

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 395

FINAL READING

(SECOND)

Introduced by Johnson, 37; Aguilar, 35; Hansen, 42; Howard, 9; Kruse, 13; Pankonin, 2; Preister, 5; Schimek, 27; Stuthman, 22.

Read first time January 16, 2007

Committee: Health and Human Services

A BILL

1 FOR AN ACT relating to public health; to repeal the current
2 Nebraska Clean Indoor Air Act and adopt a new act;
3 to provide penalties; to provide an operative date; to
4 provide severability; and to outright repeal sections
5 71-5701, 71-5702, 71-5703, 71-5704, 71-5706, 71-5708,
6 71-5709, and 71-5712, Reissue Revised Statutes of
7 Nebraska, section 71-5705, Revised Statutes Cumulative
8 Supplement, 2006, and sections 71-5707, 71-5710, 71-5711,
9 and 71-5713, Revised Statutes Supplement, 2007.

10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 19 of this act shall be known
2 and may be cited as the Nebraska Clean Indoor Air Act.

3 Sec. 2. The purpose of the Nebraska Clean Indoor Air Act
4 is to protect the public health and welfare by prohibiting smoking
5 in public places and places of employment. The act shall not be
6 construed to prohibit or otherwise restrict smoking in outdoor
7 areas. The act shall not be construed to permit smoking where
8 it is prohibited or otherwise restricted by other applicable law,
9 ordinance, or resolution. The act shall be liberally construed to
10 further its purpose.

11 Sec. 3. For purposes of the Nebraska Clean Indoor Air
12 Act, the definitions found in sections 4 to 13 of this act apply.

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

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

18 Sec. 6. Employer means a person, nonprofit entity, sole
19 proprietorship, partnership, joint venture, corporation, limited
20 partnership, limited liability company, cooperative, firm, trust,
21 association, organization, or other business entity, including
22 retail establishments where goods or services are sold, who or
23 which employs one or more employees.

24 Sec. 7. Guestroom or suite means a sleeping room and
25 directly associated private areas, such as a bathroom, a living

1 room, and a kitchen area, if any, rented to the public for their
2 exclusive transient occupancy, including, but not limited to, a
3 guestroom or suite in a hotel, motel, inn, lodge, or other such
4 establishment.

5 Sec. 8. Indoor area means an area enclosed by a floor,
6 a ceiling, and walls on all sides that are continuous and solid
7 except for closeable entry and exit doors and windows and in which
8 less than twenty percent of the total wall area is permanently open
9 to the outdoors. For walls in excess of eight feet in height, only
10 the first eight feet shall be used in determining such percentage.

11 Sec. 9. Place of employment means an indoor area under
12 the control of a proprietor that an employee accesses as part
13 of his or her employment without regard to whether the employee
14 is present or work is occurring at any given time. The indoor
15 area includes, but is not limited to, any work area, employee
16 breakroom, restroom, conference room, meeting room, classroom,
17 employee cafeteria, and hallway. A private residence is a place of
18 employment when such residence is being used as a licensed child
19 care program and one or more children who are not occupants of such
20 residence are present.

21 Sec. 10. Proprietor means any employer, owner, operator,
22 supervisor, manager, or other person who controls, governs, or
23 directs the activities in a place of employment or public place.

24 Sec. 11. Public place means an indoor area to which the
25 public is invited or in which the public is permitted, whether or

1 not the public is always invited or permitted. A private residence
2 is not a public place.

3 Sec. 12. Smoke or smoking means the lighting of any
4 cigarette, cigar, pipe, or other smoking material or the possession
5 of any lighted cigarette, cigar, pipe, or other smoking material,
6 regardless of its composition.

7 Sec. 13. Tobacco retail outlet means a store that sells
8 only tobacco and products directly related to tobacco. Products
9 directly related to tobacco do not include alcohol, coffee, soft
10 drinks, candy, groceries, or gasoline.

11 Sec. 14. Except as otherwise provided in section 15 of
12 this act, it is unlawful for any person to smoke in a place of
13 employment or a public place.

14 Sec. 15. The following indoor areas are exempt from
15 section 14 of this act:

16 (1) Guestrooms and suites that are rented to guests and
17 are designated as smoking rooms, except that not more than twenty
18 percent of rooms rented to guests in an establishment may be
19 designated as smoking rooms. All smoking rooms on the same floor
20 shall be contiguous, and smoke from such rooms shall not infiltrate
21 into areas where smoking is prohibited under the Nebraska Clean
22 Indoor Air Act;

23 (2) Indoor areas used in connection with a research
24 study on the health effects of smoking conducted in a scientific
25 or analytical laboratory under state or federal law or at a

1 college or university approved by the Coordinating Commission for
2 Postsecondary Education; and

3 (3) Tobacco retail outlets.

4 Sec. 16. A proprietor of a place of employment or public
5 place where smoking is prohibited under the Nebraska Clean Indoor
6 Air Act shall take necessary and appropriate steps to ensure
7 compliance with the act at such place.

8 Sec. 17. (1) The Department of Health and Human Services
9 or a local public health department as defined in section
10 71-1626 may institute an action in any court with jurisdiction
11 to enjoin a violation of the Nebraska Clean Indoor Air Act. Any
12 interested party may report possible violations of the act to such
13 departments.

14 (2) No person or employer shall discharge, refuse to
15 hire, or in any manner retaliate against an employee, applicant
16 for employment, or customer because such employee, applicant, or
17 customer reports or attempts to report a violation of the act.

18 (3) The Department of Health and Human Services may waive
19 provisions of the Nebraska Clean Indoor Air Act upon good cause
20 shown and shall provide for appropriate protection of the public
21 health and safety in the granting of such waivers.

22 Sec. 18. (1) A person who smokes in a place of employment
23 or a public place in violation of the Nebraska Clean Indoor Air
24 Act is guilty of a Class V misdemeanor for the first offense and
25 a Class IV misdemeanor for the second and any subsequent offenses.

1 A person charged with such offense may voluntarily participate, at
2 his or her own expense, in a smoking cessation program approved by
3 the Department of Health and Human Services, and such charge shall
4 be dismissed upon successful completion of the program.

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

9 (3) Each day that a violation continues to exist shall
10 constitute a separate and distinct violation.

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

16 Sec. 19. The Department of Health and Human Services
17 shall adopt and promulgate rules and regulations necessary to
18 implement the Nebraska Clean Indoor Air Act. The department shall
19 consult with interested persons and professional organizations
20 before adopting such rules and regulations.

21 Sec. 20. This act becomes operative on June 1, 2009.

22 Sec. 21. If any section in this act or any part of any
23 section is declared invalid or unconstitutional, the declaration
24 shall not affect the validity or constitutionality of the remaining
25 portions.

1 Sec. 22. The following sections are outright repealed:
2 Sections 71-5701, 71-5702, 71-5703, 71-5704, 71-5706, 71-5708,
3 71-5709, and 71-5712, Reissue Revised Statutes of Nebraska,
4 section 71-5705, Revised Statutes Cumulative Supplement, 2006, and
5 sections 71-5707, 71-5710, 71-5711, and 71-5713, Revised Statutes
6 Supplement, 2007.