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LOCAL GOVERNMENT

SENATE FILE 2136
BY McCOY

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to establishing smokefree public places and
2 workplaces, and providing penalties.

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

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LOCAL GOVERNMENT

SF 2136

1 Section 1. NEW SECTION. 142D.1 TITLE -- FINDINGS --
2 PURPOSE.

3 1. This chapter shall be known and may be cited as the
4 "Smokefree Public Places and Workplace Safety Act".

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

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

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

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

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

21 2. "Employee" means a person who is employed by an
22 employer in consideration for direct or indirect monetary
23 wages or profit, and a person who volunteers for a nonprofit
24 entity.

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

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

35 5. "Environmental tobacco smoke" means the mixture formed

1 from the escaping smoke of a burning tobacco product and the
2 smoke exhaled by the smoker.

3 6. "Health care provider location" means an office or
4 institution providing care or treatment of disease whether
5 physical, mental, or emotional, or other medical,
6 physiological, or psychological conditions, including but not
7 limited to a hospital as defined in section 135B.1, a health
8 care facility as defined in section 135C.1, an elder group
9 home as defined in section 231B.1, an assisted living program
10 as defined in section 231C.2, an adult day services program as
11 defined in section 231D.1, clinics, laboratories, and the
12 locations of professionals regulated pursuant to Title IV,
13 subtitle III, and includes all enclosed areas of the location
14 including waiting rooms, hallways, other common areas, private
15 rooms, semiprivate rooms, and wards within the location.

16 7. "Long-term care facility" means a health care facility
17 as defined in section 135C.1, an elder group home as defined
18 in section 231B.1, and an assisted living program as defined
19 in section 231C.2.

20 8. "Place of employment" means an area under the control
21 of a public or private employer and includes all areas that an
22 employee frequents during the course of employment, including
23 but not limited to work areas, private offices, conference and
24 meeting rooms, classrooms, auditoriums, employee lounges and
25 cafeterias, hallways, restrooms, elevators, stairways, and
26 vehicles. "Place of employment" does not include a private
27 residence, unless the private residence is used as a child
28 care facility, a child care home, or as a health care provider
29 location.

30 9. "Political subdivision" means a city, county, township,
31 or school district.

32 10. "Private club" means an organization, whether or not
33 incorporated, which is the owner, lessee, or occupant of a
34 location used exclusively for club purposes at all times and
35 which meets all of the following criteria:

- 1 a. Is operated solely for a recreational, fraternal,
2 social, patriotic, political, benevolent, or athletic purpose,
3 but not for pecuniary gain.
- 4 b. Sells alcoholic beverages only as incidental to its
5 operation.
- 6 c. Is managed by a board of directors, executive
7 committee, or similar body chosen by the members.
- 8 d. Has established bylaws or another document to govern
9 its activities.
- 10 e. Has been granted an exemption from the payment of
11 federal income tax as a club pursuant to 26 U.S.C. § 501.
- 12 11. "Public place" means an enclosed area to which the
13 public is invited or in which the public is permitted,
14 including but not limited to all of the following:
 - 15 a. Banks.
 - 16 b. Child care facilities, child care homes, and child
17 development homes.
 - 18 c. Public and private educational facilities and places of
19 public assembly in indoor locations under the control of the
20 state or its political subdivisions.
 - 21 d. Health care provider locations.
 - 22 e. Hotel and motel lobbies.
 - 23 f. Laundromats.
 - 24 g. Public transportation facilities and conveyances with
25 departures, travel, and destination entirely within this
26 state, including buses, vans, trains, taxicabs, and
27 limousines, and private vehicles used to transport children or
28 adults as part of health care provider location
29 transportation, or child care facility or child care home
30 transportation.
 - 31 h. Reception areas, lobbies, hallways, restrooms,
32 elevators, stairwells, and other common areas in any public
33 place, including in multiunit residential properties.
 - 34 i. Restaurants and bars.
 - 35 j. Retail food production and marketing establishments.

- 1 k. Retail service establishments.
- 2 l. Shopping malls, retail stores, and grocery stores.
- 3 m. Elevators.
- 4 n. Aquariums, galleries, libraries, and museums.
- 5 o. Public buildings, including all buildings owned or
6 operated by state government or a political subdivision.
- 7 p. Entertainment venues, including theaters, auditoriums,
8 concert halls, convention facilities and meeting rooms, bingo
9 facilities, and indoor arenas including sports arenas.
- 10 q. Polling places.
- 11 r. Private clubs when being used for a function to which
12 the general public is invited.
- 13 s. Service lines.
- 14 t. Other commercial establishments and locations.
- 15 12. "Restaurant" means eating establishments, including
16 private and public school cafeterias, which offer food to the
17 public, guests, or employees, including the kitchen and
18 catering facilities in which food is prepared on the premises
19 for serving elsewhere, and including a bar area within a
20 restaurant.
- 21 13. "Retail tobacco store" means a retail store utilized
22 primarily for the sale of tobacco products and accessories and
23 in which the sale of other products is incidental to the sale
24 of tobacco products.
- 25 14. "Service line" means an indoor line in which one or
26 more individuals are waiting for or receiving service of any
27 kind, whether or not the service involves the exchange of
28 money.
- 29 15. "Shopping mall" means an enclosed public walkway or
30 hall area that serves to connect retail or professional
31 establishments.
- 32 16. "Smoking" means inhaling, exhaling, burning, or
33 carrying any lighted cigar, cigarette, pipe, or other tobacco
34 product in any manner or in any form.
- 35 17. "Sports arena" means a sports pavilion, stadium,

1 gymnasium, health spa, boxing arena, swimming pool, roller or
2 ice rink, bowling alley, and other similar places where
3 members of the general public assemble to engage in physical
4 exercise, participate in athletic competition, or witness
5 sports or other events.

6 Sec. 3. NEW SECTION. 142D.3 PROHIBITION OF SMOKING --
7 PUBLIC PLACES, PLACES OF EMPLOYMENT, AND OUTDOOR ARENAS AND
8 THEATERS -- SURROUNDING AREA.

9 1. Smoking is prohibited and a person shall not smoke in
10 any of the following:

- 11 a. Public places.
- 12 b. All enclosed locations within places of employment.
- 13 c. Outdoor sports arenas and other entertainment venues
14 where members of the general public assemble to witness
15 entertainment events.

16 2. In addition to the prohibitions specified in subsection
17 1, smoking is prohibited within fifty feet of any enclosed
18 area where smoking is prohibited in order to insure that
19 tobacco smoke does not enter that area through entrances,
20 windows, ventilation systems, or other means.

21 Sec. 4. NEW SECTION. 142D.4 AREAS WHERE SMOKING NOT
22 REGULATED.

23 Notwithstanding any provision of this chapter to the
24 contrary, the following areas are exempt from the prohibitions
25 of section 142D.3:

- 26 1. Private residences, unless used as a child care
27 facility, child care home, or a health care provider location.
- 28 2. Hotel and motel rooms that are rented to guests and are
29 designated as smoking rooms; provided that not more than
30 twenty percent of the rooms of the hotel or motel rented to
31 guests are designated as smoking rooms, all smoking rooms on
32 the same floor are contiguous, and smoke from smoking rooms
33 does not infiltrate into areas in which smoking is otherwise
34 prohibited under this chapter.
- 35 3. Retail tobacco stores, provided that smoke from these

1 locations does not infiltrate into areas in which smoking is
2 otherwise prohibited under this chapter.

3 4. Private and semiprivate rooms in long-term care
4 facilities, occupied by one or more individuals, all of whom
5 are smokers and have requested in writing to be placed in a
6 room where smoking is permitted, provided that smoke from
7 these locations does not infiltrate into areas in which
8 smoking is otherwise prohibited under this chapter.

9 5. Private clubs that have no employees, except when being
10 used for a function to which the general public is invited.

11 6. Outdoor areas that are places of employment except
12 those areas where smoking is prohibited pursuant to section
13 142D.3, subsection 1, paragraph "c", and section 142D.3,
14 subsection 2.

15 7. Limousines under private hire.

16 8. An enclosed indoor workplace if the smoking is an
17 integral part of a smoking cessation program or a medical or
18 scientific research program.

19 Sec. 5. NEW SECTION. 142D.5 DECLARATION OF ESTABLISHMENT
20 AS NONSMOKING.

21 1. Notwithstanding any provision of this chapter to the
22 contrary, an owner, operator, manager, or other person having
23 custody or control of an establishment, facility, or outdoor
24 area may declare the entire establishment, facility, or
25 outdoor area as a nonsmoking place.

26 2. Smoking shall be prohibited in any location under this
27 section declared a nonsmoking place in which a sign is posted
28 conforming to the provisions of section 142D.6.

29 Sec. 6. NEW SECTION. 142D.6 NOTICE OF NONSMOKING
30 REQUIREMENTS -- POSTING OF SIGNS.

31 1. Notice of the provisions of this chapter shall be
32 provided to all applicants for a business license in the
33 state, to all law enforcement agencies, and to any business
34 required to be registered with the office of the secretary of
35 state.

1 2. All employers subject to the prohibitions of this
2 chapter shall communicate to all existing employees and to all
3 prospective employees upon application for employment the
4 smoking prohibitions prescribed in this chapter.

5 3. The owner, operator, manager, or other person having
6 custody over or in control of a public place or place of
7 employment where smoking is prohibited under this chapter
8 shall clearly and conspicuously post in and at every entrance
9 to the public place or place of employment "no smoking" signs
10 or the international "no smoking" symbol.

11 4. The owner, operator, manager, or other person having
12 custody or control of a public place or place of employment
13 where smoking is prohibited under this chapter shall remove
14 all ashtrays from these locations.

15 Sec. 7. NEW SECTION. 142D.7 NONRETALIATION -- NONWAIVER
16 OF RIGHTS.

17 1. A person or employer shall not discharge, refuse to
18 employ, or in any manner retaliate against an employee,
19 applicant for employment, or customer because that employee,
20 applicant, or customer exercises any rights afforded under
21 this chapter, registers a complaint, or attempts to prosecute
22 a violation of this chapter.

23 2. An employee who works in a location where an employer
24 allows smoking does not waive or surrender any legal rights
25 the employee may have against the employer or any other
26 person.

27 Sec. 8. NEW SECTION. 142D.8 ENFORCEMENT.

28 1. This chapter shall be enforced by local boards of
29 health. The Iowa department of public health shall adopt
30 rules to administer this chapter, including rules regarding
31 enforcement. Judicial magistrates shall hear and determine
32 violations of this chapter.

33 2. If a public place is subject to any state or political
34 subdivision inspection process or is under contract with the
35 state or a political subdivision, the person performing the

1 inspection shall assess compliance with the requirements of
2 this chapter and shall report any violations to the local
3 board of health.

4 3. An owner, operator, manager, or other person having
5 custody or control of a public place or place of employment
6 regulated under this chapter shall inform persons violating
7 this chapter of the appropriate provisions of this chapter.

8 4. An employee or private citizen may bring legal action
9 to enforce this chapter. Any person may register a complaint
10 under this chapter by filing a complaint with the Iowa
11 department of public health, or a local board of health.

12 5. In addition to the remedies provided in this section,
13 the local board of health or any other person aggrieved by the
14 failure of the owner, operator, manager, or other person
15 having custody or control of a public place or place of
16 employment to comply with this chapter may seek injunctive
17 relief to enforce this chapter.

18 Sec. 9. NEW SECTION. 142D.9 CIVIL PENALTIES.

19 1. A person who smokes in an area where smoking is
20 prohibited pursuant to this chapter shall pay a civil penalty
21 pursuant to section 805.8C, subsection 3, paragraph "a", for
22 each violation.

23 2. A person who owns, manages, operates, or otherwise has
24 custody or control of a public place or place of employment
25 and who fails to comply with this chapter shall pay a civil
26 penalty as follows:

27 a. For a first violation, a monetary penalty not to exceed
28 one hundred dollars.

29 b. For a second violation within one year, a monetary
30 penalty not to exceed two hundred dollars.

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

34 3. An employer who discharges or in any manner
35 discriminates against an employee because the employee has

1 made a complaint or has provided information or instituted a
2 legal action under this chapter shall pay a civil penalty of
3 not less than two thousand dollars nor more than ten thousand
4 dollars for each violation.

5 4. In addition to the penalties established in this
6 section, violation of this chapter by a person who owns,
7 manages, operates, or who otherwise has custody or control of
8 a public place or place of employment may result in the
9 suspension or revocation of any permit or license issued to
10 the person for the premises on which the violation occurred.

11 5. Violation of this chapter constitutes a public nuisance
12 which may be abated by the Iowa department of public health or
13 a local board of health by restraining order, preliminary or
14 permanent injunction, or other means provided by law, and the
15 entity abating the public nuisance may take action to recover
16 the costs of such abatement.

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

19 7. Civil penalties paid pursuant to this chapter shall be
20 deposited in the county treasury.

21 Sec. 10. NEW SECTION. 142D.10 PUBLIC EDUCATION.

22 The Iowa department of public health shall provide a
23 program to educate employers, owners, operators, managers, and
24 others having custody or control of a public place or a place
25 of employment and the general public regarding the provisions
26 of and compliance with this chapter. The education program
27 may include the publication of a written document regarding
28 the provisions of and compliance with this chapter.

29 Sec. 11. NEW SECTION. 142D.11 INTERPRETATION --
30 APPLICATION.

31 1. This chapter shall not be interpreted or construed to
32 permit smoking where smoking is otherwise restricted or
33 prohibited by other applicable laws.

34 2. This chapter shall not be interpreted to prevent
35 political subdivisions from adopting ordinances or regulations

1 which are more restrictive than the provisions of this
2 chapter.

3 Sec. 12. Section 135.1, unnumbered paragraph 1, Code 2005,
4 is amended to read as follows:

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

8 Sec. 13. Section 135.11, subsection 14, Code Supplement
9 2005, is amended to read as follows:

10 14. Establish, publish, and enforce rules not inconsistent
11 with law for the enforcement of the provisions of chapters 125
12 and 155, and Title IV, subtitle 2, excluding chapters ~~142B~~,
13 142D, 145B, and 146 and for the enforcement of the various
14 laws, the administration and supervision of which are imposed
15 upon the department.

16 Sec. 14. Section 237A.3A, subsection 5, Code 2005, is
17 amended to read as follows:

18 5. Smoking, as defined in section ~~142B.1~~, 142D.2, shall
19 not be permitted during a child development home's hours of
20 operation in an area of the child development home which may
21 be used by the children receiving child care.

22 Sec. 15. Section 331.427, subsection 1, unnumbered
23 paragraph 1, Code Supplement 2005, is amended to read as
24 follows:

25 Except as otherwise provided by state law, county revenues
26 from taxes and other sources for general county services shall
27 be credited to the general fund of the county, including
28 revenues received under sections 9I.11, 101A.3, 101A.7,
29 123.36, 123.143, ~~142B.6~~, 142D.9, 176A.8, 321.105, 321.152,
30 321G.7, 321I.8, section 331.554, subsection 6, sections
31 341A.20, 364.3, 368.21, 423A.7, 428A.8, 430A.3, 433.15,
32 434.19, 445.57, 453A.35, 458A.21, 483A.12, 533.24, 556B.1,
33 583.6, 602.8108, 904.908, and 906.17, and the following:

34 Sec. 16. Section 805.8C, subsection 3, paragraph a, Code
35 Supplement 2005, is amended to read as follows:

1 a. For violations ~~of section 142B-6~~ described in section
2 142D.9, subsection 1, the scheduled fine is ~~twenty-five~~ fifty
3 dollars, and is a civil penalty, and the criminal penalty
4 surcharge under section 911.1 shall not be added to the
5 penalty, and the court costs pursuant to section 805.9,
6 subsection 6, shall not be imposed. If the civil penalty
7 assessed for a violation ~~of~~ described in section ~~142B-6~~
8 142D.9, subsection 1, is not paid in a timely manner, a
9 citation shall be issued for the violation in the manner
10 provided in section 804.1. However, a person under age
11 eighteen shall not be detained in a secure facility for
12 failure to pay the civil penalty. The complainant shall not
13 be charged a filing fee.

14 Sec. 17. Chapter 142B, Code 2005, is repealed.

15

EXPLANATION

16 This bill creates a new Code chapter 142D, the "Smokefree
17 Public Places and Workplace Safety Act". The bill provides
18 findings relating to environmental tobacco smoke, and the
19 purpose of the new chapter which is to reduce the level of
20 exposure by the general public and employees to environmental
21 tobacco smoke in order to improve the public health of Iowans.

22 The bill provides definitions, including definitions of
23 "public place" and "place of employment".

24 The bill prohibits smoking in public places, all enclosed
25 locations within places of employment, and outdoor sports
26 arenas and other entertainment venues where members of the
27 general public assemble to witness entertainment events. In
28 addition, smoking is prohibited within 50 feet of any enclosed
29 area where smoking is prohibited in order to ensure that
30 tobacco smoke does not enter that area through entrances,
31 windows, ventilation systems, or other means.

32 Smoking is not regulated in private residences, unless used
33 as a child care facility, child care home, child development
34 home, or a health care provider location; hotel and motel
35 rooms which meet certain specifications; retail tobacco

1 stores; private and semiprivate rooms in long-term care
2 facilities under certain conditions; private clubs; outdoor
3 areas that are places of employment, with some exceptions;
4 limousines under private hire; and enclosed indoor workplaces
5 if the smoking is an integral part of a smoking cessation
6 program or a medical or scientific research program.

7 Additionally, an owner, operator, manager, or other person
8 having custody or control of an establishment, facility, or
9 outdoor area may declare the entire establishment, facility,
10 or outdoor area as a nonsmoking place.

11 The bill requires notice of the provisions of the Code
12 chapter to be provided to all applicants for a business
13 license in the state, to all law enforcement agencies, and to
14 any business required to be registered with the office of the
15 secretary of state; that all employers subject to the
16 prohibitions of the Code chapter communicate to all existing
17 employees and to all prospective employees upon application
18 for employment the smoking prohibitions prescribed in the Code
19 chapter; that the owner, operator, manager, or other person in
20 custody or control of each public place or place of employment
21 where smoking is prohibited under the Code chapter clearly and
22 conspicuously post in and at every entrance to the location
23 "no smoking" signs or the international "no smoking" symbol;
24 and that the owner, operator, manager, or other person having
25 custody or control of each public place or place of employment
26 where smoking is prohibited under the Code chapter remove all
27 ashtrays from these locations.

28 The bill prohibits a person or employer from discharging,
29 refusing to employ, or in any manner retaliating against an
30 employee, applicant for employment, or customer because that
31 employee, applicant, or customer exercises any rights afforded
32 under the Code chapter, registers a complaint, or attempts to
33 prosecute a violation of the chapter.

34 The Code chapter is to be enforced by local boards of
35 health which are county, city, or district boards of health

1 under Code chapter 137. The Iowa department of public health
2 is required to adopt rules to administer the Code chapter.
3 Judicial magistrates are to hear and determine violations of
4 this chapter. If a public place is subject to any state or
5 political subdivision inspection process or is under contract
6 with the state or a political subdivision, the person
7 performing the inspection is required to assess compliance
8 with the requirements of this Code chapter and report
9 violations to the local board of health. The bill requires an
10 owner, operator, manager, or other person having custody or
11 control of a public place or place of employment regulated
12 under the Code chapter to inform persons violating this Code
13 chapter of the appropriate provisions. The bill authorizes an
14 employee or private citizen to bring legal action to enforce
15 the Code chapter and any person may register a complaint under
16 the Code chapter by filing a complaint with the Iowa
17 department of public health, or a local board of health. In
18 addition to other remedies, the county or local board of
19 health or any other person aggrieved by the failure of the
20 owner, operator, manager, or other person having custody or
21 control of a public place or place of employment to comply
22 with the Code chapter may seek injunctive relief to enforce
23 the Code chapter.

24 The bill provides civil penalties for violations of the
25 Code chapter. A person who smokes in an area where smoking is
26 prohibited is required to pay a civil penalty of \$50 for each
27 violation. A person who owns, manages, operates, or otherwise
28 has custody or control of a public place or place of
29 employment and who fails to comply with the Code chapter is
30 required to pay a civil penalty as follows: for a first
31 violation, a monetary penalty not to exceed \$100; for a second
32 violation within one year, a monetary penalty not to exceed
33 \$200; and for each violation in excess of a second violation
34 within one year, a monetary penalty not to exceed \$500 for
35 each additional violation. An employer who discharges or in

1 any manner discriminates against an employee because that
2 employee has made a complaint or has provided information or
3 instituted a legal action under the Code chapter is required
4 to pay a civil penalty of not less than \$2,000 nor more than
5 \$10,000 for each violation. Civil penalties are to be
6 deposited in the county treasury. In addition to the
7 penalties, violation of the Code chapter by a person who owns,
8 manages, operates, or who otherwise has custody or control of
9 a public place or place of employment may result in the
10 suspension or revocation of any permit or license issued to
11 the person for the premises on which the violation occurred.

12 Under the bill, a violation of the Code chapter constitutes
13 a public nuisance which may be abated by the Iowa department
14 of public health or a local board of health by restraining
15 order, preliminary or permanent injunction, or other means
16 provided by law, and the entity abating the public nuisance
17 may take action to recover the costs of such abatement. Each
18 day on which a violation of the Code chapter occurs is
19 considered a separate and distinct violation.

20 The bill directs the Iowa department of public health to
21 provide a program to educate employers, owners, operators,
22 managers, and others having custody or control of a public
23 place or a place of employment and the general public
24 regarding the provisions of and compliance with the Code
25 chapter.

26 The bill provides that the Code chapter is not to be
27 interpreted or construed to permit smoking where smoking is
28 otherwise restricted or prohibited by other applicable laws
29 and the Code chapter is not to be interpreted to prevent
30 political subdivisions from adopting ordinances or regulations
31 which are more restrictive than the provisions of this Code
32 chapter.

33 The bill repeals existing Code chapter 142B relating to
34 smoking prohibitions and makes conforming changes throughout
35 the Code.