HOUSE FILE 2212

AN ACT
CREATING A SMOKEFREE AIR ACT AND PROVIDING PENALTIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. NEW SECTION. 142D.1 TITLE == FINDINGS ==
PURPOSE.

1. This chapter shall be known and may be cited as the 
"Smokefree Air Act".

2. The general assembly finds that environmental tobacco 
smoke causes and exacerbates disease in nonsmoking adults and 
children. These findings are sufficient to warrant measures 
that regulate smoking in public places, places of employment, 
and outdoor areas in order to protect the public health and 
the health of employees.

3. The purpose of this chapter is to reduce the level of 
exposure by the general public and employees to environmental 
tobacco smoke in order to improve the public health of Iowans.

Sec. 2. NEW SECTION. 142D.2 DEFINITIONS.

As used in this chapter, unless the context otherwise 
requires:

1. "Bar" means an establishment where one may purchase 
alcoholic beverages as defined in section 123.3, for 
consumption on the premises and in which the serving of food 
is only incidental to the consumption of those beverages.

2. "Business" means a sole proprietorship, partnership, 
joint venture, corporation, association, or other business 
entity, either for-profit or not-for-profit, including retail 
establishments where goods or services are sold; professional 
corporations and other entities where legal, medical, dental, 
engineering, architectural, or other professional services are 
delivered; and private clubs.

3. "Common area" means a reception area, waiting room, 
lobby, hallway, restroom, elevator, stairway or stairwell, the 
common use area of a multiunit residential property, or other 
area to which the public is invited or in which the public is 
permitted.

4. "Employee" means a person who is employed by an 
employer in consideration for direct or indirect monetary 
wages or profit, or a person who provides services to an 
employer on a voluntary basis.

5. "Employer" means a person including a sole 
proprietorship, partnership, joint venture, corporation, 
association, or other business entity whether for-profit or 
not-for-profit, including state government and its political 
subdivisions, that employs the services of one or more 
individuals as employees.

6. "Enclosed area" means all space between a floor and 
ceiling that is contained on all sides by solid walls or 
windows, exclusive of doorways, which extend from the floor to

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7. "Farm tractor" means farm tractor as defined in section 321.1.
8. "Farm truck" means a single-unit truck, tractor-semitrailer, or trailer used by a farmer to transport agricultural, horticultural, dairy, or other farm products, including livestock, produced or finished by the farmer, or to transport any other personal property owned by the farmer, from the farm market, and to transport property and supplies to the farm of the farmer.
9. "Farmer" means any of the following:
   a. A person who files schedule F as part of the person's annual form 1040 or form 1041 filing with the United States internal revenue service, or an employee of such person while the employee is actively engaged in farming.
   b. A person who holds an equity position in or who is employed by a business association holding agricultural land where the business association is any of the following:
      1. A family farm corporation, authorized farm corporation, family farm limited partnership, limited partnership, family farm limited liability company, authorized limited liability company, family trust, or authorized trust, as provided in chapter 9H.
   c. A natural person related to the person actively engaged in farming as provided in paragraph "a" or "b" when the person is actively engaged in farming. The natural person must be related as spouse, parent, grandparent, lineal ascendant of a grandparent or a grandparent's spouse, other lineal descendant of a grandparent or a grandparent's spouse, or a person acting in a fiduciary capacity for persons so related.
10. For purposes of this subsection: "actively engaged in farming" means participating in physical labor on a regular, continuous, and substantial basis, or making day-to-day management decisions, where such participation or decision making is directly related to raising and harvesting crops for feed, food, seed, or fiber, or to the care and feeding of livestock.
11. "Health care provider location" means an office or institution providing care or treatment of disease, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to a hospital as defined in section 135B.1, a long-term care facility, an adult day services program as defined in section 231D.1, clinics, laboratories, and the locations of professionals regulated pursuant to Title IV, subtitle III, and includes all enclosed areas of the location including waiting rooms, hallways, other common areas, private rooms, semiprivate rooms, and wards within the location.
12. "Long-term care facility" means a health care facility as defined in section 135C.1, an elder group home as defined in section 231B.1, or an assisted living program as defined in section 231C.2.
13. "Place of employment" means an area under the control of an employer and includes all areas that an employee frequents during the course of employment or volunteering, including but not limited to work areas, private offices,
conference and meeting rooms, classrooms, auditoriums,
employee lounges and cafeterias, hallways, medical facilities,
restrooms, elevators, stairways and stairwells, and vehicles
owned, leased, or provided by the employer unless otherwise
provided under this chapter. "Place of employment" does not
include a private residence, unless the private residence is
used as a child care facility, a child care home, or as a
health care provider location.

14. "Political subdivision" means a city, county,
township, or school district.
15. "Private club" means an organization, whether or not
incorporated, that is the owner, lessee, or occupant of a
location used exclusively for club purposes at all times and
that meets all of the following criteria:
a. Is operated solely for a recreational, fraternal,
social, patriotic, political, benevolent, or athletic purpose,
but not for pecuniary gain.
b. Sells alcoholic beverages only as incidental to its
operation.
c. Is managed by a board of directors, executive
committee, or similar body chosen by the members.
d. Has established bylaws or another document to govern
its activities.
e. Has been granted an exemption from the payment of
federal income tax as a club pursuant to 26 U.S.C. § 501.
16. "Public place" means an enclosed area to which the
public is invited or in which the public is permitted,
including common areas, and including but not limited to all
of the following:
a. Financial institutions.
b. Restaurants.
c. Bars.
d. Public and private educational facilities.
e. Health care provider locations.
f. Hotels and motels.
g. Laundermats.
h. Public transportation facilities and conveyances under
the authority of the state or its political subdivisions,
including buses and taxicabs, and including the ticketing,
boarding, and waiting areas of these facilities.
i. Aquariums, galleries, libraries, and museums.
j. Retail food production and marketing establishments.
k. Retail service establishments.
l. Retail stores.
m. Shopping malls.
n. Entertainment venues including but not limited to
theaters; concert halls; auditoriums and other facilities
primarily used for exhibiting motion pictures, stage
performances, lectures, musical recitals, and other similar
performances; bingo facilities; and indoor arenas including
sports arenas.
o. Polling places.
p. Convention facilities and meeting rooms.
q. Public buildings and vehicles owned, leased, or
operated by or under the control of the state government or
its political subdivisions and including the entirety of the
private residence of any state employee any portion of which
is open to the public.
r. Service lines.
s. Private clubs only when being used for a function to
which the general public is invited.

1. Private residences only when used as a child care
2. facility, a child care home, or health care provider location.
4. v. Gambling structures, excursion gambling boats, and
5. racetrack enclosures.
6. 17. "Restaurant" means eating establishments, including
7. private and public school cafeterias, which offer food to the
8. public, guests, or employees, including the kitchen and
9. catering facilities in which food is prepared on the premises
10. for serving elsewhere, and including a bar area within a
11. restaurant.
12. 18. "Retail tobacco store" means a retail store utilized
13. primarily for the sale of tobacco products and accessories and
14. in which the sale of other products is incidental to the sale
15. of tobacco products.
16. 19. "Service line" means an indoor line in which one or
17. more individuals are waiting for or receiving service of any
18. kind, whether or not the service involves the exchange of
19. money.
20. 20. "Shopping mall" means an enclosed public walkway or
21. hall area that serves to connect retail or professional
22. establishments.
23. 21. "Smoking" means inhaling, exhaling, burning, or
24. carrying any lighted cigar, cigarette, pipe, or other tobacco
25. product in any manner or in any form. "Smoking" does not
26. include smoking that is associated with a recognized religious
27. ceremony, ritual, or activity, including but not limited to
28. burning of incense.
29. 22. "Sports arena" means a sports pavilion, stadium,
30. gymnasium, health spa, boxing arena, swimming pool, roller or
31. ice rink, bowling alley, or other similar place where members
32. of the general public assemble to engage in physical exercise,
33. participate in athletic competition, or witness sports or
34. other events.
35. Sec. 3. NEW SECTION. 142D.3 PROHIBITION OF SMOKING ==
36. PUBLIC PLACES, PLACES OF EMPLOYMENT, AND OUTDOOR AREAS.
37. 1 1. Smoking is prohibited and a person shall not smoke in
38. any of the following:
40. b. All enclosed areas within places of employment
41. including but not limited to work areas, private offices,
42. conference and meeting rooms, classrooms, auditoriums,
43. employee lounges and cafeterias, hallways, medical facilities,
44. restrooms, elevators, stairways and stairwells, and vehicles
45. owned, leased, or provided by the employer unless otherwise
46. provided under this chapter.
47. 2. In addition to the prohibitions specified in subsection
48. 1, smoking is prohibited and a person shall not smoke in or on
49. any of the following outdoor areas:
50. a. The seating areas of outdoor sports arenas, stadiums,
51. amphitheaters and other entertainment venues where members of
52. the general public assemble to witness entertainment events.
53. b. Outdoor seating or serving areas of restaurants.
54. c. Public transit stations, platforms, and shelters under
55. the authority of the state or its political subdivisions.
56. d. School grounds, including parking lots, athletic
57. fields, playgrounds, tennis courts, and any other outdoor area
58. under the control of a public or private educational facility,
59. including inside any vehicle located on such school grounds.
e. The grounds of any public buildings owned, leased, or
operated by or under the control of the state government or
its political subdivisions, including the grounds of a private
residence of any state employee any portion of which is open
to the public with the following exceptions:
(1) This paragraph shall not apply to the Iowa state
fairgrounds, or fairgrounds as defined in section 174.1.
(2) This paragraph shall not apply to institutions
administered by the department of corrections, except that
smoking on the grounds shall be limited to designated smoking
areas.
(3) This paragraph shall not apply to facilities of the
Iowa national guard as defined in section 29A.1, except that
smoking on the grounds shall be limited to designated smoking
areas.

Sec. 4. NEW SECTION. 142D.4 AREAS WHERE SMOKING NOT
REGULATED.
Notwithstanding any provision of this chapter to the
contrary, the following areas are exempt from the prohibitions
of section 142D.3:
1. Private residences, unless used as a child care
facility, child care home, or a health care provider location.
2. Hotel and motel rooms that are rented to guests and are
designated as smoking rooms; provided that not more than
ten percent of the rooms of a hotel or motel rented to
guests are designated as smoking rooms, all smoking rooms on
the same floor are contiguous, and smoke from smoking rooms
does not infiltrate into areas in which smoking is otherwise
prohibited under this chapter. The status of smoking and
nonsmoking rooms shall not be changed, except to provide
additional nonsmoking rooms.
3. Retail tobacco stores, provided that smoke from these
locations does not infiltrate into areas in which smoking is
otherwise prohibited under this chapter.
4. Private and semiprivate rooms in long-term care
facilities, occupied by one or more individuals, all of whom
are smokers and have requested in writing to be placed in a
room where smoking is permitted, provided that smoke from
these locations does not infiltrate into areas in which
smoking is otherwise prohibited under this chapter.
5. Private clubs that have no employees, except when being
used for a function to which the general public is invited,
provided that smoke from these locations does not infiltrate
into areas in which smoking is otherwise prohibited under this
chapter. This exemption shall not apply to any entity that is
established for the purpose of avoiding compliance with this
chapter.
6. Outdoor areas that are places of employment except
those areas where smoking is prohibited pursuant to section
142D.3, subsection 2.

7. Limousines under private hire; vehicles owned, leased,
or provided by a private employer that are for the sole use of
the driver and are not used by more than one person in the
course of employment either as a driver or passenger;
privately owned vehicles not otherwise defined as a place of
employment or public place; and cabs of motor trucks or truck
tractors if no nonsmoking employees are present.
8. An enclosed area within a place of employment or public
place that provides a smoking cessation program or a medical
or scientific research or therapy program, if smoking is an
9 integral part of the program.
10 9. Farm tractors, farm trucks, and implements of husbandry
11 when being used for their intended purposes.
12 10. Only the gaming floor of a premises licensed pursuant
13 to chapter 99F exclusive of any bar or restaurant located
14 within the gaming floor which is an enclosed area and subject
15 to the prohibitions of section 142D.3.
16 11. The Iowa veterans home.
17 Sec. 5. NEW SECTION. 142D.5 DECLARATION OF AREA AS
18 NONSMOKING.
19 1. Notwithstanding any provision of this chapter to the
20 contrary, an owner, operator, manager, or other person having
21 custody or control of an area otherwise exempt from the
22 prohibitions of section 142D.3 may declare the entire area as
23 a nonsmoking place.
24 2. Smoking shall be prohibited in any location of an area
25 declared a nonsmoking place under this section if a sign is
26 posted conforming to the provisions of section 142D.6.
27 Sec. 6. NEW SECTION. 142D.6 NOTICE OF NONSMOKING
28 REQUIREMENTS == POSTING OF SIGNS.
29 1. Notice of the provisions of this chapter shall be
30 provided to all applicants for a business license in this
31 state, to all law enforcement agencies, and to any business
32 required to be registered with the office of the secretary of
33 state.
34 2. All employers subject to the prohibitions of this
35 chapter shall communicate to all existing employees and to all
36 prospective employees upon application for employment the
37 smoking prohibitions prescribed in this chapter.
38 3. The owner, operator, manager, or other person having
39 custody or control of a public place, place of employment,
40 area declared a nonsmoking place pursuant to section 142D.5,
41 or outdoor area where smoking is prohibited under this chapter
42 shall clearly and conspicuously post in and at every entrance
43 to the public place, place of employment, area declared a
44 nonsmoking place pursuant to section 142D.5, or outdoor area,
45 "no smoking" signs or the international "no smoking" symbol.
46 Additionally, a "no smoking" sign or the international "no
47 smoking" symbol shall be placed in every vehicle that
48 constitutes a public place, place of employment, or area
49 declared a nonsmoking place pursuant to section 142D.5 under
50 this chapter, visible from the exterior of the vehicle. All
51 signs shall contain the telephone number for reporting
52 complaints and the internet site of the department of public
53 health. The owner, operator, manager, or other person having
54 custody or control of the public place, place of employment,
55 area declared a nonsmoking place pursuant to section 142D.5,
56 or outdoor area may use the sample signs provided on the
57 department of public health's internet site, or may use
58 another sign if the contents of the sign comply with the
59 requirements of this subsection.
60 4. The owner, operator, manager, or other person having
61 custody or control of a public place, place of employment,
62 area declared a nonsmoking place pursuant to section 142D.5,
63 or outdoor area where smoking is prohibited under this chapter
64 shall remove all ashtrays from these locations.
65 Sec. 7. NEW SECTION. 142D.7 NONRETIATION == NONWAIVER
66 1 OF RIGHTS.
67 1. A person or employer shall not discharge, refuse to
68 employ, or in any manner retaliate against an employee,
4 applicant for employment, or customer because that employee,
5 applicant, or customer exercises any rights afforded under
6 this chapter, registers a complaint, or attempts to prosecute
7 a violation of this chapter.
8
9 2. An employee who works in a location where an employer
10 allows smoking does not waive or surrender any legal rights
11 the employee may have against the employer or any other
12 person.
13
14 Sec. 8. NEW SECTION. 142D.8 ENFORCEMENT.
15
16 1. This chapter shall be enforced by the department of
17 public health or the department's designee. The department of
18 public health shall adopt rules to administer this chapter,
19 including rules regarding enforcement. The department of
20 public health shall provide information regarding the
21 provisions of this chapter and related compliance issues to
22 employers, owners, operators, managers, and other persons
23 having custody or control of a public place, place of
24 employment, area declared a nonsmoking place pursuant to
25 section 142D.5, or outdoor area where smoking is prohibited,
26 and the general public via the department's internet site.
27 The internet site shall include sample signage and the
28 telephone number for reporting complaints. Judicial
29 magistrates shall hear and determine violations of this
30 chapter.
31
32 2. If a public place is subject to any state or political
33 subdivision inspection process or is under contract with the
34 state or a political subdivision, the person performing the
35 inspection shall assess compliance with the requirements of
36 this chapter and shall report any violations to the department
37 of public health or the department's designee.
38
39 3. An owner, operator, manager, or other person having
40 custody or control of a public place, place of employment,
41 area declared a nonsmoking place pursuant to section 142D.5,
42 or outdoor area regulated under this chapter shall inform
43 persons violating this chapter of the provisions of this
44 chapter.
45
46 4. An employee or private citizen may bring a legal action
47 to enforce this chapter. Any person may register a complaint
48 under this chapter by filing a complaint with the department
49 of public health or the department's designee.
50
51 5. In addition to the remedies provided in this section,
52 the department of public health or the department's designee
53 or any other person aggrieved by the failure of the owner,
54 operator, manager, or other person having custody or control
55 of a public place, place of employment, area declared a
56 nonsmoking place pursuant to section 142D.5, or outdoor area
57 regulated by this chapter to comply with this chapter may seek
58 injunctive relief to enforce this chapter.
59
60 Sec. 9. NEW SECTION. 142D.9 CIVIL PENALTIES.
61
62 1. A person who smokes in an area where smoking is
63 prohibited pursuant to this chapter shall pay a civil penalty
64 pursuant to section 805.8C, subsection 3, paragraph "a", for
65 each violation.
66
67 2. A person who owns, operates, manages, or otherwise has
68 custody or control of a public place, place of employment,
69 area declared a nonsmoking place pursuant to section 142D.5,
70 or outdoor area regulated under this chapter and who fails to
71 comply with this chapter shall pay a civil penalty as follows:
72
73 a. For a first violation, a monetary penalty not to exceed
74 one hundred dollars.
b. For a second violation within one year, a monetary penalty not to exceed two hundred dollars.

c. For each violation in excess of a second violation within one year, a monetary penalty not to exceed five hundred dollars for each additional violation.

3. An employer who discharges or in any manner discriminates against an employee because the employee has made a complaint or has provided information or instituted a legal action under this chapter shall pay a civil penalty of not less than two thousand dollars and not more than ten thousand dollars for each violation.

4. In addition to the penalties established in this section, violation of this chapter by a person who owns, operates, manages, or who otherwise has custody or control of a public place, place of employment, area declared a nonsmoking place pursuant to section 142D.5, or outdoor area regulated under this chapter may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.

5. Violation of this chapter constitutes a public nuisance which may be abated by the department of public health or the department's designee by restraining order, preliminary or permanent injunction, or other means provided by law, and the entity abating the public nuisance may take action to recover the costs of such abatement.

6. Each day on which a violation of this chapter occurs is considered a separate and distinct violation.

7. Civil penalties paid pursuant to this chapter shall be deposited in the general fund of the state, unless a local authority as designated by the department in administrative rules is involved in the enforcement, in which case the civil penalties paid shall be deposited in the general fund of the respective city or county.

Sec. 10. Section 135.1, unnumbered paragraph 1, Code 2007, is amended to read as follows:

For the purposes of chapter 155 and Title IV, subtitle 2, excluding chapters 142B., 145B. and 146, unless otherwise defined:

Sec. 11. Section 135.11, subsection 14, Code Supplement 2007, is amended to read as follows:

14. Establish, publish, and enforce rules not inconsistent with law for the enforcement of the provisions of chapters 125 1 and 155, and Title IV, subtitle 2, excluding chapters 142B., 145B. and 146 and for the enforcement of the various laws, the administration and supervision of which are imposed upon the department.


Sec. 13. NEW SECTION. 237A.3B SMOKING PROHIBITED.

Smoking, as defined in section 142D.2, shall not be permitted in a child care facility or child care home.

Sec. 14. Section 331.427, subsection 1, unnumbered paragraph 1, Code Supplement 2007, is amended to read as follows:

Except as otherwise provided by state law, county revenues from taxes and other sources for general county services shall be credited to the general fund of the county, including revenues received under sections 91.11, 101A.3, 101A.7, 123.36, 123.143, 142B., 142D.9, 176A.8, 321.105, 321.152, 321G.7, 321I.8, section 331.554, subsection 6, sections

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Sec. 15. Section 805.8C, subsection 3, paragraph a, Code Supplement 2007, is amended to read as follows:

a. For violations described in section 142D.9, subsection 1, the scheduled fine is twenty-five fifty dollars, and is a civil penalty, and the criminal penalty surcharge under section 911.1 shall not be added to the penalty, and the court costs pursuant to section 805.9, subsection 6, shall not be imposed. If the civil penalty assessed for a violation described in section 142D.9, subsection 1, is not paid in a timely manner, a citation shall be issued for the violation in the manner provided in section 804.1. However, a person under age eighteen shall not be detained in a secure facility for failure to pay the civil penalty. The complainant shall not be charged a filing fee.

Sec. 16. Chapter 142B, Code 2007, is repealed.

Patrick J. Murphy
Speaker of the House

John P. Kibbie
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2212, Eighty-second General Assembly.

Mark Brandsgard
Chief Clerk of the House

Approved __________, 2008

Chester J. Culver
Governor