

AMENDMENTS TO LB 395

(Amendments to FA16)

Introduced by White, 8

1 1. Strike the amendments and insert the following new
2 amendment:

3 1. Strike the original sections and all amendments
4 thereto and insert the following new sections:

5 Section 1. Sections 1 to 25 of this act shall be known
6 and may be cited as the Nebraska Clean Indoor Air Act.

7 Sec. 2. The Legislature declares it to be the public
8 policy of this state to encourage smoke-free places of employment
9 and public places to reduce the health and safety risks posed
10 by smoking in such places. The purposes of the Nebraska Clean
11 Indoor Air Act are to protect the public health and welfare and to
12 recognize that the need to breathe smoke-free air has priority over
13 the desire to smoke.

14 Sec. 3. For purposes of the Nebraska Clean Indoor Air
15 Act, the definitions found in sections 4 to 15 of this act apply.

16 Sec. 4. Employed means hired, contracted, subcontracted,
17 or otherwise engaged to furnish goods or services.

18 Sec. 5. Employee means a person who is employed by an
19 employer in consideration for direct or indirect monetary wages,
20 profit, or other remuneration.

21 Sec. 6. Employer means a person, nonprofit entity, sole
22 proprietorship, partnership, joint venture, corporation, limited

1 partnership, limited liability company, cooperative, firm, trust,
2 association, organization, or other business entity formed for
3 profit-making purposes, including retail establishments where goods
4 or services are sold, who or which employs one or more employees.

5 Sec. 7. Guestroom or suite means sleeping rooms and
6 directly associated private areas, such as bathrooms, living
7 rooms, and kitchen areas, if any, rented to the public for
8 their exclusive transient occupancy, including, but not limited to,
9 guestrooms or suites in hotels, motels, inns, lodges, or other such
10 establishments.

11 Sec. 8. Health director means (1) the Director of
12 Regulation and Licensure or, if a chief medical officer is
13 appointed pursuant to section 81-3201, the chief medical officer,
14 (2) a health director of a local public health department as
15 defined in section 71-1626 or the medical advisor to the board
16 of health of a county, city, or village, and (3) an authorized
17 representative of any of such officers.

18 Sec. 9. Indoor area means an area enclosed by a floor,
19 a ceiling, and floor-to-ceiling walls on all sides that are
20 continuous and solid except for closeable entry and exit doors and
21 windows.

22 Sec. 10. International no-smoking symbol means a
23 pictorial representation of a burning cigarette enclosed in a red
24 circle with a red bar across it.

25 Sec. 11. Place of employment means an indoor area under
26 the control of a proprietor that an employee accesses as part
27 of the course of employment without regard to whether work is

1 occurring at any given time. The indoor area includes, but is not
2 limited to, any work area, employee breakroom, restroom, conference
3 room, meeting room, classroom, employee cafeteria, and hallway.

4 Sec. 12. Proprietor means any employer, owner, operator,
5 supervisor, manager, or any other person who controls, governs, or
6 directs the activities in a place of employment or public place.

7 Sec. 13. Public place means an indoor area to which the
8 public is invited or in which the public is permitted, whether or
9 not the public is always invited or permitted.

10 Sec. 14. Smoke or smoking means the lighting of any
11 cigarette, cigar, or pipe or the possession of any lighted
12 cigarette, cigar, or pipe, regardless of its composition.

13 Sec. 15. Tobacco retail outlet means a retail store that
14 sells only tobacco and related products and in which the sale of
15 other products is only incidental.

16 Sec. 16. Except as otherwise permitted pursuant to
17 sections 17 and 23 of this act, it is unlawful for any person
18 to smoke in a place of employment or a public place.

19 Sec. 17. The following areas shall be exempt from the
20 prohibition in section 16 of this act:

21 (1) Private residences;

22 (2) Guestrooms and suites that are rented to guests and
23 are designated as smoking rooms, except that not more than twenty
24 percent of rooms rented to guests in an establishment may be
25 designated as smoking rooms. All smoking rooms on the same floor
26 shall be contiguous and smoke from these rooms shall not infiltrate
27 into areas where smoking is prohibited under the Nebraska Clean

1 Indoor Air Act;

2 (3) Tobacco retail outlets; and

3 (4) Areas used as part of a research study on the
4 health effects of smoking conducted in a scientific or analytical
5 laboratory either governed by state or federal law or at a
6 college or university approved by the Coordinating Commission for
7 Postsecondary Education. The proprietor shall post a temporary sign
8 on all entrances to the laboratory indicating that smoking is being
9 allowed for research purposes.

10 Sec. 18. A proprietor shall post a no-smoking sign or the
11 international no-smoking symbol clearly and conspicuously at every
12 entrance to a place of employment or public place where smoking is
13 prohibited under the Nebraska Clean Indoor Air Act and shall take
14 other necessary and appropriate steps to ensure compliance with the
15 act at such place.

16 Sec. 19. No person or employer shall discharge, refuse
17 to hire, or in any manner retaliate against an employee, applicant
18 for employment, or customer because that employee, applicant, or
19 customer exercises any rights afforded by the Nebraska Clean Indoor
20 Air Act or reports or attempts to prosecute a violation of the act.

21 Sec. 20. (1) A person who smokes in a place of employment
22 or a public place in violation of the Nebraska Clean Indoor Air
23 Act is guilty of a Class V misdemeanor for the first offense
24 and a Class IV misdemeanor for the second and any subsequent
25 offenses. For each offense, a person charged with such a violation
26 may voluntarily enroll, at his or her own expense, in a smoking
27 cessation program approved by the Department of Health and Human

1 Services. Upon successful completion of the program, the charge
2 shall be dismissed.

3 (2) A proprietor who fails, neglects, or refuses to
4 perform a duty under the Nebraska Clean Indoor Air Act is guilty
5 of a Class V misdemeanor for the first offense and a Class IV
6 misdemeanor for the second and any subsequent offenses.

7 (3) Each day that a violation continues to exist shall
8 constitute a separate and distinct offense.

9 (4) Every act or omission constituting a violation of
10 the Nebraska Clean Indoor Air Act by an employee or agent of a
11 proprietor is deemed to be the act or omission of such proprietor,
12 and such proprietor shall be subject to the same penalty as if the
13 act or omission had been committed by such proprietor.

14 Sec. 21. (1) The Department of Health and Human Services
15 Regulation and Licensure shall engage in an ongoing program to
16 explain and clarify the purposes and requirements of the Nebraska
17 Clean Indoor Air Act to persons affected by the act and to guide
18 proprietors in complying with the act. The program may include
19 publication of a brochure for affected persons explaining the
20 provisions of the act.

21 (2) The department shall adopt and promulgate rules
22 and regulations necessary to implement the Nebraska Clean Indoor
23 Air Act. The department shall consult with interested persons
24 and professional organizations before adopting such rules and
25 regulations.

26 Sec. 22. The Director of Regulation and Licensure and
27 local public health departments as defined in section 71-1626 shall

1 administer and enforce the provisions of the Nebraska Clean Indoor
2 Air Act unless otherwise provided pursuant to section 23 of this
3 act.

4 Sec. 23. (1)(a) In any city or village which had an
5 ordinance with respect to smoking regulation in effect on January
6 1, 2007, the provisions of such ordinance shall supersede the
7 provisions of the Nebraska Clean Indoor Air Act until June 1, 2009.
8 Beginning June 1, 2009, in such a city or village, the ordinance
9 shall continue in effect unless:

10 (i) The governing body of the city or village adopts an
11 ordinance on smoking regulation as described in subdivision (b) of
12 this subsection; or

13 (ii) The governing body of the city or village, or the
14 voters of the city or village pursuant to sections 18-2501 to
15 18-2537, submit the issue of smoking regulation to the voters at an
16 election called for such purpose.

17 (b) The smoking regulation under subdivision (a)(i) or
18 (ii) of this subsection may be as stringent as the provisions
19 of the Nebraska Clean Indoor Air Act, more stringent than such
20 provisions, or less stringent than such provisions, including
21 exempting any part or all of the city or village from such
22 provisions.

23 (2)(a) In any city or village which did not have an
24 ordinance with respect to smoking in effect on January 1, 2007:

25 (i) The governing body of the city or village may adopt
26 an ordinance on smoking regulation as described in subdivision (b)
27 of this subsection; or

1 (ii) The governing body of the city or village, or the
2 voters of the city or village pursuant to sections 18-2501 to
3 18-2537, may submit the issue of smoking regulation to the voters
4 at an election called for such purpose.

5 (b) The smoking regulation under subdivision (a)(i) or
6 (ii) of this subsection may be as stringent as the provisions
7 of the Nebraska Clean Indoor Air Act, more stringent than such
8 provisions, or less stringent than such provisions, including
9 exempting any part or all of the city or village from such
10 provisions.

11 (3)(a) In any area of a county outside the corporate
12 limits of a city or village:

13 (i) The county board may adopt a resolution regarding
14 smoking regulation as described in subdivision (b) of this
15 subsection for the area of the county outside the corporate
16 limits of a city or village; or

17 (ii) The county board or the voters of the area of
18 the county outside the corporate limits of a city or village may
19 submit the issue of smoking regulation to the voters of such area
20 at an election called for such purpose. The voters may have the
21 issue placed on the ballot by submitting a petition containing the
22 proposed smoking regulation to the county board signed by at least
23 five percent of the number of registered voters of the area in the
24 county outside the corporate limits of any city or village.

25 (b) The smoking regulation under subdivision (a)(i) or
26 (ii) of this subsection may be as stringent as the provisions
27 of the Nebraska Clean Indoor Air Act, more stringent than such

1 provisions, or less stringent than such provisions, including
2 exempting any part or all of the area of the county outside the
3 corporate limits of any city or village from such provisions.

4 Sec. 24. The Nebraska Clean Indoor Air Act shall not be
5 interpreted or construed to permit smoking where it is otherwise
6 restricted by other applicable law.

7 Sec. 25. The Nebraska Clean Indoor Air Act shall be
8 liberally construed to further its purposes.

9 Sec. 26. This act becomes operative on June 1, 2008.

10 Sec. 27. If any section in this act or any part of any
11 section is declared invalid or unconstitutional, the declaration
12 shall not affect the validity or constitutionality of the remaining
13 portions.

14 Sec. 28. The following sections are outright repealed:
15 Sections 71-5701, 71-5702, 71-5703, 71-5704, 71-5706, 71-5708,
16 71-5709, 71-5710, 71-5711, 71-5712, and 71-5713, Reissue Revised
17 Statutes of Nebraska, and sections 71-5705 and 71-5707, Revised
18 Statutes Cumulative Supplement, 2006.