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**HOUSE BILL 2165**

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**State of Washington**

**65th Legislature**

**2017 Regular Session**

**By** Representatives Harris, Cody, and Pollet

1 AN ACT Relating to vapor products, e-cigarettes, and nicotine  
2 products taxation; amending RCW 66.08.145, 66.44.010, 82.24.510,  
3 82.24.550, 82.26.060, 82.26.080, 82.26.150, 82.26.220, 82.32.300, and  
4 43.06.450; adding new sections to chapter 43.06 RCW; adding a new  
5 section to chapter 82.08 RCW; adding a new section to chapter 82.12  
6 RCW; adding a new chapter to Title 82 RCW; creating new sections;  
7 prescribing penalties; and providing an effective date.

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

9 **Part I**

10 **Findings**

11 NEW SECTION. **Sec. 101.** (1) The legislature finds that the use  
12 of vapor inhalation products, such as e-cigarettes, e-devices, and  
13 vape pens, has risen at an alarming rate both among adults and youth.  
14 Vapor products pose a serious public health risk because of the  
15 addictiveness of nicotine, the impact of nicotine on fetal  
16 development and adolescent brain development, the risk of liquid  
17 nicotine poisoning, and exposure to carcinogens and other toxic  
18 chemicals. The legislature finds that the nicotine in these vapor  
19 products is almost exclusively processed or derived from tobacco and  
20 that the products are intended for human consumption in the oral or

1 nasal cavity or absorption into the human body. Therefore, the  
2 legislature finds that these vapor products, including electronic  
3 cigarettes and other products are "tobacco products" as defined in  
4 RCW 82.26.010. Although these products have been documented as being  
5 interchangeably used by consumers with cigarettes or other tobacco  
6 products, and there is nicotine produced or derived from tobacco in  
7 the product intended for human consumption and absorption into the  
8 human body, the manufacturers, wholesalers, and retailers have not  
9 been paying the tax levied on tobacco products pursuant to chapter  
10 82.26 RCW. The legislature intends to transition from no tobacco or  
11 cigarette tax having been paid on these products to adopting a  
12 specific tax rate for vapor products in this act. Adoption of this  
13 specific tax will resolve claims of nonpayment of tobacco product  
14 taxes pursuant to chapter 82.26 RCW. The legislature believes that  
15 vapor products containing nicotine have always been subject to  
16 taxation pursuant to chapter 82.26 RCW, and passage of this act may  
17 not be interpreted as an indication otherwise.

18 (2) Specifically, the legislature finds that:

19 (a) Vapor products are battery-operated devices with cartridges  
20 or refillable tanks that contain a mixture of various liquids, such  
21 as propylene glycol, glycerol, nicotine, and chemical flavorings. The  
22 devices atomize the liquid mixture, producing a vapor that the user  
23 inhales;

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

34 (c) The sale of vapor products has rapidly increased over the  
35 past several years. Nationally, the percentage of middle school and  
36 high school students who have used vapor products more than doubled  
37 from 2011 to 2012. The December 2016 report by the centers for  
38 disease control finds that sixteen percent of high school students  
39 nationwide are using e-cigarettes or vapor products. The legislature  
40 finds that vapor products are heavily promoted to attract youth to

1 purchase them, with concomitant addiction to nicotine. Research shows  
2 that most young e-cigarette and vapor product users also smoke  
3 cigarettes, and that the attraction and low cost availability of  
4 vapor products is mitigating the positive benefits from the decline  
5 in cigarette use among youth;

6 (d) In Washington, the 2014 healthy youth survey found that  
7 almost twenty-three percent of twelfth graders had used an e-  
8 cigarette in the past month. These rates are alarming because an  
9 overwhelming majority of smokers begin smoking and become addicted to  
10 nicotine as teenagers, and the equipment used may be sold and used  
11 interchangeably for marijuana and nicotine. Current law in Washington  
12 prohibits the sale of vapor products containing nicotine to minors,  
13 but given the availability of vapor products online and equipment  
14 sold separately at retail stores, this law is difficult to enforce;

15 (e) The low cost of e-cigarettes and nicotine liquids for vapor  
16 products, particularly compared to cigarettes, is a key factor in  
17 youth access and use. E-cigarettes are advertised as saving smokers  
18 thousands of dollars. One survey of adult users has shown that the  
19 low price of e-cigarettes compared to other tobacco products is a key  
20 reason for their use, and youth are even more sensitive to price than  
21 adults. Increasing the price of vapor products will decrease youth  
22 access and addiction, just as raising taxes on cigarettes to  
23 discourage youth and adult smoking decreased youth access and  
24 addiction; and

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

29 (3) The legislature finds, therefore, that this act is necessary  
30 to protect the public health, safety, and welfare by providing  
31 consumers with information about products that are potentially  
32 dangerous, providing support for programs that reduce youth access to  
33 addictive nicotine products, preventing nicotine poisonings of  
34 children, and providing support for many essential public health  
35 services and educational programs for which needs and cost are  
36 increased due to increased consumption of vapor products.

1 **Part II**

2 **Tax on Vapor Products**

3 NEW SECTION. **Sec. 201.** The definitions in this section apply  
4 throughout this chapter unless the context clearly requires  
5 otherwise.

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

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

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

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

21 (5) "Distributor" has the same meaning as provided in RCW  
22 70.345.010.

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

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

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

30 (9) "Person" means: Any individual, receiver, administrator,  
31 executor, assignee, trustee in bankruptcy, trust, estate, firm,  
32 copartnership, joint venture, club, company, joint stock company,  
33 business trust, municipal corporation, corporation, limited liability  
34 company, association, or society; the state and its departments and  
35 institutions; any political subdivision of the state of Washington;  
36 and any group of individuals acting as a unit, whether mutual,  
37 cooperative, fraternal, nonprofit, or otherwise. Except as provided  
38 otherwise in this chapter, "person" does not include any person  
39 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, the price, determined as nearly as possible according  
35 to the actual price, that the taxpayer or other distributors sell the  
36 same vapor products or similar vapor products of like quality and  
37 character to unaffiliated distributors, unaffiliated retailers, or  
38 ultimate consumers;

39 (vi) In cases where section 202(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 202(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" has the same meaning as provided in RCW  
30 70.345.010.

31 NEW SECTION. **Sec. 202.** (1) There is levied and collected a tax  
32 upon the sale, use, consumption, handling, possession, or  
33 distribution of all vapor products in this state equal to sixty  
34 percent of the taxable sales price.

35 (2)(a) The tax under this section must be collected at the time  
36 the distributor: (i) Brings, or causes to be brought, into this state  
37 from without the state vapor products for sale; (ii) makes,  
38 manufactures, fabricates, or stores vapor products in this state for  
39 sale in this state; (iii) ships or transports vapor products to

1 retailers in this state, to be sold by those retailers; or (iv)  
2 handles for sale any vapor products that are within this state but  
3 upon which tax has not been imposed.

4 (b) The tax imposed under this section must also be collected by  
5 the department from the consumer of vapor products where the tax  
6 imposed under this section was not paid by the distributor on such  
7 vapor products.

8 (3)(a) The legislature intends for the revenues generated by the  
9 tax imposed under this section to help offset lost revenue from any  
10 legislation that raises the legal smoking age. Therefore, until the  
11 end of fiscal year 2020, one hundred percent of the moneys collected  
12 under this section must be deposited into the state general fund.

13 (b) Beginning in fiscal year 2021, the moneys collected under  
14 this section must be deposited as follows:

15 (i) Sixty percent into the state general fund; and

16 (ii) Forty percent into the essential public health services  
17 account created in section 204 of this act.

18 NEW SECTION. **Sec. 203.** (1)(a) Except as provided in (b) of this  
19 subsection, a bundled transaction that includes a vapor product is  
20 subject to the tax imposed under this chapter on the entire selling  
21 price of the bundled transaction.

22 (b) If the selling price is attributable to products that are  
23 taxable and products that are not taxable under this chapter, the  
24 portion of the price attributable to the nontaxable products are  
25 subject to the tax imposed by this chapter unless the seller can  
26 identify by reasonable and verifiable standards the portion that is  
27 not subject to tax from its books and records that are kept in the  
28 regular course of business for other purposes including, but not  
29 limited to, nontax purposes.

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

32 (a) "Bundled transaction" means:

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

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

1 depending on the inclusion of the vapor product provided free of  
2 charge.

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

8 NEW SECTION. **Sec. 204.** (1) The essential public health services  
9 account is created in the state treasury. As specified in section 202  
10 of this act, forty percent of revenues from the tax collected under  
11 section 202 of this act must be deposited into the account beginning  
12 in fiscal year 2021. Moneys in the account may be spent only after  
13 appropriation to the department of health. The department of health  
14 must use the moneys in the account for each of the four following  
15 purposes: (a) To fund foundational health services; (b) to fund  
16 tobacco, vapor product, and nicotine control and prevention, and  
17 other substance use prevention and education; (c) at least ten  
18 percent of funds deposited must be used to support increased access  
19 and training of public health professionals at public health programs  
20 at accredited public institutions of higher education in Washington;  
21 and (d) enforcement by the board of the provisions of chapter 70.345  
22 RCW, provided that no more than 12.5 percent of the funds deposited  
23 into the account created in this section may be utilized and  
24 distributed by the department to the board for these enforcement  
25 purposes.

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

33 NEW SECTION. **Sec. 205.** It is the intent and purpose of this  
34 chapter to levy a tax on all vapor products sold, used, consumed,  
35 handled, possessed, or distributed within this state. It is the  
36 further intent and purpose of this chapter to impose the tax only  
37 once on all vapor products in this state. Nothing in this chapter may



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

3 NEW SECTION. **Sec. 206.** (1) The tax imposed by section 202 of  
4 this act does not apply with respect to any vapor products which  
5 under the Constitution and laws of the United States may not be made  
6 the subject of taxation by this state.

7 (2) The provisions of RCW 82.32.805 and 82.32.808 do not apply to  
8 this section.

9 NEW SECTION. **Sec. 207.** (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. 208.** 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. 209.** (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. 210.** (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 201 of this act, if federally recognized

1 Indian tribes and tribal entities were not excluded from the  
2 definition of "person" in section 201 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 201 of this act, if federally recognized  
6 Indian tribes and tribal entities were not excluded from the  
7 definition of "person" in section 201 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 (3) The provisions of RCW 82.32.805 and 82.32.808 do not apply to  
17 this section.

18 NEW SECTION. **Sec. 211.** All of the provisions contained in  
19 chapter 82.32 RCW not inconsistent with the provisions of this  
20 chapter have full force and application with respect to taxes imposed  
21 under the provisions of this chapter.

22 NEW SECTION. **Sec. 212.** The department must authorize, as duly  
23 authorized agents, enforcement officers of the board to enforce  
24 provisions of this chapter. These officers are not employees of the  
25 department.

26 NEW SECTION. **Sec. 213.** (1) The department may by rule establish  
27 the invoice detail required under section 207 of this act for a  
28 distributor and for those invoices required to be provided to  
29 retailers under section 209 of this act.

30 (2) If a retailer fails to keep invoices as required under  
31 section 209 of this act, the retailer is liable for the tax owed on  
32 any uninvoiced vapor products but not penalties and interest, except  
33 as provided in subsection (3) of this section.

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

1        NEW SECTION.    **Sec. 214.**    (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. 215.**    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. 216.**    (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 or retailer  
7 or delivery sales licensee, may transport vapor products for sale in  
8 this state for which the taxes imposed under this chapter have not  
9 been paid unless:

10 (i) Notice of the transportation has been given as required under  
11 section 214 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. 217.** (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 202 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. 218.** 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. 219.** (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 or retailer and who transports vapor products  
29 for sale without having provided notice to the board required under  
30 section 214 of this act, or without invoices or delivery tickets  
31 showing the true name and address of the consignor or seller, the  
32 true name and address of the consignee or purchaser, and the quantity  
33 and brands of vapor products being transported may be seized and are  
34 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. 220.** (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. 221.** 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. 222.** (1) Preexisting inventories of vapor  
38 products are subject to the tax imposed in section 202 of this act.



1 All retailers and other distributors must report the tax due under  
2 section 202 of this act on preexisting inventories of vapor products  
3 on a form, as prescribed by the department, on or before October 31,  
4 2017.

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

8 (a) Does not sell vapor products other than to ultimate  
9 consumers; and

10 (b) Does not meet the definition of "distributor" in section 201  
11 of this act other than with respect to the sale of that retailer's  
12 preexisting inventory of vapor products.

13 (3) Taxes may not be collected under section 202(2)(c) of this  
14 act from consumers with respect to any vapor products acquired before  
15 the effective date of this section.

16 (4) For purposes of this section, "preexisting inventory" means  
17 an inventory of vapor products located in this state as of the moment  
18 that section 202 of this act takes effect and held by a distributor  
19 for sale, handling, or distribution in this state.

20 NEW SECTION. **Sec. 223.** (1) The taxes imposed by this chapter do  
21 not apply to the sale, use, consumption, handling, possession, or  
22 distribution of vapor products by an Indian retailer during the  
23 effective period of a vapor product tax contract subject to section  
24 403 of this act or a vapor product tax agreement under section 404 of  
25 this act.

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

28 **Part III**  
29 **Conforming Amendments**

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

32 (1) The liquor and cannabis board may issue subpoenas in  
33 connection with any investigation, hearing, or proceeding for the  
34 production of books, records, and documents held under this chapter  
35 or chapters 70.155, 70.158, 70.345, 82.24, (~~and~~) 82.26 (~~RCW~~), and  
36 82.--- RCW (the new chapter created in section 503 of this act), and  
37 books and records of common carriers as defined in RCW 81.80.010, or

1 vehicle rental agencies relating to the transportation or possession  
2 of cigarettes or other tobacco products.

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

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

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

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

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

36 (3) In addition to the other duties under this section, the board  
37 (~~shall~~) must enforce chapters 82.24 (~~and~~), 82.26 (~~RCW~~), and  
38 82.--- RCW (the new chapter created in section 503 of this act).

1 (4) The board may appoint and employ, assign to duty and fix the  
2 compensation of, officers to be designated as liquor enforcement  
3 officers. Such liquor enforcement officers (~~shall~~) have the power,  
4 under the supervision of the board, to enforce the penal provisions  
5 of this title and the penal laws of this state relating to the  
6 manufacture, importation, transportation, possession, distribution  
7 and sale of liquor. They (~~shall~~) have the power and authority to  
8 serve and execute all warrants and process of law issued by the  
9 courts in enforcing the penal provisions of this title or of any  
10 penal law of this state relating to the manufacture, importation,  
11 transportation, possession, distribution and sale of liquor, and the  
12 provisions of chapters 82.24 (~~and~~), 82.26 (RCW), and 82.--- RCW  
13 (the new chapter created in section 503 of this act). They (~~shall~~)  
14 have the power to arrest without a warrant any person or persons  
15 found in the act of violating any of the penal provisions of this  
16 title or of any penal law of this state relating to the manufacture,  
17 importation, transportation, possession, distribution and sale of  
18 liquor, and the provisions of chapters 82.24 (~~and~~), 82.26 (RCW),  
19 and 82.--- RCW (the new chapter created in section 503 of this act).

20 **Sec. 303.** RCW 82.24.510 and 2013 c 144 s 50 are each amended to  
21 read as follows:

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

23 (a) A wholesaler's license.

24 (b) A retailer's license.

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

1 years, in any state, tribal, or federal jurisdiction in the United  
2 States, its territories, or possessions, and the provisions of RCW  
3 9.95.240 and chapter 9.96A RCW do not apply to such cases. The board  
4 may, in its discretion, grant or refuse the wholesaler's license or  
5 retailer's license, subject to the provisions of RCW 82.24.550.

6 (3) No person may qualify for a wholesaler's license or a  
7 retailer's license under this section without first undergoing a  
8 criminal background check. The background check must be performed by  
9 the board and must disclose any criminal conduct within the previous  
10 five years in any state, tribal, or federal jurisdiction in the  
11 United States, its territories, or possessions. A person who  
12 possesses a valid license on July 22, 2001, is subject to this  
13 subsection and subsection (2) of this section beginning on the date  
14 of the person's business license expiration under chapter 19.02 RCW,  
15 and thereafter. If the applicant or licensee also has a license  
16 issued under chapter 66.24 ((~~66~~)), 82.26, or 70.345 RCW, the  
17 background check done under the authority of chapter 66.24 ((~~66~~)),  
18 82.26, or 70.345 RCW satisfies the requirements of this section.

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

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

28 **Sec. 304.** RCW 82.24.550 and 2015 c 86 s 307 are each amended to  
29 read as follows:

30 (1) The board must enforce the provisions of this chapter. The  
31 board may adopt, amend, and repeal rules necessary to enforce the  
32 provisions of this chapter.

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

1 (3) A license may not be suspended or revoked except upon notice  
2 to the licensee and after a hearing as prescribed by the board. The  
3 board, upon finding that the licensee has failed to comply with any  
4 provision of this chapter or any rule adopted under this chapter,  
5 must, in the case of the first offense, suspend the license or  
6 licenses of the licensee for a period of not less than thirty  
7 consecutive business days, and, in the case of a second or further  
8 offense, must suspend the license or licenses for a period of not  
9 less than ninety consecutive business days nor more than twelve  
10 months, and, in the event the board finds the licensee has been  
11 guilty of willful and persistent violations, it may revoke the  
12 license or licenses.

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

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

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

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

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

1 (9) For purposes of this section, "tobacco products" has the same  
2 meaning as in RCW 82.26.010.

3 **Sec. 305.** RCW 82.26.060 and 2009 c 154 s 3 are each amended to  
4 read as follows:

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

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

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

31 **Sec. 306.** RCW 82.26.080 and 2005 c 180 s 5 are each amended to  
32 read as follows:

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

37 (2) The retailer (~~shall~~) must keep at each retail outlet copies  
38 of complete, accurate, and legible invoices for that retail outlet or

1 place of business. All invoices required to be kept under this  
2 section (~~(shall)~~) must be preserved for five years from the date of  
3 purchase.

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

16 **Sec. 307.** RCW 82.26.150 and 2013 c 144 s 52 are each amended to  
17 read as follows:

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

20 (a) A distributor's license; and

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

1 discretion, issue or refuse to issue the distributor's license or  
2 retailer's license, subject to the provisions of RCW 82.26.220.

3 (3) No person may qualify for a distributor'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. If the applicant or  
9 licensee also has a license issued under chapter 66.24 (~~(e)~~), 82.24,  
10 or 70.345 RCW, the background check done under the authority of  
11 chapter 66.24 or 82.24 RCW satisfies the requirements of this  
12 section.

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

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

22 **Sec. 308.** RCW 82.26.220 and 2015 c 86 s 308 are each amended to  
23 read as follows:

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

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

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



1 business days but not more than twelve months, and in the event the  
2 board finds the licensee has been guilty of willful and persistent  
3 violations, it may revoke the license or licenses.

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

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

14 (6) A person whose license has been suspended or revoked may not  
15 sell tobacco products or cigarettes or permit tobacco products or  
16 cigarettes to be sold during the period of suspension or revocation  
17 on the premises occupied by the person or upon other premises  
18 controlled by the person or others or 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. 309.** 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 503 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 **Part IV**  
17 **Tribal Compacting**

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

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

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

1 (1) The governor may enter into vapor product tax contracts  
2 concerning the sale of vapor products. All vapor product tax  
3 contracts must meet the requirements for vapor product tax contracts  
4 under this section.

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

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

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

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

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

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

31 (d) A tribal manufacturer.

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

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

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

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

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

7 (10) Information received by the state or open to state review  
8 under the terms of a contract is subject to the provisions of RCW  
9 82.32.330.

10 (11) It is the intent of the legislature that the liquor and  
11 cannabis board and the department of revenue continue the division of  
12 duties and shared authority under chapter 82.--- RCW (the new chapter  
13 created in section 503 of this act) and therefore the liquor and  
14 cannabis board is responsible for enforcement activities that come  
15 under the terms of chapter 82.--- RCW (the new chapter created in  
16 section 503 of this act).

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

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

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

36 (b) "Indian country" has the same meaning as provided in RCW  
37 82.24.010.

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

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

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

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

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

8 (e) "Vapor products" has the same meaning as provided in section  
9 201 of this act.

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

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

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

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

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

35 (2) Any agreement must require the tribe to impose a tribal vapor  
36 product tax with a tax rate that is ninety percent of the state vapor  
37 product tax. This tribal tax is in lieu of the combined state and  
38 local sales and use taxes and the state vapor product tax, and as

1 such these state taxes are not imposed during the term of the  
2 agreement on any transaction governed by the agreement. The tribal  
3 vapor product tax must increase or decrease at the time of any  
4 increase or decrease in the state vapor product tax so as to remain  
5 at a level that is ninety percent of the rate of the state vapor  
6 product tax.

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

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

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

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

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

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

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

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

38 (c) The agreement must include provisions for sharing of  
39 information among the tribe, the department of revenue, and the  
40 liquor and cannabis board.

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

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

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

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

21 (11) It is the intent of the legislature that the liquor and  
22 cannabis board and the department of revenue continue the division of  
23 duties and shared authority under chapter 82.--- RCW (the new chapter  
24 created in section 503 of this act).

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

27 (a) "Indian country" has the same meaning as provided in RCW  
28 82.24.010.

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

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

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

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

36 (d) "Vapor products" has the same meaning as provided in section  
37 201 of this act.

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

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

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

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

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

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

15 **Part V**

16 **Miscellaneous Provisions**

17 NEW SECTION. **Sec. 501.** If any provision of this act or its  
18 application to any person or circumstance is held invalid, the  
19 remainder of the act or the application of the provision to other  
20 persons or circumstances is not affected.

21 NEW SECTION. **Sec. 502.** If any part of this act is found to be  
22 in conflict with federal requirements that are a prescribed condition  
23 to the allocation of federal funds to the state, the conflicting part  
24 of this act is inoperative solely to the extent of the conflict and  
25 with respect to the agencies directly affected, and this finding does  
26 not affect the operation of the remainder of this act in its  
27 application to the agencies concerned. Rules adopted under this act  
28 must meet federal requirements that are a necessary condition to the  
29 receipt of federal funds by the state.

30 NEW SECTION. **Sec. 503.** Part II of this act constitutes a new  
31 chapter in Title 82 RCW.

32 NEW SECTION. **Sec. 504.** This act takes effect October 1, 2017.

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