

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 395

Introduced by Johnson, 37; Aguilar, 35; Hansen, 42; 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 create penalties; to provide severability; and to
4 outright repeal sections 71-5701, 71-5702, 71-5703,
5 71-5704, 71-5706, 71-5708, 71-5709, 71-5710, 71-5711,
6 71-5712, and 71-5713, Reissue Revised Statutes of
7 Nebraska, and sections 71-5705 and 71-5707, Revised
8 Statutes Cumulative Supplement, 2006.

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

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

3 Sec. 2. The Legislature declares it to be the public
4 policy of this state to encourage smoke-free places of employment
5 and public places to reduce the health and safety risks posed
6 by smoking in such places. The purposes of the Nebraska Clean
7 Indoor Air Act are (1) to protect the public health and welfare
8 by prohibiting smoking in public places and places of employment
9 and (2) to guarantee the right of nonsmokers to breathe smoke-free
10 air and to recognize that the need to breathe smoke-free air has
11 priority over the desire to smoke. The Legislature authorizes the
12 Director of Regulation and Licensure of the Nebraska Health and
13 Human Services System, local health departments, and state and
14 local law enforcement to administer and enforce the act within
15 the State of Nebraska. Nothing in the act shall be construed to
16 restrict or prohibit the governing body of a county, city, or
17 village from establishing and enforcing ordinances at least as
18 stringent as, or more stringent than the act.

19 Sec. 3. The Nebraska Legislature finds that:

20 (1) The 2006 United States Surgeon General's Report,
21 The Health Consequences of Involuntary Exposure to Tobacco Smoke,
22 has concluded that (a) secondhand smoke exposure causes disease
23 and premature death in children and adults who do not smoke,
24 (b) children exposed to secondhand smoke are at an increased
25 risk for sudden infant death syndrome, acute respiratory problems,

1 ear infections, and asthma attacks and that smoking by parents
2 causes respiratory symptoms and slows lung growth in their
3 children, (c) exposure of adults to secondhand smoke has immediate
4 adverse effects on the cardiovascular system and causes coronary
5 heart disease and lung cancer, (d) there is no risk-free level
6 of exposure to secondhand smoke, (e) establishing smoke-free
7 workplaces is the only effective way to ensure that secondhand
8 smoke exposure does not occur in the workplace, because ventilation
9 and other air cleaning technologies cannot completely control the
10 exposure of nonsmokers to secondhand smoke, and (f) evidence from
11 peer-reviewed studies shows that smoke-free policies and laws do
12 not have an adverse economic impact on the hospitality industry;

13 (2) Secondhand smoke is particularly hazardous to elderly
14 people, individuals with cardiovascular disease, and individuals
15 with impaired respiratory function, including asthmatics and those
16 with obstructive airway disease;

17 (3) The United States Surgeon General has determined that
18 the simple separation of smokers and nonsmokers within the same
19 air space may reduce, but does not eliminate, the exposure of
20 nonsmokers to secondhand smoke; and

21 (4) Hundreds of communities in the United States,
22 plus numerous states, including California, Delaware, Florida,
23 Massachusetts, Montana, New Jersey, New York, and Washington,
24 have enacted laws requiring workplaces, restaurants, bars, and
25 other public places to be smoke free, as have numerous countries,

1 including Ireland, New Zealand, Norway, Scotland, Sweden, Uganda,
2 and Uruguay.

3 Sec. 4. For purposes of the Nebraska Clean Indoor Air
4 Act, the definitions in sections 5 to 15 of this act shall apply.

5 Sec. 5. Employed means hired, contracted, subcontracted,
6 or otherwise engaged to furnish goods or services.

7 Sec. 6. Employee means a person who is employed by an
8 employer in consideration for direct or indirect monetary wages,
9 profit, or other remuneration.

10 Sec. 7. Employer means a person, nonprofit entity, sole
11 proprietorship, partnership, joint venture, corporation, limited
12 partnership, limited liability company, cooperative, firm, trust,
13 association, organization, or other business entity formed for
14 profit-making purposes, including retail establishments where goods
15 or services are sold, who employs one or more employees.

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

22 Sec. 9. Health director includes (1) the state health
23 officer, the Director of Regulation and Licensure or, if a chief
24 medical officer is appointed pursuant to section 81-3201, the chief
25 medical officer, (2) local health officers, the health directors

1 of local public health departments as defined in section 71-1626
2 or the medical advisor to the board of health of a county, city,
3 or village, and (3) authorized representatives of the state health
4 officer and local health officers.

5 Sec. 10. Indoor area means an area enclosed by a
6 floor, ceiling, and floor-to-ceiling walls on all sides that
7 are continuous and solid except for closeable entry and exit doors
8 and windows.

9 Sec. 11. International no-smoking symbol means a
10 pictorial representation of a burning cigarette enclosed in a red
11 circle with a red bar across it.

12 Sec. 12. Place of employment means an indoor area under
13 the control of a proprietor that an employee accesses as part
14 of the course of employment without regard to whether work is
15 occurring at any given time. The indoor area shall include, but
16 is not limited to, work areas, employee breakrooms, restrooms,
17 conference rooms, meeting rooms, classrooms, employee cafeterias,
18 and hallways. A private residence is not a place of employment.

19 Sec. 13. Proprietor means any employer, owner, operator,
20 supervisor, manager or any other person who controls, governs, or
21 directs the activities in a place of employment or public place.

22 Sec. 14. Public place means an indoor area to which the
23 public is invited or in which the public is permitted, whether or
24 not the public is always invited or permitted. A private residence
25 is not a public place.

1 Sec. 15. Smoke or smoking means the lighting of any
2 cigarette, cigar, or pipe or the possession of any lighted
3 cigarette, cigar, or pipe, regardless of its composition.

4 Sec. 16. It is unlawful for any person to smoke in a
5 place of employment or a public place.

6 Sec. 17. Smoking is prohibited within a distance of
7 twenty feet outside entrances, operable windows, and ventilation
8 systems of enclosed areas where smoking is prohibited, to insure
9 that tobacco smoke does not enter those areas.

10 Sec. 18. Notwithstanding any other provision of the
11 Nebraska Clean Indoor Air Act, the following areas shall be exempt
12 from sections 16 and 17 of this act:

13 (1) Private residences, except when used as a childcare,
14 adult day care, or health care facility;

15 (2) Guestrooms and suites that are rented to guests and
16 are designated as smoking rooms, except that not more than twenty
17 percent of rooms rented to guests in an establishment may be
18 designated as smoking rooms. All smoking rooms on the same floor
19 shall be contiguous and smoke from these rooms shall not infiltrate
20 into areas where smoking is prohibited under the act. The status
21 of rooms as smoking or nonsmoking cannot be changed, except to add
22 additional nonsmoking rooms; and

23 (3) Areas used as part of a research study on the
24 health effects of smoking conducted in a scientific or analytical
25 laboratory either governed by state or federal law or at a

1 college or university approved by the Coordinating Commission for
2 Postsecondary Education. The proprietor shall post a temporary sign
3 on all entrances to the laboratory indicating that smoking is being
4 allowed for research purposes.

5 Sec. 19. A proprietor shall:

6 (1) Post no-smoking signs or the international no-smoking
7 symbol clearly and conspicuously in every place of employment and
8 public place where smoking is prohibited by the Nebraska Clean
9 Indoor Air Act;

10 (2) Post at every entrance a conspicuous sign clearly
11 stating that smoking is prohibited in every place of employment and
12 public place where smoking is prohibited by the act; and

13 (3) Remove all ashtrays from any place where smoking is
14 prohibited by the act.

15 Sec. 20. (1) No person or employer shall discharge,
16 refuse to hire, or in any manner retaliate against an employee,
17 applicant for employment, or customer because that employee,
18 applicant, or customer exercises any rights afforded by the
19 Nebraska Clean Indoor Air Act or reports or attempts to prosecute
20 a violation of the act.

21 (2) An employee who works in a place where an employer
22 allows smoking does not waive or otherwise surrender any legal
23 rights the employee has against the employer or any other party.

24 Sec. 21. A health director or law enforcement officer may
25 inspect a place of employment or public place at any reasonable

1 time to determine compliance with the Nebraska Clean Indoor Air
2 Act.

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

7 (2) A proprietor who fails, neglects, or refuses to
8 perform a duty under the act is guilty of a Class V misdemeanor for
9 the first offense and a Class IV misdemeanor for the second and any
10 subsequent offenses.

11 (3) Each day that a violation continues to exist shall
12 constitute a separate and distinct offense and shall be punishable
13 as such.

14 (4) Every act or omission constituting a violation of the
15 act by an employee or agent of a proprietor is deemed to be the
16 act or omission of such proprietor, and such proprietor shall be
17 punished in the same manner as if the act or omission had been
18 committed by such proprietor.

19 Sec. 23. (1) The Department of Regulation and Licensure
20 shall engage in a continuing program to explain and clarify the
21 purposes and requirements of the Nebraska Clean Indoor Air Act
22 to citizens affected by it, and to guide proprietors in their
23 compliance with it. The program may include publication of a
24 brochure for affected persons explaining the provisions of the act.

25 (2) The Department of Regulation and Licensure shall

1 adopt and promulgate rules and regulations necessary and
2 reasonable to implement the Nebraska Clean Indoor Air Act. The
3 department shall consult with interested persons and professional
4 organizations before promulgating such rules and regulations.

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

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

10 Sec. 26. 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. 27. 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, 71-5713, Reissue Revised
17 Statutes of Nebraska, and sections 71-5705 and 71-5707, Revised
18 Statutes Cumulative Supplement, 2006.