

---

**SUBSTITUTE SENATE BILL 5986**

---

**State of Washington**

**66th Legislature**

**2019 Regular Session**

**By** Senate Ways & Means (originally sponsored by Senators Braun, Keiser, Kuderer, and Van De Wege)

READ FIRST TIME 04/05/19.

1 AN ACT Relating to establishing a tax on vapor and heated tobacco  
2 products to fund cancer research and support local public health;  
3 amending RCW 66.08.145, 66.44.010, 82.24.510, 82.24.550, 82.26.060,  
4 82.26.080, 82.26.150, 82.26.220, 82.32.300, 70.345.010, 70.345.030,  
5 70.345.090, 82.24.010, 82.26.020, and 43.06.450; reenacting and  
6 amending RCW 82.26.010; adding new sections to chapter 43.06 RCW;  
7 adding a new section to chapter 82.08 RCW; adding a new section to  
8 chapter 82.12 RCW; adding a new section to chapter 82.32 RCW; adding  
9 a new chapter to Title 82 RCW; creating new sections; prescribing  
10 penalties; and providing an effective date.

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

12 **Part I**  
13 **Tax on Vapor Products**

14 NEW SECTION. **Sec. 101.** The definitions in this section apply  
15 throughout this chapter unless the context clearly requires  
16 otherwise.

17 (1) "Actual price" means the total amount of consideration for  
18 which vapor products are sold, valued in money, whether received in  
19 money or otherwise, including: (a) Any charges by the seller  
20 necessary to complete the sale such as charges for delivery, freight,

1 transportation, or handling; and (b) in the case of a taxpayer  
2 importing vapor products into the state, any expenses of the taxpayer  
3 or any person affiliated with the taxpayer that are necessary to  
4 complete the importation, such as delivery, freight, transportation,  
5 federal taxes, or handling of the product.

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

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

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

12 (5) "Distributor" mean any person:

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

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

18 (c) Engaged in the business of selling vapor products outside  
19 this state who ships or transports vapor products to retailers or  
20 consumers in this state; or

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

24 (6) "Indian country" has the same meaning as provided in RCW  
25 82.24.010.

26 (7) "Manufacturer" has the same meaning as provided in RCW  
27 70.345.010.

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

31 (9) "Person" means: Any individual, receiver, administrator,  
32 executor, assignee, trustee in bankruptcy, trust, estate, firm,  
33 copartnership, joint venture, club, company, joint stock company,  
34 business trust, municipal corporation, corporation, limited liability  
35 company, association, or society; the state and its departments and  
36 institutions; any political subdivision of the state of Washington;  
37 and any group of individuals acting as a unit, whether mutual,  
38 cooperative, fraternal, nonprofit, or otherwise. Except as provided  
39 otherwise in this chapter, "person" does not include any person  
40 immune from state taxation, including the United States or its

1 instrumentalities, and federally recognized Indian tribes and  
2 enrolled tribal members, conducting business within Indian country.

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

7 (11) "Retail outlet" has the same meaning as provided in RCW  
8 70.345.010.

9 (12) "Retailer" has the same meaning as provided in RCW  
10 70.345.010.

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

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

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

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

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

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

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

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

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

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

12 (c) In any case where the taxable sales price is not indicative  
13 of a vapor product's true value at the time and place of the taxable  
14 event as provided in section 102(2)(a) of this act, "taxable sales  
15 price" means the true value of the vapor product as determined by the  
16 department. For purposes of this subsection, "true value" means  
17 market value based on sales at comparable locations in this state of  
18 the same or similar vapor product of like quality and character sold  
19 under comparable conditions of sale by comparable sellers to  
20 comparable purchasers.

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

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

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

29 (18) "Vapor product" means any noncombustible product containing  
30 a solution, regardless of whether it contains nicotine, which employs  
31 a mechanical heating element, battery, or electronic circuit  
32 regardless of shape or size that can be used to produce vapor from  
33 the solution or other substance, including an electronic cigarette,  
34 electronic cigar, electronic cigarillo, electronic pipe, any vapor  
35 cartridge or other container, or similar product or device.

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

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

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

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

7 (i) "Cigarette" has the same meaning as provided in RCW  
8 82.24.010; and

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

12 NEW SECTION. **Sec. 102.** (1) There is levied and collected a tax  
13 upon the sale, use, consumption, handling, possession, or  
14 distribution of all vapor products in this state in an amount equal  
15 to five cents per milliliter of solution, regardless of whether it  
16 contains nicotine, and a proportionate tax at the like rate on all  
17 fractional parts of a milliliter thereof. The tax on vapor products  
18 must be imposed based on the volume of the solution as listed by the  
19 manufacturer.

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

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

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

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

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

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

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

7        (a) "Bundled transaction" means:

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

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

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

22        NEW SECTION.    **Sec. 104.**    (1) The foundational public health  
23 services account is created in the state treasury. Fifty percent of  
24 revenues from the tax collected under section 102 of this act and RCW  
25 82.26.020 must be deposited into the account for the sole purpose of  
26 promoting local public health.

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

34        NEW SECTION.    **Sec. 105.**    It is the intent and purpose of this  
35 chapter to levy a tax on all vapor products sold, used, consumed,  
36 handled, possessed, or distributed within this state. It is the  
37 further intent and purpose of this chapter to impose the tax only  
38 once on all vapor products in this state. Nothing in this chapter may

1 be construed to exempt any person taxable under any other law or  
2 under any other tax imposed under this title.

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

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

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

20 (3) At any time during usual business hours the department,  
21 board, or its duly authorized agents or employees may enter any place  
22 of business of a distributor, without a search warrant, and inspect  
23 the premises, the records required to be kept under this chapter, and  
24 the vapor products contained therein, to determine whether or not all  
25 the provisions of this chapter are being fully complied with. If the  
26 department, board, or any of its agents or employees are denied free  
27 access or are hindered or interfered with in making such examination,  
28 the registration certificate issued under RCW 82.32.030 of the  
29 distributor at such premises are subject to revocation by the  
30 department, and any licenses issued under chapter 70.345, 82.26, or  
31 82.24 RCW are subject to suspension or revocation by the board.

32 NEW SECTION. **Sec. 108.** Every person required to be licensed  
33 under chapter 70.345 RCW who sells vapor products to persons other  
34 than the ultimate consumer must render with each sale itemized  
35 invoices showing the seller's name and address, the purchaser's name  
36 and address, the date of sale, and all prices. The person must

1 preserve legible copies of all such invoices for five years from the  
2 date of sale.

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

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

11 (3) At any time during usual business hours the department,  
12 board, or its duly authorized agents or employees may enter any  
13 retail outlet without a search warrant, and inspect the premises for  
14 invoices required to be kept under this section and the vapor  
15 products contained in the retail outlet, to determine whether or not  
16 all the provisions of this chapter are being fully complied with. If  
17 the department, board, or any of its agents or employees are denied  
18 free access or are hindered or interfered with in making the  
19 inspection, the registration certificate issued under RCW 82.32.030  
20 of the retailer at the premises is subject to revocation by the  
21 department, and any licenses issued under chapter 70.345, 82.26, or  
22 82.24 RCW are subject to suspension or revocation by the board.

23 NEW SECTION. **Sec. 110.** (1)(a) Where vapor products upon which  
24 the tax imposed by this chapter has been reported and paid are  
25 shipped or transported outside this state by the distributor to a  
26 person engaged in the business of selling vapor products, to be sold  
27 by that person, or are returned to the manufacturer by the  
28 distributor or destroyed by the distributor, or are sold by the  
29 distributor to the United States or any of its agencies or  
30 instrumentalities, or are sold by the distributor to any Indian  
31 tribal organization, credit of such tax may be made to the  
32 distributor in accordance with rules prescribed by the department.

33 (b) For purposes of this subsection (1), the following  
34 definitions apply:

35 (i) "Indian distributor" means a federally recognized Indian  
36 tribe or tribal entity that would otherwise meet the definition of  
37 "distributor" under section 101 of this act, if federally recognized

1 Indian tribes and tribal entities were not excluded from the  
2 definition of "person" in section 101 of this act.

3 (ii) "Indian retailer" means a federally recognized Indian tribe  
4 or tribal entity that would otherwise meet the definition of  
5 "retailer" under section 101 of this act, if federally recognized  
6 Indian tribes and tribal entities were not excluded from the  
7 definition of "person" in section 101 of this act.

8 (iii) "Indian tribal organization" means a federally recognized  
9 Indian tribe, or tribal entity, and includes an Indian distributor 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.

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

16 NEW SECTION. **Sec. 111.** All of the provisions contained in  
17 chapter 82.32 RCW not inconsistent with the provisions of this  
18 chapter have full force and application with respect to taxes imposed  
19 under the provisions of this chapter.

20 NEW SECTION. **Sec. 112.** The department must authorize, as duly  
21 authorized agents, enforcement officers of the board to enforce  
22 provisions of this chapter. These officers are not employees of the  
23 department.

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

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

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

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

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

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

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

24        NEW SECTION.    **Sec. 115.**    The board must compile and maintain a  
25 current record of the names of all distributors, retailers, and  
26 delivery sales licenses under chapter 70.345 RCW and the status of  
27 their license or licenses. The information must be updated on a  
28 monthly basis and published on the board's official internet web  
29 site. This information is not subject to the confidentiality  
30 provisions of RCW 82.32.330 and must be disclosed to manufacturers,  
31 distributors, retailers, and the general public upon request.

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

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

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

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

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

12 (ii) The person transporting the vapor products actually  
13 possesses 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; and

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

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

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

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

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

31 NEW SECTION. **Sec. 117.** (1) A retailer that obtains vapor  
32 products from an unlicensed distributor or any other person that is  
33 not licensed under chapter 70.345 RCW must be licensed both as a  
34 retailer and a distributor and is liable for the tax imposed under  
35 section 102 of this act with respect to the vapor products acquired  
36 from the unlicensed person that are held for sale, handling, or  
37 distribution in this state. For the purposes of this subsection,  
38 "person" includes both persons defined in this act and any person  
39 immune from state taxation, such as the United States or its

1 instrumentalities, and federally recognized Indian tribes and  
2 enrolled tribal members, conducting business within Indian country.

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

6 NEW SECTION. **Sec. 118.** A manufacturer that has manufacturer's  
7 representatives who sell or distribute the manufacturer's vapor  
8 products in this state must provide the board a list of the names and  
9 addresses of all such representatives and must ensure that the list  
10 provided to the board is kept current. A manufacturer's  
11 representative is not authorized to distribute or sell vapor products  
12 in this state unless the manufacturer that hired the representative  
13 has a valid distributor's license under chapter 70.345 RCW and that  
14 manufacturer provides the board a current list of all of its  
15 manufacturer's representatives as required by this section. A  
16 manufacturer's representative must carry a copy of the distributor's  
17 license of the manufacturer that hired the representative at all  
18 times when selling or distributing the manufacturer's vapor products.

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

27 (2) Any vapor products in the possession of a person who is not a  
28 licensed distributor, delivery seller, manufacturer's representative,  
29 or retailer and who transports vapor products for sale without having  
30 provided notice to the board required under section 114 of this act,  
31 or without invoices or delivery tickets showing the true name and  
32 address of the consignor or seller, the true name and address of the  
33 consignee or purchaser, and the quantity and brands of vapor products  
34 being transported may be seized and are subject to forfeiture.

35 (3) All conveyances, including aircraft, vehicles, or vessels  
36 that are used, or intended for use to transport, or in any manner to  
37 facilitate the transportation, for the purpose of sale or receipt of

1 vapor products under subsection (2) of this section, may be seized  
2 and are subject to forfeiture except:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 NEW SECTION. **Sec. 121.** When the department or the board has  
27 good reason to believe that any of the vapor products taxed under  
28 this chapter are being kept, sold, offered for sale, or given away in  
29 violation of the provisions of this chapter, it may make affidavit of  
30 facts describing the place or thing to be searched, before any judge  
31 of any court in this state, and the judge must issue a search warrant  
32 directed to the sheriff, any deputy, police officer, or duly  
33 authorized agent of the department or the board commanding him or her  
34 diligently to search any building, room in a building, place, or  
35 vehicle as may be designated in the affidavit and search warrant, and  
36 to seize the vapor products and hold them until disposed of by law.

37 NEW SECTION. **Sec. 122.** (1)(a) Where vapor products upon which  
38 the tax imposed by this chapter has been reported and paid are

1 shipped or transported outside this state by the distributor to a  
2 person engaged in the business of selling vapor products, to be sold  
3 by that person, or are returned to the manufacturer by the  
4 distributor or destroyed by the distributor, or are sold by the  
5 distributor to the United States or any of its agencies or  
6 instrumentalities, or are sold by the distributor to any Indian  
7 tribal organization, credit of such tax may be made to the  
8 distributor in accordance with rules prescribed by the department.

9 (b) For purposes of this subsection (1), the following  
10 definitions apply:

11 (i) "Indian distributor" means a federally recognized Indian  
12 tribe or tribal entity that would otherwise meet the definition of  
13 "distributor" under section 101 of this act, if federally recognized  
14 Indian tribes and tribal entities were not excluded from the  
15 definition of "person" in section 101 of this act.

16 (ii) "Indian retailer" means a federally recognized Indian tribe  
17 or tribal entity that would otherwise meet the definition of  
18 "retailer" under section 101 of this act, if federally recognized  
19 Indian tribes and tribal entities were not excluded from the  
20 definition of "person" in section 101 of this act.

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

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

29 NEW SECTION. **Sec. 123.** (1) Preexisting inventories of vapor  
30 products are subject to the tax imposed in section 102 of this act.  
31 All retailers and other distributors must report the tax due under  
32 section 102 of this act on preexisting inventories of vapor products  
33 on a form, as prescribed by the department, on or before October 31,  
34 2019, and the tax due on such preexisting inventories must be paid on  
35 or before January 31, 2020.

36 (2) Reports under subsection (1) of this section not filed with  
37 the department by October 31, 2019, are subject to a late filing  
38 penalty equal to the greater of two hundred fifty dollars or ten

1 percent of the tax due under section 102 of this act on the  
2 taxpayer's preexisting inventories.

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

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

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

15 (a) Does not sell vapor products other than to ultimate  
16 consumers; and

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

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

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

## 27 **Part II**

### 28 **Conforming Amendments**

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

31 (1) The liquor and cannabis board may issue subpoenas in  
32 connection with any investigation, hearing, or proceeding for the  
33 production of books, records, and documents held under this chapter  
34 or chapters 70.155, 70.158, 70.345, 82.24, (~~and~~) 82.26 (~~RCW~~), and  
35 82.--- RCW (the new chapter created in section 505 of this act), and  
36 books and records of common carriers as defined in RCW 81.80.010, or  
37 vehicle rental agencies relating to the transportation or possession  
38 of cigarettes, vapor products, or other tobacco products.

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

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

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

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

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

34 (3) In addition to the other duties under this section, the board  
35 (~~shall~~) must enforce chapters 82.24 (~~and~~), 82.26 (~~RCW~~), and  
36 82.--- RCW (the new chapter created in section 505 of this act).

37 (4) The board may appoint and employ, assign to duty and fix the  
38 compensation of, officers to be designated as liquor enforcement  
39 officers. Such liquor enforcement officers (~~shall~~) have the power,

1 under the supervision of the board, to enforce the penal provisions  
2 of this title and the penal laws of this state relating to the  
3 manufacture, importation, transportation, possession, distribution  
4 and sale of liquor. They (~~shall~~) have the power and authority to  
5 serve and execute all warrants and process of law issued by the  
6 courts in enforcing the penal provisions of this title or of any  
7 penal law of this state relating to the manufacture, importation,  
8 transportation, possession, distribution and sale of liquor, and the  
9 provisions of chapters 82.24 (~~and~~), 82.26 (~~RCW~~), and 82.--- RCW  
10 (the new chapter created in section 505 of this act). They (~~shall~~)  
11 have the power to arrest without a warrant any person or persons  
12 found in the act of violating any of the penal provisions of this  
13 title or of any penal law of this state relating to the manufacture,  
14 importation, transportation, possession, distribution and sale of  
15 liquor, and the provisions of chapters 82.24 (~~and~~), 82.26 (~~RCW~~),  
16 and 82.--- RCW (the new chapter created in section 505 of this act).

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

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

20 (a) A wholesaler's license.

21 (b) A retailer's license.

22 (2) Application for the licenses must be made through the  
23 business licensing system under chapter 19.02 RCW. The board must  
24 adopt rules regarding the regulation of the licenses. The board may  
25 refrain from the issuance of any license under this chapter if the  
26 board has reasonable cause to believe that the applicant has  
27 willfully withheld information requested for the purpose of  
28 determining the eligibility of the applicant to receive a license, or  
29 if the board has reasonable cause to believe that information  
30 submitted in the application is false or misleading or is not made in  
31 good faith. In addition, for the purpose of reviewing an application  
32 for a wholesaler's license or retailer's license and for considering  
33 the denial, suspension, or revocation of any such license, the board  
34 may consider any prior criminal conduct of the applicant, including  
35 an administrative violation history record with the board and a  
36 criminal history record information check within the previous five  
37 years, in any state, tribal, or federal jurisdiction in the United  
38 States, its territories, or possessions, and the provisions of RCW  
39 9.95.240 and chapter 9.96A RCW do not apply to such cases. The board

1 may, in its discretion, grant or refuse the wholesaler's license or  
2 retailer's license, subject to the provisions of RCW 82.24.550.

3 (3) No person may qualify for a wholesaler's license or a  
4 retailer's license under this section without first undergoing a  
5 criminal background check. The background check must be performed by  
6 the board and must disclose any criminal conduct within the previous  
7 five years in any state, tribal, or federal jurisdiction in the  
8 United States, its territories, or possessions. A person who  
9 possesses a valid license on July 22, 2001, is subject to this  
10 subsection and subsection (2) of this section beginning on the date  
11 of the person's business license expiration under chapter 19.02 RCW,  
12 and thereafter. If the applicant or licensee also has a license  
13 issued under chapter 66.24 (~~(66.24)~~), 82.26, or 70.345 RCW, the  
14 background check done under the authority of chapter 66.24 (~~(66.24)~~),  
15 82.26, or 70.345 RCW satisfies the requirements of this section.

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

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

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

27 (1) The board must enforce the provisions of this chapter. The  
28 board may adopt, amend, and repeal rules necessary to enforce the  
29 provisions of this chapter.

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

36 (3) A license may not be suspended or revoked except upon notice  
37 to the licensee and after a hearing as prescribed by the board. The  
38 board, upon finding that the licensee has failed to comply with any  
39 provision of this chapter or any rule adopted under this chapter,

1 must, in the case of the first offense, suspend the license or  
2 licenses of the licensee for a period of not less than thirty  
3 consecutive business days, and, in the case of a second or further  
4 offense, must suspend the license or licenses for a period of not  
5 less than ninety consecutive business days nor more than twelve  
6 months, and, in the event the board finds the licensee has been  
7 guilty of willful and persistent violations, it may revoke the  
8 license or licenses.

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

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

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

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

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

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

37 (a) "Tobacco products" has the same meaning as provided in RCW  
38 82.26.010; and

39 (b) "Vapor products" has the same meaning as provided in section  
40 101 of this act.

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

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

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

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

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

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

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

1 (3) At any time during usual business hours the department,  
2 board, or its duly authorized agents or employees may enter any  
3 retail outlet without a search warrant, and inspect the premises for  
4 invoices required to be kept under this section and the tobacco  
5 products contained in the retail outlet, to determine whether or not  
6 all the provisions of this chapter are being fully complied with. If  
7 the department, board, or any of its agents or employees, are denied  
8 free access or are hindered or interfered with in making the  
9 inspection, the registration certificate issued under RCW 82.32.030  
10 of the retailer at the premises is subject to revocation, and any  
11 licenses issued under this chapter or chapter 82.24 or 70.345 RCW are  
12 subject to suspension or revocation by the department.

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

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

17 (a) A distributor's license; and

18 (b) A retailer's license.

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

1 (3) No person may qualify for a distributor's license or a  
2 retailer's license under this section without first undergoing a  
3 criminal background check. The background check must be performed by  
4 the board and must disclose any criminal conduct within the previous  
5 five years in any state, tribal, or federal jurisdiction in the  
6 United States, its territories, or possessions. If the applicant or  
7 licensee also has a license issued under chapter 66.24 (~~(e)~~), 82.24,  
8 or 70.345 RCW, the background check done under the authority of  
9 chapter 66.24, 70.345, or 82.24 RCW satisfies the requirements of  
10 this section.

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

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

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

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

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

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

1 board finds the licensee has been guilty of willful and persistent  
2 violations, it may revoke the license or licenses.

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

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

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

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

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

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

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

38 (2) The department (~~(of revenue shall)~~) must make and publish  
39 rules and regulations, not inconsistent therewith, necessary to

1 enforce provisions of this chapter and chapters 82.02 through 82.23B  
2 and 82.27 RCW, and the liquor (~~control~~) and cannabis board  
3 (~~shall~~) must make and publish rules necessary to enforce chapters  
4 82.24 (~~and~~), 82.26 (RCW), and 82.--- RCW (the new chapter created  
5 in section 505 of this act), which (~~shall have~~) has the same force  
6 and effect as if specifically included therein, unless declared  
7 invalid by the judgment of a court of record not appealed from.

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

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

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

18 The definitions in this section apply throughout this chapter  
19 unless the context clearly requires otherwise.

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

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

24 (3) "Child care facility" has the same meaning as provided in RCW  
25 70.140.020.

26 (4) "Closed system nicotine container" means a sealed, prefilled,  
27 and disposable container of nicotine in a solution or other form in  
28 which such container is inserted directly into an electronic  
29 cigarette, electronic nicotine delivery system, or other similar  
30 product, if the nicotine in the container is inaccessible through  
31 customary or reasonably foreseeable handling or use, including  
32 reasonably foreseeable ingestion or other contact by children.

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

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

38 (b) The vapor product is delivered by use of the mails or of a  
39 delivery service. The foregoing sales of vapor products constitute a

1 delivery sale regardless of whether the seller is located within or  
2 without this state. "Delivery sale" does not include a sale of any  
3 vapor product not for personal consumption to a retailer.

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

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

6 ~~(a) Sells vapor products to persons other than ultimate~~  
7 ~~consumers; or~~

8 ~~(b) Is engaged in the business of selling vapor products in this~~  
9 ~~state and who brings, or causes to be brought, into this state from~~  
10 ~~outside of the state any vapor products for sale)) has the same~~  
11 ~~meaning as in section 101 of this act.~~

12 (8) "Liquid nicotine container" means a package from which  
13 nicotine in a solution or other form is accessible through normal and  
14 foreseeable use by a consumer and that is used to hold soluble  
15 nicotine in any concentration. "Liquid nicotine container" does not  
16 include closed system nicotine containers.

17 (9) "Manufacturer" means a person who manufactures and sells  
18 vapor products.

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

21 (11) "Person" means any individual, receiver, administrator,  
22 executor, assignee, trustee in bankruptcy, trust, estate, firm,  
23 copartnership, joint venture, club, company, joint stock company,  
24 business trust, municipal corporation, the state and its departments  
25 and institutions, political subdivision of the state of Washington,  
26 corporation, limited liability company, association, society, any  
27 group of individuals acting as a unit, whether mutual, cooperative,  
28 fraternal, nonprofit, or otherwise.

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

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

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

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

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

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

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

10 (18) "Self-service display" means a display that contains vapor  
11 products and is located in an area that is openly accessible to  
12 customers and from which customers can readily access such products  
13 without the assistance of a salesperson. A display case that holds  
14 vapor products behind locked doors does not constitute a self-service  
15 display.

16 (19) "Vapor product" means any noncombustible product that may  
17 contain nicotine and that employs a heating element, power source,  
18 electronic circuit, or other electronic, chemical, or mechanical  
19 means, regardless of shape or size, that can be used to produce vapor  
20 or aerosol from a solution or other substance.

21 (a) "Vapor product" includes any electronic cigarette, electronic  
22 cigar, electronic cigarillo, electronic pipe, or similar product or  
23 device and any vapor cartridge or other container that may contain  
24 nicotine in a solution or other form that is intended to be used with  
25 or in an electronic cigarette, electronic cigar, electronic  
26 cigarillo, electronic pipe, or similar product or device.

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

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

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

35 (1)(a) No person may engage in or conduct business as a retailer,  
36 distributor, or delivery seller in this state without a valid license  
37 issued under this chapter, except as otherwise provided by law. Any  
38 person who sells vapor products to ultimate consumers by a means  
39 other than delivery sales must obtain a retailer's license under this

1 chapter. Any person who (~~sells vapor products to persons other than~~  
2 ~~ultimate consumers or who~~) meets the definition of distributor under  
3 this chapter must obtain a distributor's license under this chapter.  
4 Any person who conducts delivery sales of vapor products must obtain  
5 a delivery sale license.

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

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

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

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

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

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

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

37 (2) No person may conduct a delivery sale or otherwise ship or  
38 transport, or cause to be shipped or transported, any vapor product  
39 ordered or purchased by mail or through the internet to any person

1 under the minimum age required for the legal sale of vapor products  
2 as provided under RCW 70.345.140.

3 (3) A delivery sale licensee must provide notice on its mail  
4 order or internet sales forms of the minimum age required for the  
5 legal sale of vapor products in Washington state as provided by RCW  
6 70.345.140.

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

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

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

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

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



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

3       Unless the context clearly requires otherwise, the definitions in  
4 this section apply throughout this chapter:

5       (1) "Board" means the state liquor ((control)) and cannabis  
6 board.

7       (2) "Cigarette" means any roll for smoking made wholly or in part  
8 of tobacco, irrespective of size or shape and irrespective of the  
9 tobacco being flavored, adulterated, or mixed with any other  
10 ingredient, where such roll has a wrapper or cover made of paper or  
11 any material, except where such wrapper is wholly or in the greater  
12 part made of natural leaf tobacco in its natural state. "Cigarette"  
13 includes a roll-your-own cigarette, but does not include a heated  
14 tobacco product as defined in RCW 82.26.010.

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

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

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

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

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

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

38       (9) "Retail selling price" means the ordinary, customary or usual  
39 price paid by the consumer for each package of cigarettes, less the

1 tax levied by this chapter and less any similar tax levied by this  
2 state.

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

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

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

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

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

16 The definitions in this section apply throughout this chapter  
17 unless the context clearly requires otherwise.

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

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

25 (3) "Board" means the state liquor ((control)) and cannabis  
26 board.

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

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

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

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

37 (8) "Distributor" means (a) any person engaged in the business of  
38 selling tobacco products in this state who brings, or causes to be  
39 brought, into this state from without the state any tobacco products

1 for sale, (b) any person who makes, manufactures, fabricates, or  
2 stores tobacco products in this state for sale in this state, (c) any  
3 person engaged in the business of selling tobacco products without  
4 this state who ships or transports tobacco products to retailers in  
5 this state, to be sold by those retailers, (d) any person engaged in  
6 the business of selling tobacco products in this state who handles  
7 for sale any tobacco products that are within this state but upon  
8 which tax has not been imposed.

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

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

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

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

17 ~~((10))~~ (11) "Little cigar" means a cigar that has a cellulose  
18 acetate integrated filter.

19 ~~((11))~~ (12) "Manufacturer" means a person who manufactures and  
20 sells tobacco products.

21 ~~((12))~~ (13) "Manufacturer's representative" means a person  
22 hired by a manufacturer to sell or distribute the manufacturer's  
23 tobacco products, and includes employees and independent contractors.

24 ~~((13))~~ (14) "Moist snuff" means tobacco that is finely cut,  
25 ground, or powdered; is not for smoking; and is intended to be placed  
26 in the oral, but not the nasal, cavity.

27 ~~((14))~~ (15) "Person" means any individual, receiver,  
28 administrator, executor, assignee, trustee in bankruptcy, trust,  
29 estate, firm, copartnership, joint venture, club, company, joint  
30 stock company, business trust, municipal corporation, the state and  
31 its departments and institutions, political subdivision of the state  
32 of Washington, corporation, limited liability company, association,  
33 society, any group of individuals acting as a unit, whether mutual,  
34 cooperative, fraternal, nonprofit, or otherwise. The term excludes  
35 any person immune from state taxation, including the United States or  
36 its instrumentalities, and federally recognized Indian tribes and  
37 enrolled tribal members, conducting business within Indian country.

38 ~~((15))~~ (16) "Place of business" means any place where tobacco  
39 products are sold or where tobacco products are manufactured, stored,

1 or kept for the purpose of sale, including any vessel, vehicle,  
2 airplane, train, or vending machine.

3 ~~((16))~~ (17) "Retail outlet" means each place of business from  
4 which tobacco products are sold to consumers.

5 ~~((17))~~ (18) "Retailer" means any person engaged in the business  
6 of selling tobacco products to ultimate consumers.

7 ~~((18))~~ (19)(a) "Sale" means any transfer, exchange, or barter,  
8 in any manner or by any means whatsoever, for a consideration, and  
9 includes and means all sales made by any person.

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

13 ~~((19))~~ (20)(a) "Taxable sales price" means:

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

18 (ii) In the case of a taxpayer that purchases tobacco products  
19 from an affiliated manufacturer, affiliated distributor, or other  
20 affiliated person, and that sells those tobacco products to  
21 unaffiliated distributors, unaffiliated retailers, or ultimate  
22 consumers, the actual price for which that taxpayer sells those  
23 tobacco products to unaffiliated distributors, unaffiliated  
24 retailers, or ultimate consumers;

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

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

35 (v) In the case of a taxpayer that has acquired tobacco products  
36 under a sale as defined in subsection ~~((18))~~ (19)(b) of this  
37 section, the price, determined as nearly as possible according to the  
38 actual price, that the taxpayer or other distributors sell the same  
39 tobacco products or similar tobacco products of like quality and

1 character to unaffiliated distributors, unaffiliated retailers, or  
2 ultimate consumers; or

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

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

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

17 (~~((20))~~) (21) "Taxpayer" means a person liable for the tax  
18 imposed by this chapter.

19 (~~((21))~~) (22) "Tobacco products" means cigars, cheroots, stogies,  
20 periques, granulated, plug cut, crimp cut, ready rubbed, and other  
21 smoking tobacco, snuff, snuff flour, cavendish, plug and twist  
22 tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps,  
23 clippings, cuttings and sweepings of tobacco, and other kinds and  
24 forms of tobacco, prepared in such manner as to be suitable for  
25 chewing or smoking in a pipe or otherwise, or both for chewing and  
26 smoking, and any other product, regardless of form, that contains  
27 tobacco and is intended for human consumption or placement in the  
28 oral or nasal cavity or absorption into the human body by any other  
29 means, but does not include cigarettes as defined in RCW 82.24.010.

30 (~~((22))~~) (23) "Unaffiliated distributor" means a distributor that  
31 is not affiliated with the manufacturer, distributor, or other person  
32 from whom the distributor has purchased tobacco products.

33 (~~((23))~~) (24) "Unaffiliated retailer" means a retailer that is  
34 not affiliated with the manufacturer, distributor, or other person  
35 from whom the retailer has purchased tobacco products.

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

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

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

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

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

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

17 (ii) On each single unit consumer-sized can or package whose net  
18 weight is more than one and two-tenths ounces, a proportionate tax at  
19 the rate established in (c)(i) of this subsection (1) on each ounce  
20 or fractional part of an ounce; (~~and~~)

21 (d) For little cigars, an amount per cigar equal to the cigarette  
22 tax under chapter 82.24 RCW(~~(-~~

23 ~~-2-))~~; and

24 (e) For heated tobacco products, forty cents per ounce of  
25 tobacco, plus a proportionate tax at the like rate on any fractional  
26 parts of an ounce. The tax on heated tobacco products is imposed  
27 based on the net weight of tobacco as listed by the manufacturer.

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

33 (3) Taxes under this section must be imposed at the time the  
34 distributor (a) brings, or causes to be brought, into this state from  
35 without the state tobacco products for sale, (b) makes, manufactures,  
36 fabricates, or stores tobacco products in this state for sale in this  
37 state, (c) ships or transports tobacco products to retailers in this  
38 state, to be sold by those retailers, or (d) handles for sale any  
39 tobacco products that are within this state but upon which tax has  
40 not been imposed.



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

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

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

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

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

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

27 (d) A tribal manufacturer.

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

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

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

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

38 (9) The governor may delegate the power to negotiate vapor  
39 product tax contracts to the department of revenue. The department of

1 revenue must consult with the liquor and cannabis board during the  
2 negotiations.

3 (10) Information received by the state or open to state review  
4 under the terms of a contract is subject to the provisions of RCW  
5 82.32.330.

6 (11) It is the intent of the legislature that the liquor and  
7 cannabis board and the department of revenue continue the division of  
8 duties and shared authority under chapter 82.--- RCW (the new chapter  
9 created in section 505 of this act) and therefore the liquor and  
10 cannabis board is responsible for enforcement activities that come  
11 under the terms of chapter 82.--- RCW (the new chapter created in  
12 section 505 of this act).

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

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

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

32 (b) "Indian country" has the same meaning as provided in RCW  
33 82.24.010.

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

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

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

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

1 (d) "Indian tribe" or "tribe" means a federally recognized Indian  
2 tribe located within the geographical boundaries of the state of  
3 Washington.

4 (e) "Vapor products" has the same meaning as provided in section  
5 101 of this act.

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

8 (1) The governor is authorized to enter into vapor product tax  
9 contracts with federally recognized Indian tribes located within the  
10 geographical boundaries of the state of Washington. Each contract  
11 adopted under this section must provide that the tribal vapor product  
12 tax rate be one hundred percent of the state vapor product tax and  
13 state and local sales and use taxes. The tribal vapor product tax is  
14 in lieu of the state vapor product tax and state and local sales and  
15 use taxes, as provided in section 402(3) of this act.

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

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

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

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

1 at a level that is ninety percent of the rate of the state vapor  
2 product tax.

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (11) It is the intent of the legislature that the liquor and  
19 cannabis board and the department of revenue continue the division of  
20 duties and shared authority under chapter 82.--- RCW (the new chapter  
21 created in section 505 of this act).

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

24 (a) "Indian country" has the same meaning as provided in RCW  
25 82.24.010.

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

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

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

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

33 (d) "Vapor products" has the same meaning as provided in section  
34 101 of this act.

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

37 (1) The tax levied by RCW 82.08.020 does not apply to sales of  
38 vapor products by an Indian retailer during the effective period of a

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

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

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

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

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

13 **Part V**

14 **Miscellaneous Provisions**

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

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

23 (2) Beginning November 1, 2020, and by each November 1st  
24 thereafter, the state treasurer must transfer from the general fund  
25 the estimated amount determined by the department under subsection  
26 (1) of this section for the immediately preceding fiscal year as  
27 follows:

28 (a) Through November 1, 2024, fifty percent into the Andy Hill  
29 cancer research fund created in RCW 43.348.060 and fifty percent into  
30 the foundational public health services account created in section  
31 104 of this act; and

32 (b) Beginning November 1, 2025, one hundred percent into the  
33 foundational public health services account created in section 104 of  
34 this act.

35 (3) The department may not make any adjustments to an estimate  
36 under subsection (1) of this section after the state treasurer makes

1 the corresponding distribution under subsection (2) of this section  
2 based on the department's estimate.

3 NEW SECTION. **Sec. 502.** The provisions of RCW 82.32.805 and  
4 82.32.808 do not apply to this act.

5 NEW SECTION. **Sec. 503.** If any provision of this act or its  
6 application to any person or circumstance is held invalid, the  
7 remainder of the act or the application of the provision to other  
8 persons or circumstances is not affected.

9 NEW SECTION. **Sec. 504.** If any part of this act is found to be  
10 in conflict with federal requirements that are a prescribed condition  
11 to the allocation of federal funds to the state, the conflicting part  
12 of this act is inoperative solely to the extent of the conflict and  
13 with respect to the agencies directly affected, and this finding does  
14 not affect the operation of the remainder of this act in its  
15 application to the agencies concerned. Rules adopted under this act  
16 must meet federal requirements that are a necessary condition to the  
17 receipt of federal funds by the state.

18 NEW SECTION. **Sec. 505.** Part I of this act constitutes a new  
19 chapter in Title 82 RCW.

20 NEW SECTION. **Sec. 506.** This act takes effect October 1, 2019.

--- END ---