

**CHAPTER 82--S.F.No. 238**

*An act relating to health; establishing the Freedom to Breathe Act of 2007; establishing public policy to protect employees and the general public from the hazards of secondhand smoke; prohibiting smoking in certain areas; providing penalties; amending Minnesota Statutes 2006, sections 116L.17, subdivision 1; 144.412; 144.413, subdivisions 2, 4, by adding subdivisions; 144.414; 144.416; 144.417; proposing coding for new law in Minnesota Statutes, chapter 144; repealing Minnesota Statutes 2006, section 144.415.*

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2006, section 116L.17, subdivision 1, is amended to read:

Subdivision 1. **Definitions.** (a) For the purposes of this section, the following terms have the meanings given them in this subdivision.

(b) "Commissioner" means the commissioner of employment and economic development.

(c) "Dislocated worker" means an individual who is a resident of Minnesota at the time employment ceased or was working in the state at the time employment ceased and:

(1) has been permanently separated or has received a notice of permanent separation from public or private sector employment and is eligible for or has exhausted entitlement to unemployment benefits, and is unlikely to return to the previous industry or occupation;

(2) has been long-term unemployed and has limited opportunities for employment or reemployment in the same or a similar occupation in the area in which the individual resides, including older individuals who may have substantial barriers to employment by reason of age;

(3) has been self-employed, including farmers and ranchers, and is unemployed as a result of general economic conditions in the community in which the individual resides or because of natural disasters;~~or~~

(4) has been permanently separated from employment in a restaurant, bar, or lawful gambling organization from October 1, 2007, to October 1, 2009, due to the implementation of any state law prohibiting smoking; or

(5) is a displaced homemaker. A "displaced homemaker" is an individual who has spent a substantial number of years in the home providing homemaking service and (i) has been dependent upon the financial support of another; and now due to divorce, separation, death, or disability of that person, must find employment to self support; or (ii) derived the substantial share of support from public assistance on account of dependents in the home and no longer receives such support.

To be eligible under this clause, the support must have ceased while the worker resided in Minnesota.

(d) "Eligible organization" means a state or local government unit, nonprofit organization, community action agency, business organization or association, or labor organization.

(e) "Plant closing" means the announced or actual permanent shutdown of a single site of employment, or one or more facilities or operating units within a single site of employment.

(f) "Substantial layoff" means a permanent reduction in the workforce, which is not a result of a plant closing, and which results in an employment loss at a single site of employment during any 30-day period for at least 50 employees excluding those employees that work less than 20 hours per week.

Sec. 2. Minnesota Statutes 2006, section 144.412, is amended to read:

**144.412 PUBLIC POLICY.**

~~The purpose of sections 144.411 to 144.417 is to protect the public health, comfort and environment by prohibiting smoking in areas where children or ill or injured persons are present, and employees and the general public from the hazards of secondhand smoke by limiting eliminating smoking in public places, places of employment, public transportation, and at public meetings to designated smoking areas.~~

Sec. 3. Minnesota Statutes 2006, section 144.413, is amended by adding a subdivision to read:

Subd. 1a. **Indoor area.** "Indoor area" means all space between a floor and a ceiling that is bounded by walls, doorways, or windows, whether open or closed, covering more than 50 percent of the combined surface area of the vertical planes constituting the perimeter of the area. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent. A 0.011 gauge window screen with an 18 by 16 mesh count is not a wall.

Sec. 4. Minnesota Statutes 2006, section 144.413, is amended by adding a subdivision to read:

Subd. 1b. **Place of employment.** "Place of employment" means any indoor area at which two or more individuals perform any type of a service for consideration of payment under any type of contractual relationship, including, but not limited to, an employment relationship with or for a private corporation, partnership, individual, or government agency. Place of employment includes any indoor area where two or more individuals gratuitously perform services for which individuals are ordinarily paid. A place of employment includes, but is not limited to, public conveyances, factories, warehouses, offices, retail stores, restaurants, bars, banquet facilities, theaters, food stores, banks, financial institutions, employee cafeterias, lounges, auditoriums, gymnasiums, restrooms, elevators, hallways, museums, libraries, bowling establishments, employee medical facilities, and rooms or areas containing photocopying equipment or other office equipment used in common. Vehicles used in whole or in part for work purposes are places of employment during hours of operation if more than one person is present. An area in which work is performed in a private residence is a place of employment during hours of operation if:

(1) the homeowner uses the area exclusively and regularly as a principal place of business and has one or more on-site employees; or

(2) the homeowner uses the area exclusively and regularly as a place to meet or deal with patients, clients, or customers in the normal course of the homeowner's trade or business.

Sec. 5. Minnesota Statutes 2006, section 144.413, subdivision 2, is amended to read:

Subd. 2. **Public place.** "Public place" means any enclosed, indoor area used by the general public ~~or serving as a place of work~~, including, but not limited to, restaurants;<sub>2</sub> bars; ~~any other food or liquor establishment;~~ retail stores; ~~offices~~ and other commercial establishments; ~~public conveyances;~~<sub>2</sub> educational facilities other than public schools, as defined in section 120A.05, subdivisions 9, 11, and 13;<sub>2</sub> hospitals;<sub>2</sub> nursing homes;<sub>2</sub> auditoriums;<sub>2</sub> arenas;<sub>2</sub> meeting rooms;<sub>2</sub> and common areas of rental apartment buildings; ~~but excluding private, enclosed offices occupied exclusively by smokers even though such offices may be visited by nonsmokers.~~

Sec. 6. Minnesota Statutes 2006, section 144.413, subdivision 4, is amended to read:

Subd. 4. **Smoking.** "Smoking" means inhaling or exhaling smoke from any lighted cigar, cigarette, pipe, or any other lighted tobacco or plant product. Smoking also includes carrying a lighted cigar, cigarette, pipe, or any other lighted smoking equipment tobacco or plant product intended for inhalation.

Sec. 7. Minnesota Statutes 2006, section 144.413, is amended by adding a subdivision to read:

Subd. 5. **Public transportation.** "Public transportation" means public means of transportation, including light and commuter rail transit; buses; enclosed bus and transit stops; taxis, vans, limousines, and other for-hire vehicles other than those being operated by the lessee; and ticketing, boarding, and waiting areas in public transportation terminals.

Sec. 8. Minnesota Statutes 2006, section 144.414, is amended to read:

#### **144.414 PROHIBITIONS.**

Subdivision 1. **Public places, places of employment, public transportation, and public meetings.** Smoking shall not be permitted in and no person shall smoke in a public place ~~or~~<sub>2</sub> at a public meeting except in designated smoking areas. This prohibition does not apply in cases in which an entire room or hall is used for a private social function and seating arrangements are under the control of the sponsor of the function and not of the proprietor or person in charge of the place. Furthermore, this prohibition shall not apply to places of work not usually frequented by the general public, except that the state commissioner of health shall establish rules to restrict or prohibit smoking in factories, warehouses, and those places of work where the close proximity of workers or the inadequacy of ventilation causes smoke pollution detrimental to the health and comfort of nonsmoking employees, in a place of employment, or in public transportation, except as provided in this section or section 144.4167.

Subd. 2. **Day care premises.** Smoking is prohibited in a day care center licensed under Minnesota Rules, parts 9503.0005 to 9503.0175, or in a family home or in a group family day care provider home licensed under Minnesota Rules, parts 9502.0300 to 9502.0445, during its hours of operation. The proprietor of a family home or group family day care provider must disclose to parents or guardians of children cared for on the premises if the proprietor permits smoking outside of its hours of operation. Disclosure

must include posting on the premises a conspicuous written notice and orally informing parents or guardians.

Subd. 3. **Health care facilities and clinics.** (a) Smoking is prohibited in any area of a hospital, health care clinic, doctor's office, licensed residential facility for children, or other health care-related facility, other than except that a patient or resident in a nursing home, boarding care facility, or licensed residential facility, except as allowed in this subdivision for adults may smoke in a designated separate, enclosed room maintained in accordance with applicable state and federal laws.

(b) Smoking by participants in peer reviewed scientific studies related to the health effects of smoking may be allowed in a separated room ventilated at a rate of 60 cubic feet per minute per person pursuant to a policy that is approved by the commissioner and is established by the administrator of the program to minimize exposure of nonsmokers to smoke. Except as provided in section 246.0141, smoking by patients in a locked psychiatric unit may be allowed in a separated well-ventilated area in the unit under a policy established by the administrator of the program that allows the treating physician to approve smoking if, in the opinion of the treating physician, the benefits to be gained in obtaining patient cooperation with treatment outweigh the negative impacts of smoking.

Subd. 4. **Public transportation vehicles.** Smoking is prohibited in public transportation vehicles except that the driver of a public transportation vehicle may smoke when the vehicle is being used for personal use. For purposes of this subdivision, "personal use" means that the public transportation vehicle is being used by the driver for private purposes and no for-hire passengers are present. If a driver smokes under this subdivision, the driver must post a conspicuous sign inside the vehicle to inform passengers.

Sec. 9. Minnesota Statutes 2006, section 144.416, is amended to read:

#### **144.416 RESPONSIBILITIES OF PROPRIETORS.**

(a) The proprietor or other person in charge, firm, limited liability company, corporation, or other entity that owns, leases, manages, operates, or otherwise controls the use of a public place, public transportation, place of employment, or public meeting shall make reasonable efforts to prevent smoking in the public place, public transportation, place of employment, or public meeting by:

- ~~(a)~~ (1) posting appropriate signs;
- ~~(b)~~ arranging seating to provide a smoke-free area;
- ~~(c)~~ asking smokers to refrain from smoking upon request of a client or employee suffering discomfort from the smoke; or
- ~~(d)~~ or by any other means which may be appropriate; and

(2) asking any person who smokes in an area where smoking is prohibited to refrain from smoking and, if the person does not refrain from smoking after being asked to do so, asking the person to leave. If the person refuses to leave, the proprietor, person, or entity in charge shall handle the situation consistent with lawful methods for handling other persons acting in a disorderly manner or as a trespasser.

(b) The proprietor or other person or entity in charge of a public place, public meeting, public transportation, or place of employment must not provide smoking equipment, including ashtrays or matches, in areas where smoking is prohibited. Nothing in this section prohibits the proprietor or other person or entity in charge from taking more

stringent measures than those under sections 144.414 to 144.417 to protect individuals from secondhand smoke. The proprietor or other person or entity in charge of a restaurant or bar may not serve an individual who is in violation of sections 144.411 to 144.417.

Sec. 10. **[144.4167] PERMITTED SMOKING.**

Subd. 1. **Scientific study participants.** Smoking by participants in peer reviewed scientific studies related to the health effects of smoking may be allowed in a separated room ventilated at a rate of 60 cubic feet per minute per person pursuant to a policy that is approved by the commissioner and is established by the administrator of the program to minimize exposure of nonsmokers to smoke.

Subd. 2. **Traditional Native American ceremonies.** Sections 144.414 to 144.417 do not prohibit smoking by a Native American as part of a traditional Native American spiritual or cultural ceremony. For purposes of this section, a Native American is a person who is a member of an Indian tribe as defined in section 260.755, subdivision 12.

Subd. 3. **Private places.** Except as provided in section 144.414, subdivision 2, nothing in sections 144.411 to 144.417 prohibits smoking in:

(1) private homes, private residences, or private automobiles when they are not in use as a place of employment, as defined in section 144.413, subdivision 1b; or

(2) a hotel or motel sleeping room rented to one or more guests.

Subd. 4. **Tobacco products shop.** Sections 144.414 to 144.417 do not prohibit the lighting of tobacco in a tobacco products shop by a customer or potential customer for the specific purpose of sampling tobacco products. For the purposes of this subdivision, a tobacco products shop is a retail establishment with an entrance door opening directly to the outside that derives more than 90 percent of its gross revenue from the sale of loose tobacco, plants, or herbs and cigars, cigarettes, pipes, and other smoking devices for burning tobacco and related smoking accessories and in which the sale of other products is merely incidental. "Tobacco products shop" does not include a tobacco department or section of any individual business establishment with any type of liquor, food, or restaurant license.

Subd. 5. **Heavy commercial vehicles.** Sections 144.414 to 144.417 do not prohibit smoking in the cabs of motor vehicles registered under section 168.013, subdivision 1e, with a total gross weight of 26,001 pounds or greater.

Subd. 6. **Farm vehicles and construction equipment.** Sections 144.414 to 144.417 do not prohibit smoking in farm trucks, as defined in section 168.011, subdivision 17; implements of husbandry, as defined in section 168A.01, subdivision 8; and special mobile equipment, as defined in section 168.011, subdivision 22. This subdivision applies to farm trucks, implements of husbandry, and special mobile equipment, when being used for their intended purposes.

Subd. 7. **Family farms.** Sections 144.414 to 144.417 do not prohibit smoking in the house, garage, barns, and other buildings on a family farm that meets the following criteria: (1) the family farm is engaged in farming, as defined in section 500.24, subdivision 2, paragraph (a); (2) the family farm meets the definition of family farm under section 500.24, subdivision 2, paragraph (b), (c), (j), or (l); and (3) the family farm employs two or fewer persons who are not family members.

Subd. 8. **Disabled veterans rest camp.** Sections 144.414 to 144.417 do not prohibit smoking in the disabled veterans rest camp located in Washington County, established as of January 1, 2007.

Subd. 9. **Theatrical productions.** Sections 144.414 to 144.417 do not prohibit smoking by actors and actresses as part of a theatrical performance conducted in compliance with section 366.01. Notice of smoking in a performance shall be given to theater patrons in advance and shall be included in performance programs.

Sec. 11. Minnesota Statutes 2006, section 144.417, is amended to read:

**144.417 COMMISSIONER OF HEALTH, ENFORCEMENT, PENALTIES.**

Subdivision 1. **Rules.** ~~(a)~~ The state commissioner of health shall adopt rules necessary and reasonable to implement the provisions of sections 144.411 to 144.417; ~~except as provided for in section 144.414.~~

~~(b) Rules implementing sections 144.411 to 144.417 adopted after January 1, 2002, may not take effect until approved by a law enacted after January 1, 2002. This paragraph does not apply to a rule or severable portion of a rule governing smoking in office buildings, factories, warehouses, or similar places of work, or in health care facilities. This paragraph does not apply to a rule changing the definition of "restaurant" to make it the same as the definition in section 157.15, subdivision 12.~~

Subd. 2. **Penalties Violations.** ~~Any person who violates section 144.414 or 144.4165 is guilty of a petty misdemeanor.~~ (a) Any proprietor, person, or entity that owns, leases, manages, operates, or otherwise controls the use of an area in which smoking is prohibited under sections 144.414 to 144.417, and that knowingly fails to comply with sections 144.414 to 144.417, is guilty of a petty misdemeanor.

(b) Any person who smokes in an area where smoking is prohibited or restricted under sections 144.414 to 144.417 is guilty of a petty misdemeanor.

(c) A proprietor, person, or entity in charge of a public place, public meeting, place of employment, or public transportation must not retaliate or take adverse action against an employee or anyone else who, in good faith, reports a violation of sections 144.414 to 144.417 to the proprietor or person in charge of the public place, public meeting, place of employment, or public transportation, or to the commissioner of health or other designee responsible for enforcing sections 144.414 to 144.417.

(d) No person or employer shall discharge, refuse to hire, penalize, discriminate against, or in any manner retaliate against any employee, applicant for employment, or customer because the employee, applicant, or customer exercises any right to a smoke-free environment provided by sections 144.414 to 144.417 or other law.

Subd. 3. **Injunction.** The state commissioner of health, a board of health as defined in section 145A.02, subdivision 2, or any affected party may institute an action in any court with jurisdiction to enjoin repeated violations of ~~section 144.416 or 144.4165~~ sections 144.414 to 144.417.

Subd. 4. **Local government ordinances.** (a) Nothing in sections 144.414 to 144.417 prohibits a statutory or home rule charter city or county from enacting and enforcing more stringent measures to protect individuals from secondhand smoke.

(b) Except as provided in sections 144.411 to 144.417, smoking is permitted outside of restaurants, bars, and bingo halls unless limited or prohibited by restrictions adopted in accordance with paragraph (a).

Sec. 12. **CHARITABLE GAMBLING IMPACT STUDY.**

The Gambling Control Board, in cooperation with the commissioner of revenue, shall study the impact of a statewide smoking ban in public places on lawful gambling. The board shall provide a summary report with recommendations to the governor and the appropriate committees of the legislature prior to March 31, 2008.

Sec. 13. **DISLOCATED WORKER PROGRAM; ALLOCATION OF FUNDS.**

The Job Skills Partnership Board must enable the dislocated worker program under Minnesota Statutes, section 116L.17, to provide services under that program to employees of bars, restaurants, and lawful gambling organizations who become unemployed from October 1, 2007, to October 1, 2009, due to the provisions of this act.

Sec. 14. **FREEDOM TO BREATHE ACT.**

This act shall be referred to as the "Freedom to Breathe Act of 2007."

Sec. 15. **REPEALER.**

Minnesota Statutes 2006, section 144.415, is repealed.

Sec. 16. **EFFECTIVE DATE.**

Sections 1 to 15 are effective October 1, 2007.

Presented to the governor May 14, 2007

Signed by the governor May 16, 2007, 11:01 a.m.