



BILL AND AMENDMENT SUMMARY

HF 2212 Smoke Free Air Act

Status of Bill: House Calendar
Committee: Commerce (passed 16-6)
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LEGISLATIVE FINDINGS: Environmental tobacco smoke causes and exacerbates disease in nonsmoking adults and children sufficient to warrant regulation of smoking in places of employment and public places in order to protect the health of employees and the general public.

PLACES WHERE SMOKING PROHIBITED: Enclosed areas of places of employment and public places, as well as in certain outdoor areas.

1. "Smoking" is defined as inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or other tobacco product in any manner or in any form, except smoking associated with a recognized religious ceremony, ritual, or activity, including but not limited to burning of incense.
2. "Enclosed area" is defined as the space between the floor and ceiling with solid walls or windows on all sides, except doorways, extending from the floor to the ceiling.

PLACES OF EMPLOYMENT: Areas under an employer's control including areas frequented by an employee or volunteer, including but not limited to work areas, private offices, conference and meeting rooms, classrooms, auditoriums, employee lounges and cafeterias, hallways, restrooms, elevators, stairways, and vehicles owned, leased, or provided by the employer.

1. "Employee" is defined as person employed for direct or indirect monetary wages or profit, or a person who provides services to an employer on a voluntary basis.
2. "Employer" is defined as any for-profit or nonprofit business, including state government and its political subdivisions, that has one or more employees. "Political subdivision" is defined as a city, county, township, or school district.
3. "Business" is defined as any for-profit or nonprofit entity, including retailers, professional corporations and entities where legal, medical, dental, engineering, architectural, or other professional services are delivered; and private clubs.
4. "Private club" is defined as an organization, incorporated or not, that owns, leases, or occupies a location used exclusively for club purposes at all times and:
 - Is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain.
 - Sells alcoholic beverages only as incidental to its operation.
 - Is managed by a board of directors, executive committee, or similar body chosen by the members.
 - Has established bylaws or another document to govern its activities.
 - Has been granted a federal income tax exemption.
5. "Bar" is a place where one may buy alcoholic beverages for on-premise consumption in which serving of food is incidental to alcoholic beverage consumption.
6. "Restaurant" is defined as an eating establishment offering food to the public, guests, or employees, including private and public school cafeterias. It includes kitchen and catering facilities where food is prepared for serving elsewhere and includes a bar area within a restaurant.

7. Smoking Also Prohibited Within 50 feet of any entrance, operable windows, or ventilation system.
8. Certain Vehicles Exempt: Although smoking is generally prohibited in vehicles owned, leased, or provided by an employer. Smoking is permitted in vehicles provided by a private employer for the sole use of the driver and not used by more than one person as a driver or passenger during employment; limousines under private hire; privately owned vehicles not defined as a place of employment or public place; and motor truck cabs or truck tractors if no nonsmoking employee is present.
9. This does not include a private residence, unless used as a child care facility, a child care home, or health care provider location. "Health care provider location" is defined as an office or institution providing physical, mental, emotional, or other medical care or treatment of physical, mental or emotional disease, or other medical, physiological, or psychological conditions, including all enclosed areas including waiting rooms, hallways, other common areas, private rooms, semiprivate rooms, and wards within the location.

PUBLIC PLACES: Smoking is prohibited in an enclosed area to which the public is invited or permitted, including common areas:

1. "Enclosed area" is defined as the space between the floor and ceiling with solid walls or windows on all sides, except doorways, extending from the floor to the ceiling.
2. "Common area" is defined as a reception area, lobby, hallway, restroom, elevator, stairwell, common use area of a multiunit residence, or other area to which the public is invited or permitted.
3. Smoking Also Prohibited Within 50 feet of any entrance, operable windows, or ventilation system.
4. A public place includes, but is not limited to:
 - Aquariums, galleries, libraries, and museums.
 - Child care facilities and child care homes.
 - Convention facilities and meeting rooms.
 - Educational facilities whether public or private.
 - Entertainment venues including but not limited to theaters; concert halls; auditoriums and other facilities primarily used for motion pictures, stage performances, lectures, musical recitals, and other similar performances; bingo facilities; and indoor arenas including sports arenas.
 - Financial institutions.
 - Health care provider locations, defined as an office or institution providing physical, mental emotional, or other medical care or treatment of physical, mental or emotional disease, or other medical, physiological, or psychological conditions, including all enclosed areas including waiting rooms, hallways, other common areas, private rooms, semiprivate rooms, and wards within the location.
 - Hotels and motels.
 - Laundromats.
 - Polling places.
 - Public buildings and places of public assembly owned, leased, or operated by or under the control of the state government or its political subdivisions. "Political subdivision" is defined as a city, county, township, or school district.
 - Public transit facilities and conveyances under authority of the state or its political subdivisions, including buses and taxicabs, and including the ticketing, boarding, and waiting areas of these facilities.
 - Reception areas.
 - Restaurants and bars.
 - Retail stores or service establishments and retail food production and marketing establishments, including a shopping mall, defined as an enclosed public walkway or hall area that connects retail or professional establishments.
 - Service lines, which are defined as an indoor line in which one or more individuals are waiting for or receiving service of any kind, whether or not the service involves the exchange of money.
 - Sports arenas, defined as a sports pavilion, stadium, gymnasium, health spa, boxing arena, swimming pool, roller or ice rink, bowling alley, or other similar place where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.
 - Private clubs only when being used for a function to which the general public is invited. "Private club" is defined as an organization, incorporated or not, that owns, leases, or occupies a location used exclusively for club purposes at all times and:

- Is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain.
- Sells alcoholic beverages only as incidental to its operation.
- Is managed by a board of directors, executive committee, or similar body chosen by the members.
- Has established bylaws or another document to govern its activities.
- Has been granted a federal income tax exemption.
- Waiting rooms.

OUTDOOR AREAS:

1. Outdoor sports arenas, stadiums, amphitheaters and other entertainment venues, except in designated perimeter areas at least 20 feet from any seating areas or concession stands.
2. Outdoor restaurant seating or serving areas and within 20 feet of such areas.
3. Outside a place of employment or public place within 50 feet of any entrance, operable windows, or ventilation system of a public place or place of employment.
4. Public transit stations, platforms, and shelters under the authority of the state or its political subdivisions.
5. On school grounds, including parking lots, athletic fields, playgrounds, tennis courts, and any other outdoor area under the control of a public or private educational facility, including inside any vehicle, and including the perimeter area of 50 feet.
6. Public transit stations, platforms, and shelters under the authority of the state or its political subdivisions.
7. On school grounds, including parking lots, athletic fields, playgrounds, tennis courts, and any other outdoor area under the control of a public or private educational facility, including inside any vehicle, and including the perimeter area of 50 feet.

DECLARATION OF OTHER PLACES AS NONSMOKING: An owner, operator, manager, or other person with custody or control of an exempt area may declare that entire area as a nonsmoking place, if a sign is posted.

AREAS WHERE SMOKING NOT REGULATED:

1. Private residences, unless used as a child care facility, child care home, or a health care provider location.
2. Hotel/motel designated smoking rooms, up to a maximum 22% of all rooms and smoke cannot infiltrate into nonsmoking areas. All smoking rooms on the same floor must be contiguous. The status of smoking and nonsmoking rooms shall not be changed, except to increase the number of nonsmoking rooms.
3. Retail tobacco stores if smoke does not infiltrate into nonsmoking areas. This is a store primarily selling tobacco products and accessories where the sale of other products is incidental to the sale of tobacco products.
4. Private and semiprivate room in long-term-care facilities occupied by smokers that requested in writing to have a smoking room, if smoke does not infiltrate into nonsmoking areas. "Long-term care facility" is defined as a health care facility 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.
5. Private clubs that have no employees, except when used for a function to which the general public is invited, provided that smoke does not infiltrate into areas in which smoking is otherwise prohibited. But this exemption does not apply to any entity established for the purpose of avoiding compliance.
6. Outdoor areas that are places of employment except those areas where smoking is prohibited.
7. Certain vehicles: Vehicles owned, leased, or provided by a private employer for the sole use of the driver and not used by more than one person as a driver or passenger during employment; limousines under private hire; privately owned vehicles not otherwise defined as a place of employment or public place; and motor truck cabs or truck tractors if no nonsmoking employee is present.
8. Smoking Cessation - Therapy - Research Programs: An enclosed area in a place of employment or public place providing a smoking cessation program or a medical or scientific research or therapy program, if smoking is an integral part of the program.
9. Casinos – Tracks: Any property, including hotel and motel rooms, owned or operated by an entity licensed under chapter 99D (pari-mutuel wagering) or 99F (gambling boats and racetracks).
10. Veterans Organizations: Incorporated and acting posts or chapters of veterans' organizations operating under a Congressional charter, except when used for a function to which the general public is invited. This does not apply to any entity established for the purpose of avoiding compliance with this chapter.

- Among other entities, this includes the American Legion, American Veterans (AMVETS), Veterans of Foreign Wars (VFW), and Vietnam Veterans of America.

ENFORCEMENT: The Department of Public Health (DPH) or its designee is responsible for enforcement and DPH shall adopt rules to administer and enforce this chapter.

1. Information Provided:

- DPH shall provide information regarding compliance to employers, owners, operators, managers, and others with custody or control of a place of employment, or a public place, as well as the general public, on its Internet site, which shall include sample signage and the telephone number for reporting complaints.
- An owner, operator, manager, or other person with custody or control of a public place or place of employment shall inform persons violating this chapter of the provisions of this chapter.

2. Judicial magistrates shall hear and determine violations of this chapter.

3. State / Local Inspections: If a public place is subject to any state or political subdivision inspection process or is under contract with the state or a political subdivision, the person performing the inspection shall assess compliance and shall report any violations to DPH or its designee.

4. Complaints / Legal Actions: Any employee or private citizen may bring a legal action to enforce this law. Any person may file a complaint with DPH or its.

5. Injunctions: DPH or its designee or any other aggrieved person may seek injunctive relief to enforce this law.

NOTICE AND POSTING OF SIGNS:

1. Notice to Businesses: DPH shall provide notice regarding this chapter to all business license applicants, law enforcement agencies, and any business required to registered with the Secretary of State.

2. Notice to Employees: All employers subject to these prohibitions shall communicate to all employees and job applicants regarding the smoking prohibitions prescribed in this chapter.

3. Signage:

- The owner, operator, manager, or other person with custody or control over a place where smoking is prohibited shall clearly and conspicuously post in and at every entrance "no smoking" signs or the international "no smoking" symbol.
- In additions, such signs shall be placed in every vehicle that constitutes a public place or place of employment under this chapter, visible from the exterior of the vehicle.
- All signs shall contain the telephone number for reporting complaints and the DPH internet.
- One may use sample signs provided on the DPH internet site or another sign if its contents comply with the requirements of this law.

4. Ashtrays Removed: The owner, operator, manager, or other person with custody or control of a place where smoking is prohibited shall remove all ashtrays from these locations.

NONRETALIATION - NONWAIVER OF RIGHTS: A person or employer shall not discharge, refuse to employ, or in any manner retaliate against an employee, job applicant, or customer exercising any rights under this law, including for registering a complaint or attempting to prosecute a violation. An employee who works in an area where an employer allows smoking does not waive or surrender any legal rights that the employee may have against the employer or any other person.

CIVIL PENALTIES:

1. A person who smokes where prohibited shall pay a civil penalty of \$50 per violation.

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

- For a first violation, a monetary penalty not to exceed \$100.
- For a second violation within one year, a monetary penalty not to exceed \$200.
- For each violation in excess of a second violation within one year, a monetary penalty not to exceed \$500 for each additional violation.

3. An employer who discharges or discriminates against an employee for making a complaint or providing information or taking legal action under this chapter shall pay a civil penalty of not less than \$2,000 and not more than \$10,000 per violation.

4. In addition to any other penalty, a violation by any person who owns, manages, operates, or otherwise has custody or control of a public place or place of employment 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. A violation is a public nuisance which DPH or its designee may abated by restraining order, preliminary or permanent injunction, or other legal means, and the abating entity may take action to recover its costs.
6. Each day on which a violation of this chapter occurs is considered a separate and distinct violation.
7. Civil penalties paid under this chapter are deposited into the state general fund, unless the DPH's designee is a local board of health, in which case revenues are deposited in the county general fund.

INTERPRETATION – APPLICATION: Language states that this chapter shall not be interpreted or construed to permit smoking where otherwise restricted or prohibited by other laws or regulations or to repeal any existing law, ordinance, or regulation relating that are equivalent to or more restrictive than those in this chapter. Language also states that this chapter shall be liberally construed to effectuate its purposes.

AMENDMENT SUMMARY

H-8025 by Paulsen (R-Linn) – Strike Everything and Amends Current Law: The amendment strikes everything after the enacting clause and amends current law. Essentially, current law (Chapter 142B) prohibits smoking in a public place or public meeting place with more than 250 square feet, except in a designated smoking area. In the case of restaurants, the prohibition only applies if the restaurant had a seating capacity greater than 50.

The amendment changes current law by repealing the greater than 50 seating capacity criterion, so smoking would be prohibited in all restaurants except in a designates no smoking area

H-8033 by Upmeyer (R-Hancock) – Strike Everything and Creates Tax Credit: The amendment strikes everything after the enacting clause – leaving current law (Chapter 142B) in place, which essentially prohibits smoking in a public place or public meeting place with more than 250 square feet, except in a designated smoking area. In the case of restaurants, the prohibition only applies if the restaurant had a seating capacity greater than 50.

The amendment creates an annual \$1,000 personal and corporate income tax credit for smoke free establishments. In order to receive the credit, the establishment must obtain a certificate from the Iowa Department of Public Health (DPH) verifying that the establishment is smoke free. DPH will adopt rules to establish a verification process. The taxpayer must then submit an applications to the Iowa Department of Revenue (IDR) accompanied by the DPH certificate. The IDR shall issue a certificate of entitlement for the smoke free tax credit containing the taxpayers name, address, tax ID number, credit amount and tax year for which the credit applies. This certificate must then be filed with the taxpayers income tax return to claim the credit. The credit is retroactive to January 1, 2008, for tax years beginning on or after that date.

H-8020 by Lukan (R-Dubuque) – Exempts Bingo Facilities. The bill exempts any property, including hotel and motel rooms, owned or operated by an entity licensed under chapter 99D (pari-mutuel wagering) or 99F (gambling boats and racetracks). The amendment adds an exemption for bingo facilities.

H-8026 by Boal (R-Polk) and May (R-Dickinson) – Strikes the Gaming Facilities Exemption. The bill exempts any property, including hotel and motel rooms, owned or operated by an entity licensed under chapter 99D (pari-mutuel wagering) or 99F (gambling boats and racetracks). The amendment strikes this exemption.

H-8018 by Lukan (R-Dubuque) – No Smoking In Vehicle If Person Under 18 Is Present: The bill prohibits smoking in motor vehicles owned, leased, or provided by an employer – except for vehicles provided by a private employer for the sole use of the driver and not used by more than one person as a driver or passenger during employment; in limousines under private hire; in privately owned vehicles not defined as a place of employment or public place; and in motor truck cabs or truck tractors if no nonsmoking employee is present. The amendment prohibits smoking in any motor vehicle, if a person under the age of 18 is present.

H-8027 by Tyler Olson (D-Linn) –Distance Criteria/Veteran’s Post & Veterans Home Exemptions:

1. The bill requires designated smoking areas for outdoor sports arenas, stadiums, amphitheaters, other entertainment venues, and outdoor restaurants to be at least 20 feet from any seating areas or concession stands. The bill also prohibits smoking within 50 feet of any entrance, operable windows, or ventilation system of a place of employment or a public place. The amendment changes this to a uniform 10 ft.
2. The bill exempts incorporated and acting posts or chapters of veterans' organizations operating under a Congressional charter, except when being used for a function to which the general public is invited. The amendment clarifies the wording to say “except when the general public is invited”.
3. The amendment adds an exemption for the Iowa Veterans Home.

H-8022 by Jacobs (R-Polk) and Clute (R-Polk) – Strikes Distance Criteria. The bill requires designated smoking areas for outdoor sports arenas, stadiums, amphitheaters, other entertainment venues, and outdoor restaurants to be at least 20 feet from any seating areas or concession stands. The bill also prohibits smoking within 50 feet of any entrance, operable windows, or ventilation system of a place of employment or a public place. The amendment strikes both the 20 foot and 50 foot distance requirements.

H-8023 by Raecker (R-Polk) – Areas Where Smoking Not Regulated. The bill specifically lists the following as places where smoking is note regulated:

1. Private residences, unless used as a child care facility, child care home, or a health care provider location.
2. Hotel/motel designated smoking rooms, up to a maximum 22% of all rooms and smoke cannot infiltrate into nonsmoking areas. All smoking rooms on the same floor must be contiguous. The status of smoking and non-smoking rooms shall not be changed, except to increase the number of nonsmoking rooms.
3. Retail tobacco stores if smoke does not infiltrate into nonsmoking areas. This is a store primarily selling tobacco products and accessories where the sale of other products is incidental to the sale of tobacco products.
4. Private and semiprivate room in long-term-care facilities occupied by smokers that requested in writing to have a smoking room, if smoke does not infiltrate into nonsmoking areas. "Long-term care facility" is defined as a health care facility 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.
5. Private clubs that have no employees, except when used for a function to which the general public is invited, provided that smoke does not infiltrate into areas in which smoking is otherwise prohibited. But this exemption does not apply to any entity established for the purpose of avoiding compliance.
6. Outdoor areas that are places of employment except those areas where smoking is prohibited.
7. Certain vehicles: Vehicles owned, leased, or provided by a private employer for the sole use of the driver and not used by more than one person as a driver or passenger during employment; limousines under private hire; privately owned vehicles not otherwise defined as a place of employment or public place; and motor truck cabs or truck tractors if no nonsmoking employee is present.
8. Smoking Cessation - Therapy - Research Programs: An enclosed area in a place of employment or public place providing a smoking cessation program or a medical or scientific research or therapy program, if smoking is an integral part of the program.
9. Casinos – Tracks: Any property, including hotel and motel rooms, owned or operated by an entity licensed under chapter 99D (pari-mutuel wagering) or 99F (gambling boats and racetracks).
10. Veterans Organizations: Incorporated and acting posts or chapters of veterans' organizations operating under a Congressional charter, except when used for a function to which the general public is invited. This does not apply to any entity established for the purpose of avoiding compliance with this chapter. Among other entities, this includes the American Legion, American Veterans (AMVETS), Veterans of Foreign Wars (VFW), and Vietnam Veterans of America.

The amendment strikes all of these exemptions areas except #1 regarding private residences.

H-8036 by Struyk (R-Pottawattamie) – Areas Where Smoking Not Regulated. The bill specifically lists the following as places where smoking is not regulated (see list in previous amendment description H-8023): The amendment strikes all these exemptions and adds:

1. A private residence, unless used as a child care facility, a child care home, or a health care provider location.
2. A public place, place of employment, or other area in which smoking is otherwise prohibited, if it utilizes equipment consistent with the standards established by the American Society of Heating, Refrigerating and Air-conditioning Engineers, a combination high-efficiency particulate air filtration, charcoal activated carbon and ultraviolet light filtration system, or other filtration system, any of which exchanges the air at least 10 times per hour.

H-8017 by Struyk (R-Pottawattamie), et al – Areas Where Smoking Not Regulated: The amendment does the same thing as the previous amendment H-8023, except that in addition to leaving the private residence exemption intact, it adds an exemption for any place of employment, public place, or outdoor area, if only people over the age of 21 are invited and allowed to enter.

H-8016 by Horbach (R-Tama), et al – Exempts Farmers and Farm Businesses: The amendment adds an exemption for any form of business organized under state law, common law, or another jurisdiction, whether on a for profit, nonprofit, or cooperative basis, including any real property, structures, or equipment owned or operated by the business, if the business is engaged in any activity related to maintaining an agricultural animal at an animal facility or a crop on crop operation property.

H-8038 to H-8016 by Horbach (R-Tama) – Redefines Farmers and Farm Businesses: The amendment strikes the amendment and replaces it with an exemption for agricultural property used by a person actively engaged in farming, if that person is:

1. A person who files schedule F with their federal tax form 1040 or form 1041, or an employee of such person while the employee is actively engaged in farming.
2. A person holding an equity position in or is employed by a business association holding agricultural land that is 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, -- or a limited liability partnership as defined in section 486A.101, which has filed a statement of qualification with the Secretary of State and has not filed a similar statement in any other jurisdiction.
3. A natural person related to the person actively engaged in farming or when the person is actively engaged in farming. Their relation must be as a spouse, parent, grandparent, lineal descendant 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.
4. "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.
5. "Agricultural property" means land of more than ten contiguous acres owned, leased, or held by a person, any residence or other structure located on that land, and any equipment used on that land.

H-8019 by Lukan (R-Dubuque) – Exempts Business Owners Private Office: The amendment adds an exemption for the private office of the owner of a business.

H-8024 by Struyk (R-Pottawattamie), Dolecheck (R-Ringgold), and Quirk (D-Chickasaw) – Exempts Restaurants and Bars Under Certain Conditions: The amendment adds an exemption for restaurants or bars at a specified time when only those 18 or older are invited or admitted, if it is a regular, single, consecutive period of time and the specified time is conspicuously posted on all major entrances of the restaurant or bar.

H-8035 by Struyk (R-Dubuque) – No-Severability Clause: States that if any provision of this chapter or the application of this chapter to any person or circumstances is held invalid, the invalidity shall invalidate this chapter in its entirety and to this end, the provisions of this chapter are not severable.

H-8021 by Lukan (R-Dubuque) – Increases Commercial Property Tax Rollback: Under current law, the statewide average growth of each class of property is limited to 4% per year. If average statewide valuation growth exceeds 4%, then it is "rolled back" to 4% - whence the term "rollback".

The statewide average growth of residential property often exceeds 4%, which is part of the reason it has a large rollback – plus its tie to the growth rate of ag property which had been low for many years. The residential rollback is currently 44.08%.

The statewide average growth of commercial property typically grows less than 4% annually, which is why it has a small or no rollback most years. The current rollback for commercial property is 99.73%.

Amendment H-8021 requires the Iowa Department of Revenue – after calculating the regular rollback – to increase the commercial property rollback - only for property subject to the smoking ban - by an additional one percent annually, beginning with the 2008 assessment year. The 2008 assessment year began the past January 1, 2008. These valuations will be used by local governments in March of 2009, to certify their Fiscal Year 10 budgets - which will affect property taxes due September 1, 2009, and March 1, 2010.