

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 that contains nicotine, which employs a mechanical heating
31 element, battery, or electronic circuit regardless of shape or size
32 that can be used to produce vapor from the solution or other
33 substance, including an electronic cigarette, electronic cigar,
34 electronic cigarillo, electronic pipe, any vapor cartridge or other
35 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 ten cents per milliliter of solution and a proportionate tax at
16 the like rate on all fractional parts of a milliliter thereof. The
17 tax on vapor products must be imposed based on the volume of the
18 solution as listed by the manufacturer.

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

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

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

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

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

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

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 the revenues from the tax collected under section 102 of this act and
25 fifty percent of the revenues from the tax collected on heated
26 tobacco products under RCW 82.26.020 must be deposited into the
27 account for the purpose of promoting governmental public health.

28 (2) To determine the funding for foundational public health
29 services pursuant to subsection (1) of this section, the governmental
30 public health system must work together to: (a) Arrive at a mutually
31 acceptable allocation and distribution of funds from the account
32 using the process established in chapter 14, Laws of 2019; and (b)
33 determine the best accountability measures to ensure efficient and
34 effective use of funds, emphasizing use of shared services where
35 appropriate.

36 NEW SECTION. **Sec. 105.** It is the intent and purpose of this
37 chapter to levy a tax on all vapor products sold, used, consumed,
38 handled, possessed, or distributed within this state. It is the

1 further intent and purpose of this chapter to impose the tax only
2 once on all vapor products in this state. Nothing in this chapter may
3 be construed to exempt any person taxable under any other law or
4 under any other tax imposed under this title.

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

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

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

22 (3) At any time during usual business hours the department,
23 board, or its duly authorized agents or employees may enter any place
24 of business of a distributor, without a search warrant, and inspect
25 the premises, the records required to be kept under this chapter, and
26 the vapor products contained therein, to determine whether or not all
27 the provisions of this chapter are being fully complied with. If the
28 department, board, or any of its agents or employees are denied free
29 access or are hindered or interfered with in making such examination,
30 the registration certificate issued under RCW 82.32.030 of the
31 distributor at such premises are subject to revocation by the
32 department, and any licenses issued under chapter 70.345, 82.26, or
33 82.24 RCW are subject to suspension or revocation by the board.

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

1 and address, the date of sale, and all prices. The person must
2 preserve legible copies of all such invoices for five years from the
3 date of sale.

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

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

12 (3) At any time during usual business hours the department,
13 board, or its duly authorized agents or employees may enter any
14 retail outlet without a search warrant, and inspect the premises for
15 invoices required to be kept under this section and the vapor
16 products contained in the retail outlet, to determine whether or not
17 all the provisions of this chapter are being fully complied with. If
18 the department, board, or any of its agents or employees are denied
19 free access or are hindered or interfered with in making the
20 inspection, the registration certificate issued under RCW 82.32.030
21 of the retailer at the premises is subject to revocation by the
22 department, and any licenses issued under chapter 70.345, 82.26, or
23 82.24 RCW are subject to suspension or revocation by the board.

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

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

36 (i) "Indian distributor" means a federally recognized Indian
37 tribe or tribal entity that would otherwise meet the definition of
38 "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 506 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 506 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 506 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 506 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 506 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, including heated tobacco products as defined in subsection (9)
30 of this section, but does not include cigarettes as defined in RCW
31 82.24.010.

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

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

38 **Sec. 303.** RCW 82.26.020 and 2010 1st sp.s. c 22 s 5 are each
39 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; and

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

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

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

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

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

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

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

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

14 **Part IV**
15 **Tribal Compacting**

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

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

34 NEW SECTION. **Sec. 402.** A new section is added to chapter 43.06
35 RCW to read as follows:

36 (1) The governor may enter into vapor product tax contracts
37 concerning the sale of vapor products. All vapor product tax

1 contracts must meet the requirements for vapor product tax contracts
2 under this section.

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

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

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

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

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

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

29 (d) A tribal manufacturer.

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

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

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

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

1 (9) The governor may delegate the power to negotiate vapor
2 product tax contracts to the department of revenue. The department of
3 revenue must consult with the liquor and cannabis board during the
4 negotiations.

5 (10) Information received by the state or open to state review
6 under the terms of a contract is subject to the provisions of RCW
7 82.32.330.

8 (11) It is the intent of the legislature that the liquor and
9 cannabis board and the department of revenue continue the division of
10 duties and shared authority under chapter 82.--- RCW (the new chapter
11 created in section 506 of this act) and therefore the liquor and
12 cannabis board is responsible for enforcement activities that come
13 under the terms of chapter 82.--- RCW (the new chapter created in
14 section 506 of this act).

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

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

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

34 (b) "Indian country" has the same meaning as provided in RCW
35 82.24.010.

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

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

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

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

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

6 (e) "Vapor products" has the same meaning as provided in section
7 101 of this act.

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

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

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

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

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

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

1 increase or decrease in the state vapor product tax so as to remain
2 at a level that is ninety percent of the rate of the state vapor
3 product tax.

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

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

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

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

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

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

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

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

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

38 (7) The agreement must provide that retailers must purchase vapor
39 products only from distributors or manufacturers licensed to do
40 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 506 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) Fifty percent into the Andy Hill cancer research fund created
29 in RCW 43.348.060; and

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

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

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

3 NEW SECTION. **Sec. 503.** The provisions of RCW 82.32.805 and
4 82.32.808 do not apply to this act.

5 NEW SECTION. **Sec. 504.** 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. 505.** 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. 506.** Part I of this act constitutes a new
19 chapter in Title 82 RCW.

20 NEW SECTION. **Sec. 507.** This act takes effect October 1, 2019.

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