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ENGROSSED SENATE BILL 6623

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State of Washington                      62nd Legislature                      2012 1st Special Session

By Senators Delvin, Ericksen, and Swecker

Read first time 02/27/12. Referred to Committee on Ways & Means.

1            AN ACT Relating to tobacco by clarifying cigarettes produced from  
2 roll-your-own machines are subject to the cigarette tax and providing  
3 for a special license endorsement for cigar lounges and retail  
4 tobacconist shops; amending RCW 82.24.010, 82.24.030, 82.24.035,  
5 82.24.050, 82.24.060, 82.24.110, 82.24.120, 82.24.180, 82.24.295,  
6 82.24.500, 82.24.530, and 70.160.060; reenacting and amending RCW  
7 82.24.130; adding new sections to chapter 82.26 RCW; prescribing  
8 penalties; providing effective dates; and declaring an emergency.

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

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

12            Unless the context clearly requires otherwise, the definitions in  
13 this section apply throughout this chapter:

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

15            (2) "Cigarette" means any roll for smoking made wholly or in part  
16 of tobacco, irrespective of size or shape and irrespective of the  
17 tobacco being flavored, adulterated, or mixed with any other  
18 ingredient, where such roll has a wrapper or cover made of paper or any

1 material, except where such wrapper is wholly or in the greater part  
2 made of natural leaf tobacco in its natural state. "Cigarette"  
3 includes a roll-your-own cigarette.

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

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

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

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

19 ((+4)) (7) "Precollection obligation" means the obligation of a  
20 seller otherwise exempt from the tax imposed by this chapter to collect  
21 the tax from that seller's buyer.

22 ((+5)) (8) "Retailer" means every person, other than a wholesaler,  
23 who purchases, sells, offers for sale or distributes any one or more of  
24 the articles taxed herein, irrespective of quantity or amount, or the  
25 number of sales, and all persons operating under a retailer's  
26 registration certificate.

27 ((+6)) (9) "Retail selling price" means the ordinary, customary or  
28 usual price paid by the consumer for each package of cigarettes, less  
29 the tax levied by this chapter and less any similar tax levied by this  
30 state.

31 ((+7)) (10) "Roll-your-own cigarettes" means cigarettes produced  
32 by a commercial cigarette-making machine.

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

36 ((+8)) (12) "Wholesaler" means every person who purchases, sells,  
37 or distributes any one or more of the articles taxed herein to  
38 retailers for the purpose of resale only.

1       (~~(9)~~) (13) The meaning attributed, in chapter 82.04 RCW, to the  
2 words "person," "sale," "business" and "successor" applies equally in  
3 this chapter.

4       (14) This section takes effect July 1, 2017.

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

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

14       (2) Except as otherwise provided in this chapter, only a wholesaler  
15 (~~shall~~) may cause to be affixed on every package of cigarettes,  
16 stamps of an amount equaling the tax due thereon or stamps identifying  
17 the cigarettes as exempt before he or she sells, offers for sale, uses,  
18 consumes, handles, removes, or otherwise disturbs and distributes the  
19 same(~~:- PROVIDED, That~~). However, where it is established to the  
20 satisfaction of the department that it is impractical to affix such  
21 stamps to the smallest container or package, the department may  
22 authorize the affixing of stamps of appropriate denomination to a large  
23 container or package.

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

27       (4) Each roll of stamps, or group of sheets, (~~shall~~) must have a  
28 separate serial number, which (~~shall be~~) is legible at the point of  
29 sale. The department of revenue (~~shall~~) must keep records of which  
30 wholesaler purchases each roll or group of sheets. If the department  
31 of revenue permits wholesalers to purchase partial rolls or sheets, in  
32 no case may stamps bearing the same serial number be sold to more than  
33 one wholesaler. The remainder of the roll or sheet, if any, (~~shall~~)  
34 must either be retained for later purchases by the same wholesaler or  
35 destroyed.

36       (5) Nothing in this section (~~shall~~) may be construed as limiting

1 any otherwise lawful activity under a cigarette tax compact pursuant to  
2 chapter 43.06 RCW.

3 (6) In order to enforce collection of the tax in the case of roll-  
4 your-own cigarettes, a retailer must affix a stamp or stamps to each  
5 box or similar container provided by the retailer to the consumer. The  
6 box or similar container must be used by a consumer to transport roll-  
7 your-own cigarettes from the retailer's place of business. A retailer  
8 must provide cigarette tubes to a consumer in one or more twenty unit  
9 denominations. Stamps must be for an amount equaling the tax due under  
10 this chapter. Each cigarette tube or paper provided to the consumer is  
11 deemed a cigarette for purposes of imposing and collecting taxes under  
12 this chapter. Stamps for roll-your-own cigarettes must be issued and  
13 affixed in a manner determined by the department but as consistent as  
14 practicable with the stamping requirements for wholesalers.

15 (7) This section takes effect July 1, 2017.

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

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

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

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

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

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

35 (2) In addition to the penalty and forfeiture provisions otherwise  
36 provided for in this chapter, a violation of this section is a

1 deceptive act or practice under the consumer protection act, chapter  
2 19.86 RCW.

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

6 (4) This section takes effect July 1, 2017.

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

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

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

14 (3) Only a retailer licensed under this chapter may provide  
15 consumers with access to a commercial cigarette-making machine to make  
16 roll-your-own cigarettes. A retailer is prohibited from allowing the  
17 use of a commercial cigarette-making machine by a person unless,  
18 contemporaneously to the person's use of the machine, the retailer  
19 provides the consumer with a box or similar container to transport  
20 roll-your-own cigarettes and such box is affixed with the appropriate  
21 stamp or stamps as required under RCW 82.24.030(6). A consumer must  
22 transport roll-your-own cigarettes from a retailer's place of business  
23 only in such box or similar container.

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

28 (5) This section takes effect July 1, 2017.

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

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

35 (2) In the case of cigarettes contained in individual packages, as

1 distinguished from cartons or larger units, the stamps (~~shall~~) must  
2 be affixed securely on each individual package.

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

6 (4) This section takes effect July 1, 2017.

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

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

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

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

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

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

22 (e) For any person other than the department of revenue, its duly  
23 authorized agent, or a licensed wholesaler who has lawfully purchased  
24 or obtained them to possess any stamps not affixed to any of the  
25 articles taxed herein whether such stamps are genuine or counterfeit;

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

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

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

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

36 (j) Except as otherwise provided in this chapter, for any retailer

1 to have in possession in any place of business any of the articles  
2 herein taxed, unless the same have the proper stamps attached;

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

7 (l) For any wholesaler or retailer or his or her agents or  
8 employees to fail to produce on demand of the department of revenue all  
9 invoices of all the articles herein taxed or stamps bought by him or  
10 her or received in his or her place of business within five years prior  
11 to such demand unless he or she can show by satisfactory proof that the  
12 nonproduction of the invoices was due to causes beyond his or her  
13 control;

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

19 (n) For any person to possess or transport in this state a quantity  
20 of ten thousand cigarettes or less unless the proper stamps required by  
21 this chapter have been affixed or unless: (i) Notice of the possession  
22 or transportation has been given as required by RCW 82.24.250; (ii) the  
23 person transporting the cigarettes has in actual possession invoices or  
24 delivery tickets which show the true name and address of the consignor  
25 or seller, the true name and address of the consignee or purchaser, and  
26 the quantity and brands of the cigarettes so transported; and (iii) the  
27 cigarettes are consigned to or purchased by any person in this state  
28 who is authorized by this chapter to possess unstamped cigarettes in  
29 this state;

30 (o) For any person to possess or receive in this state a quantity  
31 of ten thousand cigarettes or less unless the proper stamps required by  
32 this chapter have been affixed or unless the person is authorized by  
33 this chapter to possess unstamped cigarettes in this state and is in  
34 compliance with the requirements of this chapter; (~~and~~)

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

1 (g) For a retailer to provide consumers with access to a commercial  
2 cigarette-making machine without providing a box or similar container  
3 that has a properly affixed stamp or stamps.

4 (2) It is unlawful for any person knowingly or intentionally to  
5 possess or to:

6 (a) Transport in this state a quantity in excess of ten thousand  
7 cigarettes unless the proper stamps required by this chapter are  
8 affixed thereto or unless: (i) Proper notice as required by RCW  
9 82.24.250 has been given; (ii) the person transporting the cigarettes  
10 actually possesses invoices or delivery tickets showing the true name  
11 and address of the consignor or seller, the true name and address of  
12 the consignee or purchaser, and the quantity and brands of the  
13 cigarettes so transported; and (iii) the cigarettes are consigned to or  
14 purchased by a person in this state who is authorized by this chapter  
15 to possess unstamped cigarettes in this state; or

16 (b) Receive in this state a quantity in excess of ten thousand  
17 cigarettes unless the proper stamps required by this chapter are  
18 affixed thereto or unless the person is authorized by this chapter to  
19 possess unstamped cigarettes in this state and is in compliance with  
20 this chapter.

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

23 ((+3)) (4) All agents, employees, and others who aid, abet, or  
24 otherwise participate in any way in the violation of the provisions of  
25 this chapter or in any of the offenses described in this chapter  
26 ((shall-be)) are guilty and punishable as principals, to the same  
27 extent as any wholesaler or retailer or any other person violating this  
28 chapter.

29 ((+4)) (5) For purposes of this section, "person authorized by  
30 this chapter to possess unstamped cigarettes in this state" has the  
31 same meaning as in RCW 82.24.250.

32 (6) This section takes effect July 1, 2017.

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

35 (1) If any person, subject to the provisions of this chapter or any  
36 rules adopted by the department of revenue under authority ((hereof))  
37 of this section, is found to have failed to affix the stamps required,



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

17 (2) The department, for good reason shown, may waive or cancel all  
18 or any part of penalties imposed, but the taxpayer must pay all taxes  
19 due and interest thereon, at the rate as computed under RCW  
20 82.32.050(2) from the date the tax became due until the date of  
21 payment.

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

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

27 (5) This section takes effect July 1, 2017.

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

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

31 (a) Subject to RCW 82.24.250, any articles taxed in this chapter  
32 that are found at any point within this state, which articles are held,  
33 owned, or possessed by any person, and that do not have the stamps  
34 affixed to the packages or containers; any container or package of  
35 cigarettes possessed or held for sale that does not comply with this  
36 chapter; and any container or package of cigarettes that is  
37 manufactured, sold, or possessed in violation of RCW 82.24.570.

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

5 (i) A conveyance used by any person as a common or contract carrier  
6 having in actual possession invoices or delivery tickets showing the  
7 true name and address of the consignor or seller, the true name of the  
8 consignee or purchaser, and the quantity and brands of the cigarettes  
9 transported, unless it appears that the owner or other person in charge  
10 of the conveyance is a consenting party or privy to a violation of this  
11 chapter;

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

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

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

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

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

26 (2) Property subject to forfeiture under this chapter may be seized  
27 by any agent of the department authorized to collect taxes, any  
28 enforcement officer of the board, or law enforcement officer of this  
29 state upon process issued by any superior court or district court  
30 having jurisdiction over the property. Seizure without process may be  
31 made if:

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

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

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

7 (4) This section takes effect July 1, 2017.

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

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

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

23 (3) This section takes effect July 1, 2017.

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

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

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

35 (3) In addition to the compensation allowed under subsection (2) of

1 this section, retailers purchasing stamps for roll-your-own cigarettes  
2 are allowed additional compensation to offset the cost of the tax under  
3 chapter 82.26 RCW. The amount equals five cents per cigarette.

4 (4) This section takes effect July 1, 2017.

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

7 (1) No person may engage in or conduct the business of purchasing,  
8 selling, consigning, or distributing cigarettes in this state without  
9 a license under this chapter, or providing consumers with access to a  
10 commercial cigarette-making machine without a license under this  
11 chapter. A violation of this section is a class C felony.

12 (2) This section takes effect July 1, 2017.

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

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

24 (2) This section takes effect July 1, 2017.

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

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

31 (2) A fee of seventeen thousand five hundred dollars must accompany  
32 each special license endorsement application under subsection (3) of  
33 this section and a fee of six thousand dollars must accompany each  
34 special license endorsement application under subsection (4) of this  
35 section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 "physically separated" means an area that is enclosed on all sides by  
2 solid, impermeable walls or windows extending from the floor to ceiling  
3 with self-closing doors;

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

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

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

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

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

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

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

32 (iii) Uses the correct quantity of filters recommended by the  
33 manufacturer of the ventilation and exhaust system and that those  
34 filters have a minimum efficiency rating value of fourteen or higher.  
35 For the purposes of this subsection, "minimum efficiency rating value"  
36 means the air-cleaning performance rating value as expressed in  
37 American society of heating, refrigerating, and air-conditioning  
38 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 signature of the employee, the employer, and a  
14 disinterested third-party witness;

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

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

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

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

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



1 the board and the appropriate fee paid in full before any endorsement  
2 to a tobacco retailer license is issued or renewed.

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

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

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

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

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

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

32 This chapter is not intended to:

33 (1) Regulate smoking in a private enclosed workplace, within a  
34 public place, even though such workplace may be visited by nonsmokers,  
35 excepting places in which smoking is prohibited by the chief of the

1 Washington state patrol, through the director of fire protection, or by  
2 other law, ordinance, or regulation;

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

10 NEW SECTION. **Sec. 16.** Sections 13 through 15 of this act are  
11 necessary for the immediate preservation of the public peace, health,  
12 or safety, or support of the state government and its existing public  
13 institutions, and take effect July 1, 2012.

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