Z-0377.1

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SENATE BILL 5573**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State of Washington 64th Legislature 2015 Regular Session**

**By** Senators Frockt, Rivers, Mullet, Hargrove, Hobbs, Keiser, Pedersen, Kohl-Welles, and McAuliffe; by request of Governor Inslee and Attorney General

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

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

**PART I**

**Findings**

NEW SECTION. **Sec.**  (1) The legislature finds that the use of vapor inhalation products, such as e-cigarettes, e-devices, and vape pens, has risen at an alarming rate both among adults and youth. Vapor products pose a serious public health risk because of the addictiveness of nicotine, the impact of nicotine on fetal development and adolescent brain development, the risk of liquid nicotine poisoning, and exposure to carcinogens and other toxic chemicals. Specifically, the legislature finds:

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

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

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

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

(iii) Vapor products have some of the same negative health impacts on developing fetuses and infants as combustible tobacco products, including preterm delivery, stillbirth, problems feeding, delayed physical and mental development, impaired learning, and memory loss. During adolescence, exposure to nicotine may have lasting consequences for brain development.

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

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

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

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

(e) Existing regulatory efforts aimed at alcohol and cigarettes provide models for reducing the availability and appeal of vapor products to youth. Because of the appeal of sweetened products to young people, flavored cigarettes are banned at the federal level, and two major cities have banned flavored tobacco products. Studies have shown that smokers who are seventeen years old are three times as likely to use flavored cigarettes as smokers over the age of twenty-five. Documents obtained during litigation against the tobacco industry reveal that tobacco companies have used fruit, candy, and alcohol flavors as a way to target youth. Tobacco industry documents state that "sweetness can impart a different delivery taste dimension which younger adults may be receptive to," that it is "a well known fact that teenagers like sweet products," and that flavored products would have appeal "in the under 35 age group, especially in the 14-24 group." The tobacco industry uses flavored products as a "graduation strategy" to encourage new users to start with products with lower levels of nicotine and progress to products with higher levels of nicotine.

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

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

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

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

**Youth Access to Vapor Products**

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

(1) ((~~Every~~))A person who sells or gives, or permits to be sold or given, to ((~~any~~))a person under the age of eighteen years any cigar, cigarette, cigarette paper or wrapper, tobacco in any form, or a vapor product is guilty of a gross misdemeanor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) A vapor product retailer must maintain on the premises the original labeling and packaging provided by the manufacturer for all vapor products that are sold or offered for sale by the establishment separately from the original packaging designed for retail sale to the consumer. The original labeling and packaging from which the contents are sold separately must be maintained during such time as the contents of the package are offered for sale and may be disposed of upon the sale of the entire contents of such package.

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

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

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

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

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

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

(1) Where there may be a question of a person's right to purchase or obtain tobacco products by reason of age, the retailer or agent thereof((~~, shall~~))must require the purchaser to present any one of the following officially issued identification that shows the purchaser's age and bears his or her signature and photograph: (a) ((~~Liquor control authority card of identification of a state or province of Canada; (b)~~))Driver's license, instruction permit, or identification card of a state or province of Canada; ((~~(c)~~))(b) "identicard" issued by the Washington state department of licensing under chapter 46.20 RCW; ((~~(d)~~))(c) United States military identification; ((~~(e)~~))(d) passport; ((~~(f)~~))(e) enrollment card, issued by the governing authority of a federally recognized Indian tribe located in Washington, that incorporates security features comparable to those implemented by the department of licensing for Washington drivers' licenses. At least ninety days prior to implementation of an enrollment card under this subsection, the appropriate tribal authority ((~~shall~~))must give notice to the board. The board ((~~shall~~))must publish and communicate to licensees regarding the implementation of each new enrollment card; or ((~~(g)~~))(f) merchant marine identification card issued by the United States coast guard.

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

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

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

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

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

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

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

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

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

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

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

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

((~~(c) For violations of RCW 70.155.040 occurring on the licensed premises:~~

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

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

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

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

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

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

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

(3) The ((~~liquor control~~)) board may impose a monetary penalty upon any person other than a licensed cigarette or vapor product retailer if the ((~~liquor control~~)) board finds that the person has violated RCW 26.28.080, 70.155.020((~~, 70.155.030, 70.155.040, 70.155.050, 70.155.070, or 70.155.090~~))through 70.155.070, 70.155.090, or sections 111 through 114 of this act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) A person may not:

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

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

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

(a) Is engaged in business in this state;

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

(c) Receives a waiver from the board.

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) This section expires January 1, 2017.

**PART II**

**Tax on Vapor Products**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) "Vapor product" does not include: (i) Any drug, device, or combination product approved for sale by the United States food and drug administration that is marketed and sold for such approved purpose; or (ii) any product meeting the definition of marijuana, useable marijuana, marijuana concentrates, marijuana-infused products, cigarette, or tobacco products.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) A distributor's license; and

(b) A retailer's license.

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

(3) No person may qualify for a distributor's license or a retailer's license under this section without first undergoing a criminal background check. The background check must be performed by the board and must disclose any criminal conduct within the previous five years in any state, tribal, or federal jurisdiction in the United States, its territories, or possessions. If the applicant or licensee also has a license issued under chapter 66.24, 82.24, or 82.26 RCW, the background check done under the authority of chapter 66.24, 82.24, or 82.26 RCW satisfies the requirements of this subsection.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) For purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) A wholesaler's license.

(b) A retailer's license.

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

(3) No person may qualify for a wholesaler's license or a retailer's license under this section without first undergoing a criminal background check. The background check must be performed by the board and must disclose any criminal conduct within the previous five years in any state, tribal, or federal jurisdiction in the United States, its territories, or possessions. A person who possesses a valid license on July 22, 2001, is subject to this subsection and subsection (2) of this section beginning on the date of the person's business license expiration under chapter 19.02 RCW, and thereafter. If the applicant or licensee also has a license issued under chapter 66.24 ((~~or~~)), 82.26, or 82.-- RCW (the new chapter created in section 403 of this act), the background check done under the authority of chapter 66.24 ((~~or~~)), 82.26, or 82.-- RCW (the new chapter created in section 403 of this act) satisfies the requirements of this section.

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

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

**Sec.**  RCW 82.24.530 and 2012 2nd sp.s. c 4 s 12 are each amended to read as follows:

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

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

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

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

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

(4) Any licenses issued under chapter 82.26 or 82.-- RCW (the new chapter created in section 403 of this act) to a person whose license or licenses have been suspended or revoked under this section ((~~shall~~))must also be suspended or revoked during the period of suspension or revocation under this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) A distributor's license; and

(b) A retailer's license.

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

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

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

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

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

(1) A fee of ((~~ninety-three~~))two hundred fifty dollars ((~~shall~~))must accompany each retailer's license application or license renewal application. A separate license is required for each separate location at which the retailer operates.

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

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

(1) The board ((~~shall~~))must enforce this chapter. The board may adopt, amend, and repeal rules necessary to enforce and administer this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

**PART III**

**Tribal Compacting**

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

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

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

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

(2) Vapor product tax contracts must be in regard to retail sales in which Indian retailers make delivery and physical transfer of possession of the vapor products from the seller to the buyer within Indian country, and are not in regard to transactions by non-Indian retailers. In addition, contracts must provide that retailers may not sell or give, or permit to be sold or given, vapor products to any person under the age of eighteen years.

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

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

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

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

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

(d) A tribal manufacturer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**PART IV**

**Miscellaneous Provisions**

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

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

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

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

**--- END ---**