

FIRST REGULAR SESSION

HOUSE BILL NO. 438

96TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES SCHUPP (Sponsor), OXFORD, WALTON GRAY, LICHTENEGGER, CARLSON, HUMMEL, LAMPE, NEWMAN, ELLINGER, McNEIL, BLACK, McDONALD, TAYLOR, HARRIS, SMITH (71), PIERSON, SWEARINGEN, MAY, PACE, CARTER, McCANN BEATTY, QUINN, KIRKTON, CURLS, STREAM, STILL AND McNEIL (Co-sponsors).

0104L.01H

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 191.765, 191.767, 191.769, 191.771, 191.773, 191.775, 191.776, and 191.777, RSMo, and to enact in lieu thereof eleven new sections relating to the Missouri indoor clean air act, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 191.765, 191.767, 191.769, 191.771, 191.773, 191.775, 191.776, and 191.777, RSMo, are repealed and eleven new sections enacted in lieu thereof, to be known as sections 191.1200, 191.1203, 191.1206, 191.1209, 191.1212, 191.1215, 191.1218, 191.1221, 191.1224, 191.1227, and 191.1230, to read as follows:

191.1200. As used in sections 191.1200 to 191.1230, the following terms shall mean:

- (1) "Bar", an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of such beverages, including but not limited to taverns, nightclubs, cocktail lounges, and cabarets;
- (2) "Business", a sole proprietorship, partnership, joint venture, corporation, or other business entity, either for-profit or nonprofit, 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;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

11 (3) "Employee", a person who is employed by an employer in consideration for
12 direct or indirect monetary wages or profit, and a person who volunteers his or her
13 services for a nonprofit entity;

14 (4) "Employer", a person, business, partnership, association, corporation including
15 a municipal corporation, trust, or nonprofit entity that employs the services of one or more
16 individual persons;

17 (5) "Enclosed area", all space between a floor and ceiling that is enclosed on all
18 sides by permanent or temporary walls or windows, exclusive of doorways, which extend
19 from the floor to the ceiling;

20 (6) "Health care facility", an office or institution providing care or treatment of
21 diseases, whether physical, mental, or emotional, or other medical, physiological, or
22 psychological conditions, including but not limited to hospitals, rehabilitation hospitals, or
23 other clinics, including weight control clinics, nursing homes, long-term care facilities,
24 homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors,
25 physical therapists, physicians, psychiatrists, dentists, and all specialists within such
26 professions. Health care facility includes all waiting rooms, hallways, private rooms,
27 semiprivate rooms, and wards within such facilities;

28 (7) "Place of employment", an area under the control of a public or private
29 employer that employees normally frequent during the course of employment, including
30 but not limited to work areas, private offices, employee lounges, restrooms, conference
31 rooms, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles. Place of
32 employment does not include a private residence unless it is used as a child care, adult day
33 care, or health care facility;

34 (8) "Playground", any park or recreational area designed in part to be used by
35 children that has play or sports equipment installed or that has been designated or
36 landscaped for play or sports activities, or any similar facility located on public or private
37 school grounds or on city or county grounds;

38 (9) "Private club", a nonprofit association that:

39 (a) Has been in active and continuous existence as a private club for at least three
40 years prior to the effective date of this section, whether incorporated or not;

41 (b) Is the owner, lessee, or occupant of a building or portion thereof used
42 exclusively for club purposes at all times;

43 (c) Is operated solely for a recreational, fraternal, social, patriotic, political,
44 benevolent, or athletic purpose, but not for pecuniary gain; and

45 (d) Only sells alcoholic beverages incidental to its operation.
46

47 Private club includes an organization that is managed by a board of directors, executive
48 committee, or similar body chosen by the members at an annual meeting, has established
49 bylaws, a constitution, or both, to govern its activities, and has been granted an exemption
50 from the payment of federal income taxes as a club under 26 U.S.C. Section 501;

51 (10) "Public place", an enclosed area to which the public is invited or in which the
52 public is permitted, including but not limited to banks, bars, educational facilities, gaming
53 facilities, health care facilities, hotels and motels, laundromats, public transportation
54 vehicles and facilities, reception areas, restaurants, retail food production and marketing
55 establishments, retail service establishments, retail stores, shopping malls, sports arenas,
56 theaters, and waiting rooms. Public place does not include a private residence unless it is
57 used as a child care, adult day care, or health care facility;

58 (11) "Restaurant", an eating establishment, including but not limited to coffee
59 shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives
60 or offers the sale of food to the public, guests, or employees, as well as kitchens and
61 catering facilities in which food is prepared on the premises for serving elsewhere.
62 Restaurant includes a bar area within the restaurant;

63 (12) "Shopping mall", an enclosed public walkway or hall area that serves to
64 connect retail or professional establishments;

65 (13) "Smoking", inhaling, exhaling, burning, or carrying any lighted or heated
66 cigar, cigarette, or pipe in any manner or form;

67 (14) "Sports arena", sports pavilions, stadiums, gymnasiums, health spas, boxing
68 arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places
69 where members of the general public assemble to engage in physical exercise, participate
70 in athletic competition, or witness sports or other events;

71 (15) "Tobacco retail outlet", a business establishment, the primary purpose of
72 which is the sale of tobacco, tobacco products, and accessories for such products, that
73 receives no less than seventy-five percent of its total annual revenues from the sale of
74 tobacco, tobacco products, and accessories for such products, and does not serve food or
75 alcohol on its premises.

191.1203. All enclosed facilities, including buildings and vehicles owned, leased, or
2 operated by governmental entities, shall be subject to the provisions of sections 191.1200
3 to 191.1230.

191.1206. Smoking shall be prohibited in all enclosed public places within the state
2 of Missouri, including but not limited to the following places:

3 (1) Aquariums, galleries, libraries, and museums;

- 4 (2) Areas available to and customarily used by the general public in businesses and
5 nonprofit entities patronized by the public, including but not limited to banks,
6 laundromats, professional offices, and retail service establishments;
- 7 (3) Bars;
- 8 (4) Bingo facilities;
- 9 (5) Child care and adult day care facilities;
- 10 (6) Convention facilities;
- 11 (7) Educational facilities, both public and private;
- 12 (8) Elevators;
- 13 (9) Gaming facilities;
- 14 (10) Health care facilities;
- 15 (11) At least eighty percent of hotel and motel rooms that are rented to guests;
- 16 (12) All common areas including lobbies, hallways in apartment buildings,
17 condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit
18 residential facilities;
- 19 (13) Polling places;
- 20 (14) Private clubs;
- 21 (15) Public transportation vehicles, including buses, trains, and taxicabs, under the
22 authority of an agency, board, commission, committee, or a political subdivision of the
23 state, and ticket, boarding, and waiting areas of public transportation facilities, including
24 bus, train, and airport facilities;
- 25 (16) All private and semiprivate rooms in nursing homes and long-term care
26 facilities;
- 27 (17) Restaurants;
- 28 (18) Retail stores;
- 29 (19) Rooms, chambers, places of meeting or public assembly, including school
30 buildings, under the control of an agency, board, commission, committee, or a political
31 subdivision of this state;
- 32 (20) Shopping malls;
- 33 (21) Sports arenas, including enclosed places in outdoor arenas;
- 34 (22) Theaters and other facilities primarily used for exhibiting motion pictures,
35 stage dramas, lectures, musical recitals, or other similar performances.

191.1209. 1. Smoking shall be prohibited in all enclosed facilities within places of
2 employment without exception, including common work areas, auditoriums, classrooms,
3 conference and meeting rooms, private offices, elevators, hallways, medical facilities,
4 cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.

5 2. The prohibition in subsection 1 of this section shall be communicated to all
6 existing employees by the effective date of this section and to all prospective employees
7 upon their application for employment.

191.1212. Smoking shall be prohibited in the following outdoor places:

2 (1) Within a distance of fifteen feet outside entrances, operable windows, and
3 ventilation systems of enclosed areas where smoking is prohibited, so as to ensure that
4 tobacco smoke does not enter such areas;

5 (2) In all outdoor arenas, stadiums, and amphitheaters. Smoking shall also be
6 prohibited in and within fifteen feet of bleachers and grandstands for use by spectators at
7 sporting and other public events;

8 (3) In and within fifteen feet of all outdoor public transportation stations,
9 platforms, and shelters; and

10 (4) In and within fifteen feet of outdoor playgrounds.

191.1215. Notwithstanding any other provision of law to the contrary, the following
2 areas shall be exempt from the provisions of sections 191.1200 to 191.1230:

3 (1) Private residences, except when used as a child care, adult day care, or health
4 care facility, or as otherwise excepted under sections 191.1200 to 191.1230;

5 (2) Tobacco retail outlets;

6 (3) Not more than twenty percent of hotel and motel rooms rented to guests and
7 designated as smoking rooms. All smoking rooms on the same floor shall be contiguous
8 and smoke from such rooms shall not infiltrate into areas where smoking is prohibited
9 under sections 191.1200 to 191.1230. The status of rooms as smoking or nonsmoking shall
10 not be changed except to add additional nonsmoking rooms; and

11 (4) Outdoor areas of places of employment except those otherwise covered under
12 sections 191.1200 to 191.1230.

191.1218. 1. No smoking signs or the international no smoking symbol, consisting
2 of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar
3 across it, shall be clearly and conspicuously posted in every public place and place of
4 employment where smoking is prohibited under sections 191.1200 to 191.1230 by the
5 owner, operator, manager, or other person in control of such place.

6 2. All ashtrays shall be removed from any area where smoking is prohibited under
7 sections 191.1200 to 191.1230 by the owner, operator, manager, or other person having
8 control of such area.

191.1221. 1. No person or employer shall discharge, refuse to hire, or in any
2 manner retaliate against an employee, applicant for employment, or customer because such
3 employee, applicant, or customer exercises any rights afforded under sections 191.1200 to

4 191.1230, or reports or attempts to prosecute a violation of sections 191.1200 to 191.1230.
5 Any person or employer who violates this section is guilty of a class A misdemeanor.

6 2. Any employee who works in a setting where an employer allows smoking does
7 not waive or otherwise surrender any legal rights the employee may have against the
8 employer or any other party.

191.1224. 1. Sections 191.1200 to 191.1230 shall be enforced by the department of
2 health and senior services or an authorized designee.

3 2. The department of health and senior services, local fire department, or such
4 departments' designees, shall, while an establishment is undergoing otherwise mandated
5 inspections, inspect for compliance with sections 191.1200 to 191.1230.

6 3. An owner, manager, operator, or employee of an establishment regulated under
7 sections 191.1200 to 191.1230 shall inform persons in violation of sections 191.1200 to
8 191.1230 of the appropriate provisions thereof.

9 4. Notwithstanding any other provision of law, an employee or private citizen may
10 bring legal action to enforce sections 191.1200 to 191.1230.

11 5. In addition to the remedies provided under this section, the department of health
12 and senior services or any person aggrieved by the failure of an owner, operator, manager,
13 or other person in control of a public place or place of employment to comply with the
14 provisions of sections 191.1200 to 191.1230 may apply for injunctive relief to enforce such
15 provisions in any court of competent jurisdiction.

191.1227. 1. A person who smokes in an area where smoking is prohibited under
2 sections 191.1200 to 191.1230 is guilty of an infraction.

3 2. A person who owns, operates, manages, or otherwise controls a public place or
4 place of employment and who fails to comply with the provisions of sections 191.1200 to
5 191.1230 is subject to the following fines:

6 (1) For a first violation, a fine not to exceed fifty dollars;

7 (2) For a second violation within one year, a fine not to exceed one hundred dollars;
8 and

9 (3) For a third or subsequent violation within one year, a fine not to exceed five
10 hundred dollars.

11 3. In addition to the fines imposed under this section, a person who owns, operates,
12 manages, or otherwise controls a public place or place of employment who violates sections
13 191.1200 to 191.1230 may have any license issued to such person suspended or revoked.

14 4. Each day on which a violation of sections 191.1200 to 191.1230 occurs shall be
15 considered a separate and distinct violation of sections 191.1200 to 191.1230.

191.1230. 1. Sections 191.1200 to 191.1230 shall not be construed or interpreted to permit smoking where it is otherwise restricted by other applicable laws.

2. Nothing in sections 191.1200 to 191.1230 shall prohibit a political subdivision of this state or a local board of education from enacting more stringent ordinances or rules.

3. The provisions of sections 191.1200 to 191.1230 shall become effective January 2, 2012.

[191.765. As used in sections 191.765 to 191.773 and section 290.145, RSMo, the following terms mean:

(1) "Bar" or "tavern", any licensed establishment which serves liquor on the premises for which not more than ten percent of the gross sales receipts of the business are supplied by food purchases, either for consumption on the premises or elsewhere;

(2) "Other person in charge", the agent of the proprietor authorized to give administrative directions to and general supervision of the activities within the public place, work place or public meeting at any given time;

(3) "Proprietor", the party who ultimately controls, governs or directs the activities within the public place, work place or public meeting, regardless of whether he is the owner or lessor of such place or site. The term does not mean the owner of the property unless he ultimately controls, governs or directs the activities within the public place or public meeting. The term "proprietor" shall apply to a corporation as well as an individual;

(4) "Public meeting", a gathering in person of members of a governmental body, whether an open or closed session, as defined in chapter 610, RSMo;

(5) "Public place", any enclosed indoor area used by the general public or serving as a place of work including, but not limited to:

(a) Any retail or commercial establishments;

(b) Health care facilities, health clinics or ambulatory care facilities including, but not limited to, laboratories associated with health care treatment, hospitals, nursing homes, physicians' offices and dentists' offices;

(c) Any vehicle used for public transportation including, but not limited to, buses, taxicabs and limousines for hire;

(d) Rest rooms;

(e) Elevators;

(f) Libraries, educational facilities, day care facilities, museums, auditoriums and art galleries;

(g) All public areas and waiting rooms of public transportation facilities including, but not limited to, bus and airport facilities;

(h) Any enclosed indoor place used for entertainment or recreation including, but not limited to, gymnasiums, theater lobbies, concert halls, arenas and swimming pools;

36 (i) Any other enclosed indoor areas used by the general public including,
37 but not limited to, corridors and shopping malls;

38 (6) "Restaurant", any building, structure or area used, maintained or
39 advertised as or held out to the public to be an enclosure where meals for
40 consideration of payment are made available to be consumed on the premises;

41 (7) "Smoking", possession of burning tobacco in the form of a cigarette,
42 cigar, pipe or other smoking equipment.]
43

[191.767. 1. A person shall not smoke in a public place or in a public
2 meeting except in a designated smoking area.

3 2. A smoking area may be designated by persons having custody or
4 control of public places, except in places in which smoking is prohibited by the
5 fire marshal or by other law, ordinance or regulation.

6 3. No public place shall have more than thirty percent of its entire space
7 designated as a smoking area.

8 4. A designated smoking area where state employees may smoke during
9 the work day shall be provided by each state executive department and institution
10 of higher education, provided such area can be adequately ventilated at minimum
11 cost, within the physical confines of each facility.

12 5. A proprietor or other person in charge of a restaurant shall designate
13 an area of sufficient size to accommodate usual and customary demand for
14 nonsmoking areas by customers or patrons.]
15

[191.769. The following areas are not considered a public place:

2 (1) An entire room or hall which is used for private social functions,
3 provided that the seating arrangements are under the control of the sponsor of the
4 function and not of the proprietor or other person in charge;

5 (2) Limousines for hire and taxicabs, where the driver and all passengers
6 agree to smoking in such vehicle;

7 (3) Performers on the stage, provided that the smoking is part of the
8 production;

9 (4) A place where more than fifty percent of the volume of trade or
10 business carried on is that of the blending of tobaccos or sale of tobaccos,
11 cigarettes, pipes, cigars or smoking sundries;

12 (5) Bars, taverns, restaurants that seat less than fifty people, bowling
13 alleys and billiard parlors, which conspicuously post signs stating that
14 "Nonsmoking Areas are Unavailable";

15 (6) Private residences; and

16 (7) Any enclosed indoor arena, stadium or other facility which may be
17 used for sporting events and which has a seating capacity of more than fifteen
18 thousand persons.]
19

[191.771. The person having custody or control of a public place or public meeting shall:

(1) Make reasonable efforts to prevent smoking in the public place or public meeting by posting appropriate signs indicating no-smoking or smoking area and arrange seating accordingly. These signs shall be placed at a height and location easily seen by a person entering the public place or public meeting and not obscured in any way;

(2) Arrange seating and utilize available ventilation systems and physical barriers to isolate designated smoking areas;

(3) Make a reasonable request of persons smoking to move to a designated smoking area;

(4) Allow smoking in designated areas of theater lobbies only.]

[191.773. The following persons shall be guilty of an infraction:

(1) A person who smokes in those areas where smoking is prohibited pursuant to the provisions of sections 191.765 to 191.773 and section 290.145, RSMo;

(2) A proprietor or other person in charge of a public place or public meeting who permits, causes, suffers or allows a person to smoke in those areas where smoking is prohibited pursuant to sections 191.765 to 191.773 and section 290.145, RSMo.]

[191.775. No person shall smoke or otherwise use tobacco or tobacco products in any indoor area of a public elementary or secondary school building or educational facility, excluding institutions of higher education, or on buses used solely to transport students to or from school or to transport students to or from any place for educational purposes. Any school board of any school district may set policy on the permissible uses of tobacco products in any other nonclassroom or nonstudent occupant facility, and on the school grounds or outdoor facility areas as the school board deems proper. Any person who violates the provisions of this section shall be guilty of an infraction.]

[191.776. No person shall smoke or otherwise use tobacco products in any area of a child care facility licensed by the department of health and senior services pursuant to the provisions of sections 210.201 to 210.245, RSMo, during the period of time when the children cared for under that license are present. Any person who violates the provisions of this section shall be guilty of an infraction.]

[191.777. Nothing in sections 191.775 and 191.776 shall prohibit local political subdivisions or local boards of education from enacting more stringent ordinances or rules.]