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**SECOND SUBSTITUTE HOUSE BILL 1873**

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**State of Washington 66th Legislature 2019 Regular Session**

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

AN ACT Relating to the taxation of vapor products as tobacco products; amending RCW 66.08.145, 66.44.010, 70.345.090, 70.345.160, 82.24.510, 82.24.550, 82.26.060, 82.26.080, 82.26.150, 82.26.220, 82.32.300, and 43.06.450; 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; making an appropriation; and providing an effective 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, electronic nicotine delivery systems, and vape pens, has risen at an alarming rate both among adults and youth. The vaping epidemic has reversed decades of progress in reducing youth use of nicotine. 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. Although these products have been documented as being interchangeably used by consumers with cigarettes or other tobacco products, and there is nicotine produced or derived from tobacco in the product intended for human consumption and absorption into the human body, the manufacturers, wholesalers, and retailers have not been paying the tax levied on tobacco products pursuant to chapter 82.26 RCW. The legislature intends to transition from no tobacco or cigarette tax having been paid on these products to adopting a specific tax rate for tobacco products classified as vapor products in this act. Adoption of this specific tax will resolve claims of nonpayment of tobacco product taxes pursuant to chapter 82.26 RCW. The legislature believes that vapor products containing nicotine have always been subject to taxation pursuant to chapter 82.26 RCW, and passage of this act may not be interpreted as an indication otherwise.

(2) Specifically, the legislature finds that:

(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 an aerosol that the user inhales and that bystanders can also breathe in when the user exhales into the air. The aerosol can contain harmful and potentially harmful substances, including volatile organic compounds, ultrafine particles, cancer-causing chemicals, heavy metals, and flavoring such as diacetyl, which has been linked to a serious lung disease. Vapor products may also be used to deliver marijuana or other drugs;

(b) In 2016, the federal food and drug administration finalized a rule to extend its regulatory authority to all tobacco products, including e-cigarettes, to improve public health. The food and drug administration's regulatory authority over noncombustible tobacco products includes e-cigarette components and parts, such as e-liquids, cartridges, tank systems, and flavorings;

(c) Vapor products are heavily promoted as being far less costly than consuming the equivalent nicotine through cigarettes, with one industry estimate that vapor products are over eighty percent less expensive. Legislative testimony has indicated that refillable nicotine liquid and disposable e-cigarettes are as low as ten and twenty percent of the cost of a pack of cigarettes in Washington. For Washington residents, industry promotions note thousands of dollars in individual savings annually, compared to smoking cigarettes, due in part to consumers and retailers of vapor products not paying the taxes which the state places on cigarettes or other tobacco products;

(d) The sale and use of vapor products has rapidly increased over the past several years. The 2018 national youth tobacco survey found that use of e-cigarettes increased seventy-eight percent among high school students and forty-eight percent among middle school students from 2017 to 2018. Last year more than 3.6 million youth used e-cigarettes, making them the most commonly used tobacco products. The legislature finds that vapor products are heavily promoted to attract youth to purchase them, with concomitant addiction to nicotine. Research shows that most young e-cigarette and vapor product users also smoke cigarettes, and that the attraction and low cost availability of vapor products is mitigating the positive benefits from the decline in cigarette use among youth;

(e) In Washington, the 2018 healthy youth survey found that thirty percent of twelfth graders, twenty-one percent of tenth graders, and ten percent of eighth 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. State law now prohibits the sale of vapor products containing nicotine to persons under the age of twenty-one, but the availability of vapor products online and equipment sold separately at retail stores pose enforcement challenges;

(f) 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. 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 provide parity with the price of other harmful substances. Moreover, a price increase 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; and

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

(3) 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, providing support for programs that reduce youth access to addictive nicotine products, preventing nicotine poisonings of children, and providing support for many essential public health services and educational programs for which needs and cost are increased due to increased consumption of vapor products.

**Part II**

**Tax on Vapor Products**

NEW SECTION. **Sec.**  The definitions in this section apply throughout this chapter unless the context clearly requires otherwise. The definitions in chapters 82.04 and 82.08 RCW apply to this chapter unless the term is defined in this chapter or the context clearly requires otherwise.

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

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

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

(4) "Retailer" has the same meaning as provided in RCW 70.345.010.

(5) "Vapor product" means any noncombustible product containing a solution or other consumable substance, regardless of whether it contains nicotine, which employs a mechanical heating element, battery, or electronic circuit regardless of shape or size that can be used to produce vapor from the solution or other substance, including an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. The term also includes any cartridge or other container of solution or other consumable substance, regardless of whether it contains nicotine, that is intended to be used with or in a vapor product to produce vapor and is sold for such purpose.

(a) The term does not include:

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

(ii) Any product that will become an ingredient or component in a vapor product; or

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

(b) For purposes of this subsection (10):

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

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

NEW SECTION. **Sec.**  (1) There is levied and collected a vapor products excise tax equal to thirty-seven percent of the selling price on each retail sale in this state of any vapor product on which the retail sales tax imposed under RCW 82.08.020 is also levied. This tax is:

(a) Separate and in addition to the general state retail sales tax imposed in RCW 82.08.020; and

(b) Not part of the selling price or gross proceeds of sales for purposes of the taxes imposed under RCW 82.08.020 and chapter 82.04 RCW.

(2) The vapor products excise tax in this section is imposed on the buyer and must be collected from the buyer by the seller. The vapor products excise tax must be separately itemized from the state and local retail sales tax on the sales receipt provided to the buyer.

(3) Sellers are solely liable for the vapor products excise tax under this section, regardless of whether they have collected the tax from the buyer.

(4) The tax under this section must be collected by all sellers required to collect the tax imposed in RCW 82.08.020 on retail sales of vapor products.

(5) The frequency of reporting and paying the tax imposed in this section must coincide with the seller's reporting frequency for purposes of the taxes imposed in chapters 82.04 and 82.08 RCW.

NEW SECTION. **Sec.**  To the extent not inconsistent with the provisions of this chapter, the provisions of RCW 82.08.037, 82.08.040, RCW 82.08.050 (1) and (2), 82.08.054, 82.08.060, 82.08.120, and 82.08.145 and chapter 82.32 RCW apply to the tax imposed in section 202 of this act.

NEW SECTION. **Sec.**  (1) The legislature intends for the revenues generated by the tax imposed in this chapter to fund foundational public health services, tobacco, vapor product, and other substance abuse prevention, and expanded access to training of public health professionals.

(2) Seventy-five percent of the moneys collected from the tax imposed under section 202 of this act must be deposited into the essential public health services account.

(3) Beginning in the 2021-2023 biennium and through June 30, 2025, five percent of the deposits into the essential public health services account must be transferred to the Andy Hill cancer research endowment fund match transfer account in RCW 43.348.080.

NEW SECTION. **Sec.**  (1) A bundled transaction that includes a vapor product is subject to the tax imposed under this chapter on the entire selling price of the bundled transaction.

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

(a) "Bundled transaction" means:

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

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

(b) "Distinct and identifiable products" does not include packaging such as containers, boxes, sacks, bags, and bottles, or materials such as wrapping, labels, tags, and instruction guides, that accompany the sale of the products and are incidental or immaterial to the sale thereof.

NEW SECTION. **Sec.**  (1) The essential public health services account is created in the state treasury. Seventy-five percent of the moneys collected from the tax imposed under section 202 of this act must be deposited into the account. Moneys in the account may be spent only after appropriation to the office of financial management and subsequent allocation to the department of health. The department of health must use the moneys in the account for each of the four following purposes:

(a) To fund foundational health services, with a minimum of thirty-three percent of the funds deposited into the account to be used for this purpose;

(b) To fund tobacco, vapor product, and nicotine control and prevention, and other substance use prevention and education, with a minimum of thirty-three percent of the funds deposited into the account to be used for this purpose. In spending funds under this subsection (1)(b), the department must follow best practices for comprehensive tobacco control programs as described by the centers for disease control;

(c) At least ten percent of funds deposited must be used to support increased access and training of public health professionals at public health programs at accredited public institutions of higher education in Washington; and

(d) To fund enforcement by the state liquor and cannabis board of the provisions of this chapter to prevent sales of vapor products to minors and related provisions for control of marketing and product safety, provided that no more than twelve and one-half percent of the funds deposited into the account established by this section may be utilized and distributed by the department of health to the board for these enforcement purposes.

(2) To determine the funding for foundational health services pursuant to subsection (1)(a) of this section, the governmental public health system must work together to arrive at a mutually acceptable allocation and distribution of funds using the process established in RCW 43.70.--- (section 2, chapter 14, Laws of 2019).

(3) The department of health may determine, in consultation with local public health agencies, the board, and stakeholders, how funds that are not earmarked must be distributed for each biennium.

NEW SECTION. **Sec.**  (1) The taxes imposed by this chapter do not apply to the sale of vapor products by an Indian retailer during the effective period of a vapor product tax contract subject to section 403 of this act or a vapor product tax agreement under section 404 of this act.

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

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

NEW SECTION. **Sec.**  The board must compile and maintain a current record of the names of all distributors, retailers, and delivery sales licenses under chapter 70.345 RCW 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.

**Part III**

**Conforming Amendments**

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

(1) The liquor and cannabis 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, 70.345, 82.24, ((~~and~~)) 82.26 ((~~RCW~~)), and 82.--- RCW (the new chapter created in section 603 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, vapor products, or other tobacco products.

(2) The liquor and cannabis 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 and vapor products.

(3) In addition to the other duties under this section, the board ((~~shall~~)) must enforce chapters 82.24 ((~~and~~)), 82.26 ((~~RCW~~)), and 82.--- RCW (the new chapter created in section 603 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 and vapor products. 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 ((~~RCW~~)) , and 82.--- RCW (the new chapter created in section 603 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 ((~~RCW~~)), and 82.--- RCW (the new chapter created in section 603 of this act).

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

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

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

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

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

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

(6) A delivery sale licensee must collect and remit vapor product excise taxes due in accordance with chapter 82.--- RCW (the new chapter created in section 603 of this act).

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

((~~(7)~~)) (8) A delivery sale licensee must include on shipping documents a clear and conspicuous statement which includes, at a minimum, that the package contains vapor products, Washington law prohibits sales to those under the minimum age established by this chapter, and violations may result in sanctions to both the licensee and the purchaser.

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

((~~(9)~~)) (10) In addition to or in lieu of any other civil or criminal remedy provided by law, a person who has violated 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.

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

((~~(11)~~)) (12) Any violation 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 this section lies solely with the attorney general. Remedies provided by chapter 19.86 RCW are cumulative and not exclusive.

((~~(12)~~)) (13)(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 this section, the court shall 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.

((~~(13)~~)) (14) 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.

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

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

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

**Sec.**  RCW 70.345.160 and 2016 sp.s. c 38 s 24 are each amended to read as follows:

(1) The board must have, in addition to the board's other powers and authorities, the authority to enforce the provisions of this chapter and chapter 82.--- RCW (the new chapter created in section 603 of this act).

(2) The board and the board's authorized agents or employees have full power and authority to enter any place of business where 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, a peace officer or enforcement officer of the board who has reasonable grounds to believe a person observed by the officer purchasing, attempting to purchase, or in possession of vapor products is under 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, vapor products possessed by persons under eighteen years of age are considered contraband and may be seized by a peace officer or enforcement officer of the board.

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

(5) Upon a determination by the secretary of health or a local health jurisdiction that a vapor product may be injurious to human health or poses a significant risk to public health:

(a) The board, in consultation with the department of health and local county health jurisdictions, may cause a vapor product substance or solution sample, purchased or obtained from any vapor product retailer, distributor, or delivery sale licensee, to be analyzed by an analyst appointed or designated by the board;

(b) If the analyzed vapor product contains an ingredient, substance, or solution present in quantities injurious to human health or posing a significant risk to public health, as determined by the secretary of health or a local health jurisdiction, the board may suspend the license of the retailer or delivery sale licensee unless the retailer or delivery sale licensee agrees to remove the product from sales; and

(c) If upon a finding from the secretary of health or local health jurisdiction that the vapor product poses an injurious risk to public health or significant public health risk, the retailer or delivery sale licensee does not remove the product from sale, the secretary of health or local health officer may file for an injunction in superior court prohibiting the sale or distribution of that specific vapor product substance or solution.

(6) Nothing in subsection (5) of this section permits a total ban on the sale or use of vapor products.

(7) Product found to be in violation of the provisions of this chapter or chapter 82.--- RCW (the new chapter created in section 603 of this act) are subject to seizure.

**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 70.345 RCW, the background check done under the authority of chapter 66.24 ((~~or~~)), 82.26, or 70.345 RCW 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 82.24.550 and 2015 c 86 s 307 are each amended to read as follows:

(1) The board must enforce the provisions of this chapter. The board may adopt, amend, and repeal rules necessary to enforce 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 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, 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, 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 70.345 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 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 may not sell cigarettes, vapor products, or tobacco products or permit cigarettes, vapor products, 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 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.

(9) For purposes of this section((~~,~~)):

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

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

**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 70.345 RCW 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 70.345 RCW 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 70.345 RCW, the background check done under the authority of chapter 66.24, 70.345, or 82.24 RCW 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 82.26.220 and 2015 c 86 s 308 are each amended to read as follows:

(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 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 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 70.345 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 tobacco products, vapor products, or cigarettes or permit tobacco products, vapor 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.

**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~~)) and cannabis board ((~~shall~~)) must make and publish rules necessary to enforce chapters 82.24 ((~~and~~)), 82.26 ((~~RCW~~)), and 82.--- RCW (the new chapter created in section 603 of this act), which ((~~shall have~~)) has 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 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 IV**

**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 who is under the state legal age for the purchase of vapor products.

(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 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 and cannabis 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 and cannabis board and the department of revenue continue the division of duties and shared authority under chapter 82.--- RCW (the new chapter created in section 603 of this act) and therefore the liquor and cannabis board is responsible for enforcement activities that come under the terms of chapter 82.--- RCW (the new chapter created in section 603 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 and cannabis board.

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

(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 provided 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.

(e) "Vapor products" has the same meaning as provided 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. 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 402(3) of this act.

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

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 and cannabis board during the negotiations. An agreement under this section is separate from an agreement under RCW 43.06.465.

(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 402 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 who is under the state legal age for the purchase of vapor products.

(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 and cannabis 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 and cannabis 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 and cannabis board and the department of revenue continue the division of duties and shared authority under chapter 82.--- RCW (the new chapter created in section 603 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 RCW 82.24.010.

(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 provided in section 201 of this act.

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

(1) 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 403 of this act or a vapor product tax agreement under section 404 of this act.

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

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

(1) 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 403 of this act or a vapor product tax agreement under section 404 of this act.

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

**Part V**

**Appropriations**

NEW SECTION. **Sec.**  The sum of six hundred thirteen thousand dollars, or as much thereof as may be necessary, is appropriated for the fiscal year ending June 30, 2020, from the general fund to the liquor and cannabis board for the purposes of enforcement of the provisions of part II of this act, to prevent sales of vapor products to minors, and for control of marketing and product safety.

**Part VI**

**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.**  Part II of this act constitutes a new chapter in Title 82 RCW.

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

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

**--- END ---**