

# HOUSE BILL REPORT

## HB 1750

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

#### **Brief History:**

##### **Committee Activity:**

Business & Financial Services: 2/14/13, 2/19/13 [DP].

#### **Brief Summary of Bill**

- Creates cigar lounge and retail tobacconist shop endorsements to the tobacco products retailer's license.
- Requires at least 90 percent of the fees for the endorsements be deposited into the Tobacco Prevention and Control Account to be used for tobacco usage prevention and treatment programs.

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### HOUSE COMMITTEE ON BUSINESS & FINANCIAL SERVICES

**Majority Report:** Do pass. Signed by 9 members: Representatives Kirby, Chair; Parker, Ranking Minority Member; Vick, Assistant Ranking Minority Member; Blake, Chandler, Habib, Hurst, MacEwen and O'Ban.

**Minority Report:** Do not pass. Signed by 6 members: Representatives Ryu, Vice Chair; Hawkins, Hudgins, Kochmar, Santos and Stanford.

**Staff:** Jon Hedegard (786-7127).

#### **Background:**

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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.*

### 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 Revenue's Master License Service (MLS). Ninety percent of the fees collected for the wholesaler or retailer cigarette licenses are deposited into the Youth Tobacco Prevention Account (YTP Account). The remaining 10 percent is deposited into the General Fund. Funds appropriated from the YTP 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 Liquor Control Board (Board) for costs related to the enforcement of these requirements. Up to 30 percent of available funds may be used for enforcement. A licensee with a wholesaler or retailer cigarette license who applies for a distributor or retailer tobacco products license does not have to pay the distributor or retailer tobacco products license fees. Any fees from a distributor or retailer tobacco products license are deposited in the General Fund.

The 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.

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 (Initiative), which expanded a ban on smoking in public places to include schools, bars, taverns, bowling alleys, 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.

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### **Summary of Bill:**

A tobacco products retailer licensee may apply for a special endorsement as a cigar lounge or a retail tobacconist shop through the MLS. 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. An endorsement is transferrable and no initial application fee is required from the new owner of the endorsement. 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. The Board has the sole enforcement authority regarding the designated areas which receive an endorsement.

#### 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 may work 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 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 may work 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.

An applicant for an endorsement must pay a fee of:

- \$19,000 to obtain a cigar lounge endorsement;
- \$7,000 to renew a for cigar lounge endorsement;
- \$7,000 to obtain a retail tobacconist shop endorsement; and
- \$2,500 to renew a retail tobacconist shop endorsement.

Up to 5 percent of the fees must be deposited into the Liquor Revolving 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 Tobacco Prevention and Control Account (TPC Account). The funds from the TPC Account may only be used 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.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

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

(In support) This bill is about individual choice. An individual should decide whether or not to smoke a cigar. This is not an attack on the smoking ban. The use of cigars is heavily restricted and health and safety provisions are included. About 35 states allow cigar lounges. This bill will bring in jobs and business opportunities. This bill provides narrowly defined, reasonable exceptions to the smoking ban. Most states with smoking bans allow for a cigar lounge. Customers want to have the ability to sample a cigar. The heating, ventilation, air

conditioning and refrigeration industry maintains clean air throughout the country. The air in a cigar lounge may be cleaner than other urban air. Broiled meats can put more carcinogens in the air than are in the smoke in a cigar lounge. Cigars are legal and enjoyable. They are often enjoyed in celebration. Some of the casinos in this state offer smoking lounges but not everyone has access to those casinos. Occasional smoking of a cigar does not pose the same health problems as more constant cigarette smoking. The bill addresses the quality of the air filtration. The Legislature should not be concerned about the Initiative. The Legislature can repeal or amend any initiative. The Initiative provided more regulation than other states. Youth are not allowed in these locales under the bill. This is a reasonable bill that addresses the concerns raised by opponents. Only four states do not allow cigar smoking in cigar shops. Cigars and pipes are not used in the same way as cigarettes and do not cause the same problems. The bill creates jobs and provides revenues. Cigar sales have dropped massively since the ban. Cigar lounges had to close. Many employees smoke and would not have a problem with second-hand smoke.

(Opposed) The voters spoke on this issue when they passed the Initiative. This bill would violate the Initiative. The affected employees would compromise their health. There is no safe level of second-hand smoke. This is a public health issue. Washington voters passed the initiative in 2005. This bill would weaken that law and expose employees to dangerous second-hand smoke. Second-hand smoke is a Class A carcinogen. It would also send a message to the youth of the state that smoking is okay. Cigar smoke may be more toxic than cigarettes. Cigars are usually larger than cigarettes and smoked for a longer period of time. Children should not have the image that athletes should use legal or illegal drugs to get ready for or to celebrate after a big game. Six hundred businesses with these endorsements is a large number. The health costs outweigh any revenues in this bill. Tobacco leads to almost \$2 billion in health costs in this state. This bill will lead to more health care costs down the road. All smoking is unsafe. There is no evidence that any ventilation system can prevent risks. The bill bans cigarette smoking but not hookahs or cigarillos. The smoking ban improved indoor air by 85 percent. Tobacco kills. Smoking kills. This bill should not be passed. No state has repealed or limited a clean air act. Some states had a cigar lounge exception in their original law but no state has weakened clean air laws after passage. No ventilation contractor can certify that shared ventilation systems can adequately clean the air. Some smells may be reduced but not all. Not all of the particulates can be cleaned. The state should not try to increase smoking to fund tobacco prevention. The National Cancer Institute has shown that cigar smoking is more dangerous than cigarette smoking. Workers should not be exposed to the risks of smoking. Every employee deserves clean air. Tobacco smoke is the number one killer in the United States. Asthmatics can have an attack by mere exposure to smoke. The bill would lead to more illnesses and death. The current law has protected workers. Every county in the state supported the Initiative. The law is still popular among citizens. State health care costs will rise. Local health jurisdictions' costs will rise and there is no funding to address those costs in the bill. It is another unfunded mandate. Washington voters have expressed their stronger preference for the law. The ventilation industry has admitted that their ventilation efforts cannot eliminate the particulate matter in the air due to cigar smoking. Tobacco is about money. Tobacco is targeted to minority communities. This issue is all about money.

**Persons Testifying:** (In support) Representative Pettigrew, prime sponsor; Tom Echols, Cigar Association of America; Jim Kim, Washington Heating Ventilation Air-Conditioning

and Refrigeration Association; Robbie Tobeck; Dale Taylor and Joe Arundel, Cigar Association of Washington; and Kieth Robins, Tini Bigs Lounge.

(Opposed) Dorothy Bain Hanson and Erin Dziedzic, American Cancer Society and Cancer Action Network; Meghan Sullivan and Jim Cooper, Washington Association of Substance Abuse and Violence Prevention and Together Organization; Mary Selecky, Department of Health; Teresa Mosqueda, Washington State Labor Council; Dr. Anthony Chen, Tacoma-Pierce Health Department; and Annie Tegen, Americans for Non Smokers Rights.

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