 this section may reapply to the board at the expiration of one year
12 of the license or licenses. The license or licenses may be approved
13 by the board if it appears to the satisfaction of the board that the
14 licensee will comply with the provisions of this chapter and the
15 rules adopted under it.

16 (6) A person whose license has been suspended or revoked may not
17 sell tobacco products, vapor products, or cigarettes or permit
18 tobacco products, vapor products, or cigarettes to be sold during the
19 period of suspension or revocation on the premises occupied by the
20 person or upon other premises controlled by the person or others or
21 in any other manner or form.

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

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

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

35 (1) The administration of this and chapters 82.04 through 82.27
36 RCW of this title is vested in the department (~~(of revenue which~~
37 ~~shall)), which must prescribe forms and rules of procedure for the
38 determination of the taxable status of any person, for the making of~~

1 returns and for the ascertainment, assessment and collection of taxes
2 and penalties imposed thereunder.

3 (2) The department (~~(of revenue shall)~~) must make and publish
4 rules and regulations, not inconsistent therewith, necessary to
5 enforce provisions of this chapter and chapters 82.02 through 82.23B
6 and 82.27 RCW, and the liquor (~~(control)~~) and cannabis board
7 (~~(shall)~~) must make and publish rules necessary to enforce chapters
8 82.24 (~~(and)~~), 82.26 (RCW), and 82.--- RCW (the new chapter created
9 in section 507 of this act), which (~~(shall have)~~) has the same force
10 and effect as if specifically included therein, unless declared
11 invalid by the judgment of a court of record not appealed from.

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

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

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

22 The definitions in this section apply throughout this chapter
23 unless the context clearly requires otherwise.

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

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

28 (3) "Child care facility" has the same meaning as provided in RCW
29 70.140.020.

30 (4) "Closed system nicotine container" means a sealed, prefilled,
31 and disposable container of nicotine in a solution or other form in
32 which such container is inserted directly into an electronic
33 cigarette, electronic nicotine delivery system, or other similar
34 product, if the nicotine in the container is inaccessible through
35 customary or reasonably foreseeable handling or use, including
36 reasonably foreseeable ingestion or other contact by children.

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

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

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

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

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

11 ~~(a) Sells vapor products to persons other than ultimate~~
12 ~~consumers; or~~

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

16 meaning as in section 101 of this act.
17 (8) "Liquid nicotine container" means a package from which
18 nicotine in a solution or other form is accessible through normal and
19 foreseeable use by a consumer and that is used to hold soluble
20 nicotine in any concentration. "Liquid nicotine container" does not
21 include closed system nicotine containers.

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

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

26 (11) "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, the state and its departments
30 and institutions, political subdivision of the state of Washington,
31 corporation, limited liability company, association, society, any
32 group of individuals acting as a unit, whether mutual, cooperative,
33 fraternal, nonprofit, or otherwise.

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

37 (13) "Playground" means any public improved area designed,
38 equipped, and set aside for play of six or more children which is not
39 intended for use as an athletic playing field or athletic court,
40 including but not limited to any play equipment, surfacing, fencing,

1 signs, internal pathways, internal land forms, vegetation, and
2 related structures.

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

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

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

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

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

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

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

25 (a) "Vapor product" includes any electronic cigarette, electronic
26 cigar, electronic cigarillo, electronic pipe, or similar product or
27 device and any vapor cartridge or other container that may contain
28 nicotine in a solution or other form that is intended to be used with
29 or in an electronic cigarette, electronic cigar, electronic
30 cigarillo, electronic pipe, or similar product or device.

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

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

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

1 (1) (a) No person may engage in or conduct business as a retailer,
2 distributor, or delivery seller in this state without a valid license
3 issued under this chapter, except as otherwise provided by law. Any
4 person who sells vapor products to ultimate consumers by a means
5 other than delivery sales must obtain a retailer's license under this
6 chapter. Any person who (~~sells vapor products to persons other than~~
7 ~~ultimate consumers or who~~) meets the definition of distributor under
8 this chapter must obtain a distributor's license under this chapter.
9 Any person who conducts delivery sales of vapor products must obtain
10 a delivery sale license.

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

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

20 (3) Any person licensed under this chapter as a distributor, any
21 person licensed under this chapter as a retailer, and any person
22 licensed under this chapter as a delivery seller may not operate in
23 any other capacity unless the additional appropriate license is first
24 secured, except as otherwise provided by law. A violation of this
25 subsection is a misdemeanor.

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

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

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

37 (1) No person may conduct a delivery sale or otherwise ship or
38 transport, or cause to be shipped or transported, any vapor product
39 ordered or purchased by mail or through the internet to any person

1 unless such seller has a valid delivery sale license as required
2 under this chapter.

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

8 (3) A delivery sale licensee must provide notice on its mail
9 order or internet sales forms of the minimum age required for the
10 legal sale of vapor products in Washington state as provided by RCW
11 70.345.140.

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

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

24 (6) Before a delivery sale licensee delivers an initial purchase
25 to any person, the licensee must verify the identity and delivery
26 address of the purchaser by mailing or shipping to the purchaser a
27 notice of sale and certification form confirming that the addressee
28 is in fact the person placing the order. The purchaser must return
29 the signed certification form to the licensee before the initial
30 shipment of product. Certification forms are not required for repeat
31 customers. In the alternative, before a seller delivers an initial
32 purchase to any person, the seller must first obtain from the
33 prospective customer an electronic certification, such as by email,
34 that includes a declaration that, at a minimum, the prospective
35 customer is over the minimum age required for the legal sale of a
36 vapor product, and the credit or debit card used for payment has been
37 issued in the purchaser's name.

38 (7) A delivery sale licensee must include on shipping documents a
39 clear and conspicuous statement which includes, at a minimum, that
40 the package contains vapor products, Washington law prohibits sales

1 to those under the minimum age established by this chapter, and
2 violations may result in sanctions to both the licensee and the
3 purchaser.

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

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

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

15 ~~((10))~~ (11) The attorney general may seek an injunction in
16 superior court to restrain a threatened or actual violation of this
17 section and to compel compliance with this section.

18 ~~((11))~~ (12) Any violation of this section is not reasonable in
19 relation to the development and preservation of business and is an
20 unfair and deceptive act or practice and an unfair method of
21 competition in the conduct of trade or commerce in violation of RCW
22 19.86.020. Standing to bring an action to enforce RCW 19.86.020 for
23 violation of this section lies solely with the attorney general.
24 Remedies provided by chapter 19.86 RCW are cumulative and not
25 exclusive.

26 ~~((12))~~ (13)(a) In any action brought under this section, the
27 state is entitled to recover, in addition to other relief, the costs
28 of investigation, expert witness fees, costs of the action, and
29 reasonable attorneys' fees.

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

34 ~~((13))~~ (14) Unless otherwise expressly provided, the penalties
35 or remedies, or both, under this section are in addition to any other
36 penalties and remedies available under any other law of this state.

37 ~~((14))~~ (15) A licensee who violates this section is subject to
38 license suspension or revocation by the board.

39 ~~((15))~~ (16) The board may adopt by rule additional requirements
40 for mail or internet sales.

1 ((~~16~~)) (17) The board must not adopt rules prohibiting internet
2 sales.

3 **Part III**

4 **Heated Tobacco Products**

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

7 Unless the context clearly requires otherwise, the definitions in
8 this section apply throughout this chapter:

9 (1) "Board" means the state liquor (~~(control)~~) and cannabis
10 board.

11 (2) "Cigarette" means any roll for smoking made wholly or in part
12 of tobacco, irrespective of size or shape and irrespective of the
13 tobacco being flavored, adulterated, or mixed with any other
14 ingredient, where such roll has a wrapper or cover made of paper or
15 any material, except where such wrapper is wholly or in the greater
16 part made of natural leaf tobacco in its natural state. "Cigarette"
17 includes a roll-your-own cigarette, but does not include a heated
18 tobacco product as defined in RCW 82.26.010.

19 (3) "Cigarette paper" means any paper or any other material
20 except tobacco, prepared for use as a cigarette wrapper.

21 (4) "Cigarette tube" means cigarette paper made into a hollow
22 cylinder for use in making cigarettes.

23 (5) "Commercial cigarette-making machine" means a machine that is
24 operated in a retail establishment and that is capable of being
25 loaded with loose tobacco, cigarette paper or tubes, and any other
26 components related to the production of roll-your-own cigarettes,
27 including filters.

28 (6) "Indian tribal organization" means a federally recognized
29 Indian tribe, or tribal entity, and includes an Indian wholesaler or
30 retailer that is owned by an Indian who is an enrolled tribal member
31 conducting business under tribal license or similar tribal approval
32 within Indian country. For purposes of this chapter "Indian country"
33 is defined in the manner set forth in 18 U.S.C. Sec. 1151.

34 (7) "Precollection obligation" means the obligation of a seller
35 otherwise exempt from the tax imposed by this chapter to collect the
36 tax from that seller's buyer.

37 (8) "Retailer" means every person, other than a wholesaler, who
38 purchases, sells, offers for sale or distributes any one or more of

1 the articles taxed herein, irrespective of quantity or amount, or the
2 number of sales, and all persons operating under a retailer's
3 registration certificate.

4 (9) "Retail selling price" means the ordinary, customary or usual
5 price paid by the consumer for each package of cigarettes, less the
6 tax levied by this chapter and less any similar tax levied by this
7 state.

8 (10) "Roll-your-own cigarettes" means cigarettes produced by a
9 commercial cigarette-making machine.

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

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

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

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

21 The definitions in this section apply throughout this chapter
22 unless the context clearly requires otherwise.

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

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

30 (3) "Board" means the state liquor (~~control~~) and cannabis
31 board.

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

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

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

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

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

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

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

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

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

22 ~~((10))~~ (11) "Little cigar" means a cigar that has a cellulose
23 acetate integrated filter.

24 ~~((11))~~ (12) "Manufacturer" means a person who manufactures and
25 sells tobacco products.

26 ~~((12))~~ (13) "Manufacturer's representative" means a person
27 hired by a manufacturer to sell or distribute the manufacturer's
28 tobacco products, and includes employees and independent contractors.

29 ~~((13))~~ (14) "Moist snuff" means tobacco that is finely cut,
30 ground, or powdered; is not for smoking; and is intended to be placed
31 in the oral, but not the nasal, cavity.

32 ~~((14))~~ (15) "Person" means any individual, receiver,
33 administrator, executor, assignee, trustee in bankruptcy, trust,
34 estate, firm, copartnership, joint venture, club, company, joint
35 stock company, business trust, municipal corporation, the state and
36 its departments and institutions, political subdivision of the state
37 of Washington, corporation, limited liability company, association,
38 society, any group of individuals acting as a unit, whether mutual,
39 cooperative, fraternal, nonprofit, or otherwise. The term excludes
40 any person immune from state taxation, including the United States or

1 its instrumentalities, and federally recognized Indian tribes and
2 enrolled tribal members, conducting business within Indian country.

3 ~~((15))~~ (16) "Place of business" means any place where tobacco
4 products are sold or where tobacco products are manufactured, stored,
5 or kept for the purpose of sale, including any vessel, vehicle,
6 airplane, train, or vending machine.

7 ~~((16))~~ (17) "Retail outlet" means each place of business from
8 which tobacco products are sold to consumers.

9 ~~((17))~~ (18) "Retailer" means any person engaged in the business
10 of selling tobacco products to ultimate consumers.

11 ~~((18))~~ (19)(a) "Sale" means any transfer, exchange, or barter,
12 in any manner or by any means whatsoever, for a consideration, and
13 includes and means all sales made by any person.

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

17 ~~((19))~~ (20)(a) "Taxable sales price" means:

18 (i) In the case of a taxpayer that is not affiliated with the
19 manufacturer, distributor, or other person from whom the taxpayer
20 purchased tobacco products, the actual price for which the taxpayer
21 purchased the tobacco products;

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

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

35 (iv) In the case of a taxpayer that is a manufacturer selling
36 tobacco products directly to ultimate consumers, the actual price for
37 which the taxpayer sells those tobacco products to ultimate
38 consumers;

39 (v) In the case of a taxpayer that has acquired tobacco products
40 under a sale as defined in subsection ~~((18))~~ (19)(b) of this

1 section, the price, determined as nearly as possible according to the
2 actual price, that the taxpayer or other distributors sell the same
3 tobacco products or similar tobacco products of like quality and
4 character to unaffiliated distributors, unaffiliated retailers, or
5 ultimate consumers; or

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

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

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

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

22 ~~((21))~~ (22) "Tobacco products" means cigars, cheroots, stogies,
23 periques, granulated, plug cut, crimp cut, ready rubbed, and other
24 smoking tobacco, snuff, snuff flour, cavendish, plug and twist
25 tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps,
26 clippings, cuttings and sweepings of tobacco, and other kinds and
27 forms of tobacco, prepared in such manner as to be suitable for
28 chewing or smoking in a pipe or otherwise, or both for chewing and
29 smoking, and any other product, regardless of form, that contains
30 tobacco and is intended for human consumption or placement in the
31 oral or nasal cavity or absorption into the human body by any other
32 means, including heated tobacco products as defined in subsection (9)
33 of this section, but does not include cigarettes as defined in RCW
34 82.24.010.

35 ~~((22))~~ (23) "Unaffiliated distributor" means a distributor that
36 is not affiliated with the manufacturer, distributor, or other person
37 from whom the distributor has purchased tobacco products.

38 ~~((23))~~ (24) "Unaffiliated retailer" means a retailer that is
39 not affiliated with the manufacturer, distributor, or other person
40 from whom the retailer has purchased tobacco products.

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

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

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

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

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

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

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

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

25 (2) The tax imposed on a product under this chapter must be
26 reduced by fifty percent if that same product is issued a modified
27 risk tobacco product order by the secretary of the United States
28 department of health and human services pursuant to Title 21 U.S.C.
29 Sec. 387k(g)(1), or by twenty-five percent if that same product is
30 issued a modified risk tobacco product order by the secretary of the
31 United States department of health and human services pursuant to
32 Title 21 U.S.C. Sec. 387k(g)(2).

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

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

5 (b) The moneys collected on heated tobacco products under
6 subsection (1)(b) of this section must be deposited as follows:

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

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

11 (c) The funding provided under (b) of this subsection is intended
12 to supplement and not supplant general fund investments in cancer
13 research and foundational public health services.

14 **Part IV**
15 **Tribal Compacting**

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

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

34 NEW SECTION. **Sec. 402.** A new section is added to chapter 43.06
35 RCW to read as follows:

36 (1) The governor may enter into vapor product tax contracts
37 concerning the sale of vapor products. All vapor product tax

1 contracts must meet the requirements for vapor product tax contracts
2 under this section.

3 (2) Vapor product tax contracts must be in regard to retail sales
4 in which Indian retailers make delivery and physical transfer of
5 possession of the vapor products from the seller to the buyer within
6 Indian country, and are not in regard to transactions by non-Indian
7 retailers. In addition, contracts must provide that retailers may not
8 sell or give, or permit to be sold or given, vapor products to any
9 person who is under the state legal age for the purchase of vapor
10 products.

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

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

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

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

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

29 (d) A tribal manufacturer.

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

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

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

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

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

5 (10) Information received by the state or open to state review
6 under the terms of a contract is subject to the provisions of RCW
7 82.32.330.

8 (11) It is the intent of the legislature that the liquor and
9 cannabis board and the department of revenue continue the division of
10 duties and shared authority under chapter 82.--- RCW (the new chapter
11 created in section 507 of this act) and therefore the liquor and
12 cannabis board is responsible for enforcement activities that come
13 under the terms of chapter 82.--- RCW (the new chapter created in
14 section 507 of this act).

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

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

30 (a) "Essential government services" means services such as tribal
31 administration, public facilities, fire, police, public health,
32 education, job services, sewer, water, environmental and land use,
33 transportation, utility services, and economic development.

34 (b) "Indian country" has the same meaning as provided in RCW
35 82.24.010.

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

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

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

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

3 (d) "Indian tribe" or "tribe" means a federally recognized Indian
4 tribe located within the geographical boundaries of the state of
5 Washington.

6 (e) "Vapor products" has the same meaning as provided in section
7 101 of this act.

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

10 (1) The governor is authorized to enter into vapor product tax
11 contracts with federally recognized Indian tribes located within the
12 geographical boundaries of the state of Washington. Each contract
13 adopted under this section must provide that the tribal vapor product
14 tax rate be one hundred percent of the state vapor product tax and
15 state and local sales and use taxes. The tribal vapor product tax is
16 in lieu of the state vapor product tax and state and local sales and
17 use taxes, as provided in section 402(3) of this act.

18 (2) A vapor product tax contract under this section is subject to
19 section 402 of this act and is separate from a cigarette tax contract
20 subject to RCW 43.06.455 or 43.06.466.

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

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

34 (2) Any agreement must require the tribe to impose a tribal vapor
35 product tax with a tax rate that is ninety percent of the state vapor
36 product tax. This tribal tax is in lieu of the combined state and
37 local sales and use taxes and the state vapor product tax, and as
38 such these state taxes are not imposed during the term of the

1 agreement on any transaction governed by the agreement. The tribal
2 vapor product tax must increase or decrease at the time of any
3 increase or decrease in the state vapor product tax so as to remain
4 at a level that is ninety percent of the rate of the state vapor
5 product tax.

6 (3) The agreement must include a provision requiring the tribe to
7 transmit thirty percent of the tribal tax revenue on all vapor
8 products sales to the state. The funds must be transmitted to the
9 state treasurer on a quarterly basis for deposit by the state
10 treasurer into the general fund. The remaining tribal tax revenue
11 must be used for essential government services, as that term is
12 defined in section 402 of this act.

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

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

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

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

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

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

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

37 (c) The agreement must include provisions for sharing of
38 information among the tribe, the department of revenue, and the
39 liquor and cannabis board.

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

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

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

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

21 (11) It is the intent of the legislature that the liquor and
22 cannabis board and the department of revenue continue the division of
23 duties and shared authority under chapter 82.--- RCW (the new chapter
24 created in section 507 of this act).

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

27 (a) "Indian country" has the same meaning as provided in RCW
28 82.24.010.

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

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

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

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

36 (d) "Vapor products" has the same meaning as provided in section
37 101 of this act.

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

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

5 (2) The definitions in section 402 of this act apply to this
6 section.

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

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

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

15 **Part V**

16 **Miscellaneous Provisions**

17 NEW SECTION. **Sec. 501.** A new section is added to chapter 82.32
18 RCW to read as follows:

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

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

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

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

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

1 NEW SECTION. **Sec. 502.** RCW 43.348.900 (Expiration of chapter)
2 and 2015 3rd sp.s. c 34 s 10 are each repealed.

3 **Sec. 503.** RCW 43.348.080 and 2018 c 4 s 8 are each amended to
4 read as follows:

5 (1) The Andy Hill cancer research endowment fund match transfer
6 account is created in the custody of the (~~(state treasurer as a~~
7 ~~nonappropriated account to be used solely and exclusively for the~~
8 ~~program created in RCW 43.348.040. The purpose of the account is to~~
9 ~~provide matching funds for the fund and administrative costs.~~
10 ~~Expenditures to fund or reimburse the program administrator are not~~
11 ~~subject to the requirements of subsection (4) of this section.~~

12 ~~(2) Revenues to the account must consist of deposits into the~~
13 ~~account, legislative appropriations, and any gifts, grants, or~~
14 ~~donations received by the department for this purpose.~~

15 ~~(3) The legislature must appropriate a state match, up to a~~
16 ~~maximum of ten million dollars annually, beginning July 1, 2016, and~~
17 ~~each July 1st following the end of the fiscal year from tax~~
18 ~~collections and penalties generated from enforcement of state taxes~~
19 ~~on cigarettes and other tobacco products by the state liquor and~~
20 ~~cannabis board or other federal, state or local law or tax~~
21 ~~enforcement agency, as determined by the department of revenue. Tax~~
22 ~~collections include any cigarette tax, other tobacco product tax, and~~
23 ~~retail sales and use tax.~~

24 ~~(4) Expenditures, in the form of matching funds, from the account~~
25 ~~may be made only upon receipt of proof from the program administrator~~
26 ~~of nonstate or private contributions to the fund for the program.~~
27 ~~Expenditures, in the form of matching funds, may not exceed the total~~
28 ~~amount of nonstate or private contributions.~~

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

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.) state treasury to be used solely and~~
37 ~~exclusively for the program created in RCW 43.348.040. Moneys in the~~
38 ~~account may be spent only after appropriation. The purpose of the~~
39 ~~account is to provide matching funds for the fund and administrative~~

1 costs. Expenditures to fund or reimburse the program administrator
2 are not subject to the requirements of subsection (4) of this
3 section.

4 (2) Revenues to the account must consist of deposits into the
5 account, taxes imposed on vapor products under RCW 66.44.010 and on
6 heated tobacco products under RCW 82.26.020, legislative
7 appropriations, and any gifts, grants, or donations received by the
8 department for this purpose.

9 (3) Each fiscal biennium, the legislature must appropriate to the
10 department of commerce such amounts as estimated to be the balance of
11 the account to provide state matching funds.

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

17 (5) The department must enter into an appropriate agreement with
18 the program administrator to demonstrate exchange of consideration
19 for the matching funds.

20 NEW SECTION. Sec. 504. The provisions of RCW 82.32.805 and
21 82.32.808 do not apply to this act.

22 NEW SECTION. Sec. 505. If any provision of this act or its
23 application to any person or circumstance is held invalid, the
24 remainder of the act or the application of the provision to other
25 persons or circumstances is not affected.

26 NEW SECTION. Sec. 506. If any part of this act is found to be
27 in conflict with federal requirements that are a prescribed condition
28 to the allocation of federal funds to the state, the conflicting part
29 of this act is inoperative solely to the extent of the conflict and
30 with respect to the agencies directly affected, and this finding does
31 not affect the operation of the remainder of this act in its
32 application to the agencies concerned. Rules adopted under this act
33 must meet federal requirements that are a necessary condition to the
34 receipt of federal funds by the state.

35 NEW SECTION. Sec. 507. Part I of this act constitutes a new
36 chapter in Title 82 RCW.

1 NEW SECTION. **Sec. 508.** This act takes effect October 1, 2019."

E2SHB 1873 - S COMM AMD
By Committee on Ways & Means

NOT ADOPTED 04/28/2019

2 On page 1, line 2 of the title, after "products;" strike the
3 remainder of the title and insert "amending RCW 66.08.145, 66.44.010,
4 82.24.510, 82.24.550, 82.26.060, 82.26.080, 82.26.150, 82.26.220,
5 82.32.300, 70.345.010, 70.345.030, 70.345.090, 82.24.010, 82.26.020,
6 43.06.450, and 43.348.080; reenacting and amending RCW 82.26.010;
7 adding new sections to chapter 43.06 RCW; adding a new section to
8 chapter 82.08 RCW; adding a new section to chapter 82.12 RCW; adding
9 a new section to chapter 82.32 RCW; adding a new chapter to Title 82
10 RCW; creating new sections; repealing RCW 43.348.900; prescribing
11 penalties; and providing an effective date."

EFFECT: Decreases the tax on products in an "accessible container" to 8 cents per milliliter of liquid nicotine or nicotine solution; decreases the tax on all other vapor products to 24 cents per milliliter of liquid nicotine or nicotine solution; removes appropriations from the Foundational Public Health Services Account to the Andy Hill Cancer Research Endowment Fund; establishes a definition of heated tobacco products; provides that all revenues from vapor and heated tobacco products must be divided evenly between the Foundational Public Health Services Account to the Andy Hill Cancer Research Endowment Fund; provides for a reduction in tax for products issued a modified risk tobacco order; repeals the expiration date on the Andy Hill Cancer Research Endowment Fund; removes the limit on the state contribution to the Andy Hill Cancer Research Endowment Fund; makes the Andy Hill Cancer Research Endowment Fund an appropriated account, and restores certain definitions and regulatory provisions necessary to implement a tax at wholesale.

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