

# SENATE BILL REPORT

## ESSB 5542

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As Passed Senate, May 17, 2011

**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:** Senate Committee on Ways & Means (originally sponsored by Senators Delvin, Prentice, Honeyford, Hatfield, Schoesler, Hobbs and Hewitt).

**Brief History:**

**Committee Activity:** Labor, Commerce & Consumer Protection: 2/17/11, 3/08/11 [w/oRec-WM].

Ways & Means: 3/16/11, 5/03/11, 5/05/11 [DPS, DNP, w/oRec].

**First Special Session:** Passed Senate: 5/17/11, 26-21.

**Brief Summary of Engrossed Substitute Bill**

- Creates cigar lounge and retail tobacconist shop endorsements to the tobacco products retailer's license.
- Requires 95 percent of the fees for the endorsements be deposited in the Tobacco Prevention and Control Account.

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**SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION**

**Staff:** Ingrid Mungia (786-7423)

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**SENATE COMMITTEE ON WAYS & MEANS**

**Majority Report:** That Substitute Senate Bill No. 5542 be substituted therefor, and the substitute bill do pass.

Signed by Senators Zarelli, Ranking Minority Member; Parlette, Ranking Minority Member Capital; Baumgartner, Baxter, Brown, Fraser, Hatfield, Holmquist Newbry, Honeyford, Kohl-Welles, Pridemore and Schoesler.

**Minority Report:** Do not pass.

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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.*

Signed by Senators Conway, Kastama, Keiser, Regala, Rockefeller and Tom.

**Minority Report:** That it be referred without recommendation.  
Signed by Senator Kilmer, Vice Chair, Capital Budget Chair.

**Staff:** Devon Nichols (786-7716)

**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 in the Youth Tobacco Prevention Account (Account). The remaining 10 percent is deposited in the General Fund. Funds appropriated from the Account to the Department of Health are used for programs related to reducing access to tobacco products by youth. The Department of Health 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.

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. 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.

The Basic Health Plan Trust Account. The Basic Health Plan Trust Account funds the Basic Health Program and provides health care subsidies for low-income persons.

**Summary of Engrossed 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 the 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 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 \$12,500 in tobacco products and tobacco products related paraphernalia.

In addition, the applicant must obtain a signed letter from a heating, ventilation, air-conditioning, and refrigeration contractor registered with the Department of Labor and Industries, 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 provides 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 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 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 business and occupation 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 products related paraphernalia.

In addition, the applicant must obtain a signed letter from a heating, ventilation, air-conditioning, and refrigeration contractor registered with the Department of Labor and Industries, 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 provides 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 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 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 \$17,500 fee. The fee for a retail tobacconist shop endorsement is \$6,000. Up to 5 percent of the fees collected must be deposited into the Liquor Revolving Account to cover the administrative costs of implementing and enforcing the license endorsements. The remaining funds collected must be deposited into the Tobacco Prevention and Control Account solely for appropriation for tobacco usage prevention and treatment programs.

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.

**Appropriation:** None.

**Fiscal Note:** Available.

[OFM requested ten-year cost projection pursuant to I-960.]

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Original Bill (Labor, Commerce & Consumer Protection):** PRO: Other states have cigar lounges and shops. We should allow this now in our state. This is an opportunity for small businesses to stay in business. Washington would be joining 46 other states regarding smoking ban exemptions for retail cigar shops and 33 other states exempting cigar lounges from smoking bans. The bill provides for strict guidelines. There is a provision in the bill to protect employees from dismissal. This bill would provide a like-minded community a gathering place and help contribute to our states growing deficit. When the smoking ban went into effect, I don't think citizens realized they would put businesses out-of-business. Oregon has a similar law with exemptions for cigar lounges and tobacconist shops. Initiative 901 left little room for individual freedom and liberty or property rights. If I-901 had the exemptions we now seek it would have passed by the same 63 percent margin. All we are asking for is a narrow exemption for individuals to enjoy a product as consenting adults. It will also bring about a significant amount of revenue to the state in a time of need. This will bring Washington in line with other states that have exemptions. We are asking for this bill.

CON: This bill will weaken the protections from our comprehensive law we have put into place. Science tells us there is no safe level to second hand smoke. This law will be a step in the wrong direction. It will not keep the people of Washington healthy or help citizens get

healthier. Sixty-three percent of the voters approved Initiative 901 that prohibits smoking in public places. This bill will subvert the will of the voters. Cigar smoke is possibly more toxic than cigarette smoke. Cigar smoke has a higher level of carcinogenic, more tar and a high level of toxins. There is no safe level of exposure to cigar smoke. We have been concerned about the lack of revenue to support smoking prevention programs. There is no ventilation system that can protect employees in a room where there is smoking. The protections in the bill will protect no one. This bill is anti-health, anti-labor, anti-business, anti-local government and anti-democratic. You cannot protect people from smoke with a ventilation system.

**Persons Testifying (Labor, Commerce & Consumer Protection):** PRO: Senator Delvin, prime sponsor; Joe Arundel, Cigar Association of Washington; Keith Robbins, Tiny Bigs; Dale Taylor, Rain City Cigar; Paul MacKay, MacKay Restaurants; Manny Remero, citizen.

CON: Mary Selecky, Department of Health; Nick Federici, American Cancer Society/Cancer Action Network; Anthony Chen, Tacoma Pierce County Health Department; Dennis Warsham, Washington State Public Health Association; Gary Johnson, Public Health - Seattle & King County.

**Staff Summary of Public Testimony on Original Bill (Ways & Means):** PRO: Helps business in the state of Washington by bringing in more customers and not losing to Internet sales. Not only will these businesses benefit from the sale of tobacco products; they will also benefit from the increased sale of food and alcohol. Employees will see an increase in tip money and wages. The state will benefit from the increased taxes collected on these products. Patrons who are in a cigar lounge choose to be there; members of the general public will not be affected. Cigar smoking is a passion, a celebration. Smoking a cigar is a longer endeavor than smoking a cigarette and cigar smokers would like a refined place to enjoy their product.

CON: Passage of this bill would put an added expense on local health departments due to tobacco related illnesses. Additional costs to local government would be incurred from complaints and legal expenses. Keep the Indoor Air Act strong and do not include exemptions. This bill would create a big hole in the law. Voters passed Initiative 901 with a strong majority; this bill goes against the will of the people. Increased tobacco use under this bill will result in increased health care costs.

**Persons Testifying (Ways & Means):** PRO: Senator Delvin, prime sponsor; Chad MacKay, El Gaucho; Matt Freerks, Southern Wine and Spirits; Keith Robbins, Tini Biggs Lounge; Joe Arundel, Cigar Association of Washington; Dale Taylor, Rain City Cigar; Robbie Tobeck, consumer.

CON: Dennis Worsham, Washington State Public Health; Gary Johnson, Public Health Seattle-King County; Frank DiBiase, Tacoma-Pierce County Health Department; Nick Federici, American Cancer Society/Cancer Action Network.