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ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1873

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State of Washington

66th Legislature

2019 Regular Session

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

READ FIRST TIME 04/25/19.

1 AN ACT Relating to the taxation of vapor products as tobacco  
2 products; amending RCW 66.08.145, 66.44.010, 70.345.090, 70.345.160,  
3 82.24.510, 82.24.550, 82.26.060, 82.26.080, 82.26.150, 82.26.220,  
4 82.32.300, and 43.06.450; amending 2019 c 15 s 11 (uncodified);  
5 adding new sections to chapter 43.06 RCW; adding a new section to  
6 chapter 82.08 RCW; adding a new section to chapter 82.12 RCW; adding  
7 a new chapter to Title 82 RCW; creating new sections; prescribing  
8 penalties; making appropriations; and providing effective dates.

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

10 **Part I**

11 **Findings**

12 NEW SECTION. **Sec. 101.** (1) The legislature finds that the use  
13 of vapor inhalation products, such as e-cigarettes, e-devices,  
14 electronic nicotine delivery systems, and vape pens, has risen at an  
15 alarming rate both among adults and youth. The vaping epidemic has  
16 reversed decades of progress in reducing youth use of nicotine. Vapor  
17 products pose a serious public health risk because of the  
18 addictiveness of nicotine, the impact of nicotine on fetal  
19 development and adolescent brain development, the risk of liquid  
20 nicotine poisoning, and exposure to carcinogens and other toxic

1 chemicals. Although these products have been documented as being  
2 interchangeably used by consumers with cigarettes or other tobacco  
3 products, and there is nicotine produced or derived from tobacco in  
4 the product intended for human consumption and absorption into the  
5 human body, the manufacturers, wholesalers, and retailers have not  
6 been paying the tax levied on tobacco products pursuant to chapter  
7 82.26 RCW. The legislature intends to transition from no tobacco or  
8 cigarette tax having been paid on these products to adopting a  
9 specific tax rate for tobacco products classified as vapor products  
10 in this act. Adoption of this specific tax will resolve claims of  
11 nonpayment of tobacco product taxes pursuant to chapter 82.26 RCW.  
12 The legislature believes that vapor products containing nicotine have  
13 always been subject to taxation pursuant to chapter 82.26 RCW, and  
14 passage of this act may not be interpreted as an indication  
15 otherwise.

16 (2) Specifically, the legislature finds that:

17 (a) Vapor products are battery-operated devices with cartridges  
18 or refillable tanks that contain a mixture of various liquids, such  
19 as propylene glycol, glycerol, nicotine, and chemical flavorings. The  
20 devices atomize the liquid mixture, producing an aerosol that the  
21 user inhales and that bystanders can also breathe in when the user  
22 exhales into the air. The aerosol can contain harmful and potentially  
23 harmful substances, including volatile organic compounds, ultrafine  
24 particles, cancer-causing chemicals, heavy metals, and flavoring such  
25 as diacetyl, which has been linked to a serious lung disease. Vapor  
26 products may also be used to deliver marijuana or other drugs;

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

33 (c) Vapor products are heavily promoted as being far less costly  
34 than consuming the equivalent nicotine through cigarettes, with one  
35 industry estimate that vapor products are over eighty percent less  
36 expensive. Legislative testimony has indicated that refillable  
37 nicotine liquid and disposable e-cigarettes are as low as ten and  
38 twenty percent of the cost of a pack of cigarettes in Washington. For  
39 Washington residents, industry promotions note thousands of dollars  
40 in individual savings annually, compared to smoking cigarettes, due

1 in part to consumers and retailers of vapor products not paying the  
2 taxes which the state places on cigarettes or other tobacco products;

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

15 (e) In Washington, the 2018 healthy youth survey found that  
16 thirty percent of twelfth graders, twenty-one percent of tenth  
17 graders, and ten percent of eighth graders had used an e-cigarette in  
18 the past month. These rates are alarming because an overwhelming  
19 majority of smokers begin smoking and become addicted to nicotine as  
20 teenagers, and the equipment used may be sold and used  
21 interchangeably for marijuana and nicotine. State law now prohibits  
22 the sale of vapor products containing nicotine to persons under the  
23 age of twenty-one, but the availability of vapor products online and  
24 equipment sold separately at retail stores pose enforcement  
25 challenges;

26 (f) The low cost of e-cigarettes and nicotine liquids for vapor  
27 products, particularly compared to cigarettes, is a key factor in  
28 youth access and use. E-cigarettes are advertised as saving smokers  
29 thousands of dollars. One survey of adult users has shown that the  
30 low price of e-cigarettes compared to other tobacco products is a key  
31 reason for their use, and youth are even more sensitive to price than  
32 adults. Increasing the price of vapor products will provide parity  
33 with the price of other harmful substances. Moreover, a price  
34 increase of vapor products will decrease youth access and addiction,  
35 just as raising taxes on cigarettes to discourage youth and adult  
36 smoking decreased youth access and addiction; and

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

1 (3) The legislature finds, therefore, that this act is necessary  
2 to protect the public health, safety, and welfare by providing  
3 consumers with information about products that are potentially  
4 dangerous, providing support for programs that reduce youth access to  
5 addictive nicotine products, preventing nicotine poisonings of  
6 children, and providing support for many essential public health  
7 services and educational programs for which needs and cost are  
8 increased due to increased consumption of vapor products.

9 **Part II**

10 **Tax on Vapor Products**

11 NEW SECTION. **Sec. 201.** The definitions in this section apply  
12 throughout this chapter unless the context clearly requires  
13 otherwise. The definitions in chapters 82.04 and 82.08 RCW apply to  
14 this chapter unless the term is defined in this chapter or the  
15 context clearly requires otherwise.

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

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

20 (3) "Indian country" has the same meaning as provided in RCW  
21 82.24.010.

22 (4) "Retailer" has the same meaning as provided in RCW  
23 70.345.010.

24 (5) "Vapor product" means any noncombustible product containing a  
25 solution or other consumable substance, regardless of whether it  
26 contains nicotine, which employs a mechanical heating element,  
27 battery, or electronic circuit regardless of shape or size that can  
28 be used to produce vapor from the solution or other substance,  
29 including an electronic cigarette, electronic cigar, electronic  
30 cigarillo, electronic pipe, or similar product or device. The term  
31 also includes any cartridge or other container of liquid nicotine,  
32 solution, or other consumable substance, regardless of whether it  
33 contains nicotine, that is intended to be used with or in a device  
34 that can be used to deliver aerosolized or vaporized nicotine to a  
35 person inhaling from the device and is sold for such purpose.

36 (a) The term does not include:

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

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

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

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

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

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

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

14 NEW SECTION. **Sec. 202.** (1)(a) There is levied and collected a  
15 tax upon the sale, use, consumption, handling, possession, or  
16 distribution of all vapor products in this state as follows:

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

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

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

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

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

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

3 NEW SECTION. **Sec. 203.** To the extent not inconsistent with the  
4 provisions of this chapter, the provisions of RCW 82.08.037,  
5 82.08.040, RCW 82.08.050 (1) and (2), 82.08.054, 82.08.060,  
6 82.08.120, and 82.08.145 and chapter 82.32 RCW apply to the tax  
7 imposed in section 202 of this act.

8 NEW SECTION. **Sec. 204.** (1) The legislature intends for the  
9 revenues generated by the tax imposed in this chapter to fund  
10 foundational public health services; tobacco, vapor product, and  
11 other substance abuse prevention; expanded access to training of  
12 public health professionals; and the promotion of cancer research.

13 (2) All of the moneys collected from the tax imposed under  
14 section 202 of this act must be deposited into the foundational  
15 public health services account.

16 NEW SECTION. **Sec. 205.** (1) A bundled transaction that includes  
17 a vapor product is subject to the tax imposed under this chapter on  
18 the entire selling price of the bundled transaction.

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

21 (a) "Bundled transaction" means:

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

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

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

1        NEW SECTION.    **Sec. 206.**    The foundational public health services  
2 account is created in the state treasury. All of the moneys collected  
3 from the tax imposed under section 202 of this act must be deposited  
4 into the account. Moneys in the account may be spent only after  
5 appropriation. Moneys in the account are to be used for the following  
6 purposes:

7        (1) To fund foundational health services. In the 2019-2021  
8 biennium, at least twelve million dollars of the funds deposited into  
9 the account must be appropriated for this purpose. Beginning in the  
10 2021-2023 biennium, fifty percent of the funds deposited into the  
11 account, but not less than twelve million dollars each biennium, are  
12 to be used for this purpose;

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

17        (3) To support increased access and training of public health  
18 professionals at public health programs at accredited public  
19 institutions of higher education in Washington. Beginning in the  
20 2021-2023 biennium, five percent of the funds deposited into the  
21 account are to be used for this purpose;

22        (4) To fund enforcement by the state liquor and cannabis board of  
23 the provisions of this chapter to prevent sales of vapor products to  
24 minors and related provisions for control of marketing and product  
25 safety, provided that no more than eight percent of the funds  
26 deposited into the account may be appropriated for these enforcement  
27 purposes; and

28        (5) To fund cancer research. In the 2019-2021 biennium, at least  
29 six million dollars of the funds deposited into the account must be  
30 appropriated for deposit into the Andy Hill cancer research endowment  
31 fund match transfer account created in RCW 43.348.080. Beginning in  
32 the 2021-2023 biennium, at least four million dollars of the funds  
33 deposited into the account must be appropriated for deposit into the  
34 Andy Hill cancer research endowment fund match transfer account  
35 created in RCW 43.348.080.

36        NEW SECTION.    **Sec. 207.**    (1) The taxes imposed by this chapter do  
37 not apply to the sale of vapor products by an Indian retailer during  
38 the effective period of a vapor product tax contract subject to

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

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

5 NEW SECTION. **Sec. 208.** The department must authorize, as duly  
6 authorized agents, enforcement officers of the board to enforce  
7 provisions of this chapter. These officers are not employees of the  
8 department.

9 NEW SECTION. **Sec. 209.** The board must compile and maintain a  
10 current record of the names of all distributors, retailers, and  
11 delivery sales licenses under chapter 70.345 RCW and the status of  
12 their license or licenses. The information must be updated on a  
13 monthly basis and published on the board's official internet web  
14 site. This information is not subject to the confidentiality  
15 provisions of RCW 82.32.330 and must be disclosed to manufacturers,  
16 distributors, retailers, and the general public upon request.

17 **Part III**  
18 **Conforming Amendments**

19 **Sec. 301.** RCW 66.08.145 and 2016 sp.s. c 38 s 29 are each  
20 amended to read as follows:

21 (1) The liquor and cannabis board may issue subpoenas in  
22 connection with any investigation, hearing, or proceeding for the  
23 production of books, records, and documents held under this chapter  
24 or chapters 70.155, 70.158, 70.345, 82.24, (~~and~~) 82.26 ((RCW)), and  
25 82.--- RCW (the new chapter created in section 603 of this act), and  
26 books and records of common carriers as defined in RCW 81.80.010, or  
27 vehicle rental agencies relating to the transportation or possession  
28 of cigarettes, vapor products, or other tobacco products.

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

31 (3) If any person is served a subpoena from the board for the  
32 production of records, documents, and books, and fails or refuses to  
33 obey the subpoena for the production of records, documents, and books  
34 when required to do so, the person is subject to proceedings for  
35 contempt, and the board may institute contempt of court proceedings



1 in the superior court of Thurston county or in the county in which  
2 the person resides.

3 **Sec. 302.** RCW 66.44.010 and 1998 c 18 s 1 are each amended to  
4 read as follows:

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

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

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

30 (4) The board may appoint and employ, assign to duty and fix the  
31 compensation of, officers to be designated as liquor enforcement  
32 officers. Such liquor enforcement officers (~~shall~~) have the power,  
33 under the supervision of the board, to enforce the penal provisions  
34 of this title and the penal laws of this state relating to the  
35 manufacture, importation, transportation, possession, distribution  
36 and sale of liquor and vapor products. They (~~shall~~) have the power  
37 and authority to serve and execute all warrants and process of law  
38 issued by the courts in enforcing the penal provisions of this title  
39 or of any penal law of this state relating to the manufacture,

1 importation, transportation, possession, distribution and sale of  
2 liquor, and the provisions of chapters 82.24 (~~(and)~~), 82.26 ((RCW)) ,  
3 and 82.--- RCW (the new chapter created in section 603 of this act).  
4 They (~~shall~~) have the power to arrest without a warrant any person  
5 or persons found in the act of violating any of the penal provisions  
6 of this title or of any penal law of this state relating to the  
7 manufacture, importation, transportation, possession, distribution  
8 and sale of liquor, and the provisions of chapters 82.24 (~~(and)~~),  
9 82.26 ((RCW)), and 82.--- RCW (the new chapter created in section 603  
10 of this act).

11 **Sec. 303.** RCW 70.345.090 and 2016 sp.s. c 38 s 17 are each  
12 amended to read as follows:

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

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

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

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

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

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

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

18       (~~(7)~~) (8) A delivery sale licensee must include on shipping  
19 documents a clear and conspicuous statement which includes, at a  
20 minimum, that the package contains vapor products, Washington law  
21 prohibits sales to those under the minimum age established by this  
22 chapter, and violations may result in sanctions to both the licensee  
23 and the purchaser.

24       (~~(8)~~) (9) A person who knowingly violates this section is  
25 guilty of a class C felony, except that the maximum fine that may be  
26 imposed is five thousand dollars.

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

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

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

1 violation of this section lies solely with the attorney general.  
2 Remedies provided by chapter 19.86 RCW are cumulative and not  
3 exclusive.

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

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

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

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

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

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

21 **Sec. 304.** RCW 70.345.160 and 2016 sp.s. c 38 s 24 are each  
22 amended to read as follows:

23 (1) The board must have, in addition to the board's other powers  
24 and authorities, the authority to enforce the provisions of this  
25 chapter and chapter 82.--- RCW (the new chapter created in section  
26 603 of this act).

27 (2) The board and the board's authorized agents or employees have  
28 full power and authority to enter any place of business where vapor  
29 products are sold for the purpose of enforcing the provisions of this  
30 chapter.

31 (3) For the purpose of enforcing the provisions of this chapter,  
32 a peace officer or enforcement officer of the board who has  
33 reasonable grounds to believe a person observed by the officer  
34 purchasing, attempting to purchase, or in possession of vapor  
35 products is under eighteen years of age, may detain such person for a  
36 reasonable period of time and in such a reasonable manner as is  
37 necessary to determine the person's true identity and date of birth.  
38 Further, vapor products possessed by persons under eighteen years of

1 age are considered contraband and may be seized by a peace officer or  
2 enforcement officer of the board.

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

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

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

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

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

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

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

33 **Sec. 305.** RCW 82.24.510 and 2013 c 144 s 50 are each amended to  
34 read as follows:

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

36 (a) A wholesaler's license.

37 (b) A retailer's license.

38 (2) Application for the licenses must be made through the  
39 business licensing system under chapter 19.02 RCW. The board must

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

19 (3) No person may qualify for a wholesaler's license or a  
20 retailer's license under this section without first undergoing a  
21 criminal background check. The background check must be performed by  
22 the board and must disclose any criminal conduct within the previous  
23 five years in any state, tribal, or federal jurisdiction in the  
24 United States, its territories, or possessions. A person who  
25 possesses a valid license on July 22, 2001, is subject to this  
26 subsection and subsection (2) of this section beginning on the date  
27 of the person's business license expiration under chapter 19.02 RCW,  
28 and thereafter. If the applicant or licensee also has a license  
29 issued under chapter 66.24 ((~~66~~)), 82.26, or 70.345 RCW, the  
30 background check done under the authority of chapter 66.24 ((~~66~~)),  
31 82.26, or 70.345 RCW satisfies the requirements of this section.

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

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

1       **Sec. 306.** RCW 82.24.550 and 2015 c 86 s 307 are each amended to  
2 read as follows:

3       (1) The board must enforce the provisions of this chapter. The  
4 board may adopt, amend, and repeal rules necessary to enforce the  
5 provisions of this chapter.

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

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

24       (4) Any licenses issued under chapter 82.26 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 from the date of revocation of the license or licenses. The license  
31 or licenses may be approved by the board if it appears to the  
32 satisfaction of the board that the licensee will comply with the  
33 provisions of this chapter and the rules adopted under this chapter.

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

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

13 (a) "Tobacco products" has the same meaning as provided in RCW  
14 82.26.010; and

15 (b) "Vapor products" has the same meaning as provided in section  
16 201 of this act.

17 **Sec. 307.** RCW 82.26.060 and 2009 c 154 s 3 are each amended to  
18 read as follows:

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

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

32 (3) At any time during usual business hours the department,  
33 board, or its duly authorized agents or employees, may enter any  
34 place of business of a distributor, without a search warrant, and  
35 inspect the premises, the records required to be kept under this  
36 chapter, and the tobacco products contained therein, to determine  
37 whether or not all the provisions of this chapter are being fully  
38 complied with. If the department, board, or any of its agents or  
39 employees, are denied free access or are hindered or interfered with



1 in making such examination, the registration certificate issued under  
2 RCW 82.32.030 of the distributor at such premises (~~shall be~~) is  
3 subject to revocation, and any licenses issued under this chapter or  
4 chapter 82.24 or 70.345 RCW are subject to suspension or revocation,  
5 by the department or board.

6 **Sec. 308.** RCW 82.26.080 and 2005 c 180 s 5 are each amended to  
7 read as follows:

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

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

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

29 **Sec. 309.** RCW 82.26.150 and 2013 c 144 s 52 are each amended to  
30 read as follows:

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

- 33 (a) A distributor's license; and
- 34 (b) A retailer's license.

35 (2) Application for the licenses must be made through the  
36 business licensing system under chapter 19.02 RCW. The board may  
37 adopt rules regarding the regulation of the licenses. The board may  
38 refuse to issue any license under this chapter if the board has

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

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

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

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

36 **Sec. 310.** RCW 82.26.220 and 2015 c 86 s 308 are each amended to  
37 read as follows:

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

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

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

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

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

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

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

1 regard to the provisions of this chapter and the duties imposed upon  
2 the board.

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

6 **Sec. 311.** RCW 82.32.300 and 1997 c 420 s 9 are each amended to  
7 read as follows:

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

14 (2) The department (~~(of revenue shall)~~) must make and publish  
15 rules and regulations, not inconsistent therewith, necessary to  
16 enforce provisions of this chapter and chapters 82.02 through 82.23B  
17 and 82.27 RCW, and the liquor (~~(control)~~) and cannabis board  
18 (~~(shall)~~) must make and publish rules necessary to enforce chapters  
19 82.24 (~~(and)~~), 82.26 (RCW), and 82.--- RCW (the new chapter created  
20 in section 603 of this act), which (~~(shall have)~~) has the same force  
21 and effect as if specifically included therein, unless declared  
22 invalid by the judgment of a court of record not appealed from.

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

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

31 **Part IV**  
32 **Tribal Compacting**

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

35 The legislature intends to further the government-to-government  
36 relationship between the state of Washington and Indians in the state  
37 of Washington by authorizing the governor to enter into contracts

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

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

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

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

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

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

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

35 (b) Out-of-state wholesalers or manufacturers who, although not  
36 licensed to do business in the state of Washington, agree to comply  
37 with the terms of the vapor product tax contract, are certified to  
38 the state as having so agreed, and do in fact so comply. However, the  
39 state may in its sole discretion exercise its administrative and

1 enforcement powers over such wholesalers or manufacturers to the  
2 extent permitted by law;

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

5 (d) A tribal manufacturer.

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

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

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

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

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

20 (10) Information received by the state or open to state review  
21 under the terms of a contract is subject to the provisions of RCW  
22 82.32.330.

23 (11) It is the intent of the legislature that the liquor and  
24 cannabis board and the department of revenue continue the division of  
25 duties and shared authority under chapter 82.--- RCW (the new chapter  
26 created in section 603 of this act) and therefore the liquor and  
27 cannabis board is responsible for enforcement activities that come  
28 under the terms of chapter 82.--- RCW (the new chapter created in  
29 section 603 of this act).

30 (12) Each vapor product tax contract must include a procedure for  
31 notifying the other party that a violation has occurred, a procedure  
32 for establishing whether a violation has in fact occurred, an  
33 opportunity to correct such violation, and a provision providing for  
34 termination of the contract should the violation fail to be resolved  
35 through this process, such termination subject to mediation should  
36 the terms of the contract so allow. A contract must provide for  
37 termination of the contract if resolution of a dispute does not occur  
38 within twenty-four months from the time notification of a violation  
39 has occurred. Intervening violations do not extend this time period.  
40 In addition, the contract must include provisions delineating the

1 respective roles and responsibilities of the tribe, the department of  
2 revenue, and the liquor and cannabis board.

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

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

9 (b) "Indian country" has the same meaning as provided in RCW  
10 82.24.010.

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

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

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

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

17 (d) "Indian tribe" or "tribe" means a federally recognized Indian  
18 tribe located within the geographical boundaries of the state of  
19 Washington.

20 (e) "Vapor products" has the same meaning as provided in section  
21 201 of this act.

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

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

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

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

37 (1) The governor may enter into a vapor product tax agreement  
38 with the Puyallup Tribe of Indians concerning the sale of vapor

1 products, subject to the limitations in this section. The legislature  
2 intends to address the uniqueness of the Puyallup Indian reservation  
3 and its selling environment through pricing and compliance  
4 strategies, rather than through the imposition of equivalent taxes.  
5 The governor may delegate the authority to negotiate a vapor product  
6 tax agreement with the Puyallup Tribe to the department of revenue.  
7 The department of revenue must consult with the liquor and cannabis  
8 board during the negotiations. An agreement under this section is  
9 separate from an agreement under RCW 43.06.465.

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

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

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

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

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

37 (c) The agreement must include a provision to assure the price  
38 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 603 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  
11 201 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 report to the appropriate  
36 committees of the legislature regarding the status of such  
37 consultations no later than December 1, 2020.

1 **Part V**  
2 **Appropriations**

3 NEW SECTION. **Sec. 501.** The sum of six hundred ninety-six  
4 thousand dollars, or as much thereof as may be necessary, is  
5 appropriated for the fiscal biennium ending June 30, 2021, from the  
6 foundational public health services account to the liquor and  
7 cannabis board for the purposes of enforcement of the provisions of  
8 part II of this act, with emphasis on prevention of sales of vapor  
9 products to minors, and for control of marketing and product safety.

10 NEW SECTION. **Sec. 502.** The sum of two hundred thirty-two  
11 thousand dollars, or as much thereof as may be necessary, is  
12 appropriated for the fiscal biennium ending June 30, 2021, from the  
13 foundational public health services account to the University of  
14 Washington for the purposes of providing increased access and  
15 training of public health professionals.

16 NEW SECTION. **Sec. 503.** The sum of two hundred forty thousand  
17 dollars, or as much thereof as may be necessary, is appropriated for  
18 the fiscal biennium ending June 30, 2021, from the foundational  
19 public health services account to the department of health for the  
20 purposes of tobacco, vapor product, and nicotine control and  
21 prevention, and other substance use prevention and education. In  
22 spending funds under this section, the department must follow best  
23 practices for comprehensive tobacco control programs as described by  
24 the centers for disease control.

25 **Part VI**  
26 **Miscellaneous Provisions**

27 NEW SECTION. **Sec. 601.** If any provision of this act or its  
28 application to any person or circumstance is held invalid, the  
29 remainder of the act or the application of the provision to other  
30 persons or circumstances is not affected.

31 NEW SECTION. **Sec. 602.** If any part of this act is found to be  
32 in conflict with federal requirements that are a prescribed condition  
33 to the allocation of federal funds to the state, the conflicting part  
34 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. 603.** Part II of this act constitutes a new  
7 chapter in Title 82 RCW.

8 NEW SECTION. **Sec. 604.** The provisions of RCW 82.32.805 and  
9 82.32.808 do not apply to this act.

10 NEW SECTION. **Sec. 605.** Except as provided in section 606 of  
11 this act, this act takes effect October 1, 2019.

12 NEW SECTION. **Sec. 606.** Section 407 of this act takes effect  
13 January 1, 2020.

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