

SECOND REGULAR SESSION

SENATE BILL NO. 904

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR BRAY.

Read 1st time February 8, 2010, and ordered printed.

TERRY L. SPIELER, Secretary.

4929S.011

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Section A. Sections 191.765, 191.767, 191.769, 191.771, 191.773, 191.775, 191.776, and 191.777, RSMo, are repealed and eleven new sections enacted in lieu thereof, to be known as sections 191.1200, 191.1203, 191.1206, 191.1209, 191.1212, 191.1215, 191.1218, 191.1221,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

(3) "Employee", a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

16 person who volunteers his or her services for a nonprofit entity;

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

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

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

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

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

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

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

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

51 (c) Is operated solely for a recreational, fraternal, social,
52 patriotic, political, benevolent, or athletic purpose, but not for

53 **pecuniary gain; and**

54 **(d) Only sells alcoholic beverages incidental to its operation.**

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

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

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

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

77 **(13) "Smoking", inhaling, exhaling, burning, heating, or carrying**
78 **any lighted or heated cigar, cigarette, pipe or hookah waterpipe in any**
79 **manner or form;**

80 **(14) "Sports arena", sports pavillions, stadiums, gymnasiums,**
81 **health spas, boxing arenas, swimming pools, roller and ice rinks,**
82 **bowling alleys, and other similar places where members of the general**
83 **public assemble to engage in physical exercise, participate in athletic**
84 **competition, or witness sports or other events;**

85 **(15) "Tobacco retail outlet", a business establishment, the**
86 **primary purpose of which is the sale of tobacco, tobacco products, and**
87 **accessories for such products, that receives no less than seventy-five**
88 **percent of its total annual revenues from the sale of tobacco, tobacco**
89 **products, and accessories for such products, and does not serve food or**

90 alcohol on its premises.

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

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

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

34 including school buildings, under the control of an agency, board,
35 commission, committee, or a political subdivision of this state;

36 (20) Shopping malls;

37 (21) Sports arenas, including enclosed places in outdoor arenas;

38 (22) Theaters and other facilities primarily used for exhibiting
39 motion pictures, stage dramas, lectures, musical recitals, or other
40 similar performances.

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

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

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

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

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

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

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

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

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

7 (2) Tobacco retail outlets;

8 (3) Not more than twenty percent of hotel and motel rooms

9 rented to guests and designated as smoking rooms. All smoking rooms
10 on the same floor shall be contiguous and smoke from such rooms shall
11 not infiltrate into areas where smoking is prohibited under sections
12 191.1200 to 191.1230. The status of rooms as smoking or nonsmoking
13 shall not be changed except to add additional nonsmoking rooms; and
14 (4) Outdoor areas of places of employment except those
15 otherwise covered under sections 191.1200 to 191.1230.

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

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

191.1221. 1. No person or employer shall discharge, refuse to
2 hire, or in any manner retaliate against an employee, applicant for
3 employment, or customer because such employee, applicant, or
4 customer exercises any rights afforded under sections 191.1200 to
5 191.1230, or reports or attempts to prosecute a violation of sections
6 191.1200 to 191.1230. Any person or employer who violates this section
7 is guilty of a class A misdemeanor.

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

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

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

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

11 4. Notwithstanding any other provision of law, an employee or

12 private citizen may bring legal action to enforce sections 191.1200 to
13 191.1230.

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

20 191.1227. 1. A person who smokes in an area where smoking is
21 prohibited under sections 191.1200 to 191.1230 is guilty of an infraction.

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

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

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

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

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

35 4. Each day on which a violation of sections 191.1200 to 191.1230
36 occurs shall be considered a separate and distinct violation of sections
37 191.1200 to 191.1230.

38 191.1230. 1. Sections 191.1200 to 191.1230 shall not be construed
39 or interpreted to permit smoking where it is otherwise restricted by
40 other applicable laws.

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

44 3. The provisions of sections 191.1200 to 191.1230 shall become
45 effective January 2, 2011.

46 [191.765. As used in sections 191.765 to 191.773 and
47 section 290.145, RSMo, the following terms mean:

48 (1) "Bar" or "tavern", any licensed establishment which

4 serves liquor on the premises for which not more than ten percent
5 of the gross sales receipts of the business are supplied by food
6 purchases, either for consumption on the premises or elsewhere;

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

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

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

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

24 (a) Any retail or commercial establishments;

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

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

31 (d) Rest rooms;

32 (e) Elevators;

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

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

38 (h) Any enclosed indoor place used for entertainment or
39 recreation including, but not limited to, gymnasiums, theater

40 lobbies, concert halls, arenas and swimming pools;

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

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

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

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

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

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

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

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

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

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

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

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

11 (4) A place where more than fifty percent of the volume of

12 trade or business carried on is that of the blending of tobaccos or
13 sale of tobaccos, cigarettes, pipes, cigars or smoking sundries;

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

17 (6) Private residences; and

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

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

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

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

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

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

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

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

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

[191.775. No person shall smoke or otherwise use tobacco
2 or tobacco products in any indoor area of a public elementary or
3 secondary school building or educational facility, excluding
4 institutions of higher education, or on buses used solely to

5 transport students to or from school or to transport students to or
6 from any place for educational purposes. Any school board of any
7 school district may set policy on the permissible uses of tobacco
8 products in any other nonclassroom or nonstudent occupant facility,
9 and on the school grounds or outdoor facility areas as the school
10 board deems proper. Any person who violates the provisions of this
11 section shall be guilty of an infraction.]

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

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

Bill ✓

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