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HOUSE BILL 2502

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State of Washington                      59th Legislature                      2006 Regular Session

By Representatives Grant, Walsh, Newhouse, Buck and Kretz

Read first time 01/10/2006. Referred to Committee on Health Care.

1            AN ACT Relating to restoring economic viability by modifying  
2 smoking prohibitions and enforcement; amending RCW 70.160.030 and  
3 70.160.070; adding new sections to chapter 70.160 RCW; and prescribing  
4 penalties.

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

6            **Sec. 1.** RCW 70.160.030 and 2006 c 2 s 3 (Initiative Measure No.  
7 901) are each amended to read as follows:

8            Except as authorized by a waiver under section 2 of this act, no  
9 person may smoke in a public place or in any place of employment.

10           NEW SECTION. **Sec. 2.** A new section is added to chapter 70.160 RCW  
11 to read as follows:

12           (1) The department of revenue shall issue waivers from the  
13 requirements of this chapter as provided for in this section.

14           (2) If a public or private business, club, charitable bingo hall,  
15 cigar store, or hookah lounge can document an economic loss of ten  
16 percent or more of the gross revenue for thirty days, it may apply to  
17 the department of revenue for a waiver of RCW 70.160.030. If the  
18 business can show a decline of ten percent or more and the other

1 requirements under this section are met, the waiver must be granted.  
2 The waiver may be granted for the entire building or for a section of  
3 the building such as a smoking room.

4 (3) No one under the age of eighteen may be allowed into any area  
5 of any building in which a waiver is granted and no waiver may be given  
6 to any business primarily catering to children under the age of  
7 eighteen, such as a skating rink.

8 (4) The business or club must submit with the waiver application a  
9 fee of two hundred fifty dollars to cover the costs to the state of  
10 administering the waiver under this section.

11 (5) Businesses or clubs granted a waiver under this section must  
12 notify their local health department and post signs conspicuously at  
13 all entrances to the area and building where smoking is to be allowed  
14 so that all employees, patrons, members, or customers are informed that  
15 smoking is allowed.

16 **Sec. 3.** RCW 70.160.070 and 2006 c 2 s 7 (Initiative Measure No.  
17 901) are each amended to read as follows:

18 (1) Any person intentionally violating this chapter by smoking in  
19 a public place or place of employment, or any person removing,  
20 defacing, or destroying a sign required by this chapter, is subject to  
21 a civil fine of up to one hundred dollars. Any person passing by or  
22 through a public place while on a public sidewalk or public right of  
23 way has not intentionally violated this chapter. Local (~~law~~  
24 ~~enforcement agencies~~) health departments shall enforce this section by  
25 issuing a notice of infraction to be assessed in the same manner as  
26 traffic infractions. The provisions contained in chapter 46.63 RCW for  
27 the disposition of traffic infractions apply to the disposition of  
28 infractions for violation of this subsection except as follows:

29 (a) The provisions in chapter 46.63 RCW relating to the provision  
30 of records to the department of licensing in accordance with RCW  
31 46.20.270 are not applicable to this chapter; and

32 (b) The provisions in chapter 46.63 RCW relating to the imposition  
33 of sanctions against a person's driver's license or vehicle license are  
34 not applicable to this chapter.

35 The form for the notice of infraction for a violation of this  
36 subsection shall be prescribed by rule of the supreme court.

1       (2) When a local health department employee observes a  
2 violation(~~s~~) of RCW 70.160.050 (~~section~~), a warning shall first be  
3 given to the owner or other person in charge. Any subsequent violation  
4 is subject to a civil fine of up to one hundred dollars. Each day upon  
5 which a violation occurs or is permitted to continue constitutes a  
6 separate violation.

7       (3) Local health departments shall enforce RCW 70.160.050 regarding  
8 the duties of owners or persons in control of public places and places  
9 of employment by either of the following actions:

10       (a) Serving notice requiring the correction of any violation; or

11       (b) Calling upon the city or town attorney or county prosecutor  
12 (~~or local health department attorney~~) to maintain an action for an  
13 injunction to enforce RCW 70.160.050, to correct a violation, and to  
14 assess and recover a civil penalty for the violation.

15       (4) Local health departments may not delegate the authority granted  
16 to them under this chapter to any outside nongovernmental agency.

17       NEW SECTION. Sec. 4. A new section is added to chapter 70.160 RCW  
18 to read as follows:

19       Health departments may not issue fines or take other legal actions  
20 based solely on a reported violation of this chapter. The health  
21 department employee must witness the violation and it must be shown by  
22 clear and convincing evidence that the business owner or designated  
23 employee has made no attempt to comply with this chapter. For purposes  
24 of this chapter, if the owner, lessee, or other person in charge can  
25 document that they have notified the person or persons that they are in  
26 violation of this chapter and that they must cease smoking, the owner,  
27 lessee, or other person in charge has complied with the intent of this  
28 chapter and may not be found in violation of RCW 70.160.050.

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