
HOUSE BILL 2211

State of Washington

64th Legislature

2015 Regular Session

By Representatives Pollet, Ryu, McBride, Cody, Robinson, and Gregerson

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

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

10 **PART I**

11 **Findings**

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

1 (a) Vapor products are battery-operated devices with cartridges
2 or refillable tanks that contain a mixture of various liquids, such
3 as propylene glycol, glycerol, nicotine, and chemical flavorings. The
4 devices atomize the liquid mixture, producing a vapor that the user
5 inhales.

6 (b) Vapor products are widely available online and in retail
7 stores. The sale of vapor products has rapidly increased over the
8 past several years, and by 2017, their sales margins are predicted to
9 surpass cigarettes. Nationally, the percentage of middle school and
10 high school students who have used vapor products more than doubled
11 from 2011 to 2012. By 2014, seventeen percent of twelfth graders had
12 tried e-cigarettes. In Washington, the 2014 healthy youth survey
13 found that almost twenty-three percent of twelfth graders had used an
14 e-cigarette in the past month. These rates are alarming because an
15 overwhelming majority of smokers begin smoking and become addicted to
16 nicotine as teenagers, and the equipment used may be sold and used
17 interchangeably for marijuana and nicotine. Current law in Washington
18 prohibits the sale of vapor products containing nicotine to minors,
19 but given the availability of vapor products online and equipment
20 sold separately at retail stores, this law is difficult to enforce.

21 (c) The low cost of e-cigarettes and nicotine liquids for vapor
22 products, particularly compared to cigarettes, is a key factor in
23 youth access and use. Legislative testimony has indicated that
24 refillable nicotine liquid and disposable e-cigarettes are as low as
25 ten and twenty percent of the cost of a pack of cigarettes in
26 Washington. E-cigarettes are advertised as saving smokers thousands
27 of dollars. One survey of adult users has shown that the low price of
28 e-cigarettes compared to other tobacco products is a key reason for
29 their use, and youth are even more sensitive to price than
30 adults. Increasing the price of vapor products will decrease youth
31 access and addiction, just as raising taxes on cigarettes to
32 discourage youth and adult smoking decreased youth access and
33 addiction.

34 (d) Public health infrastructure and enforcement to prevent youth
35 access to tobacco and vapor products in Washington will benefit from
36 the investment of tax revenues and fees established or increased by
37 this act.

38 (2) The legislature finds, therefore, that this act is necessary
39 to protect the public health, safety, and welfare by providing
40 consumers with information about products that are potentially

1 dangerous, reducing youth access to addictive nicotine products, and
2 preventing nicotine poisonings of children.

3 **PART II**

4 **Tax on Vapor Products**

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

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

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

19 (3) "Board" means the liquor control board.

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

23 (5) "Department" means the department of revenue.

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

35 (7) "Indian country" means the same as defined in chapter 82.24
36 RCW.

37 (8) "Manufacturer" means a person who manufactures and sells
38 vapor products.

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

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

16 (11) "Place of business" means any place where vapor products are
17 sold or where vapor products are manufactured, stored, or kept for
18 the purpose of sale, including any vessel, vehicle, airplane, or
19 train.

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

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

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

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

30 (15)(a) "Taxable sales price" means:

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

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

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

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

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

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

19 (vi) In cases where section 202(2)(b) of this act applies, the
20 value of the article used as defined in RCW 82.12.010; or

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

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

33 (c) In any case where the taxable sales price is not indicative
34 of a vapor product's true value at the time and place of the taxable
35 event as provided in section 202(2)(a) of this act, "taxable sales
36 price" means the true value of the vapor product as determined by the
37 department. For purposes of this subsection, "true value" means
38 market value based on sales at comparable locations in this state of
39 the same or similar vapor product of like quality and character sold
40 under comparable conditions of sale by comparable sellers to

1 comparable purchasers. However, in the absence of such comparable
2 sales, true value means the value of the vapor product as determined
3 by all of the taxpayer's direct and indirect costs attributable to
4 the vapor product.

5 (16) "Taxpayer" means a person liable for the tax imposed by this
6 chapter.

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

10 (18) "Unaffiliated retailer" means a retailer that is not
11 affiliated with the manufacturer, distributor, or other person from
12 whom the retailer has purchased vapor products.

13 (19)(a) "Vapor product" means any noncombustible product that
14 employs a mechanical heating element, battery, or electronic circuit
15 regardless of shape or size that can be used to produce vapor from a
16 liquid solution or other substance, including an electronic
17 cigarette, electronic cigar, electronic cigarillo, electronic pipe,
18 or similar product or device. "Vapor product" includes: (i) Any
19 liquid solution or other substance in a cartridge or other container
20 that is capable of being used with or in a vapor product to produce
21 vapor; and (ii) any related accessories or equipment specifically
22 designed or marketed to be used with a vapor product.

23 (b) "Vapor product" does not include: (i) Any drug, device, or
24 combination product approved for sale by the United States food and
25 drug administration that is marketed and sold for such approved
26 purpose; or (ii) any product meeting the definition of marijuana,
27 useable marijuana, marijuana concentrates, marijuana-infused
28 products, cigarette, or tobacco products.

29 (c) For purposes of this subsection (19):

30 (i) "Cigarette" has the same meaning as in RCW 82.24.010.

31 (ii) "Marijuana," "useable marijuana," "marijuana concentrates,"
32 and "marijuana-infused products" have the same meaning as in RCW
33 69.50.101.

34 (iii) "Tobacco products" has the same meaning as in RCW
35 82.26.010.

36 NEW SECTION. **Sec. 202.** (1)(a) There is levied and collected a
37 tax upon the sale, use, consumption, handling, possession, or
38 distribution of all vapor products in this state equal to sixty
39 percent of the taxable sales price. If the vapor product is sold

1 together with products not taxable under this chapter for one price,
2 the tax imposed by this section applies to the entire selling price
3 of the product, except as provided in (b) of this subsection.

4 (b) If the seller can identify by reasonable and verifiable
5 standards the portion of the selling price attributable to the vapor
6 products from its books and records that are kept in the regular
7 course of business for other purposes including, but not limited to,
8 nontax purposes, the tax imposed by this section only applies to that
9 portion of the selling price of the product attributable to the vapor
10 products.

11 (2)(a) The tax under this section must be collected at the time
12 the distributor: (i) Brings, or causes to be brought, into this state
13 from without the state vapor products for sale; (ii) makes,
14 manufactures, fabricates, or stores vapor products in this state for
15 sale in this state; (iii) ships or transports vapor products to
16 retailers in this state, to be sold by those retailers; or (iv)
17 handles for sale any vapor products that are within this state but
18 upon which tax has not been imposed.

19 (b) The tax imposed under this section must also be collected by
20 the department from the consumer of vapor products where the tax
21 imposed under this section was not paid by the distributor on such
22 vapor products.

23 (3) The moneys collected under this section must be deposited as
24 follows: (a) Sixty percent into the state general fund; and (b) forty
25 percent into the essential public health services account created in
26 section 203 of this act.

27 (4) The department may adopt rules to implement this section.

28 **NEW SECTION.** **Sec. 203.** (1) The essential public health services
29 account is created in the state treasury. The revenue from the tax
30 collected under section 202 of this act must be deposited into the
31 account. Moneys in the account may be spent only after appropriation
32 to the department of health. The department must use the moneys in
33 the account for each of the four following purposes: (a) To fund
34 essential governmental public health services; (b) to fund tobacco
35 control and prevention and other substance use prevention and
36 education; (c) to use to strengthen and support public health system
37 capabilities, including accredited higher education public health
38 programs; and (d) enforcement by the liquor control board of the
39 provisions of House Bill No. 1645 (Z-0382/15) to prevent sales of e-

1 cigarettes and vapor products to minors and related provisions for
2 control of marketing and product safety, provided that no more than
3 12.5 percent of the funds deposited into the account established by
4 this section may be utilized and distributed by the department to the
5 liquor control board for these enforcement purposes.

6 (2) To determine the funding for essential governmental public
7 health services pursuant to subsection (1)(a) of this section, the
8 department of health and representatives of local health
9 jurisdictions must work together to: (a) Arrive at a mutually
10 acceptable allocation and distribution of funds from the account; and
11 (b) determine the best accountability measures to ensure efficient
12 and effective use of funds, emphasizing use of shared services where
13 appropriate.

14 NEW SECTION. **Sec. 204.** See RCW 82.32.805 for the expiration
15 date of new tax preferences for the tax imposed under this chapter.

16 NEW SECTION. **Sec. 205.** It is the intent and purpose of this
17 chapter to levy a tax on all vapor products sold, used, consumed,
18 handled, possessed, or distributed within this state. It is the
19 further intent and purpose of this chapter to impose the tax only
20 once on all vapor products in this state. Nothing in this chapter may
21 be construed to exempt any person taxable under any other law or
22 under any other tax imposed under this title.

23 NEW SECTION. **Sec. 206.** The tax imposed by section 202 of this
24 act does not apply with respect to any vapor products which under the
25 Constitution and laws of the United States may not be made the
26 subject of taxation by this state.

27 NEW SECTION. **Sec. 207.** (1) Every distributor must keep at each
28 place of business complete and accurate records for that place of
29 business, including itemized invoices, of vapor products held,
30 purchased, manufactured, brought in or caused to be brought in from
31 without the state, or shipped or transported to retailers in this
32 state, and of all sales of vapor products made.

33 (2) These records must show the names and addresses of
34 purchasers, the inventory of all vapor products, and other pertinent
35 papers and documents relating to the purchase, sale, or disposition
36 of vapor products. All invoices and other records required by this

1 section to be kept must be preserved for a period of five years from
2 the date of the invoices or other documents or the date of the
3 entries appearing in the records.

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

17 NEW SECTION. **Sec. 208.** Every person required to be licensed
18 under this chapter who sells vapor products to persons other than the
19 ultimate consumer must render with each sale itemized invoices
20 showing the seller's name and address, the purchaser's name and
21 address, the date of sale, and all prices. The person must preserve
22 legible copies of all such invoices for five years from the date of
23 sale.

24 NEW SECTION. **Sec. 209.** (1) Every retailer must procure itemized
25 invoices of all vapor products purchased. The invoices must show the
26 seller's name and address, the date of purchase, and all prices and
27 discounts.

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

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

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

7 NEW SECTION. **Sec. 210.** (1)(a) Where vapor products upon which
8 the tax imposed by this chapter has been reported and paid are
9 shipped or transported outside this state by the distributor to a
10 person engaged in the business of selling vapor products, to be sold
11 by that person, or are returned to the manufacturer by the
12 distributor or destroyed by the distributor, or are sold by the
13 distributor to the United States or any of its agencies or
14 instrumentalities, or are sold by the distributor to any Indian
15 tribal organization, credit of such tax may be made to the
16 distributor in accordance with rules prescribed by the department.

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

19 (i) "Indian distributor" means a federally recognized Indian
20 tribe or tribal entity that would otherwise meet the definition of
21 "distributor" under section 201 of this act, if federally recognized
22 Indian tribes and tribal entities were not excluded from the
23 definition of "person" in section 201 of this act.

24 (ii) "Indian retailer" means a federally recognized Indian tribe
25 or tribal entity that would otherwise meet the definition of
26 "retailer" under section 201 of this act, if federally recognized
27 Indian tribes and tribal entities were not excluded from the
28 definition of "person" in section 201 of this act.

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

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

37 NEW SECTION. **Sec. 211.** All of the provisions contained in
38 chapter 82.32 RCW not inconsistent with the provisions of this

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

3 NEW SECTION. **Sec. 212.** The department must authorize, as duly
4 authorized agents, enforcement officers of the liquor control board
5 to enforce provisions of this chapter. These officers are not
6 employees of the department.

7 NEW SECTION. **Sec. 213.** (1) The department may by rule establish
8 the invoice detail required under section 207 of this act for a
9 distributor under section 201(6)(d) of this act and for those
10 invoices required to be provided to retailers under section 208 of
11 this act.

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

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

20 NEW SECTION. **Sec. 214.** (1) No person may transport or cause to
21 be transported in this state vapor products for sale other than: (a)
22 A licensed distributor in the distributor's own vehicle, a
23 manufacturer's representative authorized to sell or distribute vapor
24 products in this state under section 219 of this act, or a licensed
25 retailer in the retailer's own vehicle; or (b) a person who has given
26 notice to the board in advance of the commencement of transportation.

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

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

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

3 NEW SECTION. **Sec. 215.** (1) The licenses issuable by the board
4 under this chapter are as follows:

5 (a) A distributor's license; and

6 (b) A retailer's license.

7 (2) Application for the licenses must be made through the
8 business licensing system under chapter 19.02 RCW. The board may
9 adopt rules regarding the regulation of the licenses. The board may
10 refuse to issue any license under this chapter if the board has
11 reasonable cause to believe that the applicant has willfully withheld
12 information requested for the purpose of determining the eligibility
13 of the applicant to receive a license, or if the board has reasonable
14 cause to believe that information submitted in the application is
15 false or misleading or is not made in good faith. In addition, for
16 the purpose of reviewing an application for a distributor's license
17 or retailer's license and for considering the denial, suspension, or
18 revocation of any such license, the board may consider criminal
19 conduct of the applicant, including an administrative violation
20 history record with the board and a criminal history record
21 information check within the previous five years, in any state,
22 tribal, or federal jurisdiction in the United States, its
23 territories, or possessions, and the provisions of RCW 9.95.240 and
24 chapter 9.96A RCW do not apply to such cases. The board may, in its
25 discretion, issue or refuse to issue the distributor's license or
26 retailer's license, subject to the provisions of section 220 of this
27 act.

28 (3) No person may qualify for a distributor's license or a
29 retailer's license under this section without first undergoing a
30 criminal background check. The background check must be performed by
31 the board and must disclose any criminal conduct within the previous
32 five years in any state, tribal, or federal jurisdiction in the
33 United States, its territories, or possessions. If the applicant or
34 licensee also has a license issued under chapter 66.24, 82.24, or
35 82.26 RCW, the background check done under the authority of chapter
36 66.24, 82.24, or 82.26 RCW satisfies the requirements of this
37 subsection.

38 (4) Each license issued under this chapter expires on the
39 business license expiration date. The license must be continued

1 annually if the licensee has paid the required fee and complied with
2 all the provisions of this chapter and the rules of the board adopted
3 pursuant to this chapter.

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

8 (6) License issuances and renewals are subject to board authority
9 and the rules adopted under the board including, but not limited to,
10 rights of cities, towns, county legislative authorities, the public,
11 churches, schools, and public institutions that object to or prevent
12 issuance of licenses.

13 NEW SECTION. **Sec. 216.** The board must compile and maintain a
14 current record of the names of all distributors and retailers
15 licensed under this chapter and the status of their license or
16 licenses. The information must be updated on a monthly basis and
17 published on the board's official internet web site. This information
18 is not subject to the confidentiality provisions of RCW 82.32.330 and
19 must be disclosed to manufacturers, distributors, retailers, and the
20 general public upon request.

21 NEW SECTION. **Sec. 217.** (1)(a) No person may engage in or
22 conduct business as a distributor or retailer in this state without a
23 valid license issued under this chapter, except as otherwise provided
24 by law. Any person who sells vapor products to persons other than
25 ultimate consumers or who meets the definition of "distributor" under
26 section 201(6)(d) of this act must obtain a distributor's license
27 under this chapter. Any person who sells vapor products to ultimate
28 consumers must obtain a retailer's license under this chapter.

29 (b) A violation of this subsection (1) is punishable as a class C
30 felony according to chapter 9A.20 RCW.

31 (2)(a) No person engaged in or conducting business as a
32 distributor or retailer in this state may:

33 (i) Refuse to allow the department or the board, on demand, to
34 make a full inspection of any place of business where any of the
35 vapor products taxed under this chapter are sold, stored, or handled,
36 or otherwise hinder or prevent such inspection;

37 (ii) Make, use, or present or exhibit to the department or the
38 board any invoice for any of the vapor products taxed under this

1 chapter that bears an untrue date or falsely states the nature or
2 quantity of the goods invoiced; or

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

8 (b) No person, other than a licensed distributor or retailer, may
9 transport vapor products for sale in this state for which the taxes
10 imposed under this chapter have not been paid unless:

11 (i) Notice of the transportation has been given as required under
12 section 214 of this act;

13 (ii) The person transporting the vapor products actually
14 possesses invoices or delivery tickets showing the true name and
15 address of the consignor or seller, the true name and address of the
16 consignee or purchaser, and the quantity and brands of vapor products
17 being transported; and

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

20 (c) A violation of this subsection (2) is a gross misdemeanor.

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

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

29 NEW SECTION. **Sec. 218.** (1) A retailer that obtains vapor
30 products from an unlicensed distributor or any other person that is
31 not licensed under this chapter must be licensed both as a retailer
32 and a distributor under this chapter and is liable for the tax
33 imposed under section 202 of this act with respect to the vapor
34 products acquired from the unlicensed person that are held for sale,
35 handling, or distribution in this state. For the purposes of this
36 subsection, "person" includes both persons defined in section 201(10)
37 of this act and any person immune from state taxation, such as the
38 United States or its instrumentalities, and federally recognized

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

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

6 NEW SECTION. **Sec. 219.** 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 this chapter 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. 220.** (1) The board must enforce this chapter.
20 The board may adopt, amend, and repeal rules necessary to enforce
21 this chapter.

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

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

1 (4) Any licenses issued under chapter 82.24 or 82.26 RCW to a
2 person whose license or licenses have been suspended or revoked under
3 this section must also be suspended or revoked during the period of
4 suspension or revocation under this section.

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

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

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

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

28 NEW SECTION. **Sec. 221.** (1) Any vapor products in the possession
29 of a person selling vapor products in this state acting as a
30 distributor or retailer and who is not licensed as required under
31 section 217 of this act, or a person who is selling vapor products in
32 violation of section 220(6) of this act, may be seized without a
33 warrant by any agent of the department, agent of the board, or law
34 enforcement officer of this state. Any vapor products seized under
35 this subsection are deemed forfeited.

36 (2) Any vapor products in the possession of a person who is not a
37 licensed distributor or retailer and who transports vapor products
38 for sale without having provided notice to the board required under
39 section 214 of this act, or without invoices or delivery tickets

1 showing the true name and address of the consignor or seller, the
2 true name and address of the consignee or purchaser, and the quantity
3 and brands of vapor products being transported may be seized and are
4 subject to forfeiture.

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

10 (a) A conveyance used by any person as a common or contract
11 carrier having in actual possession invoices or delivery tickets
12 showing the true name and address of the consignor or seller, the
13 true name of the consignee or purchaser, and the quantity and brands
14 of the vapor products transported, unless it appears that the owner
15 or other person in charge of the conveyance is a consenting party or
16 privy to a violation of this chapter;

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

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

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

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

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

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

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

1 NEW SECTION. **Sec. 222.** (1) In all cases of seizure of any vapor
2 products made subject to forfeiture under this chapter, the
3 department or board must proceed as provided in RCW 82.24.135.

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

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

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

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

29 NEW SECTION. **Sec. 223.** When the department or the board has
30 good reason to believe that any of the vapor products taxed under
31 this chapter are being kept, sold, offered for sale, or given away in
32 violation of the provisions of this chapter, it may make affidavit of
33 facts describing the place or thing to be searched, before any judge
34 of any court in this state, and the judge must issue a search warrant
35 directed to the sheriff, any deputy, police officer, or duly
36 authorized agent of the department or the board commanding him or her
37 diligently to search any building, room in a building, place, or
38 vehicle as may be designated in the affidavit and search warrant, and
39 to seize the vapor products and hold them until disposed of by law.

1 NEW SECTION. **Sec. 224.** The taxes imposed by this chapter do not
2 apply to the sale, use, consumption, handling, possession, or
3 distribution of vapor products by an Indian retailer during the
4 effective period of a vapor product tax contract subject to section
5 303 of this act.

6 NEW SECTION. **Sec. 225.** (1) Preexisting inventories of vapor
7 products are subject to the tax imposed in section 202 of this act.
8 All retailers and other distributors must report the tax due under
9 section 202 of this act on preexisting inventories of vapor products
10 on the taxpayer's excise tax return for a reporting period that
11 includes tax liability accruing on and after October 1, 2015,
12 consistent with the taxpayer's regular tax reporting frequency.

13 (2) A retailer required to comply with subsection (1) of this
14 section is not required to obtain a distributor's license as
15 otherwise required under this chapter as long as the retailer: (a)
16 Does not sell vapor products other than to ultimate consumers; and
17 (b) does not meet the definition of "distributor" in section
18 201(6)(d) of this act other than with respect to the sale of that
19 retailer's preexisting inventory of vapor products.

20 (3) Taxes may not be collected under section 202(2)(b) of this
21 act from consumers with respect to any vapor products acquired before
22 the effective date of section 202 of this act.

23 (4) For purposes of this section:

24 (a) The definitions in section 201 of this act apply; and

25 (b) "Preexisting inventory" means an inventory of vapor products
26 located in this state as of the moment that section 202 of this act
27 takes effect and held by a distributor for sale, handling, or
28 distribution in this state.

29 **Sec. 226.** RCW 66.08.145 and 2007 c 221 s 1 are each amended to
30 read as follows:

31 (1) The liquor control board may issue subpoenas in connection
32 with any investigation, hearing, or proceeding for the production of
33 books, records, and documents held under this chapter or chapters
34 70.155, 70.158, 82.24, ~~((and)) 82.26, and 82.--~~ RCW (the new chapter
35 created in section 403 of this act), and books and records of common
36 carriers as defined in RCW 81.80.010, or vehicle rental agencies
37 relating to the transportation or possession of cigarettes or other
38 tobacco products.

1 (2) The liquor control board may designate individuals authorized
2 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. 227.** 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, and 82.-- RCW
36 (the new chapter created in section 403 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, and 82.-- RCW (the new
10 chapter created in section 403 of this act). They (~~shall~~) have the
11 power to arrest without a warrant any person or persons found in the
12 act of violating any of the penal provisions of this title or of any
13 penal law of this state relating to the manufacture, importation,
14 transportation, possession, distribution and sale of liquor, and the
15 provisions of chapters 82.24 (~~and~~), 82.26, and 82.-- RCW (the new
16 chapter created in section 403 of this act).

17 **Sec. 228.** 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 (~~(or)~~), 82.26, or 82.-- RCW (the new
14 chapter created in section 403 of this act), the background check
15 done under the authority of chapter 66.24 (~~(or)~~), 82.26, or 82.-- RCW
16 (the new chapter created in section 403 of this act) satisfies the
17 requirements of this section.

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

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

27 **Sec. 229.** RCW 82.24.550 and 2009 c 154 s 2 are each amended to
28 read as follows:

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

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

38 (3) A license (~~(shall)~~) may not be suspended or revoked except
39 upon notice to the licensee and after a hearing as prescribed by the

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

11 (4) Any licenses issued under chapter 82.26 or 82.-- RCW (the new
12 chapter created in section 403 of this act) to a person whose license
13 or licenses have been suspended or revoked under this section
14 (~~shall~~) must also be suspended or revoked during the period of
15 suspension or revocation under this section.

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

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

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

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

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

1 **Sec. 230.** 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 82.-- RCW (the new chapter created in section 403 of
28 this act) are subject to suspension or revocation, by the department
29 or board.

30 **Sec. 231.** RCW 82.26.080 and 2005 c 180 s 5 are each amended to
31 read as follows:

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

36 (2) The retailer (~~shall~~) must keep at each retail outlet copies
37 of complete, accurate, and legible invoices for that retail outlet or
38 place of business. All invoices required to be kept under this

1 section (~~shall~~) must be preserved for five years from the date of
2 purchase.

3 (3) At any time during usual business hours the department,
4 board, or its duly authorized agents or employees may enter any
5 retail outlet without a search warrant, and inspect the premises for
6 invoices required to be kept under this section and the tobacco
7 products contained in the retail outlet, to determine whether or not
8 all the provisions of this chapter are being fully complied with. If
9 the department, board, or any of its agents or employees, are denied
10 free access or are hindered or interfered with in making the
11 inspection, the registration certificate issued under RCW 82.32.030
12 of the retailer at the premises is subject to revocation, and any
13 licenses issued under this chapter or chapter 82.24 or 82.-- RCW (the
14 new chapter created in section 403 of this act) are subject to
15 suspension or revocation by the department.

16 **Sec. 232.** 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 (~~(or)~~), 82.24,
10 or 82.-- RCW (the new chapter created in section 403 of this act),
11 the background check done under the authority of chapter 66.24
12 (~~(or)~~), 82.24, or 82.-- RCW (the new chapter created in section 403
13 of this act) satisfies the requirements of this section.

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

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

23 **Sec. 233.** RCW 82.26.220 and 2009 c 154 s 8 are each amended to
24 read as follows:

25 (1) The board (~~(shall)~~) must enforce this chapter. The board may
26 adopt, amend, and repeal rules necessary to enforce and administer
27 this chapter.

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

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

1 consecutive business days, and in the case of a second or further
2 offense, suspend the license or licenses for a period of not less
3 than ninety consecutive business days but not more than twelve
4 months, and in the event the board finds the licensee has been guilty
5 of willful and persistent violations, it may revoke the license or
6 licenses.

7 (4) Any licenses issued under chapter 82.24 or 82.-- RCW (the new
8 chapter created in section 403 of this act) to a person whose license
9 or licenses have been suspended or revoked under this section
10 (~~shall~~) must also be suspended or revoked during the period of
11 suspension or revocation under this section.

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

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

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

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

35 **Sec. 234.** RCW 82.32.300 and 1997 c 420 s 9 are each amended to
36 read as follows:

37 (1) The administration of this and chapters 82.04 through 82.27
38 RCW of this title is vested in the department (~~of revenue which~~
39 ~~shall~~), which must prescribe forms and rules of procedure for the

1 determination of the taxable status of any person, for the making of
2 returns and for the ascertainment, assessment and collection of taxes
3 and penalties imposed thereunder.

4 (2) The department of revenue (~~shall~~) must make and publish
5 rules and regulations, not inconsistent therewith, necessary to
6 enforce provisions of this chapter and chapters 82.02 through 82.23B
7 and 82.27 RCW, and the liquor control board (~~shall~~) must make and
8 publish rules necessary to enforce chapters 82.24 (~~and~~), 82.26, and
9 82.-- RCW (the new chapter created in section 403 of this act), which
10 (~~shall~~) must have the same force and effect as if specifically
11 included therein, unless declared invalid by the judgment of a court
12 of record not appealed from.

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

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

21 **PART III**
22 **Tribal Compacting**

23 **Sec. 301.** RCW 43.06.450 and 2001 c 235 s 1 are each amended to
24 read as follows:

25 The legislature intends to further the government-to-government
26 relationship between the state of Washington and Indians in the state
27 of Washington by authorizing the governor to enter into contracts
28 concerning the sale of cigarettes and vapor products. The legislature
29 finds that these cigarette tax and vapor product tax contracts will
30 provide a means to promote economic development, provide needed
31 revenues for tribal governments and Indian persons, and enhance
32 enforcement of the state's cigarette tax (~~law~~) and vapor product
33 tax, ultimately saving the state money and reducing conflict. In
34 addition, it is the intent of the legislature that the negotiations
35 and the ensuing contracts (~~shall~~) have no impact on the state's
36 share of the proceeds under the master settlement agreement entered
37 into on November 23, 1998, by the state. Chapter 235, Laws of 2001
38 (~~does~~) and this act do not constitute a grant of taxing authority

1 to any Indian tribe nor (~~does it~~) do they provide precedent for the
2 taxation of non-Indians on fee land.

3 NEW SECTION. **Sec. 302.** A new section is added to chapter 43.06
4 RCW to read as follows:

5 (1) The governor may enter into vapor product tax contracts
6 concerning the sale of vapor products. All vapor product tax
7 contracts must meet the requirements for vapor product tax contracts
8 under this section.

9 (2) Vapor product tax contracts must be in regard to retail sales
10 in which Indian retailers make delivery and physical transfer of
11 possession of the vapor products from the seller to the buyer within
12 Indian country, and are not in regard to transactions by non-Indian
13 retailers. In addition, contracts must provide that retailers may not
14 sell or give, or permit to be sold or given, vapor products to any
15 person under the age of eighteen years.

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

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

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

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

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

34 (d) A tribal manufacturer.

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

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

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

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

6 (9) The governor may delegate the power to negotiate vapor
7 product tax contracts to the department of revenue. The department of
8 revenue must consult with the liquor control board during the
9 negotiations.

10 (10) Information received by the state or open to state review
11 under the terms of a contract is subject to the provisions of RCW
12 82.32.330.

13 (11) It is the intent of the legislature that the liquor control
14 board and the department of revenue continue the division of duties
15 and shared authority under chapter 82.-- RCW (the new chapter created
16 in section 403 of this act) and therefore the liquor control board is
17 responsible for enforcement activities that come under the terms of
18 chapter 82.-- RCW (the new chapter created in section 403 of this
19 act).

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

33 (13) For purposes of this section and sections 303 and 305
34 through 307 of this act:

35 (a) "Essential government services" means services such as tribal
36 administration, public facilities, fire, police, public health,
37 education, job services, sewer, water, environmental and land use,
38 transportation, utility services, and economic development;

39 (b) "Indian country" has the same meaning as in RCW 82.24.010;

1 (c) "Indian retailer" or "retailer" means: (i) A retailer wholly
2 owned and operated by an Indian tribe; (ii) a business wholly owned
3 and operated by a tribal member and licensed by the tribe; or (iii) a
4 business owned and operated by the Indian person or persons in whose
5 name the land is held in trust;

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

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

11 NEW SECTION. **Sec. 303.** A new section is added to chapter 43.06
12 RCW to read as follows:

13 (1) The governor is authorized to enter into vapor product tax
14 contracts with federally recognized Indian tribes located within the
15 geographical boundaries of the state of Washington, except the
16 Puyallup Tribe of Indians. Each contract adopted under this section
17 must provide that the tribal vapor product tax rate be one hundred
18 percent of the state vapor product tax and state and local sales and
19 use taxes. The tribal vapor product tax is in lieu of the state vapor
20 product tax and state and local sales and use taxes, as provided in
21 section 302(3) of this act.

22 (2) A vapor product tax contract under this section is subject to
23 section 302 of this act.

24 NEW SECTION. **Sec. 304.** A new section is added to chapter 43.06
25 RCW to read as follows:

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

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

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

8 (3) The agreement must include a provision requiring the tribe to
9 transmit thirty percent of the tribal tax revenue on all vapor
10 products sales to the state. The funds must be transmitted to the
11 state treasurer on a quarterly basis for deposit by the state
12 treasurer into the general fund. The remaining tribal tax revenue
13 must be used for essential government services, as that term is
14 defined in section 302 of this act.

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

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

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

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

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

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

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

1 (c) The agreement must include provisions for sharing of
2 information among the tribe, the department of revenue, and the
3 liquor control board.

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

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

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

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

24 (11) It is the intent of the legislature that the liquor control
25 board and the department of revenue continue the division of duties
26 and shared authority under chapter 82.-- RCW (the new chapter created
27 in section 403 of this act).

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

30 (a) "Indian country" has the same meaning as provided in chapter
31 82.24 RCW.

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

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

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

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

39 (d) "Vapor products" has the same meaning as in section 201 of
40 this act.

1 NEW SECTION. **Sec. 403.** Sections 201 through 225 and 307 of this
2 act constitute a new chapter in Title 82 RCW.

3 NEW SECTION. **Sec. 404.** This act takes effect October 1, 2015.

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