

SB 6623 - S AMD 322

By Senator Delvin

1 Strike everything after the enacting clause and insert the
2 following:

3 "**Sec. 1.** RCW 82.24.010 and 1997 c 420 s 3 are each amended to read
4 as follows:

5 Unless the context clearly requires otherwise, the definitions in
6 this section apply throughout this chapter:

7 (1) "Board" means the liquor control board.

8 (2) "Cigarette" means any roll for smoking made wholly or in part
9 of tobacco, irrespective of size or shape and irrespective of the
10 tobacco being flavored, adulterated, or mixed with any other
11 ingredient, where such roll has a wrapper or cover made of paper or any
12 material, except where such wrapper is wholly or in the greater part
13 made of natural leaf tobacco in its natural state. "Cigarette"
14 includes a roll-your-own cigarette.

15 (3) "Cigarette paper" means any paper or any other material except
16 tobacco, prepared for use as a cigarette wrapper.

17 (4) "Cigarette tube" means cigarette paper made into a hollow
18 cylinder for use in making cigarettes.

19 (5) "Commercial cigarette-making machine" means a machine that is
20 operated in a retail establishment and that is capable of being loaded
21 with loose tobacco, cigarette paper or tubes, and any other components
22 related to the production of roll-your-own cigarettes, including
23 filters.

24 (6) "Indian tribal organization" means a federally recognized
25 Indian tribe, or tribal entity, and includes an Indian wholesaler or
26 retailer that is owned by an Indian who is an enrolled tribal member
27 conducting business under tribal license or similar tribal approval
28 within Indian country. For purposes of this chapter "Indian country"
29 is defined in the manner set forth in 18 U.S.C. Sec. 1151.

1 ~~((4))~~ (7) "Precollection obligation" means the obligation of a
2 seller otherwise exempt from the tax imposed by this chapter to collect
3 the tax from that seller's buyer.

4 ~~((5))~~ (8) "Retailer" means every person, other than a wholesaler,
5 who purchases, sells, offers for sale or distributes any one or more of
6 the articles taxed herein, irrespective of quantity or amount, or the
7 number of sales, and all persons operating under a retailer's
8 registration certificate.

9 ~~((6))~~ (9) "Retail selling price" means the ordinary, customary or
10 usual price paid by the consumer for each package of cigarettes, less
11 the tax levied by this chapter and less any similar tax levied by this
12 state.

13 ~~((7))~~ (10) "Roll-your-own cigarettes" means cigarettes produced
14 by a commercial cigarette-making machine.

15 (11) "Stamp" means the stamp or stamps by use of which the tax levy
16 under this chapter is paid or identification is made of those
17 cigarettes with respect to which no tax is imposed.

18 ~~((8))~~ (12) "Wholesaler" means every person who purchases, sells,
19 or distributes any one or more of the articles taxed herein to
20 retailers for the purpose of resale only.

21 ~~((9))~~ (13) The meaning attributed, in chapter 82.04 RCW, to the
22 words "person," "sale," "business" and "successor" applies equally in
23 this chapter.

24 **Sec. 2.** RCW 82.24.030 and 2003 c 114 s 2 are each amended to read
25 as follows:

26 (1) In order to enforce collection of the tax hereby levied, the
27 department of revenue (~~shall~~) must design and have printed stamps of
28 such size and denominations as may be determined by the department.
29 The stamps must be affixed on the smallest container or package that
30 will be handled, sold, used, consumed, or distributed, to permit the
31 department to readily ascertain by inspection, whether or not such tax
32 has been paid or whether an exemption from the tax applies.

33 (2) Except as otherwise provided in this chapter, only a wholesaler
34 (~~shall~~) may cause to be affixed on every package of cigarettes,
35 stamps of an amount equaling the tax due thereon or stamps identifying
36 the cigarettes as exempt before he or she sells, offers for sale, uses,
37 consumes, handles, removes, or otherwise disturbs and distributes the

1 same(~~(:—PROVIDED, That)~~). However, where it is established to the
2 satisfaction of the department that it is impractical to affix such
3 stamps to the smallest container or package, the department may
4 authorize the affixing of stamps of appropriate denomination to a large
5 container or package.

6 (3) Except as otherwise provided in this chapter, only wholesalers
7 may purchase or obtain cigarette stamps. Wholesalers (~~(shall)~~) may not
8 sell or provide stamps to any other wholesaler or person.

9 (4) Each roll of stamps, or group of sheets, (~~(shall)~~) must have a
10 separate serial number, which (~~(shall be)~~) is legible at the point of
11 sale. The department of revenue (~~(shall)~~) must keep records of which
12 wholesaler purchases each roll or group of sheets. If the department
13 of revenue permits wholesalers to purchase partial rolls or sheets, in
14 no case may stamps bearing the same serial number be sold to more than
15 one wholesaler. The remainder of the roll or sheet, if any, (~~(shall)~~)
16 must either be retained for later purchases by the same wholesaler or
17 destroyed.

18 (5) Nothing in this section (~~(shall)~~) may be construed as limiting
19 any otherwise lawful activity under a cigarette tax compact pursuant to
20 chapter 43.06 RCW.

21 (6) In order to enforce collection of the tax in the case of roll-
22 your-own cigarettes, a retailer must affix a stamp or stamps to each
23 box or similar container provided by the retailer to the consumer. The
24 box or similar container must be used by a consumer to transport roll-
25 your-own cigarettes from the retailer's place of business. A retailer
26 must provide cigarette tubes to a consumer in one or more twenty unit
27 denominations. Stamps must be for an amount equaling the tax due under
28 this chapter. Each cigarette tube or paper provided to the consumer is
29 deemed a cigarette for purposes of imposing and collecting taxes under
30 this chapter. Stamps for roll-your-own cigarettes must be issued and
31 affixed in a manner determined by the department but as consistent as
32 practicable with the stamping requirements for wholesalers.

33 **Sec. 3.** RCW 82.24.035 and 1999 c 193 s 5 are each amended to read
34 as follows:

35 (1) No stamp may be affixed to, or made upon, any container or
36 package of cigarettes if:

1 (a) The container or package differs in any respect with the
2 requirements of the federal cigarette labeling and advertising act (15
3 U.S.C. Sec. 1331 et seq.) for the placement of labels, warnings, or any
4 other information upon a package of cigarettes that is to be sold
5 within the United States;

6 (b) The container or package has been imported into the United
7 States after January 1, 2000, in violation of 26 U.S.C. Sec. 5754;

8 (c) The container or package, including a container of individually
9 stamped containers or packages, is labeled "For Export Only," "U.S. Tax
10 Exempt," "For Use Outside U.S.," or similar wording indicating that the
11 manufacturer did not intend that the product be sold in the United
12 States; or

13 (d) The container or package has been altered by adding or deleting
14 the wording, labels, or warnings described in (a) or (c) of this
15 subsection.

16 (2) In addition to the penalty and forfeiture provisions otherwise
17 provided for in this chapter, a violation of this section is a
18 deceptive act or practice under the consumer protection act, chapter
19 19.86 RCW.

20 (3) Subsection (1)(a) of this section does not apply to boxes or
21 similar containers used by a consumer to transport roll-your-own
22 cigarettes.

23 **Sec. 4.** RCW 82.24.050 and 2003 c 114 s 4 are each amended to read
24 as follows:

25 (1) No retailer in this state may possess unstamped cigarettes
26 within this state unless the person is also a wholesaler in possession
27 of the cigarettes in accordance with RCW 82.24.040.

28 (2) A retailer may obtain cigarettes only from a wholesaler subject
29 to the provisions of this chapter.

30 (3) Only a retailer licensed under this chapter may provide
31 consumers with access to a commercial cigarette-making machine to make
32 roll-your-own cigarettes. A retailer is prohibited from allowing the
33 use of a commercial cigarette-making machine by a person unless,
34 contemporaneously to the person's use of the machine, the retailer
35 provides the consumer with a box or similar container to transport
36 roll-your-own cigarettes and such box is affixed with the appropriate

1 stamp or stamps as required under RCW 82.24.030(6). A consumer must
2 transport roll-your-own cigarettes from a retailer's place of business
3 only in such box or similar container.

4 (4) A commercial cigarette-making machine must have a secure meter
5 that counts the number of cigarettes made, manufactured, or fabricated
6 by the machine and that cannot be accessed, except for the sole purpose
7 of taking meter readings, altered or reset by the machine operator.

8 **Sec. 5.** RCW 82.24.060 and 1961 c 15 s 82.24.060 are each amended
9 to read as follows:

10 (1) Except as otherwise provided in this chapter, stamps (~~shall~~)
11 must be affixed in such manner that they cannot be removed from the
12 package or container without being mutilated or destroyed, which stamps
13 so affixed (~~shall be~~) are evidence of the tax imposed.

14 (2) In the case of cigarettes contained in individual packages, as
15 distinguished from cartons or larger units, the stamps (~~shall~~) must
16 be affixed securely on each individual package.

17 (3) With respect to roll-your-own cigarettes, stamps must be
18 affixed securely on each individual box or similar container provided
19 by the retailer to the consumer.

20 **Sec. 6.** RCW 82.24.110 and 2008 c 226 s 4 are each amended to read
21 as follows:

22 (1) Each of the following acts is a gross misdemeanor and
23 punishable as such:

24 (a) To sell, except as a licensed wholesaler engaged in interstate
25 commerce as to the article being taxed herein, without the stamp first
26 being affixed;

27 (b) To sell in Washington as a wholesaler to a retailer who does
28 not possess and is required to possess a current cigarette retailer's
29 license;

30 (c) To use or have in possession knowingly or intentionally any
31 forged or counterfeit stamps;

32 (d) For any person other than the department of revenue or its duly
33 authorized agent to sell any stamps not affixed to any of the articles
34 taxed herein whether such stamps are genuine or counterfeit;

35 (e) For any person other than the department of revenue, its duly

1 authorized agent, or a licensed wholesaler who has lawfully purchased
2 or obtained them to possess any stamps not affixed to any of the
3 articles taxed herein whether such stamps are genuine or counterfeit;

4 (f) To violate any of the provisions of this chapter;

5 (g) To violate any lawful rule made and published by the department
6 of revenue or the board;

7 (h) To use any stamps more than once or any individual stamped box
8 or similar container used to transport roll-your-own cigarettes more
9 than once;

10 (i) To refuse to allow the department of revenue or its duly
11 authorized agent, on demand, to make full inspection of any place of
12 business where any of the articles herein taxed are sold or otherwise
13 hinder or prevent such inspection;

14 (j) Except as otherwise provided in this chapter, for any retailer
15 to have in possession in any place of business any of the articles
16 herein taxed, unless the same have the proper stamps attached;

17 (k) For any person to make, use, or present or exhibit to the
18 department of revenue or its duly authorized agent, any invoice for any
19 of the articles herein taxed which bears an untrue date or falsely
20 states the nature or quantity of the goods therein invoiced;

21 (l) For any wholesaler or retailer or his or her agents or
22 employees to fail to produce on demand of the department of revenue all
23 invoices of all the articles herein taxed or stamps bought by him or
24 her or received in his or her place of business within five years prior
25 to such demand unless he or she can show by satisfactory proof that the
26 nonproduction of the invoices was due to causes beyond his or her
27 control;

28 (m) For any person to receive in this state any shipment of any of
29 the articles taxed herein, when the same are not stamped, for the
30 purpose of avoiding payment of tax. It is presumed that persons other
31 than dealers who purchase or receive shipments of unstamped cigarettes
32 do so to avoid payment of the tax imposed herein;

33 (n) For any person to possess or transport in this state a quantity
34 of ten thousand cigarettes or less unless the proper stamps required by
35 this chapter have been affixed or unless: (i) Notice of the possession
36 or transportation has been given as required by RCW 82.24.250; (ii) the
37 person transporting the cigarettes has in actual possession invoices or
38 delivery tickets which show the true name and address of the consignor

1 or seller, the true name and address of the consignee or purchaser, and
2 the quantity and brands of the cigarettes so transported; and (iii) the
3 cigarettes are consigned to or purchased by any person in this state
4 who is authorized by this chapter to possess unstamped cigarettes in
5 this state;

6 (o) For any person to possess or receive in this state a quantity
7 of ten thousand cigarettes or less unless the proper stamps required by
8 this chapter have been affixed or unless the person is authorized by
9 this chapter to possess unstamped cigarettes in this state and is in
10 compliance with the requirements of this chapter; (~~and~~)

11 (p) To possess, sell, distribute, purchase, receive, ship, or
12 transport within this state any container or package of cigarettes that
13 does not comply with this chapter; and

14 (q) For a retailer to provide consumers with access to a commercial
15 cigarette-making machine without providing a box or similar container
16 that has a properly affixed stamp or stamps.

17 (2) It is unlawful for any person knowingly or intentionally to
18 possess or to:

19 (a) Transport in this state a quantity in excess of ten thousand
20 cigarettes unless the proper stamps required by this chapter are
21 affixed thereto or unless: (i) Proper notice as required by RCW
22 82.24.250 has been given; (ii) the person transporting the cigarettes
23 actually possesses invoices or delivery tickets showing the true name
24 and address of the consignor or seller, the true name and address of
25 the consignee or purchaser, and the quantity and brands of the
26 cigarettes so transported; and (iii) the cigarettes are consigned to or
27 purchased by a person in this state who is authorized by this chapter
28 to possess unstamped cigarettes in this state; or

29 (b) Receive in this state a quantity in excess of ten thousand
30 cigarettes unless the proper stamps required by this chapter are
31 affixed thereto or unless the person is authorized by this chapter to
32 possess unstamped cigarettes in this state and is in compliance with
33 this chapter.

34 (3) Violation of (~~this~~) subsection (2) (~~shall be~~) of this
35 section is punished as a class C felony under Title 9A RCW.

36 (~~(+3)~~) (4) All agents, employees, and others who aid, abet, or
37 otherwise participate in any way in the violation of the provisions of
38 this chapter or in any of the offenses described in this chapter

1 (~~shall be~~) are guilty and punishable as principals, to the same
2 extent as any wholesaler or retailer or any other person violating this
3 chapter.

4 (~~(+4)~~) (5) For purposes of this section, "person authorized by
5 this chapter to possess unstamped cigarettes in this state" has the
6 same meaning as in RCW 82.24.250.

7 **Sec. 7.** RCW 82.24.120 and 2007 c 111 s 102 are each amended to
8 read as follows:

9 (1) If any person, subject to the provisions of this chapter or any
10 rules adopted by the department of revenue under authority (~~hereof~~)
11 of this section, is found to have failed to affix the stamps required,
12 or to have them affixed as (~~herein~~) provided in this section, or to
13 pay any tax due (~~hereunder~~) under this section, or to have violated
14 any of the provisions of this chapter or rules adopted by the
15 department of revenue in the administration (~~hereof~~) of this chapter,
16 there (~~shall~~) must be assessed and collected from such person, in
17 addition to any tax that may be found due, a remedial penalty equal to
18 the greater of ten dollars per package of unstamped cigarettes or ten
19 dollars per twenty roll-your-own cigarettes, or two hundred fifty
20 dollars, plus interest on the amount of the tax at the rate as computed
21 under RCW 82.32.050(2) from the date the tax became due until the date
22 of payment, and upon notice mailed to the last known address of the
23 person or provided electronically as provided in RCW 82.32.135. The
24 amount (~~shall become~~) is due and payable in thirty days from the date
25 of the notice. If the amount remains unpaid, the department or its
26 duly authorized agent may make immediate demand upon such person for
27 the payment of all such taxes, penalties, and interest.

28 (2) The department, for good reason shown, may waive or cancel all
29 or any part of penalties imposed, but the taxpayer must pay all taxes
30 due and interest thereon, at the rate as computed under RCW
31 82.32.050(2) from the date the tax became due until the date of
32 payment.

33 (3) The keeping of any unstamped articles coming within the
34 provisions of this chapter (~~shall be~~) is prima facie evidence of
35 intent to violate the provisions of this chapter.

36 (4) This section does not apply to taxes or tax increases due under
37 RCW 82.24.280.

1 **Sec. 8.** RCW 82.24.130 and 2003 c 114 s 7, 2003 c 113 s 4, and 2003
2 c 25 s 9 are each reenacted and amended to read as follows:

3 (1) The following are subject to seizure and forfeiture:

4 (a) Subject to RCW 82.24.250, any articles taxed in this chapter
5 that are found at any point within this state, which articles are held,
6 owned, or possessed by any person, and that do not have the stamps
7 affixed to the packages or containers; any container or package of
8 cigarettes possessed or held for sale that does not comply with this
9 chapter; and any container or package of cigarettes that is
10 manufactured, sold, or possessed in violation of RCW 82.24.570.

11 (b) All conveyances, including aircraft, vehicles, or vessels,
12 which are used, or intended for use, to transport, or in any manner to
13 facilitate the transportation, for the purpose of sale or receipt of
14 property described in (a) of this subsection, except:

15 (i) A conveyance used by any person as a common or contract carrier
16 having in actual possession invoices or delivery tickets showing the
17 true name and address of the consignor or seller, the true name of the
18 consignee or purchaser, and the quantity and brands of the cigarettes
19 transported, unless it appears that the owner or other person in charge
20 of the conveyance is a consenting party or privy to a violation of this
21 chapter;

22 (ii) A conveyance subject to forfeiture under this section by
23 reason of any act or omission of which the owner thereof establishes to
24 have been committed or omitted without his or her knowledge or consent;

25 (iii) A conveyance encumbered by a bona fide security interest if
26 the secured party neither had knowledge of nor consented to the act or
27 omission.

28 (c) Any vending machine or commercial cigarette-making machine used
29 for the purpose of violating the provisions of this chapter.

30 (d) Any cigarettes that are stamped, sold, imported, or offered or
31 possessed for sale in this state in violation of RCW 70.158.030(3).
32 For the purposes of this subsection (1)(d), "cigarettes" has the
33 meaning as provided in RCW 70.158.020(3).

34 ~~((e) All cigarettes sold, delivered, or attempted to be delivered
35 in violation of RCW 70.155.105.))~~

36 (2) Property subject to forfeiture under this chapter may be seized
37 by any agent of the department authorized to collect taxes, any
38 enforcement officer of the board, or law enforcement officer of this

1 state upon process issued by any superior court or district court
2 having jurisdiction over the property. Seizure without process may be
3 made if:

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

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

10 (3) Notwithstanding the foregoing provisions of this section,
11 articles taxed in this chapter which are in the possession of a
12 wholesaler, licensed under Washington state law, for a period of time
13 necessary to affix the stamps after receipt of the articles, (~~shall~~)
14 are not (~~be~~) considered contraband unless they are manufactured,
15 sold, or possessed in violation of RCW 82.24.570.

16 **Sec. 9.** RCW 82.24.180 and 1996 c 149 s 8 are each amended to read
17 as follows:

18 (1) The department of revenue may return any property seized under
19 the provisions of this chapter when it is shown that there was no
20 intention to violate the provisions thereof.

21 (2) When any property is returned under this section, the
22 department may return such goods to the parties from whom they were
23 seized if and when such parties affix the proper amount of stamps
24 thereto, and pay to the department as penalty an amount equal to the
25 greater of ten dollars per package of unstamped cigarettes or ten
26 dollars per twenty roll-your-own cigarettes, or two hundred fifty
27 dollars, and interest on the amount of the tax at the rate as computed
28 under RCW 82.32.050(2) from the date the tax became due until the date
29 of payment, and in such cases, no advertisement shall be made or
30 notices posted in connection with said seizure.

31 **Sec. 10.** RCW 82.24.295 and 2001 c 235 s 6 are each amended to read
32 as follows:

33 (1) The taxes imposed by this chapter do not apply to the sale,
34 use, consumption, handling, possession, or distribution of cigarettes
35 by an Indian retailer during the effective period of a cigarette tax
36 contract subject to RCW 43.06.455.

1 (2) Effective July 1, 2002, wholesalers and retailers subject to
2 the provisions of this chapter (~~shall be~~) are allowed compensation
3 for their services in affixing the stamps required under this chapter
4 a sum computed at the rate of six dollars per one thousand stamps
5 purchased or affixed by them.

6 (3) In addition to the compensation allowed under subsection (2) of
7 this section, retailers purchasing stamps for roll-your-own cigarettes
8 are allowed additional compensation to offset the cost of the tax under
9 chapter 82.26 RCW. The amount equals five cents per cigarette.

10 **Sec. 11.** RCW 82.24.500 and 2003 c 114 s 10 are each amended to
11 read as follows:

12 No person may engage in or conduct the business of purchasing,
13 selling, consigning, or distributing cigarettes in this state without
14 a license under this chapter, or providing consumers with access to a
15 commercial cigarette-making machine without a license under this
16 chapter. A violation of this section is a class C felony.

17 **Sec. 12.** RCW 82.24.530 and 1993 c 507 s 15 are each amended to
18 read as follows:

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

28 NEW SECTION. **Sec. 13.** A new section is added to chapter 82.26 RCW
29 to read as follows:

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

34 (2) A fee of seventeen thousand five hundred dollars must accompany
35 each special license endorsement application under subsection (3) of

1 this section and a fee of six thousand dollars must accompany each
2 special license endorsement application under subsection (4) of this
3 section.

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

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

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

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

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

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

33 (f) Has obtained a signed letter, on appropriate letterhead, from
34 a heating, ventilation, and air-conditioning, and refrigeration
35 contractor holding a valid registration with the department of labor
36 and industries pursuant to chapter 18.27 RCW, which certifies that the
37 ventilation and exhaust system for the area designated in (a) of this
38 subsection:

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

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

6 (iii) Uses the correct quantity of filters recommended by the
7 manufacturer of the ventilation and exhaust system and that those
8 filters have a minimum efficiency rating value of fourteen or higher.
9 For the purposes of this subsection, "minimum efficiency rating value"
10 means the air-cleaning performance rating value as expressed in
11 American society of heating, refrigerating, and air-conditioning
12 engineers standard 52.2-2007; and

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

21 (g) Has on file, from each employee that may work in the area
22 designated in (a) of this subsection, a signed acknowledgment that the
23 employee has been advised of and accepts that environmental tobacco
24 smoke may be present in their potential work area. The acknowledgment
25 must contain the signature of the employee, the employer, and a
26 disinterested third-party witness;

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

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

36 (a) Is an establishment whose primary purpose is the sale of
37 tobacco products and tobacco product related paraphernalia and that is
38 physically separated from any adjacent location where smoking is

1 prohibited under state law. For the purposes of this subsection,
2 "physically separated" means an area that is enclosed on all sides by
3 solid, impermeable walls or windows extending from the floor to ceiling
4 with self-closing doors;

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

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

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

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

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

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

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

33 (iii) Uses the correct quantity of filters recommended by the
34 manufacturer of the ventilation and exhaust system and that those
35 filters have a minimum efficiency rating value of fourteen or higher.
36 For the purposes of this subsection, "minimum efficiency rating value"
37 means the air-cleaning performance rating value as expressed in

1 American society of heating, refrigerating, and air-conditioning
2 engineers standard 52.2-2007; and

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

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

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

22 (5) No employer may discharge, threaten to discharge, demote, deny
23 a promotion to, sanction, discipline, retaliate against, harass, or
24 otherwise discriminate against an employee, employed by the employer on
25 or before the effective date of this section, solely for refusing to
26 consent to or sign the acknowledgment required in subsections (3)(g) or
27 (4)(g) of this section.

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

31 (7) The board may request additional documentation or information
32 from an applicant in order to verify that the business meets the
33 requirements of this section. The applicant must comply with requests
34 from the department under this subsection or the board may withhold
35 issuance of an endorsement.

36 (8) Endorsements granted under this section are effective for the
37 same period as provided in the tobacco products retailer's license
38 granted to the applicant under this chapter. However, the affidavit

1 required under this section must be completed and verified each year by
2 the board and the appropriate fee paid in full before any endorsement
3 to a tobacco retailer license is issued or renewed.

4 (9) Endorsement decisions by the board must be made no later than
5 twenty-one business days following the submittal of a completed
6 affidavit together with the appropriate fee. Rejections of an
7 application for an endorsement under this section may be appealed under
8 the same process provided for other licenses issued by the board.

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

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

22 (1) Up to five percent of the fees collected under section 13 of
23 this act must be deposited into the liquor revolving fund created in
24 RCW 66.08.170, to be used to cover the administrative costs of
25 implementing and enforcing the endorsements created in section 13 of
26 this act.

27 (2) The remaining funds collected under section 13 of this act must
28 be deposited into the tobacco prevention and control account created in
29 RCW 43.79.480 solely for appropriation for tobacco usage prevention and
30 treatment programs.

31 **Sec. 15.** RCW 70.160.060 and 1995 c 369 s 60 are each amended to
32 read as follows:

33 This chapter is not intended to:

34 (1) Regulate smoking in a private enclosed workplace, within a
35 public place, even though such workplace may be visited by nonsmokers,

1 excepting places in which smoking is prohibited by the chief of the
2 Washington state patrol, through the director of fire protection, or by
3 other law, ordinance, or regulation;

4 (2) Regulate use or smoking of tobacco products, as that term is
5 defined under chapter 82.26 RCW, in a public place or place of
6 employment that holds a valid endorsement to their tobacco products
7 retailer's license under section 13 of this act. The liquor control
8 board has sole enforcement authority under this chapter regarding the
9 designated areas which receive an endorsement under section 13 of this
10 act.

11 NEW SECTION. **Sec. 16.** This act is necessary for the immediate
12 preservation of the public peace, health, or safety, or support of the
13 state government and its existing public institutions, and takes effect
14 July 1, 2012."

SB 6623 - S AMD
By Senator

15 On page 1, line 1 of the title, after "Relating to" strike the
16 remainder of the title and insert "tobacco by clarifying cigarettes
17 produced from roll-your-own machines are subject to the cigarette tax
18 and providing for a special license endorsement for cigar lounges and
19 retail tobacconist shops; amending RCW 82.24.010, 82.24.030, 82.24.035,
20 82.24.050, 82.24.060, 82.24.110, 82.24.120, 82.24.180, 82.24.295,
21 82.24.500, 82.24.530, and 70.160.060; reenacting and amending RCW
22 82.24.130; adding new sections to chapter 82.26 RCW; prescribing
23 penalties; providing an effective date; and declaring an emergency."

EFFECT: (1) The definition of cigarette used for excise taxation
is modified to explicitly include roll-your-own (RYO) cigarettes.

(2) A tax enforcement and regulatory system for RYO cigarettes is established that requires RYO retailers to:

(a) Purchase tax stamps that must be affixed to the containers that are provided by the retailer and used by consumers to transport RYO cigarettes from the retailer's place of business;

(b) Limit consumer access to a RYO machine;

(c) Pay an additional \$93 annual RYO retailer licensing fee; and

(d) Use only commercial RYO machines that have metering devices.

(3) Retailers that purchase RYO cigarette stamps are provided with compensation to offset the tobacco products tax. The amount is equal to \$0.05 per cigarette.

(4) Establishes special license endorsements for cigar lounges and retail tobacconist shops.

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