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HOUSE BILL 1750

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By Representatives Pettigrew, Carlyle, Hurst, Condotta, Blake, Kirby, Chandler, Goodman, Springer, Johnson, Rodne, Shea, Buys, MacEwen, and Moscoso

Read first time 02/07/13. 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 new sections 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 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) A fee of nineteen thousand dollars must accompany each  
12 initial special license endorsement application under subsection (3) of  
13 this section and a fee of seven thousand dollars must accompany each  
14 initial special license endorsement application under subsection (4) of  
15 this section.

16 (b) Each subsequent year after the initial application, a renewal  
17 fee of seven thousand dollars must accompany each affidavit submitted  
18 for a special license endorsement issued under subsection (3) of this

1 section and a renewal fee of two thousand five hundred dollars must  
2 accompany each affidavit submitted for a special license endorsement  
3 issued under subsection (4) of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (4) The board must issue an endorsement as a retail tobacconist  
33 shop to a business that meets the requirements of subsections (1) and  
34 (2) of this section and 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 is  
38 physically separated from any adjacent location where smoking is

1 prohibited under state law. For the purposes of this subsection,  
2 "physically separated" means an area that is enclosed on all sides by  
3 solid, impermeable walls or windows extending from the floor to ceiling  
4 with self-closing doors;

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

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

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

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

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

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

33 (iii) Uses the correct quantity of filters recommended by the  
34 manufacturer of the ventilation and exhaust system and that those  
35 filters have a minimum efficiency rating value of fourteen or higher.  
36 For the purposes of this subsection, "minimum efficiency rating value"  
37 means the air-cleaning performance rating value as expressed in

1 American society of heating, refrigerating, and air-conditioning  
2 engineers standard 52.2-2007; and

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

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

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

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

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

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

36 (8) Endorsements granted under this section are effective for the  
37 same period as provided in the tobacco products retailer's license  
38 granted to the applicant under this chapter. However, the affidavit

1 required under this section must be completed and verified each year by  
2 the board and the appropriate fee paid in full before any endorsement  
3 to a tobacco retailer license is issued or renewed.

4 (9) An endorsement issued under this section is transferrable and  
5 no initial application fee under subsection (2)(a) of this section may  
6 be charged to a new owner with a transferred endorsement; however, any  
7 endorsement renewal fees due under subsection (2)(b) of this section  
8 remain applicable to all transferred endorsements.

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

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

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

27 (1) Up to five percent of the fees collected under section 1 of  
28 this act must be deposited into the liquor revolving fund created in  
29 RCW 66.08.170, to be used to cover the administrative costs of  
30 implementing and enforcing the endorsements created in section 1 of  
31 this act.

32 (2) The remaining funds collected under section 1 of this act must  
33 be deposited into the tobacco prevention and control account created in  
34 RCW 43.79.480 solely for appropriation for tobacco usage prevention and  
35 treatment programs.

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

3       This chapter is not intended to:

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

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

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