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**SENATE BILL 5573**

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**State of Washington**

**64th Legislature**

**2015 Regular Session**

**By** Senators Frockt, Rivers, Mullet, Hargrove, Hobbs, Keiser, Pedersen, Kohl-Welles, and McAuliffe; by request of Governor Inslee and Attorney General

Read first time 01/26/15. Referred to Committee on Health Care.

1 AN ACT Relating to youth substance use prevention associated with  
2 tobacco and drug delivery e-cigarettes and vapor products; amending  
3 RCW 26.28.080, 28A.210.310, 70.155.010, 70.155.020, 70.155.030,  
4 70.155.050, 70.155.070, 70.155.080, 70.155.090, 70.155.100,  
5 70.155.110, 70.155.120, 70.155.130, 70.155.140, 66.08.145, 66.44.010,  
6 82.24.510, 82.24.530, 82.24.550, 82.26.060, 82.26.080, 82.26.150,  
7 82.26.170, 82.26.220, 82.32.300, and 43.06.450; adding new sections  
8 to chapter 70.155 RCW; adding new sections to chapter 43.06 RCW;  
9 adding a new section to chapter 82.08 RCW; adding a new section to  
10 chapter 82.12 RCW; adding a new chapter to Title 82 RCW; creating new  
11 sections; prescribing penalties; providing an effective date; and  
12 providing an expiration date.

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

14 **PART I**  
15 **Findings**

16 NEW SECTION. **Sec. 101.** (1) The legislature finds that the use  
17 of vapor inhalation products, such as e-cigarettes, e-devices, and  
18 vape pens, has risen at an alarming rate both among adults and youth.  
19 Vapor products pose a serious public health risk because of the  
20 addictiveness of nicotine, the impact of nicotine on fetal

1 development and adolescent brain development, the risk of liquid  
2 nicotine poisoning, and exposure to carcinogens and other toxic  
3 chemicals. Specifically, the legislature finds:

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

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

24 (i) Most vapor products contain nicotine, a fast-acting drug that  
25 the United States surgeon general has found to be as addictive as  
26 cocaine and heroin. For young people in particular, vapor products  
27 may act as a gateway to cigarettes or other combustible tobacco  
28 products, which are the leading cause of preventable disease,  
29 disability, and death. Studies are confirming this trend; one in five  
30 middle school students who had tried e-cigarettes had never tried  
31 conventional cigarettes.

32 (ii) While the health impacts of vapor products are still being  
33 studied, studies have found that many vapor products contain  
34 carcinogens and toxic chemicals, including cadmium, formaldehyde, and  
35 lead. Depending on the type of device, the vapor may also contain  
36 metals and other materials from the device components.

37 (iii) Vapor products have some of the same negative health  
38 impacts on developing fetuses and infants as combustible tobacco  
39 products, including preterm delivery, stillbirth, problems feeding,  
40 delayed physical and mental development, impaired learning, and

1 memory loss. During adolescence, exposure to nicotine may have  
2 lasting consequences for brain development.

3 (iv) When ingested or absorbed through the skin, even small  
4 amounts of liquid nicotine may be toxic or even fatal to children. In  
5 Washington, poison center calls related to e-cigarettes have  
6 increased from two in 2010 to one hundred forty-four in the first  
7 nine months of 2014, ninety-seven of which involved children. Of the  
8 calls involving children, eighty-four percent were one to three years  
9 old.

10 (v) There is no scientific evidence that vapor products are an  
11 effective long-term smoking cessation aid. People who use vapor  
12 products often continue to use combustible tobacco products. In  
13 addition, e-cigarettes may renormalize smoking behavior and serve as  
14 a reinitiation to smoking by former smokers.

15 (c) Vapor products are particularly appealing to young people, in  
16 part because they are widely available, have a high-technology  
17 design, and are marketed with fruit and candy flavors, like bubble  
18 gum and cotton candy. E-cigarette advertisements use celebrities and  
19 appear on television, the internet, and social media.

20 (d) Vapor products are largely unregulated today. Because of  
21 federal inaction, consumers do not have access to information about  
22 the contents of the vapor products they use, including the  
23 concentration of nicotine and other potentially harmful chemicals. An  
24 analysis performed by the food and drug administration found that the  
25 quality control processes used to manufacture e-cigarettes were  
26 inconsistent or nonexistent and that cartridges labeled as having no  
27 nicotine did have low levels of nicotine present.

28 (e) Existing regulatory efforts aimed at alcohol and cigarettes  
29 provide models for reducing the availability and appeal of vapor  
30 products to youth. Because of the appeal of sweetened products to  
31 young people, flavored cigarettes are banned at the federal level,  
32 and two major cities have banned flavored tobacco products. Studies  
33 have shown that smokers who are seventeen years old are three times  
34 as likely to use flavored cigarettes as smokers over the age of  
35 twenty-five. Documents obtained during litigation against the tobacco  
36 industry reveal that tobacco companies have used fruit, candy, and  
37 alcohol flavors as a way to target youth. Tobacco industry documents  
38 state that "sweetness can impart a different delivery taste dimension  
39 which younger adults may be receptive to," that it is "a well known  
40 fact that teenagers like sweet products," and that flavored products

1 would have appeal "in the under 35 age group, especially in the 14-24  
2 group." The tobacco industry uses flavored products as a "graduation  
3 strategy" to encourage new users to start with products with lower  
4 levels of nicotine and progress to products with higher levels of  
5 nicotine.

6 (f) Several countries, including Canada and Mexico, prohibit the  
7 sale of e-cigarettes, and in the face of federal inaction, states and  
8 municipalities in the United States have begun enacting laws to  
9 restrict access to vapor products. For example, most states prohibit  
10 the sale of vapor products to minors, and several counties in  
11 Washington have enacted ordinances that comprehensively regulate the  
12 sale and use of electronic smoking devices in their jurisdictions.

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

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

29 (2) 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, reducing youth access to addictive nicotine products, and  
33 preventing nicotine poisonings of children.

34 **Youth Access to Vapor Products**

35 **Sec. 102.** RCW 26.28.080 and 2013 c 47 s 1 are each amended to  
36 read as follows:

37 (1) (~~Every~~) A person who sells or gives, or permits to be sold  
38 or given, to (~~any~~) a person under the age of eighteen years any

1 cigar, cigarette, cigarette paper or wrapper, tobacco in any form, or  
2 a vapor product is guilty of a gross misdemeanor.

3 (2) It (~~shall be no~~) is not a defense to a prosecution for a  
4 violation of this section that the person acted, or was believed by  
5 the defendant to act, as agent or representative of another.

6 (3) For the purposes of this section, "vapor product" (~~means a~~  
7 ~~noncombustible tobacco derived product containing nicotine that~~  
8 ~~employs a mechanical heating element, battery, or circuit, regardless~~  
9 ~~of shape or size, that can be used to heat a liquid nicotine solution~~  
10 ~~contained in cartridges. Vapor product does not include any product~~  
11 ~~that is regulated by the United States food and drug administration~~  
12 ~~under chapter V of the federal food, drug, and cosmetic act~~) has the  
13 same meaning as provided in RCW 70.155.010.

14 **Sec. 103.** RCW 28A.210.310 and 1997 c 9 s 1 are each amended to  
15 read as follows:

16 (1) To protect children in the public schools of this state from  
17 exposure to the addictive substance of nicotine, each school district  
18 board of directors (~~shall~~) must have a written policy mandating a  
19 prohibition on the use of all tobacco products and vapor products on  
20 public school property.

21 (2) The policy in subsection (1) of this section (~~shall~~) must  
22 include, but not be limited to, a requirement that students and  
23 school personnel be notified of the prohibition, the posting of signs  
24 prohibiting the use of tobacco products and vapor products, sanctions  
25 for students and school personnel who violate the policy, and a  
26 requirement that school district personnel enforce the prohibition.  
27 Enforcement policies adopted in the school board policy (~~shall be~~)  
28 are in addition to the enforcement provisions in RCW 70.160.070.

29 (3) For purposes of this section, "vapor product" means any: (a)  
30 Device that employs a battery or other mechanism to heat a solution  
31 or substance to produce a vapor or aerosol intended for inhalation;  
32 (b) cartridge or container of a solution or substance intended to be  
33 used with or in such a device or to refill such a device; or (c)  
34 solution or substance intended for use in such a device, including,  
35 but not limited to, concentrated nicotine. "Vapor product" includes  
36 any electronic cigarettes, electronic nicotine delivery systems,  
37 electronic cigars, electronic cigarillos, electronic pipes, vape  
38 pens, or similar products or devices, as well as any parts that can  
39 be used to build such products or devices. "Vapor product" does not

1 include any drug, device, or combination product approved for sale by  
2 the United States food and drug administration that is marketed and  
3 sold for such approved purpose.

4 **Sec. 104.** RCW 70.155.010 and 2009 c 278 s 1 are each amended to  
5 read as follows:

6 The definitions ~~((set forth))~~ in this section and RCW 82.24.010  
7 ~~((shall apply to this chapter. In addition, for the purposes of this~~  
8 ~~chapter, unless otherwise required by the context:))~~ apply throughout  
9 this chapter unless the context clearly requires otherwise.

10 (1) "Board" means the Washington state liquor control board.

11 (2) "Characterizing flavor" means a distinguishable taste or  
12 smell related to fruit, chocolate, vanilla, honey, candy, cocoa, or  
13 dessert that emanates from or is imparted by a vapor product or the  
14 vapor or aerosol emitted by the vapor product at any time prior to,  
15 during, or after the use of a vapor product. "Characterizing flavor"  
16 does not include flavors related to menthol, wintergreen, or mint.

17 (3) "Concentrated nicotine" means any solution or substance with  
18 a nicotine concentration greater than ten milligrams per milliliter.

19 (4) "Department" means the department of health.

20 (5) "Distributor" means a distributor as defined in RCW 82.26.010  
21 or section 201 of this act.

22 (6) "Flavored vapor product" means a vapor product that imparts  
23 or from which emanates a characterizing flavor.

24 (7) "Internet" means any computer network, telephonic network, or  
25 other electronic network.

26 ~~((3))~~ (8) "Manufacturer" means any person, including but not  
27 limited to a repacker or relabeler, who manufactures, fabricates,  
28 assembles, processes, or labels a vapor product or who imports a  
29 finished vapor product for sale or distribution into the United  
30 States. Manufacturer includes any retail establishment that mixes, or  
31 permits customers to mix, flavors or solutions.

32 (9) "Minor" refers to an individual who is less than eighteen  
33 years old.

34 ~~((4))~~ (10) "Packaging" means a pack, box, carton, wrapping, or  
35 container of any kind in which a vapor product is sold or offered for  
36 sale to a consumer.

37 (11) "Person" means any natural person, partnership, firm, joint  
38 stock company, corporation, or other legal entity, including an  
39 employee of any such entity.

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

3 (13) "Sale" means any transfer, exchange, or barter, in any  
4 manner or by any means, for consideration, and includes all sales  
5 made by any person. "Sale" includes a gift by a person engaged in the  
6 business of selling tobacco products or vapor products for  
7 advertising, promoting, or as a means of evading the provisions of  
8 this chapter.

9 (14) "Sample" means a tobacco product distributed to members of  
10 the general public at no cost or at nominal cost for product  
11 promotion purposes.

12 ~~((+5))~~ (15) "Sampling" means the distribution of samples to  
13 members of the public.

14 ~~((+6))~~ (16) "Tobacco product" means a product that contains  
15 tobacco and is intended for human use, including any product defined  
16 in RCW 82.24.010(2) or 82.26.010(~~((+1))~~) (21), except that for the  
17 purposes of RCW 70.155.140 only, "tobacco product" does not include  
18 cigars defined in RCW 82.26.010 as to which one thousand units weigh  
19 more than three pounds.

20 (17) "Vapor product" means any: (a) Device that employs a battery  
21 or other mechanism to heat a solution or substance to produce a vapor  
22 or aerosol intended for inhalation; (b) cartridge or container of a  
23 solution or substance intended to be used with or in such a device or  
24 to refill such a device; or (c) solution or substance intended for  
25 use in such a device, including, but not limited to, concentrated  
26 nicotine. "Vapor product" includes any electronic cigarettes,  
27 electronic nicotine delivery systems, electronic cigars, electronic  
28 cigarillos, electronic pipes, vape pens, or similar products or  
29 devices, as well as any parts that can be used to build such products  
30 or devices. "Vapor product" does not include any drug, device, or  
31 combination product approved for sale by the United States food and  
32 drug administration that is marketed and sold for such approved  
33 purpose.

34 **Sec. 105.** RCW 70.155.020 and 1993 c 507 s 3 are each amended to  
35 read as follows:

36 A person who holds a license issued under RCW 82.24.520 (~~((+))~~),  
37 82.24.530 (~~((shall))~~), or section 215 of this act must:

38 (1) Display the license or a copy in a prominent location at the  
39 outlet for which the license is issued; and

1       (2)(a) Display a sign concerning the prohibition of tobacco  
2 product and vapor product sales to minors.

3       (b) Such sign (~~(shall)~~) must:

4       (~~(a)~~) (i) Be posted so that it is clearly visible to anyone  
5 purchasing tobacco products or vapor products from the licensee;

6       (~~(b)~~) (ii) Be designed and produced by the department of health  
7 to read: "THE SALE OF TOBACCO PRODUCTS AND VAPOR PRODUCTS TO PERSONS  
8 UNDER AGE 18 IS STRICTLY PROHIBITED BY STATE LAW. IF YOU ARE UNDER  
9 18, YOU COULD BE PENALIZED FOR PURCHASING A TOBACCO PRODUCT OR A  
10 VAPOR PRODUCT; PHOTO ID REQUIRED"; and

11       (~~(c)~~) (iii) Be provided free of charge by the (~~(liquor~~  
12 ~~control)~~) board.

13       NEW SECTION. Sec. 106. A new section is added to chapter 70.155  
14 RCW to read as follows:

15       A person who holds a license issued under section 215 of this act  
16 must conduct the business and maintain the premises in compliance  
17 with Titles 9 and 9A RCW and chapter 69.50 RCW.

18       **Sec. 107.** RCW 70.155.030 and 1994 c 202 s 1 are each amended to  
19 read as follows:

20       Unless preempted by federal law, no person (~~(shall)~~) may sell or  
21 permit to be sold any tobacco product or vapor product through any  
22 device that mechanically dispenses tobacco products or vapor products  
23 unless the device is located fully within premises from which minors  
24 are prohibited or in industrial worksites where minors are not  
25 employed and not less than ten feet from all entrance or exit ways to  
26 and from each premises. The board (~~(shall)~~) must adopt rules that  
27 allow an exception to the requirement that a device be located not  
28 less than ten feet from all entrance or exit ways to and from a  
29 premises if it is architecturally impractical for the device to be  
30 located not less than ten feet from all entrance and exit ways.

31       **Sec. 108.** RCW 70.155.050 and 2006 c 14 s 3 are each amended to  
32 read as follows:

33       (1) Unless preempted by federal law, no person may engage in the  
34 business of sampling tobacco products or vapor products.

35       (2) A violation of this section is a misdemeanor.



1       **Sec. 109.** RCW 70.155.070 and 1993 c 507 s 8 are each amended to  
2 read as follows:

3       No person (~~shall~~) may give or distribute vapor products,  
4 cigarettes, or other tobacco products to a person by a coupon if such  
5 coupon is redeemed in any manner that does not require an in-person  
6 transaction in a retail store.

7       NEW SECTION. **Sec. 110.** A new section is added to chapter 70.155  
8 RCW to read as follows:

9       (1) The department must adopt a rule regulating the labeling and  
10 advertisement of vapor products.

11       (a) The rule must require a manufacturer that sells, offers for  
12 sale, or distributes a vapor product to label the vapor product with  
13 a: (i) Disclosure of the nicotine content of the vapor product,  
14 measured in milligrams per milliliter and verified by an independent  
15 laboratory certified by the board; and (ii) warning regarding the  
16 harmful effects of nicotine.

17       (b) In addition, the rule must require a manufacturer that  
18 advertises a vapor product to include in any advertisement a: (i)  
19 Disclosure of the nicotine content of the vapor product, measured in  
20 milligrams per milliliter and verified by an independent laboratory  
21 certified by the board; and (ii) warning regarding the harmful  
22 effects of nicotine.

23       (c) If, following the study required by section 124(1) of this  
24 act, the department determines that vapor product constituents or  
25 ingredients or vapor product aerosol constituents other than nicotine  
26 pose a risk of harm to human health, the department must require the  
27 warnings described in (a) and (b) of this subsection to include  
28 information related to such harmful constituents or ingredients.

29       (2) The board must: (a) Designate criteria and a process for  
30 certifying independent laboratories that are authorized to perform  
31 testing of nicotine content; and (b) coordinate with the department  
32 to provide informational materials and programs to enable vapor  
33 product manufacturers to meet the requirements of the rule adopted by  
34 the department.

35       NEW SECTION. **Sec. 111.** A new section is added to chapter 70.155  
36 RCW to read as follows:

1 (1) No person may offer a tobacco product or a vapor product for  
2 sale in an open, unsecured display that is accessible to the public  
3 without the intervention of a store employee.

4 (2) This section does not apply to a person licensed under RCW  
5 82.24.520, 82.24.530, or section 215 of this act if the person  
6 ensures that minors are not present or permitted to enter the  
7 premises.

8 NEW SECTION. **Sec. 112.** A new section is added to chapter 70.155  
9 RCW to read as follows:

10 (1) Unless preempted by federal law, any substance intended for  
11 use in a vapor product that is sold at retail in this state must  
12 satisfy the child-resistant effectiveness standards under 16 C.F.R.  
13 Sec. 1700, as it existed on the effective date of this section, or  
14 such subsequent date as may be provided by the board by rule,  
15 consistent with the purposes of this section.

16 (2) A manufacturer that knowingly sells or distributes a  
17 substance intended for use in a vapor product that does not satisfy  
18 the requirements of this section is guilty of a class C felony.

19 NEW SECTION. **Sec. 113.** A new section is added to chapter 70.155  
20 RCW to read as follows:

21 (1) A person may not sell, offer for sale, or possess with intent  
22 to sell or offer for sale any flavored vapor product within the  
23 state.

24 (2) A vapor product is presumed to be a flavored vapor product  
25 if:

26 (a) A manufacturer or any of the manufacturer's agents or  
27 employees have made a public statement or claim that the vapor  
28 product has or produces a characterizing flavor including, but not  
29 limited to, text or images on the product's label or packaging that  
30 is used explicitly or implicitly to communicate information about the  
31 flavor, taste, aroma, or smell of a vapor product; or

32 (b) A manufacturer or any of the manufacturer's agents or  
33 employees have taken actions directed to consumers that would  
34 reasonably be expected to result in consumers believing that the  
35 vapor product imparts a characterizing flavor.

36 (3) A vapor product retailer must maintain on the premises the  
37 original labeling and packaging provided by the manufacturer for all  
38 vapor products that are sold or offered for sale by the establishment

1 separately from the original packaging designed for retail sale to  
2 the consumer. The original labeling and packaging from which the  
3 contents are sold separately must be maintained during such time as  
4 the contents of the package are offered for sale and may be disposed  
5 of upon the sale of the entire contents of such package.

6 NEW SECTION. **Sec. 114.** A new section is added to chapter 70.155  
7 RCW to read as follows:

8 A person may not sell, offer for sale, or possess with intent to  
9 sell or offer for sale any vapor product within the state that  
10 contains a substance that increases the absorption of nicotine or  
11 other psychoactive chemicals, as determined by the department.

12 **Sec. 115.** RCW 70.155.080 and 2002 c 175 s 47 are each amended to  
13 read as follows:

14 (1) A person under the age of eighteen who purchases or attempts  
15 to purchase, possesses, or obtains or attempts to obtain cigarettes  
16 (~~(or)~~), tobacco products, or vapor products commits a class 3 civil  
17 infraction under chapter 7.80 RCW and is subject to a fine as set out  
18 in chapter 7.80 RCW or participation in up to four hours of community  
19 restitution, or both. The court may also require participation in a  
20 (~~(smoking)~~) cessation program. This provision does not apply if a  
21 person under the age of eighteen, with parental authorization, is  
22 participating in a controlled purchase as part of a (~~(liquor~~  
23 ~~control)~~) board, law enforcement, or local health department  
24 activity.

25 (2) Municipal and district courts within the state have  
26 jurisdiction for enforcement of this section.

27 **Sec. 116.** RCW 70.155.090 and 2006 c 14 s 4 are each amended to  
28 read as follows:

29 (1) Where there may be a question of a person's right to purchase  
30 or obtain tobacco products by reason of age, the retailer or agent  
31 thereof(~~(, shall)~~) must require the purchaser to present any one of  
32 the following officially issued identification that shows the  
33 purchaser's age and bears his or her signature and photograph: (a)  
34 (~~(Liquor control authority card of identification of a state or~~  
35 ~~province of Canada; (b))~~) Driver's license, instruction permit, or  
36 identification card of a state or province of Canada; ((e)) (b)  
37 "identocard" issued by the Washington state department of licensing

1 under chapter 46.20 RCW; ~~((d))~~ (c) United States military  
2 identification; ~~((e))~~ (d) passport; ~~((f))~~ (e) enrollment card,  
3 issued by the governing authority of a federally recognized Indian  
4 tribe located in Washington, that incorporates security features  
5 comparable to those implemented by the department of licensing for  
6 Washington drivers' licenses. At least ninety days prior to  
7 implementation of an enrollment card under this subsection, the  
8 appropriate tribal authority ~~((shall))~~ must give notice to the board.  
9 The board ~~((shall))~~ must publish and communicate to licensees  
10 regarding the implementation of each new enrollment card; or ~~((g))~~  
11 (f) merchant marine identification card issued by the United States  
12 coast guard.

13 (2) It is a defense to a prosecution under RCW 26.28.080 that the  
14 person making a sale reasonably relied on any of the officially  
15 issued identification as defined in subsection (1) of this section.  
16 The ~~((liquor control))~~ board ~~((shall))~~ must waive the suspension or  
17 revocation of a license if the licensee clearly establishes that he  
18 or she acted in good faith to prevent violations and a violation  
19 occurred despite the licensee's exercise of due diligence.

20 **Sec. 117.** RCW 70.155.100 and 2006 c 14 s 5 are each amended to  
21 read as follows:

22 (1) The ~~((liquor control))~~ board may suspend or revoke a  
23 retailer's license issued under RCW 82.24.510(1)(b) or section  
24 215(1)(b) of this act held by a business at any location, or may  
25 impose a monetary penalty as set forth in subsection (2) of this  
26 section, if the ~~((liquor control))~~ board finds that the licensee has  
27 violated RCW 26.28.080, 70.155.020(~~(, 70.155.030, 70.155.040,~~  
28 ~~70.155.050, 70.155.070, or 70.155.090)~~) through 70.155.070,  
29 70.155.090, sections 111 through 114 of this act, or 21 C.F.R. Sec.  
30 1140.14 as it exists on the effective date of this section.

31 (2) The sanctions that the ~~((liquor control))~~ board may impose  
32 against a person licensed under RCW ~~((82.24.530))~~ 82.24.510(1)(b) or  
33 section 215(1)(b) of this act based upon one or more findings under  
34 subsection (1) of this section may not exceed the following:

35 (a) For violations of RCW 26.28.080 ~~((or))~~, 70.155.020, sections  
36 112 through 114 of this act, or 21 C.F.R. Sec. 1140.14, and for  
37 violations of RCW 70.155.040 occurring on the licensed premises:

38 (i) A monetary penalty of ~~((one))~~ two hundred dollars for the  
39 first violation within any ~~((two))~~ three-year period;

1 (ii) A monetary penalty of (~~three~~) six hundred dollars for the  
2 second violation within any (~~two~~) three-year period;

3 (iii) A monetary penalty of (~~one~~) two thousand dollars and  
4 suspension of the license for a period of six months for the third  
5 violation within any (~~two~~) three-year period;

6 (iv) A monetary penalty of (~~one~~) three thousand (~~five~~  
7 ~~hundred~~) dollars and suspension of the license for a period of  
8 twelve months for the fourth violation within any (~~two~~) three-year  
9 period;

10 (v) Revocation of the license with no possibility of  
11 reinstatement for a period of five years for the fifth or more  
12 violation within any (~~two~~) three-year period;

13 (b) For violations of section 106 of this act, suspension or  
14 revocation of the license;

15 (c) For violations of RCW 70.155.030, a monetary penalty in the  
16 amount of (~~one~~) two hundred dollars for each day upon which such  
17 violation occurred;

18 (~~(c) For violations of RCW 70.155.040 occurring on the licensed~~  
19 ~~premises;~~

20 (~~(i) A monetary penalty of one hundred dollars for the first~~  
21 ~~violation within any two-year period;~~

22 (~~(ii) A monetary penalty of three hundred dollars for the second~~  
23 ~~violation within any two-year period;~~

24 (~~(iii) A monetary penalty of one thousand dollars and suspension~~  
25 ~~of the license for a period of six months for the third violation~~  
26 ~~within any two-year period;~~

27 (~~(iv) A monetary penalty of one thousand five hundred dollars and~~  
28 ~~suspension of the license for a period of twelve months for the~~  
29 ~~fourth violation within any two-year period;~~

30 (~~(v) Revocation of the license with no possibility of~~  
31 ~~reinstatement for a period of five years for the fifth or more~~  
32 ~~violation within any two-year period;))~~

33 (d) For violations of RCW 70.155.050 or section 111 of this act,  
34 a monetary penalty in the amount of (~~three~~) six hundred dollars for  
35 each violation;

36 (e) For violations of RCW 70.155.070, a monetary penalty in the  
37 amount of (~~one~~) two thousand dollars for each violation.

38 (3) The (~~liquor control~~) board may impose a monetary penalty  
39 upon any person other than a licensed cigarette or vapor product  
40 retailer if the (~~liquor control~~) board finds that the person has

1 violated RCW 26.28.080, 70.155.020(~~(, 70.155.030, 70.155.040,~~  
2 ~~70.155.050, 70.155.070, or 70.155.090))~~ through 70.155.070,  
3 70.155.090, or sections 111 through 114 of this act.

4 (4) The monetary penalty that the (~~liquor control~~) board may  
5 impose based upon one or more findings under subsection (3) of this  
6 section may not exceed the following:

7 (a) For violations of RCW 26.28.080 (~~or 70.155.020, fifty~~),  
8 70.155.020, or sections 112 through 114 of this act, one hundred  
9 dollars for the first violation and (~~one~~) two hundred dollars for  
10 each subsequent violation;

11 (b) For violations of RCW 70.155.030, (~~one~~) two hundred dollars  
12 for each day upon which such violation occurred;

13 (c) For violations of RCW 70.155.040, (~~one~~) two hundred dollars  
14 for each violation;

15 (d) For violations of RCW 70.155.050 or section 111 of this act,  
16 (~~three~~) six hundred dollars for each violation;

17 (e) For violations of RCW 70.155.070, (~~one~~) two thousand  
18 dollars for each violation.

19 (5) The (~~liquor control~~) board may develop and offer a class  
20 for retail clerks and use this class in lieu of a monetary penalty  
21 for the clerk's first violation.

22 (6) The (~~liquor control~~) board may issue a cease and desist  
23 order to any person who is found by the (~~liquor control~~) board to  
24 have violated or intending to violate the provisions of this chapter,  
25 RCW 26.28.080 (~~or~~), 82.24.500, or section 215 of this act,  
26 requiring such person to cease specified conduct that is in  
27 violation. The issuance of a cease and desist order (~~shall~~) does  
28 not preclude the imposition of other sanctions authorized by this  
29 statute or any other provision of law.

30 (7) The (~~liquor control~~) board may seek injunctive relief to  
31 enforce the provisions of RCW 26.28.080 (~~or~~), 82.24.500, section  
32 215 of this act, or this chapter. The (~~liquor control~~) board may  
33 initiate legal action to collect civil penalties imposed under this  
34 chapter if the same have not been paid within thirty days after  
35 imposition of such penalties. In any action filed by the (~~liquor~~  
36 control) board under this chapter, the court may, in addition to any  
37 other relief, award the (~~liquor control~~) board reasonable  
38 attorneys' fees and costs.

1 (8) All proceedings under subsections (1) through (6) of this  
2 section (~~shall~~) must be conducted in accordance with chapter 34.05  
3 RCW.

4 (9) The (~~liquor control~~) board may reduce or waive either the  
5 penalties or the suspension or revocation of a license, or both, as  
6 set forth in this chapter where the elements of proof are inadequate  
7 or where there are mitigating circumstances. Mitigating circumstances  
8 may include, but are not limited to, an exercise of due diligence by  
9 a retailer. Further, the board may exceed penalties set forth in this  
10 chapter based on aggravating circumstances.

11 **Sec. 118.** RCW 70.155.110 and 1993 c 507 s 12 are each amended to  
12 read as follows:

13 (1) The (~~liquor control~~) board (~~shall~~) must, in addition to  
14 the board's other powers and authorities, have the authority to  
15 enforce the provisions of this chapter and RCW 26.28.080(~~(4) and~~),  
16 82.24.500, and section 215 of this act. The (~~liquor control~~) board  
17 (~~shall have~~) has full power to revoke or suspend the license of any  
18 retailer (~~(or)~~), distributor, or wholesaler in accordance with the  
19 provisions of RCW 70.155.100.

20 (2) The (~~liquor control~~) board and the board's (~~authorized~~  
21 ~~agents~~) enforcement officers or employees (~~shall~~) have full power  
22 and authority to enter any place of business where tobacco products  
23 or vapor products are sold for the purpose of enforcing the  
24 provisions of this chapter.

25 (3) For the purpose of enforcing the provisions of this chapter  
26 and RCW 26.28.080(~~(4) and~~), 82.24.500, and section 215 of this act,  
27 a peace officer or enforcement officer of the (~~liquor control~~)  
28 board who has reasonable grounds to believe a person observed by the  
29 officer purchasing, attempting to purchase, or in possession of  
30 tobacco products or vapor products is under the age of eighteen years  
31 of age, may detain such person for a reasonable period of time and in  
32 such a reasonable manner as is necessary to determine the person's  
33 true identity and date of birth. Further, tobacco products or vapor  
34 products possessed by persons under the age of eighteen years of age  
35 are considered contraband and may be seized by a peace officer or  
36 enforcement officer of the (~~liquor control~~) board.

37 (4) The (~~liquor control~~) board may work with local county  
38 health departments or districts and local law enforcement agencies to  
39 conduct random, unannounced(~~(7)~~) inspections to assure compliance.

1       **Sec. 119.** RCW 70.155.120 and 1993 c 507 s 13 are each amended to  
2 read as follows:

3       (1) The youth tobacco and vapor products prevention account is  
4 created in the state treasury. All fees collected pursuant to RCW  
5 82.24.520 (~~and~~), 82.24.530, and section 215 of this act and funds  
6 collected by the (~~liquor control~~) board from the imposition of  
7 monetary penalties (~~and samplers' fees shall~~) must be deposited  
8 into this account, except that ten percent of all such fees and  
9 penalties (~~shall~~) must be deposited in the state general fund.

10       (2) Moneys appropriated from the youth tobacco and vapor products  
11 prevention account to the department (~~of health shall~~) must be used  
12 by the department (~~of health~~) for implementation of this chapter,  
13 including collection and reporting of data regarding enforcement and  
14 the extent to which access to tobacco products and vapor products by  
15 youth has been reduced.

16       (3) The department (~~of health shall~~) must enter into  
17 interagency agreements with the (~~liquor control~~) board to pay the  
18 costs incurred, up to thirty percent of available funds, in carrying  
19 out its enforcement responsibilities under this chapter. Such  
20 agreements (~~shall~~) must set forth standards of enforcement,  
21 consistent with the funding available, so as to reduce the extent to  
22 which tobacco products and vapor products are available to  
23 individuals under the age of eighteen. The agreements (~~shall~~) must  
24 also set forth requirements for data reporting by the (~~liquor~~  
25 ~~control~~) board regarding its enforcement activities.

26       (4) The department of health and the department of revenue  
27 (~~shall~~) must enter into an interagency agreement for payment of the  
28 cost of administering the tobacco and vapor product retailer  
29 licensing system and for the provision of quarterly documentation of  
30 tobacco and vapor product wholesaler, retailer, and vending machine  
31 names and locations.

32       (5) The department (~~of health shall~~) must, within up to seventy  
33 percent of available funds, provide grants to local health  
34 departments or other local community agencies to develop and  
35 implement coordinated tobacco and vapor product intervention  
36 strategies to prevent and reduce (~~tobacco~~) use by youth.

37       **Sec. 120.** RCW 70.155.130 and 1993 c 507 s 14 are each amended to  
38 read as follows:



1       (1) This chapter preempts political subdivisions from adopting or  
2 enforcing requirements for the licensure and regulation of tobacco  
3 product promotions and sales within retail stores, except that  
4 political subdivisions that have adopted ordinances prohibiting  
5 sampling by January 1, 1993, may continue to enforce these  
6 ordinances. No political subdivision may:

7       ~~((1))~~ (a) Impose fees or license requirements on retail  
8 businesses for possessing or selling cigarettes or tobacco products,  
9 other than general business taxes or license fees not primarily  
10 levied on tobacco products; or

11       ~~((2))~~ (b) Regulate or prohibit activities related to tobacco  
12 products that are covered by RCW 70.155.020 through 70.155.080. This  
13 chapter does not otherwise preempt political subdivisions from  
14 adopting ordinances regulating the sale, purchase, use, or promotion  
15 of tobacco products not inconsistent with chapter 507, Laws of 1993.

16       (2) Nothing in this chapter preempts a political subdivision from  
17 imposing additional restrictions on the sale, purchase, use, or  
18 promotion of vapor products.

19       **Sec. 121.** RCW 70.155.140 and 2009 c 278 s 2 are each amended to  
20 read as follows:

21       (1) A person may not:

22       (a) Ship or transport, or cause to be shipped or transported, any  
23 tobacco product or vapor product ordered or purchased by mail or  
24 through the internet to anyone in this state other than a licensed  
25 wholesaler, distributor, or retailer; or

26       (b) With knowledge or reason to know of the violation, provide  
27 substantial assistance to a person who is in violation of this  
28 section.

29       (2) This section does not prohibit shipping, selling, or  
30 transporting, or causing to be sold, shipped, or transported,  
31 concentrated nicotine ordered or purchased by mail or through the  
32 internet to a person who:

33       (a) Is engaged in business in this state;

34       (b) Has a documented commercial or industrial need for  
35 concentrated nicotine that is not related to the sale, distribution,  
36 or manufacture of vapor products; and

37       (c) Receives a waiver from the board.

1       (3)(a) A person who knowingly violates subsection (1) of this  
2 section is guilty of a class C felony, except that the maximum fine  
3 that may be imposed is five thousand dollars.

4       (b) In addition to or in lieu of any other civil or criminal  
5 remedy provided by law, a person who has violated subsection (1) of  
6 this section is subject to a civil penalty of up to five thousand  
7 dollars for each violation. The attorney general, acting in the name  
8 of the state, may seek recovery of the penalty in a civil action in  
9 superior court. For purposes of this subsection, each shipment or  
10 transport of tobacco products or vapor products constitutes a  
11 separate violation.

12       (~~(3)~~) (4) The attorney general may seek an injunction in  
13 superior court to restrain a threatened or actual violation of  
14 subsection (1) of this section and to compel compliance with  
15 subsection (1) of this section.

16       (~~(4)~~) (5) Any violation of subsection (1) of this section is  
17 not reasonable in relation to the development and preservation of  
18 business and is an unfair and deceptive act or practice and an unfair  
19 method of competition in the conduct of trade or commerce in  
20 violation of RCW 19.86.020. Standing to bring an action to enforce  
21 RCW 19.86.020 for violation of subsection (1) of this section lies  
22 solely with the attorney general. Remedies provided by chapter 19.86  
23 RCW are cumulative and not exclusive.

24       (~~(5)~~) (6)(a) In any action brought under this section, the  
25 state is entitled to recover, in addition to other relief, the costs  
26 of investigation, expert witness fees, costs of the action, and  
27 reasonable attorneys' fees.

28       (b) If a court determines that a person has violated subsection  
29 (1) of this section, the court (~~shall~~) must order any profits,  
30 gain, gross receipts, or other benefit from the violation to be  
31 disgorged and paid to the state treasurer for deposit in the general  
32 fund.

33       (~~(6)~~) (7) Unless otherwise expressly provided, the penalties or  
34 remedies, or both, under this section are in addition to any other  
35 penalties and remedies available under any other law of this state.

36       NEW SECTION. **Sec. 122.** A new section is added to chapter 70.155  
37 RCW to read as follows:

38       The department may adopt rules to implement and enforce the  
39 requirements of this chapter.



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

2 (6) "Distributor" means: (a) Any person engaged in the business  
3 of selling vapor products in this state who brings, or causes to be  
4 brought, into this state from without the state any vapor products  
5 for sale; (b) any person who makes, manufactures, fabricates, or  
6 stores vapor products in this state for sale in this state; (c) any  
7 person engaged in the business of selling vapor products without this  
8 state who ships or transports vapor products to retailers in this  
9 state, to be sold by those retailers; and (d) any person engaged in  
10 the business of selling vapor products in this state who handles for  
11 sale any vapor products that are within this state but upon which tax  
12 has not been imposed.

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

15 (8) "Manufacturer" means a person who manufactures and sells  
16 vapor products.

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

20 (10) "Person" means: Any individual, receiver, administrator,  
21 executor, assignee, trustee in bankruptcy, trust, estate, firm,  
22 copartnership, joint venture, club, company, joint stock company,  
23 business trust, municipal corporation, corporation, limited liability  
24 company, association, or society; the state and its departments and  
25 institutions; any political subdivision of the state of Washington;  
26 and any group of individuals acting as a unit, whether mutual,  
27 cooperative, fraternal, nonprofit, or otherwise. "Person" does not  
28 include any person immune from state taxation, including the United  
29 States or its instrumentalities, and federally recognized Indian  
30 tribes and enrolled tribal members, conducting business within Indian  
31 country.

32 (11) "Place of business" means any place where vapor products are  
33 sold or where vapor products are manufactured, stored, or kept for  
34 the purpose of sale, including any vessel, vehicle, airplane, or  
35 train.

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

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

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

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

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

8 (i) In the case of a taxpayer that is not affiliated with the  
9 manufacturer, distributor, or other person from whom the taxpayer  
10 purchased vapor products, the actual price for which the taxpayer  
11 purchased the vapor products;

12 (ii) In the case of a taxpayer that purchases vapor products from  
13 an affiliated manufacturer, affiliated distributor, or other  
14 affiliated person, and that sells those vapor products to  
15 unaffiliated distributors, unaffiliated retailers, or ultimate  
16 consumers, the actual price for which that taxpayer sells those vapor  
17 products to unaffiliated distributors, unaffiliated retailers, or  
18 ultimate consumers;

19 (iii) In the case of a taxpayer that sells vapor products only to  
20 affiliated distributors or affiliated retailers, the price,  
21 determined as nearly as possible according to the actual price, that  
22 other distributors sell similar vapor products of like quality and  
23 character to unaffiliated distributors, unaffiliated retailers, or  
24 ultimate consumers;

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

28 (v) In the case of a taxpayer that has acquired vapor products  
29 under a sale as defined in subsection (14)(b) of this section, the  
30 price, determined as nearly as possible according to the actual  
31 price, that the taxpayer or other distributors sell the same vapor  
32 products or similar vapor products of like quality and character to  
33 unaffiliated distributors, unaffiliated retailers, or ultimate  
34 consumers;

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

37 (vii) In any case where (a)(i) through (vi) of this subsection do  
38 not apply, the price, determined as nearly as possible according to  
39 the actual price, that the taxpayer or other distributors sell the  
40 same vapor products or similar vapor products of like quality and

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

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

9 (c) In any case where the taxable sales price is not indicative  
10 of a vapor product's true value at the time and place of the taxable  
11 event as provided in section 202(2)(a) of this act, "taxable sales  
12 price" means the true value of the vapor product as determined by the  
13 department. For purposes of this subsection, "true value" means  
14 market value based on sales at comparable locations in this state of  
15 the same or similar vapor product of like quality and character sold  
16 under comparable conditions of sale by comparable sellers to  
17 comparable purchasers. However, in the absence of such comparable  
18 sales, true value means the value of the vapor product as determined  
19 by all of the taxpayer's direct and indirect costs attributable to  
20 the vapor product.

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

23 (17) "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 (18) "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 (19)(a) "Vapor product" means any noncombustible product that  
30 employs a mechanical heating element, battery, or electronic circuit  
31 regardless of shape or size that can be used to produce vapor from a  
32 liquid solution or other substance, including an electronic  
33 cigarette, electronic cigar, electronic cigarillo, electronic pipe,  
34 or similar product or device. "Vapor product" includes: (i) Any  
35 liquid solution or other substance in a cartridge or other container  
36 that is capable of being used with or in a vapor product to produce  
37 vapor; and (ii) any related accessories or equipment specifically  
38 designed or marketed to be used with a vapor product.

39 (b) "Vapor product" does not include: (i) Any drug, device, or  
40 combination product approved for sale by the United States food and

1 drug administration that is marketed and sold for such approved  
2 purpose; or (ii) any product meeting the definition of marijuana,  
3 useable marijuana, marijuana concentrates, marijuana-infused  
4 products, cigarette, or tobacco products.

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

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

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

10 (iii) "Tobacco products" has the same meaning as in RCW  
11 82.26.010.

12 NEW SECTION. **Sec. 202.** (1)(a) There is levied and collected a  
13 tax upon the sale, use, consumption, handling, possession, or  
14 distribution of all vapor products in this state equal to ninety-five  
15 percent of the taxable sales price. If the vapor product is sold  
16 together with products not taxable under this chapter for one price,  
17 the tax imposed by this section applies to the entire selling price  
18 of the product, except as provided in (b) of this subsection.

19 (b) If the seller can identify by reasonable and verifiable  
20 standards the portion of the selling price attributable to the vapor  
21 products from its books and records that are kept in the regular  
22 course of business for other purposes including, but not limited to,  
23 nontax purposes, the tax imposed by this section only applies to that  
24 portion of the selling price of the product attributable to the vapor  
25 products.

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

34 (b) The tax imposed under this section must also be collected by  
35 the department from the consumer of vapor products where the tax  
36 imposed under this section was not paid by the distributor on such  
37 vapor products.

38 (3) The moneys collected under this section must be deposited as  
39 follows: (a) Ninety percent into the state general fund; and (b) ten

1 percent into the essential public health services account created in  
2 section 203 of this act.

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

4 NEW SECTION. **Sec. 203.** (1) The essential public health services  
5 account is created in the state treasury. The revenue from the tax  
6 collected under section 202 of this act must be deposited into the  
7 account. Moneys in the account may be spent only after appropriation  
8 to the department of health. The department must use the moneys in  
9 the account for each of the three following purposes: (a) To fund  
10 essential governmental public health services; (b) to fund tobacco  
11 control and prevention and other substance use prevention and  
12 education; and (c) to use to strengthen and support public health  
13 system capabilities, including accredited higher education public  
14 health programs.

15 (2) To determine the funding for essential governmental public  
16 health services pursuant to subsection (1)(a) of this section, the  
17 department of health and representatives of local health  
18 jurisdictions must work together to: (a) Arrive at a mutually  
19 acceptable allocation and distribution of funds from the account; and  
20 (b) determine the best accountability measures to ensure efficient  
21 and effective use of funds, emphasizing use of shared services where  
22 appropriate.

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

25 NEW SECTION. **Sec. 205.** It is the intent and purpose of this  
26 chapter to levy a tax on all vapor products sold, used, consumed,  
27 handled, possessed, or distributed within this state. It is the  
28 further intent and purpose of this chapter to impose the tax only  
29 once on all vapor products in this state. Nothing in this chapter may  
30 be construed to exempt any person taxable under any other law or  
31 under any other tax imposed under this title.

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



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

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

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

27        NEW SECTION.    **Sec. 208.**    Every person required to be licensed  
28 under this chapter who sells vapor products to persons other than the  
29 ultimate consumer must render with each sale itemized invoices  
30 showing the seller's name and address, the purchaser's name and  
31 address, the date of sale, and all prices. The person must preserve  
32 legible copies of all such invoices for five years from the date of  
33 sale.

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

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

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

18 NEW SECTION. **Sec. 210.** (1)(a) Where vapor products upon which  
19 the tax imposed by this chapter has been reported and paid are  
20 shipped or transported outside this state by the distributor to a  
21 person engaged in the business of selling vapor products, to be sold  
22 by that person, or are returned to the manufacturer by the  
23 distributor or destroyed by the distributor, or are sold by the  
24 distributor to the United States or any of its agencies or  
25 instrumentalities, or are sold by the distributor to any Indian  
26 tribal organization, credit of such tax may be made to the  
27 distributor in accordance with rules prescribed by the department.

28 (b) For purposes of this subsection, the following definitions  
29 apply:

30 (i) "Indian distributor" means a federally recognized Indian  
31 tribe or tribal entity that would otherwise meet the definition of  
32 "distributor" under section 201 of this act, if federally recognized  
33 Indian tribes and tribal entities were not excluded from the  
34 definition of "person" in section 201 of this act.

35 (ii) "Indian retailer" means a federally recognized Indian tribe  
36 or tribal entity that would otherwise meet the definition of  
37 "retailer" under section 201 of this act, if federally recognized  
38 Indian tribes and tribal entities were not excluded from the  
39 definition of "person" in section 201 of this act.

1 (iii) "Indian tribal organization" means a federally recognized  
2 Indian tribe, or tribal entity, and includes an Indian distributor or  
3 retailer that is owned by an Indian who is an enrolled tribal member  
4 conducting business under tribal license or similar tribal approval  
5 within Indian country.

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

9 NEW SECTION. **Sec. 211.** All of the provisions contained in  
10 chapter 82.32 RCW not inconsistent with the provisions of this  
11 chapter have full force and application with respect to taxes imposed  
12 under the provisions of this chapter.

13 NEW SECTION. **Sec. 212.** The department must authorize, as duly  
14 authorized agents, enforcement officers of the liquor control board  
15 to enforce provisions of this chapter. These officers are not  
16 employees of the department.

17 NEW SECTION. **Sec. 213.** (1) The department may by rule establish  
18 the invoice detail required under section 207 of this act for a  
19 distributor under section 201(6)(d) of this act and for those  
20 invoices required to be provided to retailers under section 208 of  
21 this act.

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

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

30 NEW SECTION. **Sec. 214.** (1) No person may transport or cause to  
31 be transported in this state vapor products for sale other than: (a)  
32 A licensed distributor in the distributor's own vehicle, a  
33 manufacturer's representative authorized to sell or distribute vapor  
34 products in this state under section 221 of this act, or a licensed  
35 retailer in the retailer's own vehicle; or (b) a person who has given  
36 notice to the board in advance of the commencement of transportation.

1 (2) When transporting vapor products for sale, the person must  
2 have in his or her actual possession, or cause to have in the actual  
3 possession of those persons transporting such vapor products on his  
4 or her behalf, invoices or delivery tickets for the vapor products,  
5 which must show the true name and address of the consignor or seller,  
6 the true name and address of the consignee or purchaser, and the  
7 quantity and brands of the vapor products being transported.

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

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

- 15 (a) A distributor's license; and  
16 (b) A retailer's license.

17 (2) Application for the licenses must be made through the  
18 business licensing system under chapter 19.02 RCW. The board may  
19 adopt rules regarding the regulation of the licenses. The board may  
20 refuse to issue any license under this chapter if the board has  
21 reasonable cause to believe that the applicant has willfully withheld  
22 information requested for the purpose of determining the eligibility  
23 of the applicant to receive a license, or if the board has reasonable  
24 cause to believe that information submitted in the application is  
25 false or misleading or is not made in good faith. In addition, for  
26 the purpose of reviewing an application for a distributor's license  
27 or retailer's license and for considering the denial, suspension, or  
28 revocation of any such license, the board may consider criminal  
29 conduct of the applicant, including an administrative violation  
30 history record with the board and a criminal history record  
31 information check within the previous five years, in any state,  
32 tribal, or federal jurisdiction in the United States, its  
33 territories, or possessions, and the provisions of RCW 9.95.240 and  
34 chapter 9.96A RCW do not apply to such cases. The board may, in its  
35 discretion, issue or refuse to issue the distributor's license or  
36 retailer's license, subject to the provisions of section 222 of this  
37 act.

38 (3) No person may qualify for a distributor's license or a  
39 retailer's license under this section without first undergoing a

1 criminal background check. The background check must be performed by  
2 the board and must disclose any criminal conduct within the previous  
3 five years in any state, tribal, or federal jurisdiction in the  
4 United States, its territories, or possessions. If the applicant or  
5 licensee also has a license issued under chapter 66.24, 82.24, or  
6 82.26 RCW, the background check done under the authority of chapter  
7 66.24, 82.24, or 82.26 RCW satisfies the requirements of this  
8 subsection.

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

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

18 (6) License issuances and renewals are subject to board authority  
19 and the rules adopted under the board including, but not limited to,  
20 rights of cities, towns, county legislative authorities, the public,  
21 churches, schools, and public institutions that object to or prevent  
22 issuance of licenses.

23 NEW SECTION. **Sec. 216.** A fee of six hundred fifty dollars must  
24 accompany each distributor's license application or license renewal  
25 application. If a distributor sells or intends to sell vapor products  
26 at two or more places of business, whether established or temporary,  
27 a separate license with a license fee of one hundred fifteen dollars  
28 is required for each additional place of business.

29 NEW SECTION. **Sec. 217.** A fee of two hundred fifty dollars must  
30 accompany each retailer's license application or license renewal  
31 application. A separate license is required for each separate  
32 location at which the retailer operates.

33 NEW SECTION. **Sec. 218.** The board must compile and maintain a  
34 current record of the names of all distributors and retailers  
35 licensed under this chapter and the status of their license or  
36 licenses. The information must be updated on a monthly basis and  
37 published on the board's official internet web site. This information

1 is not subject to the confidentiality provisions of RCW 82.32.330 and  
2 must be disclosed to manufacturers, distributors, retailers, and the  
3 general public upon request.

4 NEW SECTION. **Sec. 219.** (1)(a) No person may engage in or  
5 conduct business as a distributor or retailer in this state without a  
6 valid license issued under this chapter, except as otherwise provided  
7 by law. Any person who sells vapor products to persons other than  
8 ultimate consumers or who meets the definition of "distributor" under  
9 section 201(6)(d) of this act must obtain a distributor's license  
10 under this chapter. Any person who sells vapor products to ultimate  
11 consumers must obtain a retailer's license under this chapter.

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

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

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

20 (ii) Make, use, or present or exhibit to the department or the  
21 board any invoice for any of the vapor products taxed under this  
22 chapter that bears an untrue date or falsely states the nature or  
23 quantity of the goods invoiced; or

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

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

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

34 (ii) The person transporting the vapor products actually  
35 possesses invoices or delivery tickets showing the true name and  
36 address of the consignor or seller, the true name and address of the  
37 consignee or purchaser, and the quantity and brands of vapor products  
38 being transported; and

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

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

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

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

12 NEW SECTION. **Sec. 220.** (1) A retailer that obtains vapor  
13 products from an unlicensed distributor or any other person that is  
14 not licensed under this chapter must be licensed both as a retailer  
15 and a distributor under this chapter and is liable for the tax  
16 imposed under section 202 of this act with respect to the vapor  
17 products acquired from the unlicensed person that are held for sale,  
18 handling, or distribution in this state. For the purposes of this  
19 subsection, "person" includes both persons defined in section 201(10)  
20 of this act and any person immune from state taxation, such as the  
21 United States or its instrumentalities, and federally recognized  
22 Indian tribes and enrolled tribal members, conducting business within  
23 Indian country.

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

27 NEW SECTION. **Sec. 221.** A manufacturer that has manufacturer's  
28 representatives who sell or distribute the manufacturer's vapor  
29 products in this state must provide the board a list of the names and  
30 addresses of all such representatives and must ensure that the list  
31 provided to the board is kept current. A manufacturer's  
32 representative is not authorized to distribute or sell vapor products  
33 in this state unless the manufacturer that hired the representative  
34 has a valid distributor's license under this chapter and that  
35 manufacturer provides the board a current list of all of its  
36 manufacturer's representatives as required by this section. A  
37 manufacturer's representative must carry a copy of the distributor's

1 license of the manufacturer that hired the representative at all  
2 times when selling or distributing the manufacturer's vapor products.

3 NEW SECTION. **Sec. 222.** (1) The board must enforce this chapter.  
4 The board may adopt, amend, and repeal rules necessary to enforce  
5 this chapter.

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

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

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

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

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



1 (7) Any determination and order by the board, and any order of  
2 suspension or revocation by the board of the license or licenses  
3 issued under this chapter, or refusal to reinstate a license or  
4 licenses after revocation is reviewable by an appeal to the superior  
5 court of Thurston county. The superior court must review the order or  
6 ruling of the board and may hear the matter de novo, having due  
7 regard to the provisions of this chapter and the duties imposed upon  
8 the board.

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

12 NEW SECTION. **Sec. 223.** (1) Any vapor products in the possession  
13 of a person selling vapor products in this state acting as a  
14 distributor or retailer and who is not licensed as required under  
15 section 219 of this act, or a person who is selling vapor products in  
16 violation of section 222(6) of this act, may be seized without a  
17 warrant by any agent of the department, agent of the board, or law  
18 enforcement officer of this state. Any vapor products seized under  
19 this subsection are deemed forfeited.

20 (2) Any vapor products in the possession of a person who is not a  
21 licensed distributor or retailer and who transports vapor products  
22 for sale without having provided notice to the board required under  
23 section 214 of this act, or without invoices or delivery tickets  
24 showing the true name and address of the consignor or seller, the  
25 true name and address of the consignee or purchaser, and the quantity  
26 and brands of vapor products being transported may be seized and are  
27 subject to forfeiture.

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

33 (a) A conveyance used by any person as a common or contract  
34 carrier having in actual possession invoices or delivery tickets  
35 showing the true name and address of the consignor or seller, the  
36 true name of the consignee or purchaser, and the quantity and brands  
37 of the vapor products transported, unless it appears that the owner  
38 or other person in charge of the conveyance is a consenting party or  
39 privy to a violation of this chapter;

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

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

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

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

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

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

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

25 NEW SECTION. **Sec. 224.** (1) In all cases of seizure of any vapor  
26 products made subject to forfeiture under this chapter, the  
27 department or board must proceed as provided in RCW 82.24.135.

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

30 (a) Retain the property for official use or upon application by  
31 any law enforcement agency of this state, another state, or the  
32 District of Columbia, or of the United States for the exclusive use  
33 of enforcing this chapter or the laws of any other state or the  
34 District of Columbia or of the United States; or

35 (b) Sell the vapor products at public auction to the highest  
36 bidder after due advertisement. Before delivering any of the goods to  
37 the successful bidder, the department or board must require the  
38 purchaser to pay the proper amount of any tax due. The proceeds of  
39 the sale must be first applied to the payment of all proper expenses

1 of any investigation leading to the seizure and of the proceedings  
2 for forfeiture and sale, including expenses of seizure, maintenance  
3 of custody, advertising, and court costs. The balance of the proceeds  
4 and all money must be deposited in the general fund of the state.  
5 Proper expenses of investigation include costs incurred by any law  
6 enforcement agency or any federal, state, or local agency.

7 (3) The department or the board may return any property seized  
8 under the provisions of this chapter when it is shown that there was  
9 no intention to violate the provisions of this chapter. When any  
10 property is returned under this section, the department or the board  
11 may return the property to the parties from whom they were seized if  
12 and when such parties have paid the proper amount of tax due under  
13 this chapter.

14 NEW SECTION. **Sec. 225.** When the department or the board has  
15 good reason to believe that any of the vapor products taxed under  
16 this chapter are being kept, sold, offered for sale, or given away in  
17 violation of the provisions of this chapter, it may make affidavit of  
18 facts describing the place or thing to be searched, before any judge  
19 of any court in this state, and the judge must issue a search warrant  
20 directed to the sheriff, any deputy, police officer, or duly  
21 authorized agent of the department or the board commanding him or her  
22 diligently to search any building, room in a building, place, or  
23 vehicle as may be designated in the affidavit and search warrant, and  
24 to seize the vapor products and hold them until disposed of by law.

25 NEW SECTION. **Sec. 226.** The taxes imposed by this chapter do not  
26 apply to the sale, use, consumption, handling, possession, or  
27 distribution of vapor products by an Indian retailer during the  
28 effective period of a vapor product tax contract subject to section  
29 303 of this act.

30 NEW SECTION. **Sec. 227.** (1) Preexisting inventories of vapor  
31 products are subject to the tax imposed in section 202 of this act.  
32 All retailers and other distributors must report the tax due under  
33 section 202 of this act on preexisting inventories of vapor products  
34 on the taxpayer's excise tax return for a reporting period that  
35 includes tax liability accruing on and after October 1, 2015,  
36 consistent with the taxpayer's regular tax reporting frequency.

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

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

11 (4) For purposes of this section:

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

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

17 **Sec. 228.** RCW 66.08.145 and 2007 c 221 s 1 are each amended to  
18 read as follows:

19 (1) The liquor control board may issue subpoenas in connection  
20 with any investigation, hearing, or proceeding for the production of  
21 books, records, and documents held under this chapter or chapters  
22 70.155, 70.158, 82.24, ~~((and)) 82.26, and 82.--~~ RCW (the new chapter  
23 created in section 403 of this act), and books and records of common  
24 carriers as defined in RCW 81.80.010, or vehicle rental agencies  
25 relating to the transportation or possession of cigarettes or other  
26 tobacco products.

27 (2) The liquor control board may designate individuals authorized  
28 to sign subpoenas.

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

36 **Sec. 229.** RCW 66.44.010 and 1998 c 18 s 1 are each amended to  
37 read as follows:

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

18 (2) In addition to any and all other powers granted, the board  
19 (~~shall have~~) has the power to enforce the penal provisions of this  
20 title and the penal laws of this state relating to the manufacture,  
21 importation, transportation, possession, distribution and sale of  
22 liquor.

23 (3) In addition to the other duties under this section, the board  
24 (~~shall~~) must enforce chapters 82.24 (~~and~~), 82.26, and 82.-- RCW  
25 (the new chapter created in section 403 of this act).

26 (4) The board may appoint and employ, assign to duty and fix the  
27 compensation of, officers to be designated as liquor enforcement  
28 officers. Such liquor enforcement officers (~~shall~~) have the power,  
29 under the supervision of the board, to enforce the penal provisions  
30 of this title and the penal laws of this state relating to the  
31 manufacture, importation, transportation, possession, distribution  
32 and sale of liquor. They (~~shall~~) have the power and authority to  
33 serve and execute all warrants and process of law issued by the  
34 courts in enforcing the penal provisions of this title or of any  
35 penal law of this state relating to the manufacture, importation,  
36 transportation, possession, distribution and sale of liquor, and the  
37 provisions of chapters 82.24 (~~and~~), 82.26, and 82.-- RCW (the new  
38 chapter created in section 403 of this act). They (~~shall~~) have the  
39 power to arrest without a warrant any person or persons found in the  
40 act of violating any of the penal provisions of this title or of any

1 penal law of this state relating to the manufacture, importation,  
2 transportation, possession, distribution and sale of liquor, and the  
3 provisions of chapters 82.24 (~~and~~), 82.26, and 82.-- RCW (the new  
4 chapter created in section 403 of this act).

5 **Sec. 230.** RCW 82.24.510 and 2013 c 144 s 50 are each amended to  
6 read as follows:

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

8 (a) A wholesaler's license.

9 (b) A retailer's license.

10 (2) Application for the licenses must be made through the  
11 business licensing system under chapter 19.02 RCW. The board must  
12 adopt rules regarding the regulation of the licenses. The board may  
13 refrain from the issuance of any license under this chapter if the  
14 board has reasonable cause to believe that the applicant has  
15 willfully withheld information requested for the purpose of  
16 determining the eligibility of the applicant to receive a license, or  
17 if the board has reasonable cause to believe that information  
18 submitted in the application is false or misleading or is not made in  
19 good faith. In addition, for the purpose of reviewing an application  
20 for a wholesaler's license or retailer's license and for considering  
21 the denial, suspension, or revocation of any such license, the board  
22 may consider any prior criminal conduct of the applicant, including  
23 an administrative violation history record with the board and a  
24 criminal history record information check within the previous five  
25 years, in any state, tribal, or federal jurisdiction in the United  
26 States, its territories, or possessions, and the provisions of RCW  
27 9.95.240 and chapter 9.96A RCW do not apply to such cases. The board  
28 may, in its discretion, grant or refuse the wholesaler's license or  
29 retailer's license, subject to the provisions of RCW 82.24.550.

30 (3) No person may qualify for a wholesaler's license or a  
31 retailer's license under this section without first undergoing a  
32 criminal background check. The background check must be performed by  
33 the board and must disclose any criminal conduct within the previous  
34 five years in any state, tribal, or federal jurisdiction in the  
35 United States, its territories, or possessions. A person who  
36 possesses a valid license on July 22, 2001, is subject to this  
37 subsection and subsection (2) of this section beginning on the date  
38 of the person's business license expiration under chapter 19.02 RCW,  
39 and thereafter. If the applicant or licensee also has a license

1 issued under chapter 66.24 (~~(~~or~~)~~), 82.26, or 82.-- RCW (the new  
2 chapter created in section 403 of this act), the background check  
3 done under the authority of chapter 66.24 (~~(~~or~~)~~), 82.26, or 82.-- RCW  
4 (the new chapter created in section 403 of this act) satisfies the  
5 requirements of this section.

6 (4) Each such license expires on the business license expiration  
7 date, and each such license must be continued annually if the  
8 licensee has paid the required fee and complied with all the  
9 provisions of this chapter and the rules of the board made pursuant  
10 thereto.

11 (5) Each license and any other evidence of the license that the  
12 board requires must be exhibited in each place of business for which  
13 it is issued and in the manner required for the display of a business  
14 license.

15 **Sec. 231.** RCW 82.24.530 and 2012 2nd sp.s. c 4 s 12 are each  
16 amended to read as follows:

17 A fee of (~~(ninety-three)~~) two hundred fifty dollars must  
18 accompany each retailer's license application or license renewal  
19 application. A separate license is required for each separate  
20 location at which the retailer operates. A fee of thirty additional  
21 dollars for each vending machine must accompany each application or  
22 renewal for a license issued to a retail dealer operating a cigarette  
23 vending machine. An additional fee of ninety-three dollars (~~(shall)~~)  
24 must accompany each application or renewal for a license issued to a  
25 retail dealer operating a cigarette-making machine.

26 **Sec. 232.** RCW 82.24.550 and 2009 c 154 s 2 are each amended to  
27 read as follows:

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

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

37 (3) A license (~~(shall)~~) may not be suspended or revoked except  
38 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. 233.** 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. 234.** 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. 235.** 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 (~~( $\text{\textcircled{e}}$ )~~), 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 (~~( $\text{\textcircled{e}}$ )~~), 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. 236.** RCW 82.26.170 and 2005 c 180 s 13 are each amended to  
24 read as follows:

25 (1) A fee of (~~(ninety-three)~~) two hundred fifty dollars (~~(shall)~~)  
26 must accompany each retailer's license application or license renewal  
27 application. A separate license is required for each separate  
28 location at which the retailer operates.

29 (2) The fee imposed under subsection (1) of this section does not  
30 apply to any person applying for a retailer's license or for renewal  
31 of a retailer's license if the person has a valid retailer's license  
32 under RCW 82.24.510 for the place of business associated with the  
33 retailer's license application or renewal application.

34 **Sec. 237.** RCW 82.26.220 and 2009 c 154 s 8 are each amended to  
35 read as follows:

36 (1) The board (~~(shall)~~) must enforce this chapter. The board may  
37 adopt, amend, and repeal rules necessary to enforce and administer  
38 this chapter.

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

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

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

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

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

36 (7) Any determination and order by the board, and any order of  
37 suspension or revocation by the board of the license or licenses  
38 issued under this chapter, or refusal to reinstate a license or  
39 licenses after revocation is reviewable by an appeal to the superior  
40 court of Thurston county. The superior court (~~shall~~) must review

1 the order or ruling of the board and may hear the matter de novo,  
2 having due regard to the provisions of this chapter and the duties  
3 imposed upon the board.

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

7 **Sec. 238.** RCW 82.32.300 and 1997 c 420 s 9 are each amended to  
8 read as follows:

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

15 (2) The department of revenue (~~shall~~) must make and publish  
16 rules and regulations, not inconsistent therewith, necessary to  
17 enforce provisions of this chapter and chapters 82.02 through 82.23B  
18 and 82.27 RCW, and the liquor control board (~~shall~~) must make and  
19 publish rules necessary to enforce chapters 82.24 (~~and~~), 82.26, and  
20 82.-- RCW (the new chapter created in section 403 of this act), which  
21 (~~shall~~) must have the same force and effect as if specifically  
22 included therein, unless declared invalid by the judgment of a court  
23 of record not appealed from.

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

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

32 **PART III**  
33 **Tribal Compacting**

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

36 The legislature intends to further the government-to-government  
37 relationship between the state of Washington and Indians in the state

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

15 NEW SECTION. Sec. 302. A new section is added to chapter 43.06  
16 RCW to read as follows:

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

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

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

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

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

37 (b) Out-of-state wholesalers or manufacturers who, although not  
38 licensed to do business in the state of Washington, agree to comply  
39 with the terms of the vapor product tax contract, are certified to

1 the state as having so agreed, and who do in fact so comply. However,  
2 the state may in its sole discretion exercise its administrative and  
3 enforcement powers over such wholesalers or manufacturers to the  
4 extent permitted by law;

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

7 (d) A tribal manufacturer.

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

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

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

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

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

22 (10) Information received by the state or open to state review  
23 under the terms of a contract is subject to the provisions of RCW  
24 82.32.330.

25 (11) It is the intent of the legislature that the liquor control  
26 board and the department of revenue continue the division of duties  
27 and shared authority under chapter 82.-- RCW (the new chapter created  
28 in section 403 of this act) and therefore the liquor control board is  
29 responsible for enforcement activities that come under the terms of  
30 chapter 82.-- RCW (the new chapter created in section 403 of this  
31 act).

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

1 has occurred. Intervening violations do not extend this time period.  
2 In addition, the contract must include provisions delineating the  
3 respective roles and responsibilities of the tribe, the department of  
4 revenue, and the liquor control board.

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

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

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

12 (c) "Indian retailer" or "retailer" means: (i) A retailer wholly  
13 owned and operated by an Indian tribe; (ii) a business wholly owned  
14 and operated by a tribal member and licensed by the tribe; or (iii) a  
15 business owned and operated by the Indian person or persons in whose  
16 name the land is held in trust;

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

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

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

24 (1) The governor is authorized to enter into vapor product tax  
25 contracts with federally recognized Indian tribes located within the  
26 geographical boundaries of the state of Washington, except the  
27 Puyallup Tribe of Indians. Each contract adopted under this section  
28 must provide that the tribal vapor product tax rate be one hundred  
29 percent of the state vapor product tax and state and local sales and  
30 use taxes. The tribal vapor product tax is in lieu of the state vapor  
31 product tax and state and local sales and use taxes, as provided in  
32 section 302(3) of this act.

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

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

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



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

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

19 (3) The agreement must include a provision requiring the tribe to  
20 transmit thirty percent of the tribal tax revenue on all vapor  
21 products sales to the state. The funds must be transmitted to the  
22 state treasurer on a quarterly basis for deposit by the state  
23 treasurer into the general fund. The remaining tribal tax revenue  
24 must be used for essential government services, as that term is  
25 defined in section 302 of this act.

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

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

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

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

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

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

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

12 (c) The agreement must include provisions for sharing of  
13 information among the tribe, the department of revenue, and the  
14 liquor control board.

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

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

20 (9) The agreement must include provisions to resolve disputes  
21 using a nonjudicial process, such as mediation, and must include a  
22 dispute resolution protocol. The protocol must include a procedure  
23 for notifying the other party that a violation has occurred, a  
24 procedure for establishing whether a violation has in fact occurred,  
25 an opportunity to correct such violation, and a provision providing  
26 for termination of the agreement should the violation fail to be  
27 resolved through this process, such termination subject to mediation  
28 should the terms of the agreement so allow. An agreement must provide  
29 for termination of the agreement if resolution of a dispute does not  
30 occur within twenty-four months from the time notification of a  
31 violation has occurred. Intervening violations do not extend this  
32 time period.

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

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

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

1 (a) "Indian country" has the same meaning as provided in chapter  
2 82.24 RCW.

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

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

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

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

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

12 NEW SECTION. **Sec. 305.** A new section is added to chapter 82.08  
13 RCW to read as follows:

14 The tax levied by RCW 82.08.020 does not apply to sales of vapor  
15 products by an Indian retailer during the effective period of a vapor  
16 product tax contract subject to section 303 of this act or a vapor  
17 product tax agreement under section 304 of this act.

18 NEW SECTION. **Sec. 306.** A new section is added to chapter 82.12  
19 RCW to read as follows:

20 The provisions of this chapter do not apply in respect to the use  
21 of vapor products sold by an Indian retailer during the effective  
22 period of a vapor product tax contract subject to section 303 of this  
23 act or a vapor product tax agreement under section 304 of this act.

24 NEW SECTION. **Sec. 307.** The taxes imposed by this chapter do not  
25 apply to the sale, use, consumption, handling, possession, or  
26 distribution of vapor products by an Indian retailer during the  
27 effective period of a vapor product tax contract subject to section  
28 303 of this act or a vapor product tax agreement under section 304 of  
29 this act.

30 **PART IV**

31 **Miscellaneous Provisions**

32 NEW SECTION. **Sec. 401.** If any provision of this act or its  
33 application to any person or circumstance is held invalid, the  
34 remainder of the act or the application of the provision to other  
35 persons or circumstances is not affected.

1        NEW SECTION.    **Sec. 402.**    If any part of this act is found to be  
2    in conflict with federal requirements that are a prescribed condition  
3    to the allocation of federal funds to the state, the conflicting part  
4    of this act is inoperative solely to the extent of the conflict and  
5    with respect to the agencies directly affected, and this finding does  
6    not affect the operation of the remainder of this act in its  
7    application to the agencies concerned. Rules adopted under this act  
8    must meet federal requirements that are a necessary condition to the  
9    receipt of federal funds by the state.

10       NEW SECTION.    **Sec. 403.**    Sections 201 through 227 and 307 of this  
11    act constitute a new chapter in Title 82 RCW.

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

--- END ---