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**SUBSTITUTE HOUSE BILL 1296**

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**State of Washington**

**64th Legislature**

**2015 Regular Session**

**By** House Commerce & Gaming (originally sponsored by Representatives Vick, Kirby, Pettigrew, Blake, Buys, MacEwen, Rodne, Walsh, Condotta, G. Hunt, Hayes, Carlyle, and Sawyer)

READ FIRST TIME 02/02/15.

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 a new section 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  
6 RCW to read as follows:

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

12 (b) The board may charge a reasonable fee per special endorsement  
13 application under this section, as deemed necessary by the board, for  
14 the purpose of reimbursing the board for costs directly related to  
15 the board's administration of special endorsements issued under this  
16 section.

17 (2) The board must issue an endorsement as a cigar lounge to a  
18 business that has submitted an affidavit to the board certifying that  
19 it:

20 (a) Is an establishment or part of an establishment specifically  
21 designated for the smoking of tobacco products, purchased on the

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

7 (b) Holds a valid spirits, beer, and wine license in good  
8 standing from the board;

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

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

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

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

34 (iii) Uses the correct quantity of filters recommended by the  
35 manufacturer of the ventilation and exhaust system and that those  
36 filters have a minimum efficiency rating value of 14 or higher. For  
37 the purposes of this subsection, "minimum efficiency rating value"  
38 means the air-cleaning performance rating value as expressed in  
39 American society of heating, refrigerating, and air-conditioning  
40 engineers standard 52.2-2007; and

1 (iv) Uses a loose-fill, rechargeable-type sorbent material  
2 positioned across the airflow in such a configuration that gaseous  
3 contaminants will have a residence time of one-tenth of one second or  
4 more within the sorbent material. For the purposes of this section,  
5 "residence time" must be calculated consistent with the  
6 recommendations outlined in Chapter 46 of the 2011 American society  
7 of heating, refrigerating, and air-conditioning engineers handbook -  
8 HVAC applications entitled "Control of Gaseous Indoor Air  
9 Contaminants";

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

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

21 (3) The board must issue an endorsement as a retail tobacconist  
22 shop to a business that has submitted an affidavit to the board  
23 certifying that it:

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

31 (b) Will prohibit entry into the area designated in (a) of this  
32 subsection to any person under the age of eighteen;

33 (c) Has a valid uniform business identifier number and, if an  
34 established business with reportable gross receipts, has paid all  
35 applicable state business and occupation taxes in the year prior to  
36 application for endorsement;

37 (d) In the year immediately preceding initial application or  
38 renewal, derived at least seventy-five percent of the business'  
39 annual gross income from the combination of the sale of tobacco  
40 products and tobacco product related paraphernalia. In the case where

1 this is the first endorsement application, the applicant may use any  
2 year prior to the initial application to meet the requirements of  
3 this subsection or must show proof that it has purchased, at  
4 wholesale, at least twenty-five thousand dollars in tobacco products  
5 and tobacco products related paraphernalia;

6 (e) Has obtained a signed letter, on appropriate letterhead, from  
7 a heating, ventilation, and air-conditioning, and refrigeration  
8 contractor holding a valid registration with the department of labor  
9 and industries pursuant to chapter 18.27 RCW, which certifies that  
10 the ventilation and exhaust system for the area designated in (a) of  
11 this subsection:

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

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

17 (iii) Uses the correct quantity of filters recommended by the  
18 manufacturer of the ventilation and exhaust system and that those  
19 filters have a minimum efficiency rating value of 14 or higher. For  
20 the purposes of this subsection, "minimum efficiency rating value"  
21 means the air-cleaning performance rating value as expressed in  
22 American society of heating, refrigerating, and air-conditioning  
23 engineers standard 52.2-2007; and

24 (iv) Uses a loose-fill, rechargeable-type sorbent material  
25 positioned across the airflow in such a configuration that gaseous  
26 contaminants will have a residence time of one-tenth of one second or  
27 more within the sorbent material. For the purposes of this section,  
28 "residence time" must be calculated consistent with the  
29 recommendations outlined in Chapter 46 of the 2011 American society  
30 of heating, refrigerating, and air-conditioning engineers handbook -  
31 HVAC applications entitled "Control of Gaseous Indoor Air  
32 Contaminants";

33 (f) Has on file, from each employee that may work in the area  
34 designated in (a) of this subsection, a signed acknowledgment that  
35 the employee has been advised of and accepts that environmental  
36 tobacco smoke may be present in their potential work area. The  
37 acknowledgment must contain the signature of the employee, the  
38 employer, and a disinterested third-party witness;

39 (g) Will post signage indicating that environmental tobacco smoke  
40 may be present in the establishment or part of the establishment.

1 This signage must be in the form and manner provided by the board and  
2 must be placed in a conspicuous location at each entry to the area  
3 designated in (a) of this subsection.

4 (4) No employer may discharge, threaten to discharge, demote,  
5 deny a promotion to, sanction, discipline, retaliate against, harass,  
6 or otherwise discriminate against an employee, employed by the  
7 employer on or before the effective date of this section, solely for  
8 refusing to consent to or sign the acknowledgment required in  
9 subsections (2)(f) or (3)(f) of this section.

10 (5) The affidavits required under this section must be submitted  
11 in a form and manner as prescribed by the board to effectively  
12 administer the provisions of this chapter.

13 (6) The board may request additional documentation or information  
14 from an applicant in order to verify that the business meets the  
15 requirements of this section. The applicant must comply with requests  
16 from the department under this subsection or the board may withhold  
17 issuance of an endorsement.

18 (7) Endorsements granted under this section are effective for the  
19 same period as provided in the tobacco products retailer's license  
20 granted to the applicant under this chapter. However, the affidavit  
21 required under this section must be completed and verified each year  
22 by the board.

23 (8) An endorsement issued under this section is transferrable.

24 (9) Endorsement decisions by the board must be made no later than  
25 twenty-one business days following the submittal of a completed  
26 affidavit. Rejections of an application for an endorsement under this  
27 section may be appealed under the same process provided for other  
28 licenses issued by the board.

29 (10) At no point during any calendar year may the board allow the  
30 total number of cigar lounge endorsements in the state to exceed  
31 forty or the total number of retail tobacco shop endorsements in the  
32 state to exceed seventy-five. The board must administer the  
33 distribution of cigar lounge or retail tobacco shop endorsements and  
34 must ensure that the collective number of cigar lounge or retail  
35 tobacco shop endorsements located within all counties with a  
36 population of over five hundred thousand never exceed one-half of the  
37 endorsements allowed under this subsection for each endorsement  
38 respectively. Renewing applicants must be given priority over new  
39 applicants for endorsements under these limitations.

1 (11) Licensees receiving an endorsement under this section must  
2 not permit the smoking of cigarettes, the use of any hookah,  
3 narghile, water pipe, or similar device, nor the smoking of marijuana  
4 as that term is defined in chapter 69.50 RCW.

5 **Sec. 2.** RCW 70.160.060 and 1995 c 369 s 60 are each amended to  
6 read as follows:

7 This chapter is not intended to:

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

13 (2) Regulate use or smoking of tobacco products, as that term is  
14 defined under chapter 82.26 RCW, in a public place or place of  
15 employment that holds a valid endorsement to its tobacco products  
16 retailer's license under section 1 of this act. The liquor  
17 controlboard has sole enforcement authority under this chapter  
18 regarding the designated areas which receive an endorsement under  
19 section 1 of this act.

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