

HOUSE RESEARCH

Bill Summary

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Overview

This bill establishes the Freedom to Breathe Act of 2007. It expands the prohibition on smoking in public places to include restaurants and bars with some exceptions.

Section

- 1 Public Policy.** Amends § 144.412. States that the purpose of sections 144.411 to 144.417 is to protect employees and the general public from the hazards of secondhand smoke by eliminating smoking from public places, places of employment, public transportation, and public meetings.
- 2 Indoor Area.** Amends § 144.413, by adding subdivision 1a. Defines indoor area as an area that is bounded on two or more sides by temporary or permanent walls, doorways or windows.
- 3 Place of employment.** Amends §144.413, by adding subdivision 1b. States that a place of employment is an indoor area where two or more persons provide a service for payment under a contractual relationship, or gratuitously.
 - Lists examples, such as, warehouses, restaurants, theaters, employee cafeterias, restrooms and hallways.
 - Includes vehicles used for work purposes during hours of operation and when more than one person is present.

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- Includes an area where work is performed in a private residence during hours of operation, if the homeowner uses the area exclusively and regularly as a place of business, or to meet with clients.

- 4** **Public Place.** Amends § 144.413, subdivision 2. Adds "bars" and "any other food or liquor establishment" to the list of public places where smoking is prohibited. Eliminates the exclusion for certain private, enclosed offices.
- 5** **Smoking.** Amends § 144.413, subdivision 4. Clarifies the definition of smoking by adding "inhaling or exhaling smoke from any lighted cigar, cigarette, pipe, or any other lighted tobacco or plant product." Replaces the term "smoking equipment" with "tobacco or plant product intended for inhalation."
- 6** **Public Transportation.** Amends § 144.413, by adding subdivision 5. States that public transportation includes light and commuter rail transit, buses and enclosed bus and transit stops. Includes for-hire vehicles, such as, taxis and limousines. Includes ticketing, boarding and waiting areas in public transportation terminals.
- 7** **Prohibitions.** Amends § 144.414. Expands the prohibitions on smoking in various settings.
- Subd. 1. Public places, places of employment, public transportation, and public meetings.**
- (a) Prohibits smoking in public places, at public meetings, in places of employment, or in public transportation. Eliminates exceptions for designated smoking areas, certain social functions, and places of work not usually frequented by the general public.
- (b) States that the prohibitions do not go into effect for bars and restaurants until January 1, 2009. Provides a tax exemption for bars and restaurants that voluntarily comply with the smoking prohibitions, regardless of whether there is a current local smoking regulation in place for that establishment.
- Subd. 2. Day care premises.** Requires a proprietor of a family home or group family day care to disclose to the parents and guardians whether the proprietor allows smoking on the premises outside of hours of operation. Requires a conspicuous written notice as well as orally informing the parents and guardians.
- Subd. 3. Health care facilities and clinics.** Adds to the smoking prohibition licensed residential facilities for children. Allows adult residents in a nursing home or boarding facility to smoke in a "designated separate, enclosed room" with a separate ventilation system. Eliminates a narrow exception for participants in smoking studies (this is reinstated in section 9 of this bill).
- Subd. 4. Public transportation vehicles.** Prohibits smoking in public transportation vehicles, except by the driver when the vehicle is being used for the driver's private use and there are no passengers present. Requires a driver that smokes in the vehicle under this provision to post a conspicuous sign inside the vehicle.
- 8** **Responsibilities of Proprietors.** Amends § 144.416. Clarifies the requirement proprietors and other owners of public places, public transportation, places of employment or public meetings to make "reasonable efforts" to prevent smoking. Modifies the list of reasonable efforts as follows:

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- Requires proprietors to ask persons who smoke in prohibited areas to refrain from smoking (under current law this is only required at the request of a client or employee)
- Requires proprietors to ask a person to leave if that person refuses to refrain from smoking
- Adds that if that smoker does not leave, the proprietors shall use lawful methods consistent with handling disorderly persons
- Prohibits proprietors from providing smoking equipment, such as ashtrays, in areas where smoking is prohibited
- Permits proprietors to adopt more stringent measures than those in sections 144.414 to 144.417 to protect individuals from secondhand smoke
- Eliminates the reference to a smoke-free area

9 Permitted Smoking. Adds § 144.4167. Combines and clarifies exceptions to smoking prohibitions.

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.

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.

Subd. 3. Private places. States that smoking is not prohibited in private homes, private residences or private automobiles when they are not being used as places of employment. States that smoking is not prohibited in a hotel or motel sleeping room rented to one or more guests.

Subd. 4. Tobacco products shop. States that customers in tobacco products shops may light tobacco and tobacco products for the purpose of sampling the products. Defines "tobacco products shop" as a retail business that earns at least 90 percent of its gross receipts from the sale of tobacco products and paraphernalia.

10 Commissioner of Health, Enforcement, Penalties. Amends § 144.417.

Subd. 1. Rules. Removes obsolete language regarding application of adopted rules.

Subd. 2. Violations.

- a) States that it is a misdemeanor for a proprietor or person, who owns, leases, manages, operates or otherwise controls the use of an area where smoking is prohibited, to knowingly fail to comply with sections 144.414 to 144.417.
- b) States that it is a petty misdemeanor for a person to smoke in an area where smoking is prohibited.
- c) Prohibits retaliation by a proprietor or person in charge of a public place, public meeting, place of employment or public transportation against an employee or anyone else who reports a violation of sections 144.414 to 144.417.

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- d) Prohibits an employer from discharging, refusing to hire, penalizing, discriminating or retaliating against any employee, applicant or customer because such person exercises any right to a smoke-free environment.

Subd. 3. Injunction. Updates a statutory reference.

- 11** **Gross receipts tax imposed.** Cross-references the exemption from the liquor gross receipts tax, permitted in section 7, in the tax code.
- 12** **Freedom to Breathe Act.** Lends a name to this act: "Freedom to Breathe Act of 2007."
- 13** **Repealer.** Repeals § 144.415, which allowed for designated smoking areas.