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**HOUSE BILL 1919**

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**State of Washington 65th Legislature 2017 Regular Session**

**By** Representatives Vick, Blake, Kirby, Jenkin, J. Walsh, Hayes, Pettigrew, Condotta, Buys, Young, Barkis, Harmsworth, Rodne, MacEwen, and Goodman

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) Has on file, from each employee that may work in the area designated in (a) of this subsection, a signed declaration that includes the signature of the employee, the employer, and a disinterested third-party witness. The employee declaration must include the following acknowledgments:

(i) That the employee has been advised of and accepts that environmental tobacco smoke may be present in their potential work area;

(ii) That the employee is an active smoker of tobacco products; and

(iii) That the employee has obtained a blood test in accordance with the requirements of this section verifying that the employee is an active smoker of tobacco products;

(g) Maintains records verifying that the blood testing required under (f) of this subsection has been completed and has in its possession documentation from a qualified blood testing entity verifying blood test results showing that the employee is an active smoker of tobacco products;

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

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

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

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

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

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

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

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

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

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

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

(f) Has on file, from each employee that may work in the area designated in (a) of this subsection, a signed declaration that includes the signature of the employee, the employer, and a disinterested third-party witness. The employee declaration must include the following acknowledgments:

(i) That the employee has been advised of and accepts that environmental tobacco smoke may be present in their potential work area;

(ii) That the employee is an active smoker of tobacco products; and

(iii) That the employee has obtained a blood test in accordance with the requirements of this section verifying that the employee is an active smoker of tobacco products;

(g) Maintains records verifying that the blood testing required under (f) of this subsection has been completed and has in its possession documentation from a qualified blood testing entity verifying blood test results showing that the employee is an active smoker of tobacco products;

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

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

(5) The employee blood testing required under this section must be done by a qualified blood testing entity that is licensed for such testing by the state of Washington and is otherwise legally authorized to do such testing. The blood test results must provide data sufficient to prove that the employee is an active smoker, including the presence of nicotine and/or other test results scientifically recognized as indicating that the employee is an active smoker.

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

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

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

(9) An endorsement issued under this section is transferable.

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

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

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

(13) The department is authorized to establish the administrative rules necessary to implement this section, including rules pertaining to employee blood testing requirements, blood testing verification, and the qualifications required of authorized blood testing facilities.

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

This chapter is not intended to:

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

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

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