

SSB 5986 - S AMD 767
By Senator Braun

ADOPTED 04/23/2019

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

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

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

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

23 (5) "Distributor" mean any person:

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

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

29 (c) Engaged in the business of selling vapor products outside
30 this state who ships or transports vapor products to retailers or
31 consumers in this state; or

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

4 (6) "Indian country" has the same meaning as provided in RCW
5 82.24.010.

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

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

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

23 (10) "Place of business" means any place where vapor products are
24 sold or where vapor products are manufactured, stored, or kept for
25 the purpose of sale, including any vessel, vehicle, airplane, or
26 train.

27 (11) "Retail outlet" has the same meaning as provided in RCW
28 70.345.010.

29 (12) "Retailer" has the same meaning as provided in RCW
30 70.345.010.

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

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

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

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

1 consumers, the actual price for which that taxpayer sells those vapor
2 products to unaffiliated distributors, unaffiliated retailers, or
3 ultimate consumers;

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

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

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

19 (vi) In cases where section 102(2)(b) of this act applies, the
20 value of the article used as defined in RCW 82.12.010; or

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

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

32 (c) In any case where the taxable sales price is not indicative
33 of a vapor product's true value at the time and place of the taxable
34 event as provided in section 102(2)(a) of this act, "taxable sales
35 price" means the true value of the vapor product as determined by the
36 department. For purposes of this subsection, "true value" means
37 market value based on sales at comparable locations in this state of
38 the same or similar vapor product of like quality and character sold
39 under comparable conditions of sale by comparable sellers to
40 comparable purchasers.

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

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

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

9 (18) "Vapor product" means any noncombustible product containing
10 a solution that contains nicotine, which employs a mechanical heating
11 element, battery, or electronic circuit regardless of shape or size
12 that can be used to produce vapor from the solution or other
13 substance, including an electronic cigarette, electronic cigar,
14 electronic cigarillo, electronic pipe, any vapor cartridge or other
15 container, or similar product or device.

16 (a) The term does not include:

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

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

23 (iii) Any product that meets the definition of marijuana, useable
24 marijuana, marijuana concentrates, marijuana-infused products,
25 cigarette, or tobacco products.

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

27 (i) "Cigarette" has the same meaning as provided in RCW
28 82.24.010; and

29 (ii) "Marijuana," "useable marijuana," "marijuana concentrates,"
30 and "marijuana-infused products" have the same meaning as provided in
31 RCW 69.50.101.

32 NEW SECTION. **Sec. 102.** (1) There is levied and collected a tax
33 upon the sale, use, consumption, handling, possession, or
34 distribution of all vapor products in this state in an amount equal
35 to ten cents per milliliter of solution and a proportionate tax at
36 the like rate on all fractional parts of a milliliter thereof. The
37 tax on vapor products must be imposed based on the volume of the
38 solution as listed by the manufacturer.

1 (2) (a) The tax under this section must be collected at the time
2 the distributor: (i) Brings, or causes to be brought, into this state
3 from without the state vapor products for sale; (ii) makes,
4 manufactures, fabricates, or stores vapor products in this state for
5 sale in this state; (iii) ships or transports vapor products to
6 retailers or consumers in this state; or (iv) handles for sale any
7 vapor products that are within this state but upon which tax has not
8 been imposed.

9 (b) The tax imposed under this section must also be collected by
10 the department from the consumer of vapor products where the tax
11 imposed under this section was not paid by the distributor on such
12 vapor products.

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

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

17 (ii) Fifty percent into the foundational public health services
18 account created in section 104 of this act.

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

22 NEW SECTION. **Sec. 103.** (1) A bundled transaction that includes
23 a vapor product is subject to the tax imposed under this chapter on
24 only the milliliters, or portion of milliliters, of vapor products
25 included in the bundled transaction.

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

28 (a) "Bundled transaction" means:

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

33 (ii) A vapor product provided free of charge with the required
34 purchase of another product. A vapor product is provided free of
35 charge if the sales price of the product purchased does not vary
36 depending on the inclusion of the vapor product provided free of
37 charge.

38 (b) "Distinct and identifiable products" does not include
39 packaging such as containers, boxes, sacks, bags, and bottles, or

1 materials such as wrapping, labels, tags, and instruction guides,
2 that accompany the sale of the products and are incidental or
3 immaterial to the sale thereof.

4 NEW SECTION. **Sec. 104.** (1) The foundational public health
5 services account is created in the state treasury. Fifty percent of
6 the revenues from the tax collected under section 102 of this act and
7 fifty percent of the revenues from the tax collected on heated
8 tobacco products under RCW 82.26.020 must be deposited into the
9 account for the purpose of promoting governmental public health.

10 (2) To determine the funding for foundational public health
11 services pursuant to subsection (1) of this section, the governmental
12 public health system must work together to: (a) Arrive at a mutually
13 acceptable allocation and distribution of funds from the account
14 using the process established in chapter 14, Laws of 2019; and (b)
15 determine the best accountability measures to ensure efficient and
16 effective use of funds, emphasizing use of shared services where
17 appropriate.

18 NEW SECTION. **Sec. 105.** It is the intent and purpose of this
19 chapter to levy a tax on all vapor products sold, used, consumed,
20 handled, possessed, or distributed within this state. It is the
21 further intent and purpose of this chapter to impose the tax only
22 once on all vapor products in this state. Nothing in this chapter may
23 be construed to exempt any person taxable under any other law or
24 under any other tax imposed under this title.

25 NEW SECTION. **Sec. 106.** The tax imposed by section 102 of this
26 act does not apply with respect to any vapor products which under the
27 Constitution and laws of the United States may not be made the
28 subject of taxation by this state.

29 NEW SECTION. **Sec. 107.** (1) Every distributor must keep at each
30 place of business complete and accurate records for that place of
31 business, including itemized invoices, of vapor products held,
32 purchased, manufactured, brought in or caused to be brought in from
33 without the state, or shipped or transported to retailers in this
34 state, and of all sales of vapor products made.

35 (2) These records must show the names and addresses of
36 purchasers, the inventory of all vapor products, and other pertinent

1 papers and documents relating to the purchase, sale, or disposition
2 of vapor products. All invoices and other records required by this
3 section to be kept must be preserved for a period of five years from
4 the date of the invoices or other documents or the date of the
5 entries appearing in the records.

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

18 NEW SECTION. **Sec. 108.** Every person required to be licensed
19 under chapter 70.345 RCW who sells vapor products to persons other
20 than the ultimate consumer must render with each sale itemized
21 invoices showing the seller's name and address, the purchaser's name
22 and address, the date of sale, and all prices. The person must
23 preserve legible copies of all such invoices for five years from the
24 date of sale.

25 NEW SECTION. **Sec. 109.** (1) Every retailer must procure itemized
26 invoices of all vapor products purchased. The invoices must show the
27 seller's name and address, the date of purchase, and all prices and
28 discounts.

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

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

1 the department, board, or any of its agents or employees are denied
2 free access or are hindered or interfered with in making the
3 inspection, the registration certificate issued under RCW 82.32.030
4 of the retailer at the premises is subject to revocation by the
5 department, and any licenses issued under chapter 70.345, 82.26, or
6 82.24 RCW are subject to suspension or revocation by the board.

7 NEW SECTION. **Sec. 110.** (1)(a) Where vapor products upon which
8 the tax imposed by this chapter has been reported and paid are
9 shipped or transported outside this state by the distributor to a
10 person engaged in the business of selling vapor products, to be sold
11 by that person, or are returned to the manufacturer by the
12 distributor or destroyed by the distributor, or are sold by the
13 distributor to the United States or any of its agencies or
14 instrumentalities, or are sold by the distributor to any Indian
15 tribal organization, credit of such tax may be made to the
16 distributor in accordance with rules prescribed by the department.

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

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

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

29 (iii) "Indian tribal organization" means a federally recognized
30 Indian tribe, or tribal entity, and includes an Indian distributor or
31 retailer that is owned by an Indian who is an enrolled tribal member
32 conducting business under tribal license or similar tribal approval
33 within Indian country.

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

37 NEW SECTION. **Sec. 111.** All of the provisions contained in
38 chapter 82.32 RCW not inconsistent with the provisions of this

1 chapter have full force and application with respect to taxes imposed
2 under the provisions of this chapter.

3 NEW SECTION. **Sec. 112.** The department must authorize, as duly
4 authorized agents, enforcement officers of the board to enforce
5 provisions of this chapter. These officers are not employees of the
6 department.

7 NEW SECTION. **Sec. 113.** (1) The department may by rule establish
8 the invoice detail required under section 107 of this act for a
9 distributor and for those invoices required to be provided to
10 retailers under section 109 of this act.

11 (2) If a retailer fails to keep invoices as required under
12 section 109 of this act, the retailer is liable for the tax owed on
13 any uninvoiced vapor products but not penalties and interest, except
14 as provided in subsection (3) of this section.

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

19 NEW SECTION. **Sec. 114.** (1) No person may transport or cause to
20 be transported in this state vapor products for sale other than: (a)
21 A licensed distributor under chapter 70.345 RCW, or a manufacturer's
22 representative authorized to sell or distribute vapor products in
23 this state under chapter 70.345 RCW; (b) a licensed retailer under
24 chapter 70.345 RCW; (c) a seller with a valid delivery sale license
25 under chapter 70.345 RCW; or (d) a person who has given notice to the
26 board in advance of the commencement of transportation.

27 (2) When transporting vapor products for sale, the person must
28 have in his or her actual possession, or cause to have in the actual
29 possession of those persons transporting such vapor products on his
30 or her behalf, invoices or delivery tickets for the vapor products,
31 which must show the true name and address of the consignor or seller,
32 the true name and address of the consignee or purchaser, and the
33 quantity and brands of the vapor products being transported.

34 (3) In any case where the department or the board, or any peace
35 officer of the state, has knowledge or reasonable grounds to believe
36 that any vehicle is transporting vapor products in violation of this

1 section, the department, board, or peace officer is authorized to
2 stop the vehicle and to inspect it for contraband vapor products.

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

6 NEW SECTION. **Sec. 115.** The board must compile and maintain a
7 current record of the names of all distributors, retailers, and
8 delivery sales licenses under chapter 70.345 RCW and the status of
9 their license or licenses. The information must be updated on a
10 monthly basis and published on the board's official internet web
11 site. This information is not subject to the confidentiality
12 provisions of RCW 82.32.330 and must be disclosed to manufacturers,
13 distributors, retailers, and the general public upon request.

14 NEW SECTION. **Sec. 116.** (1) No person engaged in or conducting
15 business as a distributor or retailer in this state may:

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

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

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

29 (i) Notice of the transportation has been given as required under
30 section 114 of this act;

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

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

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

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

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

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

12 NEW SECTION. **Sec. 117.** (1) A retailer that obtains vapor
13 products from an unlicensed distributor or any other person that is
14 not licensed under chapter 70.345 RCW must be licensed both as a
15 retailer and a distributor and is liable for the tax imposed under
16 section 102 of this act with respect to the vapor products acquired
17 from the unlicensed person that are held for sale, handling, or
18 distribution in this state. For the purposes of this subsection,
19 "person" includes both persons defined in this act and any person
20 immune from state taxation, such as the United States or its
21 instrumentalities, and federally recognized Indian tribes and
22 enrolled tribal members, conducting business within Indian country.

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

26 NEW SECTION. **Sec. 118.** A manufacturer that has manufacturer's
27 representatives who sell or distribute the manufacturer's vapor
28 products in this state must provide the board a list of the names and
29 addresses of all such representatives and must ensure that the list
30 provided to the board is kept current. A manufacturer's
31 representative is not authorized to distribute or sell vapor products
32 in this state unless the manufacturer that hired the representative
33 has a valid distributor's license under chapter 70.345 RCW and that
34 manufacturer provides the board a current list of all of its
35 manufacturer's representatives as required by this section. A
36 manufacturer's representative must carry a copy of the distributor's
37 license of the manufacturer that hired the representative at all
38 times when selling or distributing the manufacturer's vapor products.

1 NEW SECTION. **Sec. 119.** (1) Any vapor products in the possession
2 of a person selling vapor products in this state acting as a
3 distributor or retailer and who is not licensed as required under
4 chapter 70.345 RCW, or a person who is selling vapor products in
5 violation of RCW 82.24.550(6), may be seized without a warrant by any
6 agent of the department, agent of the board, or law enforcement
7 officer of this state. Any vapor products seized under this
8 subsection are deemed forfeited.

9 (2) Any vapor products in the possession of a person who is not a
10 licensed distributor, delivery seller, manufacturer's representative,
11 or retailer and who transports vapor products for sale without having
12 provided notice to the board required under section 114 of this act,
13 or without invoices or delivery tickets showing the true name and
14 address of the consignor or seller, the true name and address of the
15 consignee or purchaser, and the quantity and brands of vapor products
16 being transported may be seized and are subject to forfeiture.

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

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

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

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

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

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

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

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

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

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

17 NEW SECTION. **Sec. 120.** (1) In all cases of seizure of any vapor
18 products made subject to forfeiture under this chapter, the
19 department or board must proceed as provided in RCW 82.24.135.

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

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

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

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

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

6 NEW SECTION. **Sec. 121.** When the department or the board has
7 good reason to believe that any of the vapor products taxed under
8 this chapter are being kept, sold, offered for sale, or given away in
9 violation of the provisions of this chapter, it may make affidavit of
10 facts describing the place or thing to be searched, before any judge
11 of any court in this state, and the judge must issue a search warrant
12 directed to the sheriff, any deputy, police officer, or duly
13 authorized agent of the department or the board commanding him or her
14 diligently to search any building, room in a building, place, or
15 vehicle as may be designated in the affidavit and search warrant, and
16 to seize the vapor products and hold them until disposed of by law.

17 NEW SECTION. **Sec. 122.** (1)(a) Where vapor products upon which
18 the tax imposed by this chapter has been reported and paid are
19 shipped or transported outside this state by the distributor to a
20 person engaged in the business of selling vapor products, to be sold
21 by that person, or are returned to the manufacturer by the
22 distributor or destroyed by the distributor, or are sold by the
23 distributor to the United States or any of its agencies or
24 instrumentalities, or are sold by the distributor to any Indian
25 tribal organization, credit of such tax may be made to the
26 distributor in accordance with rules prescribed by the department.

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

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

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

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

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

9 NEW SECTION. **Sec. 123.** (1) Preexisting inventories of vapor
10 products are subject to the tax imposed in section 102 of this act.
11 All retailers and other distributors must report the tax due under
12 section 102 of this act on preexisting inventories of vapor products
13 on a form, as prescribed by the department, on or before October 31,
14 2019, and the tax due on such preexisting inventories must be paid on
15 or before January 31, 2020.

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

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

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

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

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

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

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

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

8 **Part II**

9 **Conforming Amendments**

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

12 (1) The liquor and cannabis board may issue subpoenas in
13 connection with any investigation, hearing, or proceeding for the
14 production of books, records, and documents held under this chapter
15 or chapters 70.155, 70.158, 70.345, 82.24, ~~((and)) 82.26 ((RCW)), and~~
16 82.--- RCW (the new chapter created in section 506 of this act), and
17 books and records of common carriers as defined in RCW 81.80.010, or
18 vehicle rental agencies relating to the transportation or possession
19 of cigarettes, vapor products, or other tobacco products.

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

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

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

31 (1) All county and municipal peace officers are hereby charged
32 with the duty of investigating and prosecuting all violations 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, and all fines imposed for violations of this title and the
36 penal laws of this state relating to the manufacture, importation,
37 transportation, possession, distribution and sale of liquor (~~shall~~)

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

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

16 (3) In addition to the other duties under this section, the board
17 (~~shall~~) must enforce chapters 82.24 (~~and~~) 82.26 (RCW), and
18 82.--- RCW (the new chapter created in section 506 of this act).

19 (4) The board may appoint and employ, assign to duty and fix the
20 compensation of, officers to be designated as liquor enforcement
21 officers. Such liquor enforcement officers (~~shall~~) have the power,
22 under the supervision of the board, to enforce the penal provisions
23 of this title and the penal laws of this state relating to the
24 manufacture, importation, transportation, possession, distribution
25 and sale of liquor. They (~~shall~~) have the power and authority to
26 serve and execute all warrants and process of law issued by the
27 courts in enforcing the penal provisions of this title or of any
28 penal law of this state relating to the manufacture, importation,
29 transportation, possession, distribution and sale of liquor, and the
30 provisions of chapters 82.24 (~~and~~) 82.26 (RCW) , and 82.--- RCW
31 (the new chapter created in section 506 of this act). They (~~shall~~)
32 have the power to arrest without a warrant any person or persons
33 found in the act of violating any of the penal provisions of this
34 title or of any penal law of this state relating to the manufacture,
35 importation, transportation, possession, distribution and sale of
36 liquor, and the provisions of chapters 82.24 (~~and~~) 82.26 (RCW) ,
37 and 82.--- RCW (the new chapter created in section 506 of this act).

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

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

2 (a) A wholesaler's license.

3 (b) A retailer's license.

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

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

37 (4) Each such license expires on the business license expiration
38 date, and each such license must be continued annually if the
39 licensee has paid the required fee and complied with all the

1 provisions of this chapter and the rules of the board made pursuant
2 thereto.

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

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

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

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

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

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

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

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

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

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

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

19 (a) "Tobacco products" has the same meaning as provided in RCW
20 82.26.010; and

21 (b) "Vapor products" has the same meaning as provided in section
22 101 of this act.

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

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

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

38 (3) At any time during usual business hours the department,
39 board, or its duly authorized agents or employees, may enter any

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

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

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

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

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

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

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

1 (a) A distributor's license; and

2 (b) A retailer's license.

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

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

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

38 (5) Each license and any other evidence of the license required
39 under this chapter must be exhibited in each place of business for

1 which it is issued and in the manner required for the display of a
2 business license.

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

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

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

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

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

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

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

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

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

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

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

20 (2) The department (~~(of revenue shall))~~ must make and publish
21 rules and regulations, not inconsistent therewith, necessary to
22 enforce provisions of this chapter and chapters 82.02 through 82.23B
23 and 82.27 RCW, and the liquor (~~(control))~~ and cannabis board
24 (~~(shall))~~ must make and publish rules necessary to enforce chapters
25 82.24 (~~(and))~~, 82.26 ((RCW)), and 82.--- RCW (the new chapter created
26 in section 506 of this act), which (~~(shall have))~~ has the same force
27 and effect as if specifically included therein, unless declared
28 invalid by the judgment of a court of record not appealed from.

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

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

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

1 The definitions in this section apply throughout this chapter
2 unless the context clearly requires otherwise.

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

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

7 (3) "Child care facility" has the same meaning as provided in RCW
8 70.140.020.

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

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

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

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

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

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

28 ~~(a) Sells vapor products to persons other than ultimate~~
29 ~~consumers; or~~

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

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

39 (9) "Manufacturer" means a person who manufactures and sells
40 vapor products.

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

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

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

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

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

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

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

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

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

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

37 (19) "Vapor product" means any noncombustible product that may
38 contain nicotine and that employs a heating element, power source,
39 electronic circuit, or other electronic, chemical, or mechanical

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

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

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

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

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

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

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

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

36 (3) Any person licensed under this chapter as a distributor, any
37 person licensed under this chapter as a retailer, and any person
38 licensed under this chapter as a delivery seller may not operate in
39 any other capacity unless the additional appropriate license is first

1 secured, except as otherwise provided by law. A violation of this
2 subsection is a misdemeanor.

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

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

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

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

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

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

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

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

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

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

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

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

26 ~~((9))~~ (10) In addition to or in lieu of any other civil or
27 criminal remedy provided by law, a person who has violated this
28 section is subject to a civil penalty of up to five thousand dollars
29 for each violation. The attorney general, acting in the name of the
30 state, may seek recovery of the penalty in a civil action in superior
31 court.

32 ~~((10))~~ (11) The attorney general may seek an injunction in
33 superior court to restrain a threatened or actual violation of this
34 section and to compel compliance with this section.

35 ~~((11))~~ (12) Any violation of this section is not reasonable in
36 relation to the development and preservation of business and is an
37 unfair and deceptive act or practice and an unfair method of
38 competition in the conduct of trade or commerce in violation of RCW
39 19.86.020. Standing to bring an action to enforce RCW 19.86.020 for
40 violation of this section lies solely with the attorney general.

1 Remedies provided by chapter 19.86 RCW are cumulative and not
2 exclusive.

3 ~~((12))~~ (13)(a) In any action brought under this section, the
4 state is entitled to recover, in addition to other relief, the costs
5 of investigation, expert witness fees, costs of the action, and
6 reasonable attorneys' fees.

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

11 ~~((13))~~ (14) Unless otherwise expressly provided, the penalties
12 or remedies, or both, under this section are in addition to any other
13 penalties and remedies available under any other law of this state.

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

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

18 ~~((16))~~ (17) The board must not adopt rules prohibiting internet
19 sales.

20 **Part III**

21 **Heated Tobacco Products**

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

24 Unless the context clearly requires otherwise, the definitions in
25 this section apply throughout this chapter:

26 (1) "Board" means the state liquor ~~((control))~~ and cannabis
27 board.

28 (2) "Cigarette" means any roll for smoking made wholly or in part
29 of tobacco, irrespective of size or shape and irrespective of the
30 tobacco being flavored, adulterated, or mixed with any other
31 ingredient, where such roll has a wrapper or cover made of paper or
32 any material, except where such wrapper is wholly or in the greater
33 part made of natural leaf tobacco in its natural state. "Cigarette"
34 includes a roll-your-own cigarette, but does not include a heated
35 tobacco product as defined in RCW 82.26.010.

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

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

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

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

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

17 (8) "Retailer" means every person, other than a wholesaler, who
18 purchases, sells, offers for sale or distributes any one or more of
19 the articles taxed herein, irrespective of quantity or amount, or the
20 number of sales, and all persons operating under a retailer's
21 registration certificate.

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

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

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

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

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

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

1 The definitions in this section apply throughout this chapter
2 unless the context clearly requires otherwise.

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

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

10 (3) "Board" means the state liquor (~~control~~) and cannabis
11 board.

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

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

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

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

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

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

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

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

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

1 ~~((10))~~ (11) "Little cigar" means a cigar that has a cellulose
2 acetate integrated filter.

3 ~~((11))~~ (12) "Manufacturer" means a person who manufactures and
4 sells tobacco products.

5 ~~((12))~~ (13) "Manufacturer's representative" means a person
6 hired by a manufacturer to sell or distribute the manufacturer's
7 tobacco products, and includes employees and independent contractors.

8 ~~((13))~~ (14) "Moist snuff" means tobacco that is finely cut,
9 ground, or powdered; is not for smoking; and is intended to be placed
10 in the oral, but not the nasal, cavity.

11 ~~((14))~~ (15) "Person" means any individual, receiver,
12 administrator, executor, assignee, trustee in bankruptcy, trust,
13 estate, firm, copartnership, joint venture, club, company, joint
14 stock company, business trust, municipal corporation, the state and
15 its departments and institutions, political subdivision of the state
16 of Washington, corporation, limited liability company, association,
17 society, any group of individuals acting as a unit, whether mutual,
18 cooperative, fraternal, nonprofit, or otherwise. The term excludes
19 any person immune from state taxation, including the United States or
20 its instrumentalities, and federally recognized Indian tribes and
21 enrolled tribal members, conducting business within Indian country.

22 ~~((15))~~ (16) "Place of business" means any place where tobacco
23 products are sold or where tobacco products are manufactured, stored,
24 or kept for the purpose of sale, including any vessel, vehicle,
25 airplane, train, or vending machine.

26 ~~((16))~~ (17) "Retail outlet" means each place of business from
27 which tobacco products are sold to consumers.

28 ~~((17))~~ (18) "Retailer" means any person engaged in the business
29 of selling tobacco products to ultimate consumers.

30 ~~((18))~~ (19)(a) "Sale" means any transfer, exchange, or barter,
31 in any manner or by any means whatsoever, for a consideration, and
32 includes and means all sales made by any person.

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

36 ~~((19))~~ (20)(a) "Taxable sales price" means:

37 (i) In the case of a taxpayer that is not affiliated with the
38 manufacturer, distributor, or other person from whom the taxpayer
39 purchased tobacco products, the actual price for which the taxpayer
40 purchased the tobacco products;

1 (ii) In the case of a taxpayer that purchases tobacco products
2 from an affiliated manufacturer, affiliated distributor, or other
3 affiliated person, and that sells those tobacco products to
4 unaffiliated distributors, unaffiliated retailers, or ultimate
5 consumers, the actual price for which that taxpayer sells those
6 tobacco products to unaffiliated distributors, unaffiliated
7 retailers, or ultimate consumers;

8 (iii) In the case of a taxpayer that sells tobacco products only
9 to affiliated distributors or affiliated retailers, the price,
10 determined as nearly as possible according to the actual price, that
11 other distributors sell similar tobacco products of like quality and
12 character to unaffiliated distributors, unaffiliated retailers, or
13 ultimate consumers;

14 (iv) In the case of a taxpayer that is a manufacturer selling
15 tobacco products directly to ultimate consumers, the actual price for
16 which the taxpayer sells those tobacco products to ultimate
17 consumers;

18 (v) In the case of a taxpayer that has acquired tobacco products
19 under a sale as defined in subsection (~~((18))~~) (19)(b) of this
20 section, the price, determined as nearly as possible according to the
21 actual price, that the taxpayer or other distributors sell the same
22 tobacco products or similar tobacco products of like quality and
23 character to unaffiliated distributors, unaffiliated retailers, or
24 ultimate consumers; or

25 (vi) In any case where (a)(i) through (v) of this subsection do
26 not apply, the price, determined as nearly as possible according to
27 the actual price, that the taxpayer or other distributors sell the
28 same tobacco products or similar tobacco products of like quality and
29 character to unaffiliated distributors, unaffiliated retailers, or
30 ultimate consumers.

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

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

39 (~~((20))~~) (21) "Taxpayer" means a person liable for the tax
40 imposed by this chapter.

1 (~~(21)~~) (22) "Tobacco products" means cigars, cheroots, stogies,
2 periques, granulated, plug cut, crimp cut, ready rubbed, and other
3 smoking tobacco, snuff, snuff flour, cavendish, plug and twist
4 tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps,
5 clippings, cuttings and sweepings of tobacco, and other kinds and
6 forms of tobacco, prepared in such manner as to be suitable for
7 chewing or smoking in a pipe or otherwise, or both for chewing and
8 smoking, and any other product, regardless of form, that contains
9 tobacco and is intended for human consumption or placement in the
10 oral or nasal cavity or absorption into the human body by any other
11 means, including heated tobacco products as defined in subsection (9)
12 of this section, but does not include cigarettes as defined in RCW
13 82.24.010.

14 (~~(22)~~) (23) "Unaffiliated distributor" means a distributor that
15 is not affiliated with the manufacturer, distributor, or other person
16 from whom the distributor has purchased tobacco products.

17 (~~(23)~~) (24) "Unaffiliated retailer" means a retailer that is
18 not affiliated with the manufacturer, distributor, or other person
19 from whom the retailer has purchased tobacco products.

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

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

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

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

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

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

38 (ii) On each single unit consumer-sized can or package whose net
39 weight is more than one and two-tenths ounces, a proportionate tax at

1 the rate established in (c)(i) of this subsection (1) on each ounce
2 or fractional part of an ounce; ~~((and))~~

3 (d) For little cigars, an amount per cigar equal to the cigarette
4 tax under chapter 82.24 RCW; and

5 (e) For heated tobacco products, sixty cents per ounce of
6 tobacco, plus a proportionate tax at the like rate on any fractional
7 parts of an ounce. The tax on heated tobacco products is imposed
8 based on the net weight of tobacco as listed by the manufacturer.

9 (2) The tax imposed on a product under this chapter must be
10 reduced by fifty percent if that same product is issued a modified
11 risk tobacco product order by the secretary of the United States
12 department of health and human services pursuant to Title 21 U.S.C.
13 Sec. 387k(g)(1).

14 (3) Taxes under this section must be imposed at the time the
15 distributor (a) brings, or causes to be brought, into this state from
16 without the state tobacco products for sale, (b) makes, manufactures,
17 fabricates, or stores tobacco products in this state for sale in this
18 state, (c) ships or transports tobacco products to retailers in this
19 state, to be sold by those retailers, or (d) handles for sale any
20 tobacco products that are within this state but upon which tax has
21 not been imposed.

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

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

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

30 (ii) Fifty percent into the foundational public health services
31 account created in section 104 of this act.

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

35 **Part IV**
36 **Tribal Compacting**

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

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

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

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

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

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

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

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

1 (b) Out-of-state wholesalers or manufacturers who, although not
2 licensed to do business in the state of Washington, agree to comply
3 with the terms of the vapor product tax contract, are certified to
4 the state as having so agreed, and do in fact so comply. However, the
5 state may in its sole discretion exercise its administrative and
6 enforcement powers over such wholesalers or manufacturers to the
7 extent permitted by law;

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

10 (d) A tribal manufacturer.

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

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

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

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

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

25 (10) Information received by the state or open to state review
26 under the terms of a contract is subject to the provisions of RCW
27 82.32.330.

28 (11) It is the intent of the legislature that the liquor and
29 cannabis board and the department of revenue continue the division of
30 duties and shared authority under chapter 82.--- RCW (the new chapter
31 created in section 506 of this act) and therefore the liquor and
32 cannabis board is responsible for enforcement activities that come
33 under the terms of chapter 82.--- RCW (the new chapter created in
34 section 506 of this act).

35 (12) Each vapor product tax contract must include a procedure for
36 notifying the other party that a violation has occurred, a procedure
37 for establishing whether a violation has in fact occurred, an
38 opportunity to correct such violation, and a provision providing for
39 termination of the contract should the violation fail to be resolved
40 through this process, such termination subject to mediation should

1 the terms of the contract so allow. A contract must provide for
2 termination of the contract if resolution of a dispute does not occur
3 within twenty-four months from the time notification of a violation
4 has occurred. Intervening violations do not extend this time period.
5 In addition, the contract must include provisions delineating the
6 respective roles and responsibilities of the tribe, the department of
7 revenue, and the liquor and cannabis board.

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

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

14 (b) "Indian country" has the same meaning as provided in RCW
15 82.24.010.

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

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

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

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

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

25 (e) "Vapor products" has the same meaning as provided in section
26 101 of this act.

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

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

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

1 NEW SECTION. **Sec. 404.** A new section is added to chapter 43.06

2 RCW to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (11) It is the intent of the legislature that the liquor and
38 cannabis board and the department of revenue continue the division of
39 duties and shared authority under chapter 82.--- RCW (the new chapter
40 created in section 506 of this act).

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

3 (a) "Indian country" has the same meaning as provided in RCW
4 82.24.010.

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

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

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

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

12 (d) "Vapor products" has the same meaning as provided in section
13 101 of this act.

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

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

20 (2) The definitions in section 402 of this act apply to this
21 section.

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

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

28 (2) The definitions in section 402 of this act apply to this
29 section.

30 **Part V**

31 **Miscellaneous Provisions**

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

34 (1) By October 15, 2020, and by each October 15th thereafter, the
35 department must estimate any increase in state general fund revenue
36 collections for the immediately preceding fiscal year resulting from

1 the taxes imposed in chapter . . ., Laws of 2019 (this act). The
2 department must promptly notify the state treasurer of these
3 estimated amounts.

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

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

11 (b) Fifty percent into the foundational public health services
12 account created in section 104 of this act.

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

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

19 NEW SECTION. **Sec. 503.** The provisions of RCW 82.32.805 and
20 82.32.808 do not apply to this act.

21 NEW SECTION. **Sec. 504.** If any provision of this act or its
22 application to any person or circumstance is held invalid, the
23 remainder of the act or the application of the provision to other
24 persons or circumstances is not affected.

25 NEW SECTION. **Sec. 505.** If any part of this act is found to be
26 in conflict with federal requirements that are a prescribed condition
27 to the allocation of federal funds to the state, the conflicting part
28 of this act is inoperative solely to the extent of the conflict and
29 with respect to the agencies directly affected, and this finding does
30 not affect the operation of the remainder of this act in its
31 application to the agencies concerned. Rules adopted under this act
32 must meet federal requirements that are a necessary condition to the
33 receipt of federal funds by the state.

34 NEW SECTION. **Sec. 506.** Part I of this act constitutes a new
35 chapter in Title 82 RCW.

1 NEW SECTION. **Sec. 507.** This act takes effect October 1, 2019."

SSB 5986 - S AMD 767
By Senator Braun

ADOPTED 04/23/2019

2 On page 1, line 2 of the title, after "health;" 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 and 43.06.450; reenacting and amending RCW 82.26.010; adding new
7 sections to chapter 43.06 RCW; adding a new section to chapter 82.08
8 RCW; adding a new section to chapter 82.12 RCW; adding a new section
9 to chapter 82.32 RCW; adding a new chapter to Title 82 RCW; creating
10 new sections; repealing RCW 43.348.900; prescribing penalties; and
11 providing an effective date."

EFFECT: Increases the tax on vapor products from five to ten cents per milliliter of solution; modifies the use and distribution of funds deposited to the foundational public health services account created under the act; provides that funding from the vapor and heated tobacco products taxes are intended to supplement and not supplant general fund investments in cancer research and foundational public health services; increases the tax on heated tobacco products from forty cents to sixty cents per ounce of tobacco; adds heated tobacco products to other tobacco products for purposes of taxation; repeals the expiration date on the Andy Hill Cancer Research Endowment; and makes other technical changes.

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