

Business & Financial Services Committee

HB 1919

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 Summary of 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 and that the employee is an active smoker of tobacco products, which must be supported by a blood test on file.
- 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.

Hearing Date: 2/7/17

Staff: Peter Clodfelter (786-7127).

Background:

Licensing of Cigarette and Tobacco Products Sellers.

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.

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 (DOR) 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 (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 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 (DOR) 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 humidior space. In the case where it is the first 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

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 the following acknowledgments:

- the employee has been advised of and accepts that environmental tobacco smoke may be present in the employee's potential work area;
- the employee is an active smoker of tobacco products; and
- the employee has obtained a blood test verifying that the employee is an active smoker of tobacco products.

The business must maintain records verifying that the required blood testing has been completed and possess documentation from a qualified blood testing entity verifying blood test results showing that the employee is an active smoker of tobacco products. 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' annual gross income from the combination of the sale of tobacco products and tobacco product related paraphernalia. In the case where it is the first 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.

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 the following acknowledgments:

- the employee has been advised of and accepts that environmental tobacco smoke may be present in the employee's potential work area;
- the employee is an active smoker of tobacco products; and
- the employee has obtained a blood test verifying that the employee is an active smoker of tobacco products.

The business must maintain records verifying that the required blood testing has been completed and possess documentation from a qualified blood testing entity verifying blood test results showing that the employee is an active smoker of tobacco products. 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 smoking area that the employee is an active smoker. 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. The DOR is authorized to establish the administrative rules necessary to implement the special endorsements and related requirements, including rules pertaining to employee blood testing requirements, blood testing verification, and the qualifications required of authorized blood testing facilities.

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.

Appropriation: None.

Fiscal Note: Available.

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