

# HOUSE RESEARCH

## Bill Summary

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**Authors:** Meslow and others

**Subject:** Freedom to Breathe Act of 2005

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### Overview

This bill establishes the Freedom to Breathe Act of 2005. It expands the prohibition on smoking in public places and adds places of employment, public transportation, and public meetings to the list of areas in which smoking is prohibited.

#### Section

- 1** **Public policy.** Amends § 144.412. Changes purpose to protecting "employees and the general public from the known hazards of second-hand smoke." Changes language from "limiting" to "eliminating" smoking from public places and adds places of employment, public transportation, and public meetings (by removing the designated area option) to the list of areas in which smoking is prohibited.
- 2** **Place of employment.** Amends § 144.413 by adding subd. 1a. Defines "place of employment" as "any indoor area at which two or more individuals perform any type of a service for consideration of payment under any type of employment relationship." Examples are provided and these include bars and restaurants.
- 3** **Public place.** Amends § 144.413, subd 2. Adds "bars and outdoor seating at restaurants and bars" to the definition of "public place." Eliminates the exception for private, enclosed offices occupied exclusively by smokers.
- 4** **Smoking.** Amends § 144.413, subd. 4. Clarifies the definition of smoking by adding to the definition "inhaling, exhaling, or combustion of any cigar, cigarette, pipe, or any other lighted smoking equipment."
- 5** **Public transportation.** Amends § 144.413 by adding subd. 5. Defines "public transportation" as "public means of transportation," which includes light and commuter rail,

buses, and enclosed bus and transit stops. It also includes taxis, vans, limousines and other for hire vehicles not operated by the lessee; and ticketing, boarding, and waiting areas in public transportation terminals.

**6 Prohibitions and exceptions.** Amends § 144.414.

**Subd. 1. Public places, places of employment, public transportation, and public meetings.** Adds "places of employment, public transportation and public meetings" to the heading and to the list of areas in which smoking is prohibited. Eliminates the following exceptions to the prohibitions on smoking:

- Public meeting smoking in designated areas
- Rooms or halls used for a private social function
- Places of work not frequented by the public

**Subd. 2. Day care premises.** Requires proprietors of family home or group family day cares who permit smoking after hours to disclose to parents/guardians of children cared for at the day care that smoking is permitted outside the hours of operation. The proprietor must disclose the information by posting a written notice and orally informing parents/guardians.

**Subd. 3. Health care facilities and clinics.** Adds "licensed residential facility for children" to the list of facilities in which smoking is prohibited. Permits smoking in nursing homes, boarding care facilities or licensed residential facilities for adults if smoking by patients/residents is done in a designated separate, enclosed room that has a separate ventilation system.

**Subd. 4. Public transportation vehicles.** Prohibits smoking in public transportation vehicles, except when the vehicle is in private use by the driver and no for-hire passengers are present. The driver must post a sign inside the vehicle to inform passengers if smoking does occur.

**Subd. 5. Outdoor seating.** Adds outdoor seating at restaurants/bars to the list of prohibited smoking. Proprietors may designate up to 50 percent of the seating capacity for smoking, provided a sign marks the area as a smoking area.

**7 Responsibilities of proprietors.** Amends § 144.416. Makes proprietors of public transportation, places of employment, or public meetings subject to requirements to prevent smoking. Modifies the list of "reasonable efforts" proprietors must take to prevent smoking by:

- Removing arranging seating to provide a smoke free area as an option
- Requiring proprietors to ask anyone smoking to refrain from smoking (under current law this was required at the request of a client or employee)
- Requiring proprietors to ask those smoking who have been told to refrain from smoking to leave the premises if they do not refrain from smoking
- Adds that if the smoker does not leave, the proprietor shall use lawful methods

consistent with handling disorderly persons or trespassers.

- Allowing proprietors to adopt more stringent measures than those in sections 144.414 to 144.417 to protect individuals from second-hand smoke.
- Prohibits a proprietor of a restaurant or bar from serving those in violation of sections 144.411 to 144.417
- Prohibits a proprietor from providing smoking equipment (ashtrays, matches, etc.) where smoking is prohibited.

**8 Permitted smoking.** Adds a new section to combine and clarify exceptions to prohibited smoking.

**Subd. 1. Scientific study participants.** Retains the exception for smoking done by participants of peer-reviewed scientific studies related to the health effects of smoking provided certain requirements are met. The exception was added in 1995.

**Subd. 2. Traditional Native American ceremonies.** Retains the exception for smoking done by an Indian adult as part of a traditional Indian spiritual or cultural ceremony. The exception was added in 1993.

**Subd. 3. Private places.** States that smoking is not prohibited in private homes, private residences or private automobiles; or in hotels/motel sleeping rooms rented to one or more guests.

**9 Commissioner of health, enforcement, violations.** Amends § 144.417 by removing rule making instruction and redefining violations.

**Subd. 1. Rules.** Eliminates the requirement that certain rules implementing sections 144.411 to 144.417 adopted after January 1, 2002 not take effect until approved by law enacted after January 1, 2002. Also eliminates rule-making provisions for work places not generally visited by the public.

**Subd. 2. Violations.** Paragraph (a) states that it is unlawful for any person/entity that owns, manages, operates or controls an area, to fail to comply. Provides what an affirmative defense would be and the methods for providing it.

Paragraph (b) states that it is unlawful for any employer whose place of employment is subject to sections 144.414 to 144.417 to fail to comply. Provides that making a good faith effort to ensure that employees comply is an affirmative defense.

Paragraph (c) states that it is unlawful for a person to smoke in an area where it is prohibited.

Paragraph (d) establishes that a person who smokes where smoking is prohibited is guilty of a petty misdemeanor.

Paragraphs (e) and (f) establish protections from retaliation by proprietors for those reporting violations or those exercising any right to a smoke free environment as provided in sections 144.414 to 144.417.

**10 Local government ordinances.** States that nothing in sections 144.414 to 144.417 prohibits

statutory or home rule charter cities or counties from enacting and enforcing more stringent measures.

- 11** **Freedom to Breathe Act.** States that the act shall be referred to as the "Freedom to Breathe Act of 2005."
- 12** **Repealer.** Repeals section 144.415 which allowed proprietors of public places to designate smoking areas.