
SENATE BILL 5542

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By Senators Delvin, Prentice, Honeyford, Hatfield, Schoesler, Hobbs, and Hewitt

Read first time 01/28/11. Referred to Committee on Labor, Commerce & Consumer Protection.

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

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 fifteen thousand dollars must accompany each special
12 license endorsement application under subsection (3) of this section
13 and a fee of five thousand dollars must accompany each special license
14 endorsement application under subsection (4) of this section.

15 (3) The board must issue an endorsement as a cigar lounge to a
16 business that meets the requirements of subsections (1) and (2) of this
17 section and that has submitted an affidavit to the board certifying
18 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 following provision in bold-faced type: "I, the
19 undersigned, acknowledge and certify that I have had sufficient
20 opportunity to read the entire acknowledgment of risks, that I
21 understand its content, and that I execute it freely and without duress
22 of any kind." The acknowledgment must contain the signature of the
23 employee, the employer, and a disinterested third-party witness;

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

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

33 (a) Is an establishment whose primary purpose is the sale of
34 tobacco products and tobacco product related paraphernalia and that is
35 physically separated from any adjacent location where smoking is
36 prohibited under state law. For the purposes of this subsection,
37 "physically separated" means an area that is enclosed on all sides by

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

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

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

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

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

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

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

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

31 (iii) Uses the correct quantity of filters recommended by the
32 manufacturer of the ventilation and exhaust system and that those
33 filters have a minimum efficiency rating value of fourteen or higher.
34 For the purposes of this subsection, "minimum efficiency rating value"
35 means the air-cleaning performance rating value as expressed in
36 American society of heating, refrigerating, and air-conditioning
37 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 recommendations
6 outlined in Chapter 45 of the 2007 American society of heating,
7 refrigerating, and air-conditioning engineers handbook - HVAC
8 applications entitled "Control of Gaseous Indoor Air Contaminants";

9 (g) Has on file, from each employee that may work in the area
10 designated in (a) of this subsection, a signed acknowledgment that the
11 employee has been advised of and accepts that environmental tobacco
12 smoke may be present in their potential work area. The acknowledgment
13 must contain the following provision in bold-faced type: "I, the
14 undersigned, acknowledge and certify that I have had sufficient
15 opportunity to read the entire acknowledgment of risks, that I
16 understand its content, and that I execute it freely and without duress
17 of any kind." The acknowledgment must contain the signature of the
18 employee, the employer, and a disinterested third-party witness;

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

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

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

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

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

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

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

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

25 The board must forward ninety-five percent of the funds accruing
26 from the fees collected under section 1 of this act, together with a
27 proper identifying, detailed report, to the state treasurer who must
28 deposit such moneys in the basic health plan trust account established
29 in chapter 70.47 RCW. The remaining five percent of the funds accruing
30 from the fees collected under section 1 of this act must be retained by
31 the board to cover the administrative costs of implementing and
32 enforcing the license endorsements provided in this act.

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

35 This chapter is not intended to:

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

6 (2) Regulate use or smoking of tobacco products, as that term is
7 defined under chapter 82.26 RCW, in a public place or place of
8 employment that holds a valid endorsement to their tobacco products
9 retailer's license under section 1 of this act.

10 NEW SECTION. **Sec. 4.** This act is necessary for the immediate
11 preservation of the public peace, health, or safety, or support of the
12 state government and its existing public institutions, and takes effect
13 immediately.

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