

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

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

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

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

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

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

3 **PART II**

4 **Tax on Vapor Products**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (19)(a) "Vapor product" means any noncombustible product
14 containing a solution or other consumable substance, regardless of
15 whether it contains nicotine, that employs a mechanical heating
16 element, battery, or electronic circuit regardless of shape or size
17 that can be used to produce vapor from the solution or other
18 substance, including an electronic cigarette, electronic cigar,
19 electronic cigarillo, electronic pipe, or similar product or device.
20 The term also includes any cartridge or other container of solution
21 or other consumable substance, regardless of whether it contains
22 nicotine, that is intended to be used with or in a vapor product to
23 produce vapor and is sold for such purpose.

24 (b) The term does not include:

25 (i) Any product approved by the United States food and drug
26 administration for sale as a tobacco cessation product, medical
27 device, or for other therapeutic purposes when such product is
28 marketed and sold solely for such an approved purpose;

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

31 (iii) Any product that meets the definition of marijuana, useable
32 marijuana, marijuana concentrates, marijuana-infused products,
33 cigarette, or tobacco products.

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

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

36 (ii) "Marijuana," "useable marijuana," "marijuana concentrates,"
37 and "marijuana-infused products" have the same meaning as in RCW
38 69.50.101.

39 (iii) "Tobacco products" has the same meaning as in RCW
40 82.26.010.

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

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

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

23 (b) The tax imposed under this section must also be collected by
24 the department from the consumer of vapor products where the tax
25 imposed under this section was not paid by the distributor on such
26 vapor products.

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

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

32 NEW SECTION. **Sec. 203.** (1) The essential public health services
33 account is created in the state treasury. The revenue from the tax
34 collected under section 202 of this act must be deposited into the
35 account. Moneys in the account may be spent only after appropriation
36 to the department of health. The department must use the moneys in
37 the account for each of the four following purposes: (a) To fund
38 essential governmental public health services; (b) to fund tobacco
39 control and prevention and other substance use prevention and

1 education; (c) to use to strengthen and support public health system
2 capabilities, including accredited higher education public health
3 programs; and (d) enforcement by the liquor control board of the
4 provisions of House Bill No. 1645 (Z-0382/15) to prevent sales of e-
5 cigarettes and vapor products to minors and related provisions for
6 control of marketing and product safety, provided that no more than
7 12.5 percent of the funds deposited into the account established by
8 this section may be utilized and distributed by the department to the
9 liquor control board for these enforcement purposes.

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

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

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

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

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

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

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

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

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

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

36 (3) At any time during usual business hours the department,
37 board, or its duly authorized agents or employees may enter any
38 retail outlet without a search warrant, and inspect the premises for

1 invoices required to be kept under this section and the vapor
2 products contained in the retail outlet, to determine whether or not
3 all the provisions of this chapter are being fully complied with. If
4 the department, board, or any of its agents or employees are denied
5 free access or are hindered or interfered with in making the
6 inspection, the registration certificate issued under RCW 82.32.030
7 of the retailer at the premises is subject to revocation by the
8 department, and any licenses issued under this chapter or chapter
9 82.26 or 82.24 RCW are subject to suspension or revocation by the
10 board.

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

21 (b) For purposes of this subsection, the following definitions
22 apply:

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

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

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

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

4 NEW SECTION. **Sec. 211.** All of the provisions contained in
5 chapter 82.32 RCW not inconsistent with the provisions of this
6 chapter have full force and application with respect to taxes imposed
7 under the provisions of this chapter.

8 NEW SECTION. **Sec. 212.** The department must authorize, as duly
9 authorized agents, enforcement officers of the liquor control board
10 to enforce provisions of this chapter. These officers are not
11 employees of the department.

12 NEW SECTION. **Sec. 213.** (1) The department may by rule establish
13 the invoice detail required under section 207 of this act for a
14 distributor under section 201(6)(d) of this act and for those
15 invoices required to be provided to retailers under section 208 of
16 this act.

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

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

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

32 (2) When transporting vapor products for sale, the person must
33 have in his or her actual possession, or cause to have in the actual
34 possession of those persons transporting such vapor products on his
35 or her behalf, invoices or delivery tickets for the vapor products,
36 which must show the true name and address of the consignor or seller,

1 the true name and address of the consignee or purchaser, and the
2 quantity and brands of the vapor products being transported.

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

8 (4) This section does not apply to a motor carrier or freight
9 forwarder as defined in 49 U.S.C. 13102 or an air carrier as defined
10 in 49 U.S.C. 40102.

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

13 (a) A distributor's license; and

14 (b) A retailer's license.

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

36 (3) No person may qualify for a distributor's license or a
37 retailer's license under this section without first undergoing a
38 criminal background check. The background check must be performed by
39 the board and must disclose any criminal conduct within the previous

1 five years in any state, tribal, or federal jurisdiction in the
2 United States, its territories, or possessions. If the applicant or
3 licensee also has a license issued under chapter 66.24, 82.24, or
4 82.26 RCW, the background check done under the authority of chapter
5 66.24, 82.24, or 82.26 RCW satisfies the requirements of this
6 subsection.

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

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

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

21 NEW SECTION. **Sec. 216.** The board must compile and maintain a
22 current record of the names of all distributors and retailers
23 licensed under this chapter and the status of their license or
24 licenses. The information must be updated on a monthly basis and
25 published on the board's official internet web site. This information
26 is not subject to the confidentiality provisions of RCW 82.32.330 and
27 must be disclosed to manufacturers, distributors, retailers, and the
28 general public upon request.

29 NEW SECTION. **Sec. 217.** (1)(a) No person may engage in or
30 conduct business as a distributor or retailer in this state without a
31 valid license issued under this chapter, except as otherwise provided
32 by law. Any person who sells vapor products to persons other than
33 ultimate consumers or who meets the definition of "distributor" under
34 section 201(6)(d) of this act must obtain a distributor's license
35 under this chapter. Any person who sells vapor products to ultimate
36 consumers must obtain a retailer's license under this chapter.

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

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

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

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

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

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

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

21 (ii) The person transporting the vapor products actually
22 possesses invoices or delivery tickets showing the true name and
23 address of the consignor or seller, the true name and address of the
24 consignee or purchaser, and the quantity and brands of vapor products
25 being transported; and

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

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

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

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

37 (5) This section does not apply to a motor carrier or freight
38 forwarder as defined in 49 U.S.C. 13102 or an air carrier as defined
39 in 49 U.S.C. 40102.

1 NEW SECTION. **Sec. 218.** (1) A retailer that obtains vapor
2 products from an unlicensed distributor or any other person that is
3 not licensed under this chapter must be licensed both as a retailer
4 and a distributor under this chapter and is liable for the tax
5 imposed under section 202 of this act with respect to the vapor
6 products acquired from the unlicensed person that are held for sale,
7 handling, or distribution in this state. For the purposes of this
8 subsection, "person" includes both persons defined in section 201(10)
9 of this act and any person immune from state taxation, such as the
10 United States or its instrumentalities, and federally recognized
11 Indian tribes and enrolled tribal members, conducting business within
12 Indian country.

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

16 NEW SECTION. **Sec. 219.** A manufacturer that has manufacturer's
17 representatives who sell or distribute the manufacturer's vapor
18 products in this state must provide the board a list of the names and
19 addresses of all such representatives and must ensure that the list
20 provided to the board is kept current. A manufacturer's
21 representative is not authorized to distribute or sell vapor products
22 in this state unless the manufacturer that hired the representative
23 has a valid distributor's license under this chapter and that
24 manufacturer provides the board a current list of all of its
25 manufacturer's representatives as required by this section. A
26 manufacturer's representative must carry a copy of the distributor's
27 license of the manufacturer that hired the representative at all
28 times when selling or distributing the manufacturer's vapor products.

29 NEW SECTION. **Sec. 220.** (1) The board must enforce this chapter.
30 The board may adopt, amend, and repeal rules necessary to enforce
31 this chapter.

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

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

12 (4) Any licenses issued under chapter 82.24 or 82.26 RCW to a
13 person whose license or licenses have been suspended or revoked under
14 this section 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 of the license or licenses. The license or licenses may be approved
19 by the board if it appears to the satisfaction of the board that the
20 licensee will comply with the provisions of this chapter and the
21 rules adopted under it.

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

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 is reviewable by an appeal to the superior
32 court of Thurston county. The superior court must review the order or
33 ruling of the board and may hear the matter de novo, having due
34 regard to the provisions of this chapter and the duties imposed upon
35 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.

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

9 (2) Any vapor products in the possession of a person who is not a
10 licensed distributor or retailer and who transports vapor products
11 for sale without having provided notice to the board required under
12 section 214 of this act, or without invoices or delivery tickets
13 showing the true name and address of the consignor or seller, the
14 true name and address of the consignee or purchaser, and the quantity
15 and brands of vapor products being transported may be seized and are
16 subject to forfeiture.

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

22 (a) A conveyance used by any person as a common or contract
23 carrier having in actual possession invoices or delivery tickets
24 showing the true name and address of the consignor or seller, the
25 true name of the consignee or purchaser, and the quantity and brands
26 of the vapor products transported, unless it appears that the owner
27 or other person in charge of the conveyance is a consenting party or
28 privy to a violation of this chapter;

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

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

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

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

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

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

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

14 (7) This section does not apply to a motor carrier or freight
15 forwarder as defined in 49 U.S.C. 13102 or an air carrier as defined
16 in 49 U.S.C. 40102.

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

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

22 (a) Retain the property for official use or upon application by
23 any law enforcement agency of this state, another state, or the
24 District of Columbia, or of the United States for the exclusive use
25 of enforcing this chapter or the laws of any other state or the
26 District of Columbia or of the United States; or

27 (b) Sell the vapor products at public auction to the highest
28 bidder after due advertisement. Before delivering any of the goods to
29 the successful bidder, the department or board must require the
30 purchaser to pay the proper amount of any tax due. The proceeds of
31 the sale must be first applied to the payment of all proper expenses
32 of any investigation leading to the seizure and of the proceedings
33 for forfeiture and sale, including expenses of seizure, maintenance
34 of custody, advertising, and court costs. The balance of the proceeds
35 and all money must be deposited in the general fund of the state.
36 Proper expenses of investigation include costs incurred by any law
37 enforcement agency or any federal, state, or local agency.

38 (3) The department or the board may return any property seized
39 under the provisions of this chapter when it is shown that there was

1 no intention to violate the provisions of this chapter. When any
2 property is returned under this section, the department or the board
3 may return the property to the parties from whom they were seized if
4 and when such parties have paid the proper amount of tax due under
5 this chapter.

6 NEW SECTION. **Sec. 223.** When the department or the board has
7 good reason to believe that any of the vapor products taxed under
8 this chapter are being kept, sold, offered for sale, or given away in
9 violation of the provisions of this chapter, it may make affidavit of
10 facts describing the place or thing to be searched, before any judge
11 of any court in this state, and the judge must issue a search warrant
12 directed to the sheriff, any deputy, police officer, or duly
13 authorized agent of the department or the board commanding him or her
14 diligently to search any building, room in a building, place, or
15 vehicle as may be designated in the affidavit and search warrant, and
16 to seize the vapor products and hold them until disposed of by law.

17 **Sec. 224.** 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. 225.** 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. 226.** 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 (~~(e)~~), 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 (~~(e)~~), 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. 227.** RCW 82.24.550 and 2015 c 86 s 307 are each amended to
16 read as follows:

17 (1) The board must enforce the provisions of this chapter. The
18 board may adopt, amend, and repeal rules necessary to enforce the
19 provisions of this chapter.

20 (2) The department may adopt, amend, and repeal rules necessary
21 to administer the provisions of this chapter. The board may revoke or
22 suspend the license or permit of any wholesale or retail cigarette
23 dealer in the state upon sufficient cause appearing of the violation
24 of this chapter or upon the failure of such licensee to comply with
25 any of the provisions of this chapter.

26 (3) A license may not be suspended or revoked except upon notice
27 to the licensee and after a hearing as prescribed by the board. The
28 board, upon finding that the licensee has failed to comply with any
29 provision of this chapter or any rule adopted under this chapter,
30 must, in the case of the first offense, suspend the license or
31 licenses of the licensee for a period of not less than thirty
32 consecutive business days, and, in the case of a second or further
33 offense, must suspend the license or licenses for a period of not
34 less than ninety consecutive business days nor more than twelve
35 months, and, in the event the board finds the licensee has been
36 guilty of willful and persistent violations, it may revoke the
37 license or licenses.

38 (4) Any licenses issued under chapter 82.26 or 82.-- RCW (the new
39 chapter created in section 403 of this act) to a person whose license

1 or licenses have been suspended or revoked under this section must
2 also be suspended or revoked during the period of suspension or
3 revocation under this section.

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

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

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

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

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

29 **Sec. 228.** RCW 82.26.060 and 2009 c 154 s 3 are each amended to
30 read as follows:

31 (1) Every distributor (~~shall~~) must keep at each place of
32 business complete and accurate records for that place of business,
33 including itemized invoices, of tobacco products held, purchased,
34 manufactured, brought in or caused to be brought in from without the
35 state, or shipped or transported to retailers in this state, and of
36 all sales of tobacco products made.

37 (2) These records (~~shall~~) must show the names and addresses of
38 purchasers, the inventory of all tobacco products, and other
39 pertinent papers and documents relating to the purchase, sale, or

1 disposition of tobacco products. All invoices and other records
2 required by this section to be kept (~~shall~~) must be preserved for a
3 period of five years from the date of the invoices or other documents
4 or the date of the entries appearing in the records.

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

19 **Sec. 229.** RCW 82.26.080 and 2005 c 180 s 5 are each amended to
20 read as follows:

21 (1) Every retailer (~~shall~~) must procure itemized invoices of
22 all tobacco products purchased. The invoices (~~shall~~) must show the
23 seller's name and address, the date of purchase, and all prices and
24 discounts.

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

30 (3) At any time during usual business hours the department,
31 board, or its duly authorized agents or employees may enter any
32 retail outlet without a search warrant, and inspect the premises for
33 invoices required to be kept under this section and the tobacco
34 products contained in the retail outlet, to determine whether or not
35 all the provisions of this chapter are being fully complied with. If
36 the department, board, or any of its agents or employees, are denied
37 free access or are hindered or interfered with in making the
38 inspection, the registration certificate issued under RCW 82.32.030
39 of the retailer at the premises is subject to revocation, and any

1 licenses issued under this chapter or chapter 82.24 or 82.-- RCW (the
2 new chapter created in section 403 of this act) are subject to
3 suspension or revocation by the department.

4 **Sec. 230.** RCW 82.26.150 and 2013 c 144 s 52 are each amended to
5 read as follows:

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

8 (a) A distributor's license; and

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 may
12 adopt rules regarding the regulation of the licenses. The board may
13 refuse to issue any license under this chapter if the board has
14 reasonable cause to believe that the applicant has willfully withheld
15 information requested for the purpose of determining the eligibility
16 of the applicant to receive a license, or if the board has reasonable
17 cause to believe that information submitted in the application is
18 false or misleading or is not made in good faith. In addition, for
19 the purpose of reviewing an application for a distributor's license
20 or retailer's license and for considering the denial, suspension, or
21 revocation of any such license, the board may consider criminal
22 conduct of the applicant, including an administrative violation
23 history record with the board and a criminal history record
24 information check within the previous five years, in any state,
25 tribal, or federal jurisdiction in the United States, its
26 territories, or possessions, and the provisions of RCW 9.95.240 and
27 chapter 9.96A RCW do not apply to such cases. The board may, in its
28 discretion, issue or refuse to issue the distributor's license or
29 retailer's license, subject to the provisions of RCW 82.26.220.

30 (3) No person may qualify for a distributor'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. If the applicant or
36 licensee also has a license issued under chapter 66.24 (~~(e)~~) 82.24,
37 or 82.-- RCW (the new chapter created in section 403 of this act),
38 the background check done under the authority of chapter 66.24

1 (~~or~~), 82.24, or 82.-- RCW (the new chapter created in section 403
2 of this act) satisfies the requirements of this section.

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

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

12 **Sec. 231.** RCW 82.26.220 and 2015 c 86 s 308 are each amended to
13 read as follows:

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

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

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

33 (4) Any licenses issued under chapter 82.24 or 82.-- RCW (the new
34 chapter created in section 403 of this act) to a person whose license
35 or licenses have been suspended or revoked under this section must
36 also be suspended or revoked during the period of suspension or
37 revocation under this section.

38 (5) Any person whose license or licenses have been revoked under
39 this section may reapply to the board at the expiration of one year

1 of the license or licenses. The license or licenses may be approved
2 by the board if it appears to the satisfaction of the board that the
3 licensee will comply with the provisions of this chapter and the
4 rules adopted under it.

5 (6) A person whose license has been suspended or revoked may not
6 sell tobacco products or cigarettes or permit tobacco products or
7 cigarettes to be sold during the period of suspension or revocation
8 on the premises occupied by the person or upon other premises
9 controlled by the person or others or in any other manner or form.

10 (7) Any determination and order by the board, and any order of
11 suspension or revocation by the board of the license or licenses
12 issued under this chapter, or refusal to reinstate a license or
13 licenses after revocation is reviewable by an appeal to the superior
14 court of Thurston county. The superior court must review the order or
15 ruling of the board and may hear the matter de novo, having due
16 regard to the provisions of this chapter and the duties imposed upon
17 the board.

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

21 **Sec. 232.** RCW 82.32.300 and 1997 c 420 s 9 are each amended to
22 read as follows:

23 (1) The administration of this and chapters 82.04 through 82.27
24 RCW of this title is vested in the department (~~(of revenue which~~
25 ~~shall)), which must prescribe forms and rules of procedure for the
26 determination of the taxable status of any person, for the making of
27 returns and for the ascertainment, assessment and collection of taxes
28 and penalties imposed thereunder.~~

29 (2) The department of revenue (~~(shall)~~) must make and publish
30 rules and regulations, not inconsistent therewith, necessary to
31 enforce provisions of this chapter and chapters 82.02 through 82.23B
32 and 82.27 RCW, and the liquor control board (~~(shall)~~) must make and
33 publish rules necessary to enforce chapters 82.24 (~~(and)~~), 82.26, and
34 82.-- RCW (the new chapter created in section 403 of this act), which
35 (~~(shall)~~) must have the same force and effect as if specifically
36 included therein, unless declared invalid by the judgment of a court
37 of record not appealed from.

38 (3) The department may employ such clerks, specialists, and other
39 assistants as are necessary. Salaries and compensation of such

1 employees (~~shall~~) must be fixed by the department and (~~shall~~)
2 must be charged to the proper appropriation for the department.

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

7 **PART III**
8 **Tribal Compacting**

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

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

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

29 (1) The governor may enter into vapor product tax contracts
30 concerning the sale of vapor products. All vapor product tax
31 contracts must meet the requirements for vapor product tax contracts
32 under this section.

33 (2) Vapor product tax contracts must be in regard to retail sales
34 in which Indian retailers make delivery and physical transfer of
35 possession of the vapor products from the seller to the buyer within
36 Indian country, and are not in regard to transactions by non-Indian
37 retailers. In addition, contracts must provide that retailers may not

1 sell or give, or permit to be sold or given, vapor products to any
2 person under the age of eighteen years.

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

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

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

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

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

21 (d) A tribal manufacturer.

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

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

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

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

32 (9) The governor may delegate the power to negotiate vapor
33 product tax contracts to the department of revenue. The department of
34 revenue must consult with the liquor control board during the
35 negotiations.

36 (10) Information received by the state or open to state review
37 under the terms of a contract is subject to the provisions of RCW
38 82.32.330.

39 (11) It is the intent of the legislature that the liquor control
40 board and the department of revenue continue the division of duties

1 and shared authority under chapter 82.-- RCW (the new chapter created
2 in section 403 of this act) and therefore the liquor control board is
3 responsible for enforcement activities that come under the terms of
4 chapter 82.-- RCW (the new chapter created in section 403 of this
5 act).

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

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

21 (a) "Essential government services" means services such as tribal
22 administration, public facilities, fire, police, public health,
23 education, job services, sewer, water, environmental and land use,
24 transportation, utility services, and economic development;

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

26 (c) "Indian retailer" or "retailer" means: (i) A retailer wholly
27 owned and operated by an Indian tribe; (ii) a business wholly owned
28 and operated by a tribal member and licensed by the tribe; or (iii) a
29 business owned and operated by the Indian person or persons in whose
30 name the land is held in trust;

31 (d) "Indian tribe" or "tribe" means a federally recognized Indian
32 tribe located within the geographical boundaries of the state of
33 Washington; and

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

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

38 (1) The governor is authorized to enter into vapor product tax
39 contracts with federally recognized Indian tribes located within the

1 geographical boundaries of the state of Washington, except the
2 Puyallup Tribe of Indians. Each contract adopted under this section
3 must provide that the tribal vapor product tax rate be one hundred
4 percent of the state vapor product tax and state and local sales and
5 use taxes. The tribal vapor product tax is in lieu of the state vapor
6 product tax and state and local sales and use taxes, as provided in
7 section 302(3) of this act.

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

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

12 (1) The governor may enter into a vapor product tax agreement
13 with the Puyallup Tribe of Indians concerning the sale of vapor
14 products, subject to the limitations in this section. The legislature
15 intends to address the uniqueness of the Puyallup Indian reservation
16 and its selling environment through pricing and compliance
17 strategies, rather than through the imposition of equivalent taxes.
18 The governor may delegate the authority to negotiate a vapor product
19 tax agreement with the Puyallup Tribe to the department of revenue.
20 The department of revenue must consult with the liquor control board
21 during the negotiations.

22 (2) Any agreement must require the tribe to impose a tribal vapor
23 product tax with a tax rate that is ninety percent of the state vapor
24 product tax. This tribal tax is in lieu of the combined state and
25 local sales and use taxes and the state vapor product tax, and as
26 such these state taxes are not imposed during the term of the
27 agreement on any transaction governed by the agreement. The tribal
28 vapor product tax must increase or decrease at the time of any
29 increase or decrease in the state vapor product tax so as to remain
30 at a level that is ninety percent of the rate of the state vapor
31 product tax.

32 (3) The agreement must include a provision requiring the tribe to
33 transmit thirty percent of the tribal tax revenue on all vapor
34 products sales to the state. The funds must be transmitted to the
35 state treasurer on a quarterly basis for deposit by the state
36 treasurer into the general fund. The remaining tribal tax revenue
37 must be used for essential government services, as that term is
38 defined in section 302 of this act.

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

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

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

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

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

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

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

25 (c) The agreement must include provisions for sharing of
26 information among the tribe, the department of revenue, and the
27 liquor control board.

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

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

33 (9) The agreement must include provisions to resolve disputes
34 using a nonjudicial process, such as mediation, and must include a
35 dispute resolution protocol. The protocol must include a procedure
36 for notifying the other party that a violation has occurred, a
37 procedure for establishing whether a violation has in fact occurred,
38 an opportunity to correct such violation, and a provision providing
39 for termination of the agreement should the violation fail to be
40 resolved through this process, such termination subject to mediation

1 should the terms of the agreement so allow. An agreement must provide
2 for termination of the agreement if resolution of a dispute does not
3 occur within twenty-four months from the time notification of a
4 violation has occurred. Intervening violations do not extend this
5 time period.

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

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

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

14 (a) "Indian country" has the same meaning as provided in chapter
15 82.24 RCW.

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

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

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

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

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

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

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

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

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

