

HOUSE BILL REPORT

HB 1919

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 Vick, Blake, Kirby, Jenkin, J. Walsh, Hayes, Pettigrew, Condotta, Buys, Young, Barkis, Harmsworth, Rodne, MacEwen and Goodman.

Brief History:

Committee Activity:

Business & Financial Services: 2/7/17, 2/14/17 [DPS].

Brief Summary of Substitute Bill

- Establishes a cigar lounge endorsement and a retail tobacconist shop endorsement to the tobacco product retailer's license to allow for the smoking of tobacco products in a physically separated and designated area, subject to restrictions.
- Requires proof of a ventilation and exhaust system for the designated smoking area meeting specific technical standards and certified by a state-registered heating, ventilation, air-conditioning, and refrigeration contractor.
- Requires any employee of a business with such an endorsement who will work in a designated smoking area to sign a declaration stating that the employee accepts the risks of environmental tobacco smoke.
- Prohibits a business with such an endorsement from taking adverse action against an employee for refusing to sign such a declaration.
- Limits the Liquor and Cannabis Board from issuing more than a total of 40 cigar lounge endorsements or 75 retail tobacconist lounge endorsements statewide.

HOUSE COMMITTEE ON BUSINESS & FINANCIAL SERVICES

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.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Kirby, Chair; Reeves, Vice Chair; Vick, Ranking Minority Member; J. Walsh, Assistant Ranking Minority Member; Barkis, Blake, Jenkin and McCabe.

Minority Report: Do not pass. Signed by 2 members: Representatives Bergquist and Stanford.

Minority Report: Without recommendation. Signed by 1 member: Representative Santos.

Staff: Peter Clodfelter (786-7127).

Background:

Licensing of Cigarette and Tobacco Products Sellers.

Prior to the retail sale or distribution of cigarettes or tobacco products, each retailer must first be issued a cigarette or tobacco products retailer license by the Department of Revenue through its Business Licensing Service. There is a separate license to sell cigarettes and to sell other tobacco products. The Liquor and Cannabis Board (LCB) has supervision and enforcement authority over licensees. Each retailer must undergo a criminal background check conducted by the LCB before a license may be issued. A cigarette or tobacco product retailer license is valid for one year from issuance. A fee of \$175 applies to a license application or license renewal. A separate license is required for each location from which a retailer conducts sales of cigarettes or other tobacco products.

Smoking in Public Places Act.

In 2005 voters passed Initiative 901, now called the Smoking in Public Places Act, which expanded the 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.

Summary of Substitute Bill:

A special endorsement as a cigar lounge or retail tobacconist shop is established to the tobacco product retailer's license. A person holding a tobacco products retailer's license may apply through the Department of Revenue's Business Licensing System for a special endorsement. The Liquor and Cannabis Board (LCB) may charge a reasonable fee per special endorsement application for the purpose of reimbursing the LCB for costs directly related to the LCB's administration of the special endorsement.

Cigar Lounge Endorsement.

The LCB must issue an endorsement as a cigar lounge to a business that submits an affidavit to the LCB certifying that the business meets specific requirements. The business must be an establishment or part of an establishment specifically designated for the smoking of tobacco

products, purchased on the premises or elsewhere, that is physically separated from any areas of the same or adjacent location where smoking is prohibited under state law. The term "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 business must hold a valid spirits, beer, and wine license issued by the LCB. The business must have a valid uniform business identifier number and, if it is an established business with reportable gross receipts, have paid all applicable state business and occupation (B&O) taxes in the year prior to application for endorsement. Additionally, the business must certify that in the year immediately preceding initial application or renewal, the business derived at least \$25,000 of the business's annual gross income from the combination of the sale of tobacco products, tobacco products related paraphernalia, and the rental of on-site humidor space. If it is the first time an applicant is applying for an endorsement, 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

Additionally, the business must have obtained a signed letter from a heating, ventilation, air-conditioning, and refrigeration contractor with a valid registration with the Department of Labor. The signed letter must certify that the ventilation and exhaust system for the area specifically designated for the smoking of tobacco products is separate and distinct from the location's general heating, ventilation, and air-conditioning system and meets specific standards related to air flow, air filtration, and performance.

Also, the business must have on file from each employee that may work in the designated smoking area, a signed declaration that includes the signature of the employee, the employer, and a disinterested third-party witness, and an acknowledgement that the employee has been advised of and accepts that environmental tobacco smoke may be present in the employee's potential work area. The business's affidavit must also provide that the business will post signage indicating that environmental tobacco smoke may be present in the establishment or part of the establishment. This signage must be in the form and manner provided by the LCB and must be placed in a conspicuous location at each entry to the area designated for the smoking of tobacco products.

Retail Tobacconist Shop Endorsement.

The LCB must issue an endorsement as a retail tobacconist shop to a business that submits an affidavit to the LCB certifying that the business meets specific requirements. The business's primary purpose must be the sale of tobacco products and tobacco product related paraphernalia, and the establishment must be physically separated from any adjacent location where smoking is prohibited under state law. The term "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 business will prohibit entry into the designated smoking area to any person under the age of 18. The business must have a valid uniform business identifier number and, if an established business with reportable gross receipts, have paid all applicable state B&O taxes in the year prior to application for endorsement. The business must certify that in the year immediately preceding initial application or renewal, it derived at least 75 percent of the

business's annual gross income from the combination of the sale of tobacco products and tobacco product related paraphernalia. If it is the first time an applicant is applying for an endorsement, 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.

Additionally, the business must have obtained a signed letter from a heating, ventilation, air-conditioning, and refrigeration contractor with a valid registration with the Department of Labor. The signed letter must certify that the ventilation and exhaust system for the area specifically designated for the smoking of tobacco products is separate and distinct from the location's general heating, ventilation, and air-conditioning system and meets specific standards related to air flow, air filtration, and performance.

Also, the business must have on file from each employee that may work in the designated smoking area, a signed declaration that includes the signature of the employee, the employer, and a disinterested third-party witness, and an acknowledgement that the employee has been advised of and accepts that environmental tobacco smoke may be present in the employee's potential work area. The business' affidavit must provide that the business will post signage indicating that environmental tobacco smoke may be present in the establishment or part of the establishment. This signage must be in the form and manner provided by the LCB and must be placed in a conspicuous location at each entry to the area designated for the smoking of tobacco products.

Additional Requirements Related to the Special Endorsements.

No employer that holds either special endorsement may take adverse action against an employee solely for refusing to consent to or sign the declaration required to be signed by employees who will work in the designated smoking area. The LCB may request additional documentation or information from an applicant in order to verify that the business meets the requirements for a special endorsement. The required affidavit must be completed and verified each year by the LCB. Endorsement decisions by the LCB must be made no later than 21 days following the submittal of a completed affidavit.

The LCB may not allow the total number of cigar lounge endorsements in the state to exceed 40 or the total number of retail tobacco shop endorsements in the state to exceed 75. The LCB must administer the distribution of cigar lounge or retail tobacco shop endorsements and must ensure that the collective number of cigar lounge or retail tobacco shop endorsements located within all counties with a population of over 500,000 never exceed one-half of the endorsements allowed for each endorsement respectively. Renewing applicants have priority over new applicants for endorsements under these limitations.

Licensees receiving a cigar lounge endorsement or a retail tobacconist shop endorsement must not permit the smoking of cigarettes, the use of any hookah, narghile, water pipe, or similar device, nor the smoking of marijuana in the smoking area.

Smoking in Public Places Act.

It is established that the Smoking in Public Places Act (Act) does not regulate the use or the smoking of tobacco products in a public place or place of employment that holds a valid cigar lounge or retail tobacconist shop endorsement to its tobacco products retailer's license.

Additionally, the LCB has sole enforcement authority under the Act regarding the designated smoking areas of special endorsement holders.

Substitute Bill Compared to Original Bill:

The requirements that an employee of a business applying for a cigar lounge or retail tobacconist shop endorsement who will work in the designated smoking area be an active smoker and obtain a blood test verifying that the employee is an active smoker are removed. Related rule-making authority regarding the employee blood testing and verification is also removed. A provision about the effective periods of cigar lounge and retail tobacconist shop endorsements is removed, so that the default procedures under the Department of Revenue's business licensing service control the effective dates and renewals of endorsements.

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) There is bipartisan support for this bill, which is a bill that stakeholders have refined over the years. The bill is detailed and prescriptive to eliminate concerns raised by stakeholders. This is a freedom of choice issue. The bill allows consenting adults to go to a common place, have a drink, smoke a cigar, and not disturb anyone. Nonsmokers can choose not to go to a cigar lounge. These lounges are for cigar smokers who just want a warm place to enjoy each others' company over a cigar. Tourists come to Washington and are surprised that they cannot enjoy a cigar in a cigar lounge. Tobacco retailers who would apply for this new endorsement are currently losing money by not being able to operate a cigar lounge. There are currently exceptions to the Smoking in Public Places Act, such as for certain hotel rooms and for private cigar clubs. There is no reason those exceptions should be allowed but not this exception, especially considering all the restrictions in the bill. The bill specifies who can obtain an endorsement and limits the number of endorsements that may be issued throughout the state. It also includes specific requirements related to mandatory ventilation and exhaust systems for the smoking area, which must be certified as to their effectiveness by a professional. Employees who choose to work in the designated smoking area must also sign an acknowledgement that they are a smoker and must have a supporting blood test on file proving that they are smoker. There are worker protections so adverse action cannot be taken against an employee who chooses to not work in the designated smoking area and to not sign the acknowledgement. Cigarette smoking is prohibited. The bill takes into consideration all concerns raised with the proposal over the years and is a good compromise.

(Opposed) There are reasons why society chooses to prohibit certain conduct that consenting adults wish to engage in. Stakeholders believe this bill is a public health risk for employees of retailers who would hold a cigar lounge or retail tobacconist shop endorsement, the

customers who would smoke tobacco at such a lounge or shop, and the people around those customers and employees. The requirements related to the necessary ventilation systems will not eliminate all of the environmental tobacco smoke. Smoke will still find a way out of the designated smoking area, no matter what precautions are taken. Nicotine is a nerve poison. Unlike alcohol, tobacco smoke can negatively affect the health of people around a smoker, even if those people do not smoke themselves. Smoking tobacco significantly raises the risks for disease, especially heart and lung disease and cancers. This bill could increase healthcare costs. Initiative 901 (2005), now called the Smoking in Public Places Act, passed with strong support in every county in the state, and a new exception to the law should not be added. The bill is a step towards renormalizing smoking. Employees should not be forced to smoke tobacco to work in the designated smoking area; this will incentivize people to continue a harmful habit.

Persons Testifying: (In support) Representative Vick, prime sponsor; and Joe Arundel, Cigar Association of Washington.

(Opposed) Michael Shaw, American Heart Association; Anthony Chen, Tacoma Pierce County Health Department; and Janna Bardi, Department of Health.

Persons Signed In To Testify But Not Testifying: None.