
SENATE BILL 5909

State of Washington

59th Legislature

2005 Regular Session

By Senators Deccio, Keiser and Oke

Read first time 02/14/2005. Referred to Committee on Health & Long-Term Care.

1 AN ACT Relating to regulation of indoor smoking for the purpose of
2 protecting minors and public health; amending RCW 70.160.020,
3 70.160.030, 70.160.040, and 70.160.070; adding new sections to chapter
4 70.160 RCW; creating a new section; and repealing RCW 70.160.050 and
5 70.160.080.

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

7 **Sec. 1.** RCW 70.160.020 and 1985 c 236 s 2 are each amended to read
8 as follows:

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

11 (1) "Lounge or lounge area" means an area: (a) Used for the
12 preparation, sale, and service of beer, wine, or spirits that is
13 licensed for such use by the Washington state liquor control board; and
14 (b) that is conspicuously posted at all entrances that persons under
15 twenty-one years of age are not permitted to enter or remain.

16 (2) "Smoke" or "smoking" means the carrying or smoking of any kind
17 of lighted pipe, cigar, cigarette, or any other lighted smoking
18 equipment.

1 ~~((2))~~ (3) "Public place" means that portion of any building or
2 vehicle used by and open to the public, regardless of whether the
3 building or vehicle is owned in whole or in part by private persons or
4 entities, the state of Washington, or other public entity, and
5 regardless of whether a fee is charged for admission.

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

18 ~~(3))~~ (4) "Restaurant" means any building, structure, or area used,
19 maintained, or advertised as, or held out to the public to be, an
20 enclosure where meals are made available to be consumed on the
21 premises, for consideration of payment.

22 **Sec. 2.** RCW 70.160.030 and 1985 c 236 s 3 are each amended to read
23 as follows:

24 No person may smoke in a public place except ~~((in designated
25 smoking areas))~~ as provided in this chapter.

26 **Sec. 3.** RCW 70.160.040 and 1985 c 236 s 4 are each amended to read
27 as follows:

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

31 ~~(a) Elevators; buses, except for private hire; streetcars; taxis,
32 except those clearly and visibly designated by the owner to permit
33 smoking; public areas of retail stores and lobbies of financial
34 institutions; office reception areas and waiting rooms of any building
35 owned or leased by the state of Washington or by any city, county, or
36 other municipality in the state of Washington; museums; public meetings~~

1 ~~or hearings; classrooms and lecture halls of schools, colleges, and~~
2 ~~universities; and the seating areas and aisle ways which are contiguous~~
3 ~~to seating areas of concert halls, theaters, auditoriums, exhibition~~
4 ~~halls, and indoor sports arenas; and~~

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

11 ~~Except as provided in other provisions of this chapter,))~~ No public
12 place, other than a place where bingo is conducted for a bona fide
13 charitable or nonprofit organization as authorized under chapter 9.46
14 RCW, a private facility, a bar, tavern, bowling ((alley)) center, card
15 room or enhanced card room, tobacco shop, lounge or lounge area, or
16 restaurant, may be designated as a smoking area in its entirety.

17 (2) If a bar, ((tobacco shop, or restaurant)) tavern, or lounge or
18 lounge area is designated as a smoking area in its entirety, this
19 designation shall be posted conspicuously ((on)) at all entrances
20 normally used by the public.

21 ~~((+2))~~ (3) If a place where bingo is conducted for a bona fide
22 charitable or nonprofit organization as authorized under chapter 9.46
23 RCW, private facility, a restaurant, tobacco shop, bowling center, or
24 card room or enhanced card room is designated as a smoking area in its
25 entirety, this designation, together with a designation that persons
26 under the age of eighteen years of age are not permitted to enter shall
27 be posted conspicuously at all entrances normally used by the public.

28 (4) If a place where bingo is conducted for a bona fide charitable
29 or nonprofit organization as authorized under chapter 9.46 RCW, private
30 facility, a restaurant, tobacco shop, bowling center, or card room or
31 enhanced card room designates a portion of its premises as a designated
32 smoking area, this designation, together with a designation that
33 persons under the age of eighteen years of age are not permitted to
34 enter the designated smoking area shall be posted conspicuously at all
35 entrances normally used by the public.

36 (5) Where smoking areas are designated, existing physical barriers
37 and ventilation systems ((shall)) may be used to minimize the toxic

1 effect of smoke in adjacent nonsmoking areas so long as the
2 requirements of this chapter are complied with.

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

9 ~~(4))~~ (6) Except as otherwise provided in this chapter, a facility
10 or area may be designated in its entirety as a nonsmoking area by the
11 owner or other person in charge.

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

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

23 ~~((a))~~ (i) The provisions in chapter 46.63 RCW relating to the
24 provision of records to the department of licensing in accordance with
25 RCW 46.20.270 are not applicable to this chapter; and

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

29 (b) The form for the notice of infraction for a violation of this
30 subsection shall be prescribed by rule of the supreme court.

31 ~~((2))~~ (c) When violations of RCW 70.160.040 or ~~((70.160.050))~~
32 section 5 of this act occur, a warning shall first be given to the
33 owner or other person in charge. Any subsequent violation is subject
34 to a civil fine of up to one hundred dollars. Each day upon which a
35 violation occurs or is permitted to continue constitutes a separate
36 violation.

1 (~~(3)~~) (2) The state building code council has the sole authority
2 to adopt rules, as necessary, to implement this chapter, and local
3 (~~fire departments or fire districts~~) building code enforcement
4 officials shall enforce RCW 70.160.040 (~~or 70.160.050~~) and section 5
5 of this act regarding the duties of owners or persons in control of
6 public places(~~, and local health departments shall enforce RCW~~
7 ~~70.160.040 or 70.160.050 regarding the duties of owners of~~
8 ~~restaurants~~) by either of the following actions:

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

10 (b) Calling upon the city or town attorney or county prosecutor to
11 maintain an action for an injunction to enforce RCW 70.160.040 and
12 (~~70.160.050~~) section 5 of this act, to correct a violation, and to
13 assess and recover a civil penalty for the violation.

14 NEW SECTION. Sec. 5. A new section is added to chapter 70.160 RCW
15 to read as follows:

16 (1) Where a designated smoking area, including a lounge or lounge
17 area, is provided for in a place where bingo is conducted for a bona
18 fide charitable or nonprofit organization as authorized under chapter
19 9.46 RCW, private facility, restaurant, bowling center, or card room or
20 enhanced card room as authorized by this chapter, the area shall be
21 either an enclosed area or the area shall have sufficient negative air
22 pressure between the smoking and nonsmoking areas, which shall be
23 separated by solid walls or windows, exclusive of doors or passageways
24 that extend from the floor to a minimum of five feet in height between
25 the smoking and nonsmoking area, so that environmental tobacco smoke is
26 not permitted to flow into the nonsmoking area from the smoking area at
27 all times. "Enclosed area" means all space between a floor and a
28 ceiling that is enclosed on all sides by solid walls or windows,
29 exclusive of doors or passageways, which extend from the floor to the
30 ceiling.

31 (2) Local building code enforcement officials shall have the sole
32 enforcement authority under this chapter and shall apply the state
33 building code council rules and the following standards where smoking
34 areas are provided:

35 (a) Passage between the main entrance of a facility to all
36 nonsmoking areas shall be possible through areas that are also

1 nonsmoking. A separate entrance may be maintained for direct entry
2 into a designated smoking area if desired.

3 (b) If the owner or other person in charge establishes an area as
4 a smoking area for something less than a twenty-four-hour period, that
5 designation and the hours the area is designated as a smoking area
6 shall be conspicuously posted at all entrances to such area together
7 with a sign that prohibits persons under eighteen years of age when the
8 area is functioning as a smoking area, provided, such areas shall
9 maintain the negative air pressure requirements contained in this
10 section at all times.

11 (c) The boundary between a nonsmoking area and a smoking permitted
12 area shall be clearly designated so that persons may differentiate
13 between the two areas.

14 (3) As used in this section, "negative air pressure" means the use
15 and any combination of mechanical exhaust systems, ventilation systems,
16 and/or solid walls or windows that are shown by the owner or other
17 person in charge to function in a manner that prohibits and eliminates,
18 without air recirculation, the flow of air from the designated smoking
19 area into the nonsmoking area. If sufficient negative air pressure is
20 not being achieved, smoking shall not be permitted in the designated
21 smoking area until repairs are completed.

22 NEW SECTION. **Sec. 6.** A new section is added to chapter 70.160 RCW
23 to read as follows:

24 (1) Employers shall disclose to a prospective employee that all or
25 a portion of the facility that the prospective employee would work is
26 a designated smoking area.

27 (2) Employees under the age of eighteen shall not be permitted to
28 enter designated smoking areas at any time.

29 NEW SECTION. **Sec. 7.** A new section is added to chapter 70.160 RCW
30 to read as follows:

31 The state of Washington hereby fully occupies and preempts the
32 entire field of indoor smoking regulation within the boundaries of the
33 state. Local laws and ordinances that regulate indoor smoking are
34 preempted and repealed.

1 NEW SECTION. **Sec. 8.** The following acts or parts of acts are each
2 repealed:

3 (1) RCW 70.160.050 (Owners, lessees to post signs prohibiting or
4 permitting smoking--Boundaries to be clearly designated) and 1985 c 236
5 s 5; and

6 (2) RCW 70.160.080 (Local regulations authorized) and 1985 c 236 s
7 9.

8 NEW SECTION. **Sec. 9.** For facilities that possess an occupancy
9 permit from the applicable building official as of June 1, 2005, the
10 requirements of this act apply January 1, 2007. For facilities that do
11 not possess an occupancy permit from the applicable building official
12 as of June 1, 2005, the requirements of this act apply June 1, 2006.

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