

# HOUSE BILL REPORT

## HB 1683

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**As Reported by House Committee On:**  
Business & Financial Services

**Title:** An act relating to establishing special license endorsements for cigar lounges and retail tobacconist shops.

**Brief Description:** Establishing special license endorsements for cigar lounges and retail tobacconist shops.

**Sponsors:** Representatives Carlyle, Armstrong, Eddy, Chandler, Kirby, Condotta, Hurst, Zeiger and Kagi.

**Brief History:**

**Committee Activity:**

Business & Financial Services: 2/10/11, 2/15/11, 2/17/11 [DPS].

**Brief Summary of Substitute Bill**

- Creates cigar lounge and retail tobacconist shop endorsements to the tobacco products retailer's license.
- Requires at least 95 percent of the fees for the endorsements be deposited into the Education Legacy Trust Account to be used for the Passport to College Promise Program.

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### HOUSE COMMITTEE ON BUSINESS & FINANCIAL SERVICES

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Kirby, Chair; Kelley, Vice Chair; Bailey, Ranking Minority Member; Buys, Assistant Ranking Minority Member; Blake, Condotta, Hurst, Parker, Rivers and Stanford.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Hudgins, Pedersen and Ryu.

**Staff:** Alison Hellberg (786-7152).

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

## **Background:**

### Licensing of Cigarette and Tobacco Products Sellers.

Persons selling cigarettes or tobacco products in this state are required to hold either a wholesaler or retailer cigarette license or a distributor or retailer tobacco products license (for all tobacco products other than cigarettes) through the Department of Licensing's Master License Service.

The Liquor Control Board (Board) has authority to approve, deny, suspend, or revoke retail, wholesale, or distributor cigarette and tobacco products licenses. If the Board makes an initial decision to deny a license or renewal, or suspend or revoke a license, the applicant may request a hearing under the Administrative Procedure Act.

Ninety percent of the fees collected for these licenses are deposited into the Youth Tobacco Prevention Account (Account). The remaining 10 percent is deposited into the General Fund. Funds appropriated from the Account to the Department of Health (DOH) are used for programs related to reducing access to tobacco products by youth. The DOH is also required to enter into interagency agreements to pay the Board for costs related to the enforcement of these requirements. Up to 30 percent of available funds may be used for enforcement.

The Board enforces the tax on tobacco products. The Board's Tobacco Tax Enforcement Unit ensures that people who sell tobacco are properly licensed, have paid the appropriate state taxes, and do not sell tobacco to those under 18 years of age.

### Passport to College Promise Program.

The Passport to College Promise Program (Promise Program) was created in 2007. The Program is designed to provide: (1) outreach and information to current foster youth regarding the opportunities available to them for post-secondary education; and (2) scholarships to eligible former foster youth to cover their full costs of resident undergraduate tuition, fees, and living expenses. The Program is set to expire on June 30, 2013.

### Smoking in Places of Employment.

In 2005 voters passed Initiative 901, which expanded a ban on smoking in public places to include schools, bars, taverns, bowling allies, casinos, reception areas, at least 75 percent of the sleeping quarters in hotels and motels, and places of employment. A "place of employment" includes an area under the control of an employer that employees are required to pass through during the course of employment.

### Contractor Registration Act.

The Contractor Registration Act requires construction contractors to register with the Department of Labor and Industries (L&I). An applicant for registration must submit a form that contains certain information, including the applicant's unified business identifier number and the names and addresses of owners, principals, members, or officers of the contracting business. The applicant must also file a surety bond and furnish proof of liability insurance. An applicant is not required to fulfill any education, experience, or examination requirements in order to register.

## **Summary of Substitute Bill:**

A tobacco products retailer licensee may apply for a special endorsement as a cigar lounge or a retail tobacconist shop through the Master Licensing System. Applicants must pay a fee and submit an affidavit to the Board certifying several items to obtain the endorsement. The Board determines the form and manner of submission of the affidavit. The Board may request additional documentation or information from an applicant.

Endorsements are effective for the same period as the tobacco products retailer's license. The affidavit, however, must be completed and verified each year by the Board and the appropriate fee paid in full before any endorsement to a tobacco retailer license is issued or renewed. Endorsement decisions must be made by the Board within 21 business days of application. Rejections of an application for an endorsement may be appealed under the same process provided for other licenses issued by the Board.

### Cigar Lounge Endorsement.

An applicant for a cigar lounge endorsement must designate an area for the smoking of tobacco products, which is physically separated from any areas where smoking is prohibited under state law. For the purposes of this requirement, "physically separated" means an area that is enclosed on all sides by solid, impermeable walls or windows extending from floor to ceiling with self-closing doors. The applicant must:

- not allow cigarettes to be smoked in the designated area;
- hold a valid spirits, beer, and wine license from the Board; and
- have a valid uniform business identifier number and have paid all applicable state business and occupation (B&O) taxes in the year prior to application for endorsement.

In the year immediately preceding initial application or renewal, the applicant must show that it derived at least \$25,000 of the business' annual gross income from the sale of tobacco products, tobacco product related paraphernalia, and the rental of on-site humidor space. If it is an initial endorsement application, the applicant may use any year prior to the initial application to meet the requirements or must show proof that it has purchased, at wholesale, at least \$12,000 in tobacco products and tobacco product related paraphernalia.

In addition, the applicant must obtain a signed letter from a heating, ventilation, air-conditioning, and refrigeration contractor registered with the L&I, which certifies that the ventilation and exhaust system for the designated area:

- is separate and distinct from the location's general heating, ventilation, and air-conditioning system;
- has an air flow, as calculated in cubic feet per minute, that will provide for at least 13 or more air changes within the space served by the ventilation and exhaust system;
- uses the correct quantity of filters recommended by the manufacturer of the ventilation and exhaust system and that those filters have a minimum efficiency rating value of 14 or higher; and
- uses a loose-fill, rechargeable-type sorbent material positioned across the airflow in such a configuration that gaseous contaminants will have a residence time of one-tenth of one second or more within the sorbent material.

Each employee who works in the designated area must sign an acknowledgment that the employee has been advised of and accepts that environmental tobacco smoke may be present in their potential work area. The acknowledgment must contain the following provision in bold-faced type: "I, the undersigned, acknowledge and certify that I have had sufficient opportunity to read the entire acknowledgment of risks, that I understand its content, and that I execute it freely and without duress of any kind." The applicant must maintain the acknowledgement on file.

The applicant must post signage indicating that environmental tobacco smoke may be present in the designated area. This signage must be in the form and manner provided by the Board and must be placed in a conspicuous location at each entry to the designated area.

#### Retail Tobacconist Shop Endorsement.

An applicant for a retail tobacconist shop endorsement must be an establishment whose primary purpose is the sale of tobacco products and tobacco product-related paraphernalia and that is physically separated from any adjacent location where smoking is prohibited under state law. For the purposes of this requirement, "physically separated" means an area that is enclosed on all sides by solid, impermeable walls or windows extending from the floor to ceiling with self-closing doors.

The applicant must:

- not allow cigarettes to be smoked in the designated area;
- prohibit entry into the designated area to any person under the age of 18; and
- have a valid uniform business identifier number and have paid all applicable state B&O taxes in the year prior to application for endorsement.

In the year immediately preceding initial application or renewal, the applicant must show that it derived at least 75 percent of the business' annual gross income from the sale of tobacco products and tobacco product-related paraphernalia. If it is an initial endorsement application, the applicant may use any year prior to the initial application to meet the requirements or must show proof that it has purchased, at wholesale, at least \$25,000 in tobacco products and tobacco-product related paraphernalia.

In addition, the applicant must obtain a signed letter from a heating, ventilation, air-conditioning, and refrigeration contractor registered with the L&I, which certifies that the ventilation and exhaust system for the designated area:

- is separate and distinct from the location's general heating, ventilation, and air-conditioning system;
- has an air flow, as calculated in cubic feet-per-minute, that will provide for at least 13 or more air changes within the space served by the ventilation and exhaust system;
- uses the correct quantity of filters recommended by the manufacturer of the ventilation and exhaust system and that those filters have a minimum efficiency rating value of 14 or higher; and
- uses a loose-fill, rechargeable-type sorbent material positioned across the airflow in such a configuration that gaseous contaminants will have a residence time of one-tenth of one second or more within the sorbent material.

Each employee who works in the designated area must sign an acknowledgment that the employee has been advised of and accepts that environmental tobacco smoke may be present in their potential work area. The acknowledgment must contain the following provision in bold-faced type: "I, the undersigned, acknowledge and certify that I have had sufficient opportunity to read the entire acknowledgment of risks, that I understand its content, and that I execute it freely and without duress of any kind." The applicant must maintain the acknowledgement on file.

The applicant must post signage indicating that environmental tobacco smoke may be present in the establishment. This signage must be in the form and manner provided by the Board and must be placed in a conspicuous location at each entry to the designated area.

#### Fees.

To obtain a cigar lounge endorsement, a licensee must pay a \$15,000 fee. The fee for a retail tobacconist shop endorsement is \$5,000. Up to 5 percent of the fees must be deposited into the Liquor Revolving Fund (Fund) to be used by the Board to cover the administrative costs of implementing and enforcing the license endorsements. The remaining fees collected must be deposited into the Education Legacy Trust Account (Account). The funds from the Account are appropriated and may only be used for the Promise Program.

#### Retaliation.

No employer may discharge, threaten to discharge, demote, deny a promotion to, sanction, discipline, retaliate against, harass, or otherwise discriminate against an employee solely for refusing to consent to or sign the acknowledgment required for the endorsements.

#### Endorsement Caps.

The Board may not allow the total number of cigar lounge endorsements in the state to exceed 100 or the total number of retail tobacconist shop endorsements in the state to exceed 500. The Board must administer the distribution of cigar lounge or retail tobacconist shop endorsements and must ensure that the collective number of endorsements located in all counties with a population of over 500,000 never exceed one-half of the endorsements allowed for each endorsement. Renewing applicants must be given priority over new applicants for endorsements.

#### **Substitute Bill Compared to Original Bill:**

It is specified that the 5 percent of fees that are retained by the Board for enforcement and implementation be deposited in the Fund.

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**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on February 18, 2011.

**Effective Date of Substitute Bill:** The bill contains an emergency clause and takes effect immediately.

## **Staff Summary of Public Testimony:**

(In support) The people of the state have created an initiative to prohibit smoking in public places and there are genuine feelings of protecting public health. This bill creates a balance by allowing freedom of association and allowing businesses to serve their customers while protecting employees and passers by. Public health will not be impacted by this small carve out of the law. This bill attempts to respect and protect those who do not smoke.

When people voted for the initiative to prohibit smoking in public places, it was not meant to also prohibit it in cigar lounges. This was an unintended consequence and hurt many businesses profoundly. People did not mean to shut down iconic businesses. This bill allows one small exemption for cigar and pipe smoking. Cigar smokers want a nice place to smoke cigars. It also recognizes the fundamental difference between cigarettes and cigars. Cigarettes are addictive and are smoked quickly. Cigars are about relaxation, celebration, and bonding and rarely involve addiction. Many business transactions take place over a cigar.

This bill is about freedom. The market should decide whether cigar lounges exist. If someone does not want to be around cigar smoke, they would not choose to be at an establishment where cigar smoke is allowed. Adults know what they are getting into when they enter a tobacco shop.

The bill has been developed in a thoughtful manner and is modeled after successful ordinances in other cities. The mitigation standards in the bill have proven to be successful. This bill contains even more safeguards than exist in other states. The ventilation systems, the consideration of employees, and the merchandise requirements all make this a narrowly tailored and reasonable exemption. With proper ventilation systems, it is possible to separate cigar smoking areas.

With limited resources, the Legislature must be thoughtful, creative, and reflective. Foster youth face all sorts of barriers to getting educated. Thirty percent of youth are incarcerated within 18 months of leaving foster care. This will provide a mechanism for funding towards programs that help them get educated.

(Opposed) This bill has major implications. Over the last number of years, there has been a momentum for strong laws to maintain smoke-free environments. It would be unprecedented to carve an exemption out of a law that has passed and implemented. This is framed as simple carve out, but it is a slippery slope. Soon, many groups will want exemptions and the law will be weakened. The original law is popular. It passed with a two-thirds majority in all counties. It is also effective and easy to enforce because it is simple and strong. States with too many exemptions have had difficulty with enforcement.

The harm of secondhand smoke is one of the most settled issues in science. There is no safe level of secondhand smoke. It is linked to heart disease and all sorts of other diseases. Many deaths are related to exposure. Washington prides itself on being healthy and has made a policy decision that people should not be subjected to smoke in the workplace. No other workplace requirement allows employees to waive their rights to be safe. The law is working. It has resulted in a reduction in respiratory illness and healthier communities.

It was not an oversight to include cigar shops in the initiative. The introductory language pointed out that it was meant to protect public health and employee health. Most shops share walls and common areas with other businesses. Cigar lounges are parts of restaurants. It is impossible to completely separate these areas and protect people.

The "fee" is actually a "tax" because the businesses are paying for something unrelated to their enforcement.

**Persons Testifying:** (In support) Representative Carlyle, prime sponsor; Lee Somerstein; Joe Arundel, Cigar Association of Washington; Dale Taylor; Keith Robbins; Mark Chriest, Oki Developments; Rob Tobeck; Jim King; Tim Wong, Rocky Patel Premium Cigars; Bill Daly, Cigar Rights of America; John Ohm, J and J Cigars; and Paul Mackay, El Gaucho Restaurant.

(Opposed) Chris Sherwin, American Heart Association; Gary Johnson, Public Health Seattle and King County; Nick Federici, American Cancer Society; Mary Selecky, Department of Health; and Dennis Worsham, Washington State Public Health Association.

**Persons Signed In To Testify But Not Testifying:** None.