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HOUSE BILL 1136

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State of Washington

55th Legislature

1997 Regular Session

By Representatives Cody and Anderson; by request of Governor Lowry

Read first time 01/15/97. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to prohibiting smoking in public places and  
2 worksites; amending RCW 70.160.010, 70.160.020, 70.160.030, 70.160.040,  
3 and 70.160.070; adding a new section to chapter 70.160 RCW; creating a  
4 new section; repealing RCW 70.160.050, 70.160.060, 70.160.080, and  
5 70.160.100; prescribing penalties; and providing for submission of this  
6 act to a vote of the people.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8 **Sec. 1.** RCW 70.160.010 and 1985 c 236 s 1 are each amended to read  
9 as follows:

10 The legislature recognizes (~~((the increasing evidence))~~) that tobacco  
11 smoke in (~~((closely confined places may))~~) enclosed spaces creates a  
12 danger to the health of (~~((some))~~) the citizens of this state. In order  
13 to protect the health and welfare of those citizens, it is necessary to  
14 prohibit smoking in most public places (~~((except in areas designated as~~  
15 ~~smoking areas))~~) and enclosed worksites.

16 **Sec. 2.** RCW 70.160.020 and 1985 c 236 s 2 are each amended to read  
17 as follows:

1 As used in this chapter, the following terms have the meanings  
2 indicated unless the context clearly indicates otherwise.

3 (1) "Smoke" or "smoking" means the carrying or smoking of any kind  
4 of lighted pipe, cigar, cigarette, or any other lighted smoking  
5 equipment.

6 (2) "Public place" means that portion of any building or vehicle  
7 used by and open to the public, regardless of whether the building or  
8 vehicle is owned in whole or in part by private persons or entities,  
9 the state of Washington, or other public entity, and regardless of  
10 whether a fee is charged for admission.

11 (~~Public places include, but are not limited to: Elevators, public~~  
12 ~~conveyances or transportation facilities, museums, concert halls,~~  
13 ~~theaters, auditoriums, exhibition halls, indoor sports arenas,~~  
14 ~~hospitals, nursing homes, health care facilities or clinics, enclosed~~  
15 ~~shopping centers, retail stores, retail service establishments,~~  
16 ~~financial institutions, educational facilities, ticket areas, public~~  
17 ~~hearing facilities, state legislative chambers and immediately adjacent~~  
18 ~~hallways, public restrooms, libraries, restaurants, waiting areas,~~  
19 ~~lobbies, and reception areas. A public place does not include a~~  
20 ~~private residence. This chapter is not intended to restrict smoking in~~  
21 ~~private facilities which are occasionally open to the public except~~  
22 ~~upon the occasions when the facility is open to the public.~~

23 (~~(3) "Restaurant" means any building, structure, or area used,~~  
24 ~~maintained, or advertised as, or held out to the public to be, an~~  
25 ~~enclosure where meals are made available to be consumed on the~~  
26 ~~premises, for consideration of payment.))~~

27 (3) "Employer" means any person, firm, corporation, partnership,  
28 business trust, legal representative, or other business entity that  
29 engages in any business, industry, profession, or activity in this  
30 state and employs one or more employees or who contracts with one or  
31 more persons, the essence of which is the personal labor of the person  
32 or persons and includes the state, counties, cities, and all municipal  
33 corporations, public corporations, political subdivisions of the state,  
34 and charitable organizations. Any persons, partnership, or business  
35 entity not having employees, and who is covered by Title 51 RCW is  
36 considered both an employer and an employee.

37 (4) "Worksite" means an enclosed indoor plant, premises, room,  
38 vehicle, or portions of those places, where an employee or employees  
39 are employed for the performance of labor or service over which the

1 employer has the right of access or control, and includes, but is not  
2 limited to, all enclosed workplaces covered by industrial insurance  
3 under Title 51 RCW. It also includes persons, partnerships, or  
4 business entities not having employees but are covered by Title 51 RCW  
5 or have worksites that share an air space or ventilation system with an  
6 adjoining worksite.

7 **Sec. 3.** RCW 70.160.030 and 1985 c 236 s 3 are each amended to read  
8 as follows:

9 No person may smoke in a public place (~~except in designated~~  
10 ~~smoking areas~~) or worksite except for the following:

11 (1) Private residences, except for homes licensed as family day  
12 care homes, during the hours of operation;

13 (2) Privately owned or leased passenger vehicles or vehicles used  
14 for business purposes if no nonsmoking employees are present;

15 (3) Up to twenty-five percent of the guest rooms of hotels, motels,  
16 and similar transient lodging;

17 (4) In conjunction with a religious ceremony in which smoking is an  
18 integral part of the ceremony;

19 (5) By performers or production staff at theatrical production  
20 sites, if smoking is an integral part of the story;

21 (6) Medical research or treatment sites, if smoking is integral to  
22 the research or treatment being conducted;

23 (7) Smoking rooms designated by employers for smoking, under  
24 conditions specified in RCW 70.160.040;

25 (8) The premises of sole proprietorships or partnerships where no  
26 employees are present and that are ventilated directly outdoors; and

27 (9) Private clubs and fraternal organizations where no employees  
28 are present.

29 **Sec. 4.** RCW 70.160.040 and 1985 c 236 s 4 are each amended to read  
30 as follows:

31 (1) A designated smoking ((area may be designated in a public place  
32 by the owner or, in the case of a leased or rented space, by the lessee  
33 or other person in charge except in:

34 (a) Elevators; buses, except for private hire; streetcars; taxis,  
35 except those clearly and visibly designated by the owner to permit  
36 smoking; public areas of retail stores and lobbies of financial  
37 institutions; office reception areas and waiting rooms of any building

1 owned or leased by the state of Washington or by any city, county, or  
2 other municipality in the state of Washington; museums; public meetings  
3 or hearings; classrooms and lecture halls of schools, colleges, and  
4 universities; and the seating areas and aisle ways which are contiguous  
5 to seating areas of concert halls, theaters, auditoriums, exhibition  
6 halls, and indoor sports arenas; and

7 (b) ~~Hallways of health care facilities, with the exception of~~  
8 ~~nursing homes, and lobbies of concert halls, theaters, auditoriums,~~  
9 ~~exhibition halls, and indoor sports arenas, if the area is not~~  
10 ~~physically separated. Owners or other persons in charge are not~~  
11 ~~required to incur any expense to make structural or other physical~~  
12 ~~modifications in providing these areas.~~

13 Except as provided in other provisions of this chapter, no public  
14 place, other than a bar, tavern, bowling alley, tobacco shop, or  
15 restaurant, may be designated as a smoking area in its entirety. If a  
16 bar, tobacco shop, or restaurant is designated as a smoking area in its  
17 entirety, this designation shall be posted conspicuously on all  
18 entrances normally used by the public.

19 (2) Where smoking areas are designated, existing physical barriers  
20 and ventilation systems shall be used to minimize the toxic effect of  
21 smoke in adjacent nonsmoking areas.

22 (3) Managers of restaurants who choose to provide smoking areas  
23 shall designate an adequate amount of seating to meet the demands of  
24 restaurant patrons who wish to smoke. Owners of restaurants are not  
25 required to incur any expense to make structural or other physical  
26 modifications in providing these areas. Restaurant patrons shall be  
27 informed that separate smoking and nonsmoking sections are available.

28 (4) ~~Except as otherwise provided in this chapter, a facility or~~  
29 ~~area may be designated in its entirety as a nonsmoking area by the~~  
30 ~~owner or other person in charge.)) room is permitted under this chapter  
31 if air from the room is exhausted directly outdoors with sufficient  
32 negative pressure to prevent smoke migration to surrounding nonsmoking  
33 areas at all times. The room must be in a nonwork area where employees  
34 are not required to be present as part of their work responsibilities.  
35 A designated smoking room must be clearly posted as a designated  
36 smoking room.~~

37 (2) Where a designated smoking room is provided for smokers, there  
38 must also be a sufficient number of breakrooms to accommodate  
39 nonsmokers. However, this chapter does not require an employer to

1 provide a designated smoking room or a breakroom for smokers, or to  
2 provide a breakroom for nonsmokers where one is not provided for  
3 smokers.

4 **Sec. 5.** RCW 70.160.070 and 1985 c 236 s 7 are each amended to read  
5 as follows:

6 ~~((1) Any person intentionally violating this chapter by smoking in~~  
7 ~~a public place not designated as a smoking area or any person removing,~~  
8 ~~defacing, or destroying a sign required by this chapter is subject to~~  
9 ~~a civil fine of up to one hundred dollars. Local law enforcement~~  
10 ~~agencies shall enforce this section by issuing a notice of infraction~~  
11 ~~to be assessed in the same manner as traffic infractions. The~~  
12 ~~provisions contained in chapter 46.63 RCW for the disposition of~~  
13 ~~traffic infractions apply to the disposition of infractions for~~  
14 ~~violation of this subsection except as follows:~~

15 ~~(a) The provisions in chapter 46.63 RCW relating to the provision~~  
16 ~~of records to the department of licensing in accordance with RCW~~  
17 ~~46.20.270 are not applicable to this chapter; and~~

18 ~~(b) The provisions in chapter 46.63 RCW relating to the imposition~~  
19 ~~of sanctions against a person's driver's license or vehicle license are~~  
20 ~~not applicable to this chapter.~~

21 ~~The form for the notice of infraction for a violation of this~~  
22 ~~subsection shall be prescribed by rule of the supreme court.~~

23 ~~(2) When violations of RCW 70.160.040 or 70.160.050 occur, a~~  
24 ~~warning shall first be given to the owner or other person in charge.~~  
25 ~~Any subsequent violation is subject to a civil fine of up to one~~  
26 ~~hundred dollars. Each day upon which a violation occurs or is~~  
27 ~~permitted to continue constitutes a separate violation.~~

28 ~~(3) Local fire departments or fire districts shall enforce RCW~~  
29 ~~70.160.040 or 70.160.050 regarding the duties of owners or persons in~~  
30 ~~control of public places, and local health departments shall enforce~~  
31 ~~RCW 70.160.040 or 70.160.050 regarding the duties of owners of~~  
32 ~~restaurants by either of the following actions:~~

33 ~~(a) Serving notice requiring the correction of any violation; or~~

34 ~~(b) Calling upon the city or town attorney or county prosecutor to~~  
35 ~~maintain an action for an injunction to enforce RCW 70.160.040 and~~  
36 ~~70.160.050, to correct a violation, and to assess and recover a civil~~  
37 ~~penalty for the violation.))~~ A person who violates this chapter or who  
38 allows violations of this chapter to occur on his or her premises is

1 subject to a class 2 civil infraction under chapter 7.80 RCW. Each day  
2 upon which a violation occurs or is permitted to continue is a separate  
3 violation. The department of labor and industries, the liquor control  
4 board, local health jurisdictions, and local law enforcement agencies  
5 shall: (1) Enforce this chapter in worksites and public places where  
6 they exercise jurisdiction; (2) adopt rules and procedures as may be  
7 necessary to carry out the purposes of this chapter; and (3) coordinate  
8 their enforcement efforts and the adoption of rules and procedures to  
9 ensure that this chapter is enforced in a consistent, efficient, and  
10 economical manner.

11 NEW SECTION. Sec. 6. A new section is added to chapter 70.160 RCW  
12 to read as follows:

13 This chapter does not supersede regulation by local jurisdictions  
14 that is at least as restrictive as the provisions of this chapter.

15 NEW SECTION. Sec. 7. The following acts or parts of acts are each  
16 repealed:

17 (1) RCW 70.160.050 and 1985 c 236 s 5;

18 (2) RCW 70.160.060 and 1995 c 369 s 60, 1986 c 266 s 121, & 1985 c  
19 236 s 6;

20 (3) RCW 70.160.080 and 1985 c 236 s 9; and

21 (4) RCW 70.160.100 and 1985 c 236 s 8.

22 NEW SECTION. Sec. 8. If any provision of this act or its  
23 application to any person or circumstance is held invalid, the  
24 remainder of the act or the application of the provision to other  
25 persons or circumstances is not affected.

26 NEW SECTION. Sec. 9. This act shall be liberally construed to  
27 carry out its purposes.

28 NEW SECTION. Sec. 10. The secretary of state shall submit this  
29 act to the people for their adoption and ratification, or rejection, at  
30 the next general election to be held in this state, in accordance with  
31 Article II, section 1 of the state Constitution and the laws adopted to  
32 facilitate its operation.

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