

## LEGISLATIVE BILL 395

Approved by the Governor February 26, 2008

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

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

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

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

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

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

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

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

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

Sec. 7. Guestroom or suite means a sleeping room and directly associated private areas, such as a bathroom, a living room, and a kitchen area, if any, rented to the public for their exclusive transient occupancy, including, but not limited to, a guestroom or suite in a hotel, motel, inn, lodge, or other such establishment.

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

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

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

Sec. 11. Public place means an indoor area to which the public is invited or in which the public is permitted, whether or not the public is always invited or permitted. A private residence is not a public place.

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

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

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

place.

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

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

(2) Indoor areas used in connection with a research study on the health effects of smoking conducted in a scientific or analytical laboratory under state or federal law or at a college or university approved by the Coordinating Commission for Postsecondary Education; and

(3) Tobacco retail outlets.

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

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

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

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

Sec. 18. (1) A person who smokes in a place of employment or a public place in violation of the Nebraska Clean Indoor Air Act is guilty of a Class V misdemeanor for the first offense and a Class IV misdemeanor for the second and any subsequent offenses. A person charged with such offense may voluntarily participate, at his or her own expense, in a smoking cessation program approved by the Department of Health and Human Services, and such charge shall be dismissed upon successful completion of the program.

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

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

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

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

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

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

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