

**2SHB 1873 - H AMD 807**

By Representative Stokesbary

**NOT ADOPTED 04/26/2019**

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

3 **"Part I**

4 **Tax on Vapor Products**

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

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

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

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

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

23 (5) "Distributor" mean any person:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (a) The term does not include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (a) "Bundled transaction" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 **Part II**

9 **Conforming Amendments**

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

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

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

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

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

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



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

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

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

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

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

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

2 (a) A wholesaler's license.

3 (b) A retailer's license.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (a) A distributor's license; and

2 (b) A retailer's license.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (2) No person may conduct a delivery sale or otherwise ship or  
20 transport, or cause to be shipped or transported, any vapor product  
21 ordered or purchased by mail or through the internet to any person  
22 under the minimum age required for the legal sale of vapor products  
23 as provided under RCW (~~(70.345.140)~~) 26.28.080.

24 (3) A delivery sale licensee must provide notice on its mail  
25 order or internet sales forms of the minimum age required for the  
26 legal sale of vapor products in Washington state as provided by RCW  
27 (~~(70.345.140)~~) 26.28.080.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### 20 Part III

#### 21 Heated Tobacco Products

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (b) Out-of-state wholesalers or manufacturers who, although not  
39 licensed to do business in the state of Washington, agree to comply

1 with the terms of the vapor product tax contract, are certified to  
2 the state as having so agreed, and do in fact so comply. However, the  
3 state may in its sole discretion exercise its administrative and  
4 enforcement powers over such wholesalers or manufacturers to the  
5 extent permitted by law;

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

8 (d) A tribal manufacturer.

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

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

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

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

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

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

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

33 (12) Each vapor product tax contract must include a procedure for  
34 notifying the other party that a violation has occurred, a procedure  
35 for establishing whether a violation has in fact occurred, an  
36 opportunity to correct such violation, and a provision providing for  
37 termination of the contract should the violation fail to be resolved  
38 through this process, such termination subject to mediation should  
39 the terms of the contract so allow. A contract must provide for  
40 termination of the contract if resolution of a dispute does not occur

1 within twenty-four months from the time notification of a violation  
2 has occurred. Intervening violations do not extend this time period.  
3 In addition, the contract must include provisions delineating the  
4 respective roles and responsibilities of the tribe, the department of  
5 revenue, and the liquor and cannabis board.

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

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

12 (b) "Indian country" has the same meaning as provided in RCW  
13 82.24.010.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

1 (a) "Indian country" has the same meaning as provided in RCW  
2 82.24.010.

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

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

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

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

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

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

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

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

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

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

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

28 **Sec. 407.** 2019 c 15 s 11 (uncodified) is amended to read as  
29 follows:

30 In recognition of the sovereign authority of tribal governments,  
31 the governor may seek government-to-government consultations with  
32 federally recognized Indian tribes regarding raising the minimum  
33 legal age of sale in compacts entered into pursuant to RCW 43.06.455,  
34 43.06.465, ~~((and))~~ 43.06.466, and sections 402 through 404 of this  
35 act. The office of the governor ~~((shall))~~ must report to the  
36 appropriate committees of the legislature regarding the status of  
37 such consultations no later than December 1, 2020.

1 **Part V**

2 **Miscellaneous Provisions**

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

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

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

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

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

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

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

26 NEW SECTION. **Sec. 503.** The provisions of RCW 82.32.805 and  
27 82.32.808 do not apply to this act.

28 NEW SECTION. **Sec. 504.** If any provision of this act or its  
29 application to any person or circumstance is held invalid, the  
30 remainder of the act or the application of the provision to other  
31 persons or circumstances is not affected.

32 NEW SECTION. **Sec. 505.** If any part of this act is found to be  
33 in conflict with federal requirements that are a prescribed condition  
34 to the allocation of federal funds to the state, the conflicting part  
35 of this act is inoperative solely to the extent of the conflict and

1 with respect to the agencies directly affected, and this finding does  
2 not affect the operation of the remainder of this act in its  
3 application to the agencies concerned. Rules adopted under this act  
4 must meet federal requirements that are a necessary condition to the  
5 receipt of federal funds by the state.

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

8 NEW SECTION. **Sec. 507.** Except as provided in section 508 of  
9 this act, this act takes effect October 1, 2019.

10 NEW SECTION. **Sec. 508.** Section 407 of this act takes effect  
11 January 1, 2020."

12 Correct the title.

EFFECT: (1) Removes the 37% excise tax on vapor products.

(2) Levies a tax on vapor products equal to 10 cents per milliliter of solution, plus a proportionate tax on any fractional parts, based on the volume of solution listed by the manufacturer. The tax is levied at the time of distribution in the state.

(3) Levies the tax on preexisting inventories of vapor products, and requires retailers and distributors to report the tax due on preexisting inventories by October 31, 2019, and to pay the tax by January 31, 2019. Establishes late fees and penalties for noncompliance.

(4) Modifies the definition of "vapor product" to exclude substances that do not contain nicotine.

(5) Establishes recordkeeping requirements for distributors and retailers of vapor products.

(6) Establishes enforcement provisions for the LCB and the DOR.

(7) Excludes heated tobacco products from the definition of "cigarette."

(8) Defines "heated tobacco products" for purposes of the other tobacco products tax.

(9) Levies a tax on "heated tobacco products" of 60 cents per ounce of tobacco, plus a proportionate tax on any fractional parts of an ounce.

(10) Directs that the tax imposed on heated tobacco products must be reduced by 50% if the product is issued a modified risk tobacco product order by the Secretary of the US Department of Health and Human Services.

(11) Creates the Foundational Public Health Services Account for the purpose of promoting governmental public health.

(12) Directs revenues from the vapor tax and from the heated tobacco products tax to be distributed as follows:

(a) 50% to the Andy Hill Cancer Research Endowment Fund;

(b) 50% to the Foundational Public Health Services Account.

(13) Repeals the expiration of the Andy Hill Cancer Research Endowment Fund.

(14) Directs DOR to estimate the increase in general fund revenues from the vapor and heated tobacco products tax beginning October 15, 2020, and by each October 15th thereafter. Directs the Treasurer to transfer from the general fund the estimated amount determined by DOR as follows:

(a) 50% to the Andy Hill Cancer Research Endowment Fund;

(b) 50% to the Foundational Public Health Services Account.

(15) Removes the \$613,000 General Fund-State appropriation in FY20 to LCB for enforcement purposes.

(16) Eliminates the creation of the Essential Public Health Services Account and associated distributions.

(17) Eliminates the requirement that vapor product tax contracts with Indian tribes require that retailers not sell vapor products to anyone who is under the state legal age for the purchase of vapor products. Instead permits the Governor to seek government-to-government consultations with Indian tribes regarding raising the minimum legal age of sale pursuant to vapor product tax contracts.

(18) Updates internal references to reflect recently passed session law.

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