

HOUSE BILL REPORT

HB 1296

As Reported by House Committee On: Commerce & Gaming

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 Vick, Kirby, Pettigrew, Blake, Buys, MacEwen, Rodne, Walsh, Condotta, G. Hunt, Hayes, Carlyle and Sawyer.

Brief History:

Committee Activity:

Commerce & Gaming: 1/20/15, 1/29/15 [DPS].

Brief Summary of Substitute Bill

- Authorizes a person holding a tobacco products retailer license to apply through the business licensing system for a special endorsement as a cigar lounge or retail tobacconist shop.
- Exempts endorsement holders from the Smoking in Public Places Act.

HOUSE COMMITTEE ON COMMERCE & GAMING

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Hurst, Chair; Wylie, Vice Chair; Condotta, Ranking Minority Member; Holy, Assistant Ranking Minority Member; Blake, Kirby, Moscoso, Scott and Vick.

Staff: David Rubenstein (786-7153).

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

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.

(for all tobacco products other than cigarettes), through the Department of Revenue's Business License System (BLS). The Liquor Control Board (Board) has supervision and enforcement authority over licensees. The Board has authority to approve, deny, suspend, or revoke retail, wholesale, or distributor cigarette and tobacco products licenses.

Smoking in Public Places Act.

In 2005 voters passed Initiative 901 (Initiative), now called the Smoking in Public Places Act (SIPP), 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. The 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 either as a cigar lounge or a retail tobacconist shop through the BLS. Applicants must pay a fee, as determined by the Board, to cover the Board's costs in administering the special endorsements, 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 license. The affidavit, however, must be completed and verified each year by the Board before any endorsement to a tobacco retailer license renewed. An endorsement is transferrable. 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.

Exemption from the Smoking in Public Places Act.

Holders of special endorsements for a cigar lounge or retail tobacconist shop are exempt from the SIPP. The Board has enforcement authority over what areas are subject to the exemption.

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, hookahs, or marijuana 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's annual gross income from the sale of tobacco products, tobacco-product-related paraphernalia, and the rental of on-site humidior 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-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 reporting 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 conspicuous signage, in a form dictated by the Board, indicating that environmental tobacco smoke may be present in 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, hookahs, or marijuana 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's 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;
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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 conspicuous signage, in a form dictated by the Board, indicating that environmental tobacco smoke may be present in the designated area.

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 40 or the total number of retail tobacconist shop endorsements in the state to exceed 75. 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 type of endorsement. Renewing applicants must be given priority over new applicants for endorsements.

Substitute Bill Compared to Original Bill:

Prohibits the smoking of hookahs under the endorsement created by this act and clarifies that smoking marijuana is not permitted. Makes technical corrections.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) If people want to go out and smoke a cigar, they should be allowed to do it. It's a matter of free choice. Right now, that activity is only allowed in casinos, but it should not be so limited. Public opinion polling shows that 79 percent of respondents are in favor of allowing cigar lounges.

Employees will be warned of the risks and have the option to decline to waive without recourse. Many employees of existing businesses are smokers and want this option. People have a choice of where to work, and those who oppose this act won't be seeking employment at cigar lounges. For those who do, many businesses offer health insurance. The bigger risk is actually alcohol, obesity, and cigarettes.

Heating, ventilation, and air conditioning (HVAC) technology is so advanced that one could walk through a cigar lounge and not notice that anyone is smoking. Professional HVAC technicians can make the air cleaner than the outside air, but it can never be perfectly clean.

Cigar lounges used to be fairly common before the Initiative 901, but they had largely disappeared by the time Initiative 901 passed. The few businesses that remained saw substantial declines after the law passed and that continue today. The decline was not limited to cigar sales but also to sales of food and drink. This bill would help boost business again, especially when businesses have invested hundreds of thousands of dollars in these lounges and HVAC systems. Oregon passed a similar measure and has seen significant business growth.

This bill has been around and has been worked on by stakeholders. The substantial reduction in permitted endorsements from previous years is big progress. And even with the reduction, the bill authorizes as many as 115 new employers in the state. This will also bring Washington on par with as many as 35 other states that allow cigar lounges.

(Opposed) This bill will make more people sick and die and increase costs to society. Initiative 901 passed in all 39 Washington counties and support has grown since then, as it has effectively protected workers and citizens from smoke for years and increased restaurant patronage. This bill undermines the SIPP and goes against the will of the voters. Increased smoking is likely to lead to increased health care costs and insurance premiums without providing any money or guidance to local authorities.

It is misleading to characterize this as a quaint issue of free will because it has real impacts on other people. People should be allowed to do what they want if it will not hurt other people, but smoking hurts others. There is no safe level of exposure to secondhand smoke, which increases the risk of many diseases in the long term. But tobacco smoke can also have immediate health consequences, such as increased risk of heart attack and asthma. Cigar smoke can also be more dangerous than cigarette smoke because it contains higher levels of some carcinogens, and particulate matter is taken home to the family. A healthy environment should make the healthy choice the easy choice, and this bill runs contrary to that idea.

There is no perfectly effective HVAC system, and the only way to ensure safety is to prohibit smoking entirely. Impressive-sounding technical specifications do not work.

This bill would allow all smoking but cigarettes, including pipes, cigars, cigarillos, and hookahs. This could also lead to the creation of hookah lounges, which could lead to increased youth tobacco use, as happened in Oregon according to recent studies, especially in counties that permitted such lounges. Further, this bill does not clearly prohibit marijuana.

Finally, while the bill includes employee protection, it cannot protect employees from surreptitious retaliation.

Persons Testifying: (In support) Representative Vick, prime sponsor; Ed Sozinho; Keith Robbins, Tini Bigs Lounge; Jeff Packer, Tinder Box/Cigar Association of Washington; Jim King Jr., Washington State HVACR Association; Chad MacKay, El Gaucho; and Stacey Thrasher, F.K. Kirsten Tobacconist.

(Opposed) Lindsay Hovind, American Heart Association; Kathy Lofy, Department of Health; and Anthony Chen, Tacoma-Pierce County Health Department.

Persons Signed In To Testify But Not Testifying: None.