
HOUSE BILL 1919

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65th Legislature

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

Read first time 02/02/17. Referred to Committee on Business & Financial Services.

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 declaration that
12 includes the signature of the employee, the employer, and a
13 disinterested third-party witness. The employee declaration must
14 include the following acknowledgments:

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

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

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

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

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

33 (3) The board must issue an endorsement as a retail tobacconist
34 shop to a business 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
38 is physically separated from any adjacent location where smoking is
39 prohibited under state law. For the purposes of this subsection,
40 "physically separated" means an area that is enclosed on all sides by

1 solid, impermeable walls or windows extending from the floor to
2 ceiling with self-closing doors;

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

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

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

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

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

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

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

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

1 recommendations outlined in Chapter 46 of the 2011 American society
2 of heating, refrigerating, and air-conditioning engineers handbook -
3 HVAC applications entitled "Control of Gaseous Indoor Air
4 Contaminants";

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

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

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

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

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

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

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

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

1 scientifically recognized as indicating that the employee is an
2 active smoker.

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

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

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

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

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

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

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

37 (13) The department is authorized to establish the administrative
38 rules necessary to implement this section, including rules pertaining
39 to employee blood testing requirements, blood testing verification,

1 and the qualifications required of authorized blood testing
2 facilities.

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

5 This chapter is not intended to:

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

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

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