

AMENDMENTS TO LB 395

Introduced by Johnson, 37

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

3 Section 1. Sections 1 to 20 of this act shall be known
4 and may be cited as the Nebraska Clean Indoor Air Act.

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

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

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

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

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

1 which employs one or more employees.

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

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

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

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

27 Sec. 11. Public place means an indoor area to which the

1 public is invited or in which the public is permitted, whether or
2 not the public is always invited or permitted. A private residence
3 is not a public place.

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

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

11 Sec. 14. Except as otherwise provided in sections 15 and
12 16 of this act, it is unlawful for any person to smoke in a place
13 of 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
26 college or university approved by the Coordinating Commission for
27 Postsecondary Education; and

1 (3) Tobacco retail outlets.

2 Sec. 16. On and after November 1, 2008, the voters of
3 any city or village may adopt an ordinance that is less stringent
4 or more stringent than the Nebraska Clean Indoor Air Act, except
5 that such ordinance shall not be less stringent than the Nebraska
6 Clean Indoor Air Act as such act existed immediately prior to the
7 effective date of this act. Such ordinance may be placed on the
8 ballot by a majority vote of the governing body of the city or
9 village or by initiative under sections 18-2501 to 18-2538. A copy
10 of such ordinance shall be provided to the Department of Health and
11 Human Services Regulation and Licensure.

12 Sec. 17. A proprietor shall post a no-smoking sign or the
13 international no-smoking symbol clearly and conspicuously at every
14 entrance to a place of employment or public place where smoking is
15 prohibited under the Nebraska Clean Indoor Air Act and shall take
16 other necessary and appropriate steps to ensure compliance with the
17 act at such place.

18 Sec. 18. (1) The Department of Health and Human Services
19 Regulation and Licensure or a local public health department as
20 defined in section 71-1626 may institute an action in any court
21 with jurisdiction to enjoin a violation of the Nebraska Clean
22 Indoor Air Act. Any interested party may report possible violations
23 of the act to such departments.

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

1 (3) The Department of Health and Human Services
2 Regulation and Licensure or a local public health department may
3 wave provisions of the Nebraska Clean Indoor Air Act upon good
4 cause shown and shall provide for appropriate protection of the
5 public health and safety in the granting of such waivers.

6 Sec. 19. (1) A person who smokes in a place of employment
7 or a public place in violation of the Nebraska Clean Indoor Air
8 Act is guilty of a Class V misdemeanor for the first offense and
9 a Class IV misdemeanor for the second and any subsequent offenses.
10 A person charged with such offense may voluntarily participate, at
11 his or her own expense, in a smoking cessation program approved
12 by the Department of Health and Human Services Regulation and
13 Licensure. The charge against such person shall be dismissed upon
14 successful completion of the program.

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

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

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

26 Sec. 20. The Department of Health and Human Services
27 Regulation and Licensure shall adopt and promulgate rules and

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

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

9 Sec. 22. The following sections are outright repealed:
10 Sections 71-5701, 71-5702, 71-5703, 71-5704, 71-5706, 71-5708,
11 71-5709, 71-5710, 71-5711, 71-5712, and 71-5713, Reissue Revised
12 Statutes of Nebraska, and sections 71-5705 and 71-5707, Revised
13 Statutes Cumulative Supplement, 2006.