
ENGROSSED SUBSTITUTE SENATE BILL 5542

State of Washington 62nd Legislature 2011 1st Special Session

By Senate Ways & Means (originally sponsored by Senators Delvin, Prentice, Honeyford, Hatfield, Schoesler, Hobbs, and Hewitt)

READ FIRST TIME 05/06/11.

1 AN ACT Relating to establishing special license endorsements for
2 cigar lounges and retail tobacconist shops; amending RCW 70.160.060;
3 and adding new sections to chapter 82.26 RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 82.26 RCW
6 to read as follows:

7 (1) A person holding a tobacco products retailer's license issued
8 under this chapter may apply through the master license system under
9 chapter 19.02 RCW for a special endorsement as a cigar lounge or retail
10 tobacconist shop subject to the requirements of this section.

11 (2) A fee of seventeen thousand five hundred dollars must accompany
12 each special license endorsement application under subsection (3) of
13 this section and a fee of six thousand dollars must accompany each
14 special license endorsement application under subsection (4) of this
15 section.

16 (3) The board must issue an endorsement as a cigar lounge to a
17 business that meets the requirements of subsections (1) and (2) of this
18 section and that has submitted an affidavit to the board certifying
19 that it:

1 (a) Is an establishment or part of an establishment specifically
2 designated for the smoking of tobacco products, purchased on the
3 premises or elsewhere, which is physically separated from any areas of
4 the same or adjacent location where smoking is prohibited under state
5 law. For the purposes of this subsection, "physically separated" means
6 an area that is enclosed on all sides by solid, impermeable walls or
7 windows extending from the floor to ceiling with self-closing doors.

8 (b) Will not allow cigarettes to be smoked in the area designated
9 in (a) of this subsection;

10 (c) Holds a valid spirits, beer, and wine license in good standing
11 from the board;

12 (d) Has a valid uniform business identifier number and, if it is an
13 established business with reportable gross receipts, has paid all
14 applicable state business and occupation taxes in the year prior to
15 application for endorsement;

16 (e) In the year immediately preceding initial application or
17 renewal, derived at least twenty-five thousand dollars of the business'
18 annual gross income from the combination of the sale of tobacco
19 products, tobacco products related paraphernalia, and the rental of on-
20 site humidor space. In the case where this is the first endorsement
21 application, the applicant may use any year prior to the initial
22 application to meet the requirements of this subsection or must show
23 proof that it has purchased, at wholesale, at least twelve thousand
24 five hundred dollars in tobacco products and tobacco products related
25 paraphernalia;

26 (f) Has obtained a signed letter, on appropriate letterhead, from
27 a heating, ventilation, and air-conditioning, and refrigeration
28 contractor holding a valid registration with the department of labor
29 and industries pursuant to chapter 18.27 RCW, which certifies that the
30 ventilation and exhaust system for the area designated in (a) of this
31 subsection:

32 (i) Is separate and distinct from the location's general heating,
33 ventilation, and air-conditioning system;

34 (ii) Has an air flow, as calculated in cubic feet per minute, that
35 will provide for at least thirteen or more air changes within the space
36 served by the ventilation and exhaust system;

37 (iii) Uses the correct quantity of filters recommended by the
38 manufacturer of the ventilation and exhaust system and that those

1 filters have a minimum efficiency rating value of 14 or higher. For
2 the purposes of this subsection, "minimum efficiency rating value"
3 means the air-cleaning performance rating value as expressed in
4 American society of heating, refrigerating, and air-conditioning
5 engineers standard 52.2-2007; and

6 (iv) Uses a loose-fill, rechargeable-type sorbent material
7 positioned across the airflow in such a configuration that gaseous
8 contaminants will have a residence time of one-tenth of one second or
9 more within the sorbent material. For the purposes of this section,
10 "residence time" must be calculated consistent with the recommendations
11 outlined in Chapter 45 of the 2007 American society of heating,
12 refrigerating, and air-conditioning engineers handbook - HVAC
13 applications entitled "Control of Gaseous Indoor Air Contaminants";

14 (g) Has on file, from each employee that may work in the area
15 designated in (a) of this subsection, a signed acknowledgment that the
16 employee has been advised of and accepts that environmental tobacco
17 smoke may be present in their potential work area. The acknowledgment
18 must contain the signature of the employee, the employer, and a
19 disinterested third-party witness;

20 (h) Will post signage indicating that environmental tobacco smoke
21 may be present in the establishment or part of the establishment. This
22 signage must be in the form and manner provided by the board and must
23 be placed in a conspicuous location at each entry to the area
24 designated in (a) of this subsection.

25 (4) The board must issue an endorsement as a retail tobacconist
26 shop to a business that meets the requirements of subsections (1) and
27 (2) of this section and that has submitted an affidavit to the board
28 certifying that it:

29 (a) Is an establishment whose primary purpose is the sale of
30 tobacco products and tobacco product related paraphernalia and that is
31 physically separated from any adjacent location where smoking is
32 prohibited under state law. For the purposes of this subsection,
33 "physically separated" means an area that is enclosed on all sides by
34 solid, impermeable walls or windows extending from the floor to ceiling
35 with self-closing doors;

36 (b) Will not allow cigarettes to be smoked in the area designated
37 in (a) of this subsection;

1 (c) Will prohibit entry into the area designated in subsection
2 (3)(a) of this section to any person under the age of eighteen;

3 (d) Has a valid uniform business identifier number and, if an
4 established business with reportable gross receipts, has paid all
5 applicable state business and occupation taxes in the year prior to
6 application for endorsement;

7 (e) In the year immediately preceding initial application or
8 renewal, derived at least seventy-five percent of the business' annual
9 gross income from the combination of the sale of tobacco products and
10 tobacco product related paraphernalia. In the case where this is the
11 first endorsement application, the applicant may use any year prior to
12 the initial application to meet the requirements of this subsection or
13 must show proof that it has purchased, at wholesale, at least twenty-
14 five thousand dollars in tobacco products and tobacco products related
15 paraphernalia;

16 (f) Has obtained a signed letter, on appropriate letterhead, from
17 a heating, ventilation, and air-conditioning, and refrigeration
18 contractor holding a valid registration with the department of labor
19 and industries pursuant to chapter 18.27 RCW, which certifies that the
20 ventilation and exhaust system for the area designated in (a) of this
21 subsection:

22 (i) Is separate and distinct from the location's general heating,
23 ventilation, and air-conditioning system;

24 (ii) Has an airflow, as calculated in cubic feet per minute, that
25 provides for at least thirteen or more air changes within the space
26 served by the ventilation and exhaust system; and

27 (iii) Uses the correct quantity of filters recommended by the
28 manufacturer of the ventilation and exhaust system and that those
29 filters have a minimum efficiency rating value of fourteen or higher.
30 For the purposes of this subsection, "minimum efficiency rating value"
31 means the air-cleaning performance rating value as expressed in
32 American society of heating, refrigerating, and air-conditioning
33 engineers standard 52.2-2007; and

34 (iv) Uses a loose-fill, rechargeable-type sorbent material
35 positioned across the airflow in such a configuration that gaseous
36 contaminants will have a residence time of one-tenth of one second or
37 more within the sorbent material. For the purposes of this section,
38 "residence time" must be calculated consistent with the recommendations

1 outlined in Chapter 45 of the 2007 American society of heating,
2 refrigerating, and air-conditioning engineers handbook - HVAC
3 applications entitled "Control of Gaseous Indoor Air Contaminants";

4 (g) Has on file, from each employee that may work in the area
5 designated in (a) of this subsection, a signed acknowledgment that the
6 employee has been advised of and accepts that environmental tobacco
7 smoke may be present in their potential work area. The acknowledgment
8 must contain the signature of the employee, the employer, and a
9 disinterested third-party witness;

10 (h) Will post signage indicating that environmental tobacco smoke
11 may be present in the establishment or part of the establishment. This
12 signage must be in the form and manner provided by the board and must
13 be placed in a conspicuous location at each entry to the area
14 designated in (a) of this subsection.

15 (5) No employer may discharge, threaten to discharge, demote, deny
16 a promotion to, sanction, discipline, retaliate against, harass, or
17 otherwise discriminate against an employee, employed by the employer on
18 or before the effective date of this section, solely for refusing to
19 consent to or sign the acknowledgment required in subsections (3)(g) or
20 (4)(g) of this section.

21 (6) The affidavits required under this section must be submitted in
22 a form and manner as prescribed by the board to effectively administer
23 the provisions of this chapter.

24 (7) The board may request additional documentation or information
25 from an applicant in order to verify that the business meets the
26 requirements of this section. The applicant must comply with requests
27 from the department under this subsection or the board may withhold
28 issuance of an endorsement.

29 (8) Endorsements granted under this section are effective for the
30 same period as provided in the tobacco products retailer's license
31 granted to the applicant under this chapter. However, the affidavit
32 required under this section must be completed and verified each year by
33 the board and the appropriate fee paid in full before any endorsement
34 to a tobacco retailer license is issued or renewed.

35 (9) Endorsement decisions by the board must be made no later than
36 twenty-one business days following the submittal of a completed
37 affidavit together with the appropriate fee. Rejections of an

1 application for an endorsement under this section may be appealed under
2 the same process provided for other licenses issued by the board.

3 (10) At no point during any calendar year may the board allow the
4 total number of cigar lounge endorsements in the state to exceed one
5 hundred or the total number of retail tobacco shop endorsements in the
6 state to exceed five hundred. The board must administer the
7 distribution of cigar lounge or retail tobacco shop endorsements and
8 must ensure that the collective number of cigar lounge or retail
9 tobacco shop endorsements located within all counties with a population
10 of over five hundred thousand never exceed one-half of the endorsements
11 allowed under this subsection for each endorsement respectively.
12 Renewing applicants must be given priority over new applicants for
13 endorsements under these limitations.

14 NEW SECTION. **Sec. 2.** A new section is added to chapter 82.26 RCW
15 to read as follows:

16 (1) Up to five percent of the fees collected under section 1 of
17 this act must be deposited into the liquor revolving fund created in
18 RCW 66.08.170, to be used to cover the administrative costs of
19 implementing and enforcing the endorsements created in section 1 of
20 this act.

21 (2) The remaining funds collected under section 1 of this act must
22 be deposited into the tobacco prevention and control account created in
23 RCW 43.79.480 solely for appropriation for tobacco usage prevention and
24 treatment programs.

25 **Sec. 3.** RCW 70.160.060 and 1995 c 369 s 60 are each amended to
26 read as follows:

27 This chapter is not intended to:

28 (1) Regulate smoking in a private enclosed workplace, within a
29 public place, even though such workplace may be visited by nonsmokers,
30 excepting places in which smoking is prohibited by the chief of the
31 Washington state patrol, through the director of fire protection, or by
32 other law, ordinance, or regulation;

33 (2) Regulate use or smoking of tobacco products, as that term is
34 defined under chapter 82.26 RCW, in a public place or place of
35 employment that holds a valid endorsement to their tobacco products
36 retailer's license under section 1 of this act. The liquor control

1 board has sole enforcement authority under this chapter regarding the
2 designated areas which receive an endorsement under section 1 of this
3 act.

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