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HOUSE BILL 3319

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State of Washington                      59th Legislature                      2006 Regular Session

By Representatives Grant, Armstrong and Newhouse

Read first time 03/02/2006. Referred to Committee on Health Care.

1            AN ACT Relating to application of the Washington clean indoor air  
2 act; amending RCW 70.160.020, 70.160.030, 70.160.050, and 70.160.070;  
3 adding new sections to chapter 70.160 RCW; and creating a new section.

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

5            NEW SECTION.    **Sec. 1.** (1) The legislature recognizes the will of  
6 the people strongly expressed by passage of Initiative Measure No. 901  
7 to prohibit smoking in many places. A clear message was sent that  
8 people do not want to be exposed unwillingly to second-hand smoke.

9            (2) The legislature finds that other states that have passed  
10 smoking bans have provided exceptions for key establishments and  
11 settings.

12            (3) The legislature further finds that since Initiative Measure No.  
13 901 exempted private offices and the people that work in them from the  
14 initiative, other exemptions should be created.

15            (4) The legislature also finds that the general understanding of  
16 Initiative Measure No. 901 is that it did not prohibit people from  
17 smoking in their own homes or in select commercial settings where one  
18 would expect to find smoking. The initiative defines public places to  
19 include adult care private residences and, therefore, it applies to

1 assisted living facilities, veterans' homes, nursing homes, and adult  
2 family homes, places that are the homes or social gathering spots of  
3 the residents. Some of these residents still smoke, and consider it  
4 one of their few remaining "pleasures" in life. Typically they smoke  
5 in a separate, ventilated safe room in the facility. Under Initiative  
6 Measure No. 901, these designated smoking rooms are prohibited. The  
7 legislature has long recognized that residents who live in long-term  
8 care facilities should have the opportunity to exercise reasonable  
9 control over life decisions, that the right of choice enhances the  
10 quality of life for residents, and that residents should not lose their  
11 rights because they live in a care facility.

12 (5) The legislature further finds that members of bona fide private  
13 clubs, many who are veterans organizations, are now excluded from  
14 socializing on a basis that has been done for decades.

15 (6) Next, such places as cigar bars and retail cigar stores that  
16 were never expected by the public to be banned are no longer allowed to  
17 operate. Initiative Measure No. 901 has closed these establishments  
18 and they are now struggling for their financial existence.

19 **Sec. 2.** RCW 70.160.020 and 2006 c 2 s 2 (Initiative Measure No.  
20 901) are each amended to read as follows:

21 As used in this chapter, the following terms have the meanings  
22 indicated unless the context clearly indicates otherwise.

23 (1) "Smoke" or "smoking" means the carrying or smoking of any kind  
24 of lighted pipe, cigar, cigarette, or any other lighted smoking  
25 equipment.

26 (2) "Public place" means that portion of any building or vehicle  
27 used by and open to the public, regardless of whether the building or  
28 vehicle is owned in whole or in part by private persons or entities,  
29 the state of Washington, or other public entity, and regardless of  
30 whether a fee is charged for admission, and includes a presumptively  
31 reasonable minimum distance, as set forth in RCW 70.160.075, of twenty-  
32 five feet from entrances, exits, windows that open, and ventilation  
33 intakes that serve an enclosed area where smoking is prohibited. A  
34 public place does not include a private residence unless the private  
35 residence is used to provide licensed child care, foster care, adult  
36 care, or other similar social service care on the premises.

1 Public places include, but are not limited to: Schools, elevators,  
2 public conveyances or transportation facilities, museums, concert  
3 halls, theaters, auditoriums, exhibition halls, indoor sports arenas,  
4 hospitals, nursing homes, health care facilities or clinics, enclosed  
5 shopping centers, retail stores, retail service establishments,  
6 financial institutions, educational facilities, ticket areas, public  
7 hearing facilities, state legislative chambers and immediately adjacent  
8 hallways, public restrooms, libraries, restaurants, waiting areas,  
9 lobbies, bars, taverns, bowling alleys, skating rinks, casinos,  
10 reception areas, and no less than seventy-five percent of the sleeping  
11 quarters within a hotel or motel that are rented to guests. A public  
12 place does not include a private residence. This chapter is not  
13 intended to restrict smoking in private facilities which are  
14 occasionally open to the public except upon the occasions when the  
15 facility is open to the public.

16 (3) "Place of employment" means any area under the control of a  
17 public or private employer which employees are required to pass through  
18 during the course of employment, including, but not limited to:  
19 Entrances and exits to the places of employment, and including a  
20 presumptively reasonable minimum distance, as set forth in RCW  
21 70.160.075, of twenty-five feet from entrances, exits, windows that  
22 open, and ventilation intakes that serve an enclosed area where smoking  
23 is prohibited; work areas; restrooms; conference and classrooms; break  
24 rooms and cafeterias; and other common areas. A private residence or  
25 home-based business, unless used to provide licensed child care, foster  
26 care, adult care, or other similar social service care on the premises,  
27 is not a place of employment.

28 (4) "Cigar bar" means an establishment that sells alcohol and food,  
29 sells cigars on the premises, has an in-house humidor, is advertised  
30 clearly as a cigar bar, does not admit anyone under twenty-one years of  
31 age, and is enclosed and separately ventilated.

32 (5) "Retail tobacco shop" means an establishment that (a) holds  
33 itself out to the public as being devoted primarily to the on-site sale  
34 of tobacco, tobacco products, and tobacco product accessories; and (b)  
35 derives not less than fifty percent of its total annual gross income  
36 from the on-site sale of tobacco, tobacco products, and tobacco product  
37 accessories. If a tobacco shop is located in an enclosed shopping

1 mall, a hotel, or any other building used for multiple purposes or if  
2 it shares premises with another business, the tobacco shop must be  
3 completely enclosed and separately ventilated.

4 (6) "Private club" means a bona fide private club, licensed by the  
5 liquor control board under RCW 66.24.450 or a restaurant not serving  
6 the general public licensed by the liquor control board under RCW  
7 66.24.425. A "private club" must be either a free standing facility or  
8 enclosed and separately ventilated and may not admit anyone under  
9 eighteen years of age.

10 (7) "Cigar humidor" means a container designed for storing cigars  
11 or other tobacco products at a constant level of humidity.

12 (8) "Theatrical production site" means any production site where  
13 smoking by the actor or actors is an integral part of the story.

14 (9) "Long-term care facility" means a facility or home as defined  
15 in RCW 43.190.020 (1) or (2), and includes but is not limited to  
16 nursing homes, assisted living facilities, boarding homes, adult family  
17 homes, and veterans homes.

18 (10) "Designated smoking area in a long-term care facility" means  
19 an indoor or outdoor smoking area that meets the standards set forth in  
20 section 7 of this act.

21 (11) "Enclosed and separately ventilated" means an area that is  
22 enclosed by solid walls or windows, a ceiling, and a solid door, and  
23 equipped with a ventilation system that is separately exhausted from  
24 any adjacent nonsmoking areas so that air from such area is not  
25 recirculated to such nonsmoking areas and smoke is not backstreamed  
26 into nonsmoking areas.

27 (12) "Department" means the department of licensing.

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

30 No person may smoke in a public place or in any place of employment  
31 except in a cigar bar, retail tobacco shop, private club, theatrical  
32 production site, or designated smoking area in a long-term care  
33 facility, licensed by the department under section 6 of this act.

34 **Sec. 4.** RCW 70.160.050 and 2006 c 2 s 4 (Initiative Measure No.  
35 901) are each amended to read as follows:

36 Owners, or in the case of a leased or rented space the lessee or

1 other person in charge, of a place regulated under this chapter shall  
2 prohibit smoking in public places and places of employment, except in  
3 a cigar bar, retail tobacco shop, private club, theatrical production  
4 site, or designated smoking area in a long-term care facility, licensed  
5 by the department under section 6 of this act, and shall post signs  
6 prohibiting smoking as appropriate under this chapter. Signs shall be  
7 posted conspicuously at each building entrance. In the case of retail  
8 stores and retail service establishments, signs shall be posted  
9 conspicuously at each entrance and in prominent locations throughout  
10 the place.

11 **Sec. 5.** RCW 70.160.070 and 2006 c 2 s 5 (Initiative Measure No.  
12 901) are each amended to read as follows:

13 (1) Any person intentionally violating this chapter by smoking in  
14 a public place or place of employment, except in a cigar bar, retail  
15 tobacco shop, private club, theatrical production site, or designated  
16 smoking area in a long-term care facility, licensed by the department  
17 under section 6 of this act, or any person removing, defacing, or  
18 destroying a sign required by this chapter, is subject to a civil fine  
19 of up to one hundred dollars. Any person passing by or through a  
20 public place while on a public sidewalk or public right of way has not  
21 intentionally violated this chapter. Local law enforcement agencies  
22 shall enforce this section by issuing a notice of infraction to be  
23 assessed in the same manner as traffic infractions. The provisions  
24 contained in chapter 46.63 RCW for the disposition of traffic  
25 infractions apply to the disposition of infractions for violation of  
26 this subsection except as follows:

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

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

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

35 (2) When violations of RCW 70.160.050 occur, a warning shall first  
36 be given to the owner or other person in charge. Any subsequent

1 violation is subject to a civil fine of up to one hundred dollars.  
2 Each day upon which a violation occurs or is permitted to continue  
3 constitutes a separate violation.

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

- 7 (a) Serving notice requiring the correction of any violation; or
- 8 (b) Calling upon the city or town attorney or county prosecutor or  
9 local health department attorney to maintain an action for an  
10 injunction to enforce RCW 70.160.050, to correct a violation, and to  
11 assess and recover a civil penalty for the violation.

12 NEW SECTION. **Sec. 6.** A new section is added to chapter 70.160 RCW  
13 to read as follows:

14 (1) The department shall issue a transferable license for a cigar  
15 bar, retail tobacco shop, private club, theatrical production site, or  
16 designated smoking area in a long-term care facility, if the applicant  
17 pays any applicable fee established by the department and shows to the  
18 satisfaction of the department that the establishment is, and has been  
19 since January 1, 2004, a cigar bar, retail tobacco shop, private club,  
20 theatrical production site, or designated smoking area in a long-term  
21 care facility, as defined in RCW 70.160.020.

22 (2) The department shall adopt application forms, application fees,  
23 renewal fees, penalty fees, and the frequency of renewal by rule. The  
24 fees charged by the department must cover the costs of establishing and  
25 maintaining the licensing program in accordance with RCW 43.24.086.

26 (3) The department shall adopt rules as necessary to implement this  
27 section.

28 NEW SECTION. **Sec. 7.** A new section is added to chapter 70.160 RCW  
29 to read as follows:

30 Smoking by residents living in long-term care facilities is  
31 permitted in a designated smoking area that meets the following  
32 standards:

33 (1) The designated smoking area cannot be located in a common area,  
34 including but not limited to entrances, lobbies, hallways, dining  
35 rooms, activity rooms, or meeting rooms, where employees, visitors, or

1 nonsmoking residents are required to enter or pass through for work,  
2 visits, or services.

3 (2) An indoor designated smoking area must be enclosed and  
4 separately ventilated as defined in RCW 70.160.020. The indoor area  
5 must meet the stricter of any applicable indoor air exposure limits set  
6 by the department of labor and industries or the department of health  
7 for vapor phase nicotine and carbon monoxide. Long-term care  
8 facilities whose designated smoking areas met the standards as they  
9 existed prior to the enactment of Initiative Measure No. 901 are  
10 permitted to continue to use those designated smoking areas. If either  
11 the department of labor and industries or the department of health  
12 adopts stricter exposure standards by rule, the facility shall comply  
13 with the stricter standards.

14 (3) An outdoor designated smoking area must be covered and  
15 protected from inclement weather, identified with signs, and reachable  
16 by a nonhazardous pathway. The outdoor area may be located no closer  
17 than fifteen feet from entrances, exits, operable windows, and  
18 ventilation intakes that serve an enclosed nonsmoking area. The  
19 outdoor area must be closed on at least one side to minimize smoke  
20 infiltration into the facility and must have an outdoor filter system  
21 to help absorb smoke when the outdoor smoking area is in use.

22 (4) Prospective employees and residents must be informed as to  
23 whether the facility has a designated smoking area. No employee may be  
24 required to enter a designated smoking area while in use. Cleaning and  
25 maintenance of the designated smoking area may not occur when smokers  
26 are present. Persons under the age of eighteen are prohibited from  
27 entering or performing any duties in a designated smoking area.

28 (5) The department of labor and industries and the department of  
29 health may adopt rules as needed to implement this section.

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