

# Nebraska Clean Indoor Air Act

## LB395 of 2008 and LB118 of 2015

**71-5716. Act, how cited.** Sections 71-5716 to 71-5735 shall be known and may be cited as the Nebraska Clean Indoor Air Act. *Source: Laws 2008, LB395, § 1; Laws 2015, LB118, § 8. Effective Date: February 27, 2015*

**71-5717. Purpose of act.** The purpose of the Nebraska Clean Indoor Air Act is to protect the public health and welfare by prohibiting smoking in public places and places of employment with limited exceptions for guestrooms and suites, research, tobacco retail outlets, and cigar shops. The limited exceptions permit smoking in public places where the public would reasonably expect to find persons smoking, including guestrooms and suites which are subject to expectations of privacy like private residences, institutions engaged in research related to smoking, and tobacco retail outlets and cigar shops which provide the public legal retail outlets to sample, use, and purchase tobacco products and products related to smoking. The act shall not be construed to prohibit or otherwise restrict smoking in outdoor areas. The act shall not be construed to permit smoking where it is prohibited or otherwise restricted by other applicable law, ordinance, or resolution. The act shall be liberally construed to further its purpose. *Source: Laws 2008, LB395, § 2; Laws 2015, LB118, § 9. Effective Date: February 27, 2015*

**71-5718. Definitions, where found.** For purposes of the Nebraska Clean Indoor Air Act, the definitions found in sections 71-5719 to 71-5728 apply. *Source: Laws 2008, LB395, § 3.*

**71-5719. Employed, defined.** Employed means hired, contracted, subcontracted, or otherwise engaged to furnish goods or services. *Source: Laws 2008, LB395, § 4.*

**71-5720. Employee, defined.** Employee means a person who is employed by an employer in consideration for direct or indirect monetary wages, profit, or other remuneration. *Source: Laws 2008, LB395, § 5.*

**71-5721. Employer, defined.** Employer means a person, nonprofit entity, sole proprietorship, partnership, joint venture, corporation, limited partnership, limited liability company, cooperative, firm, trust, association, organization, or other business entity, including retail establishments where goods or services are sold, who or which employs one or more employees. *Source: Laws 2008, LB395, § 6.*

**71-5722. Guestroom or suite, defined.** Guestroom or suite means a sleeping room and directly associated private areas, such as a bathroom, a living room, and a kitchen area, if any, rented to the public for their exclusive transient occupancy, including, but not limited to, a guestroom or suite in a hotel, motel, inn, lodge, or other such establishment. *Source: Laws 2008, LB395, § 7.*

**71-5723. Indoor area, defined.** Indoor area means an area enclosed by a floor, a ceiling, and walls on all sides that are continuous and solid except for closeable entry and exit doors and windows and in which less than twenty percent of the total wall area is permanently open to the outdoors. For walls in excess of eight feet in height, only the first eight feet shall be used in determining such percentage. *Source: Laws 2008, LB395, § 8.*

**71-5724. Place of employment, defined.** Place of employment means an indoor area under the control of a proprietor that an employee accesses as part of his or her employment without regard to whether the employee is present or work is occurring at any given time. The indoor area includes, but is not limited to, any work area, employee breakroom, restroom, conference room, meeting room, classroom, employee cafeteria, and hallway. A private residence is a place of employment when such residence is being used as a licensed child care program and one or more children who are not occupants of such residence are present. *Source: Laws 2008, LB395, § 9.*

**71-5724. Place of employment, defined.** Place of employment means an indoor area under the control of a proprietor that an employee accesses as part of his or her employment without regard to whether the employee is present or work is occurring at any given time. The indoor area includes, but is not limited to, any work area,

employee breakroom, restroom, conference room, meeting room, classroom, employee cafeteria, and hallway. A private residence is a place of employment when such residence is being used as a licensed child care program and one or more children who are not occupants of such residence are present. *Source: Laws 2008, LB395, § 9.*

**71-5725. Proprietor, defined.** Proprietor means any employer, owner, operator, supervisor, manager, or other person who controls, governs, or directs the activities in a place of employment or public place. *Source: Laws 2008, LB395, § 10.*

**71-5726. Public place, defined.** Public place means an indoor area to which the public is invited or in which the public is permitted, whether or not the public is always invited or permitted. A private residence is not a public place. *Source: Laws 2008, LB395, § 11.*

**71-5727. Smoke or smoking, defined.** Smoke or smoking means the lighting of any cigarette, cigar, pipe, or other smoking material or the possession of any lighted cigarette, cigar, pipe, or other smoking material, regardless of its composition. *Source: Laws 2008, LB395, § 12.*

**71-5728. Tobacco retail outlet, defined.** Tobacco retail outlet means a store that sells only tobacco and products directly related to tobacco. Products directly related to tobacco do not include alcohol, coffee, soft drinks, candy, groceries, or gasoline. *Source: Laws 2008, LB395, § 13.*

**71-5729. Smoking in place of employment or public place prohibited.** Except as otherwise provided in section 71-5730, it is unlawful for any person to smoke in a place of employment or a public place. *Source: Laws 2008, LB395, § 14.*

**71-5730. Exemptions; legislative findings; legislative intent.** (1) The following indoor areas are exempt from section 71-5729:

(a) Guestrooms and suites that are rented to guests and that are designated as smoking rooms, except that not more than twenty percent of rooms rented to guests in an establishment may be designated as smoking rooms. All smoking rooms on the same floor shall be contiguous, and smoke from such rooms shall not infiltrate into areas where smoking is prohibited under the Nebraska Clean Indoor Air Act;

(b) Indoor areas used in connection with a research study on the health effects of smoking conducted in a scientific or analytical laboratory under state or federal law or at a college or university approved by the Coordinating Commission for Postsecondary Education;

(c) Tobacco retail outlets; and

(d) Cigar shops as defined in section 53-103.08.

(2)(a) The Legislature finds that allowing smoking in tobacco retail outlets as a limited exception to the Nebraska Clean Indoor Air Act does not interfere with the original intent that the general public and employees not be unwillingly subjected to second-hand smoke since the general public does not frequent tobacco retail outlets and should reasonably expect that there would be second-hand smoke in tobacco retail outlets and could choose to avoid such exposure. The products that tobacco retail outlets sell are legal for customers who meet the age requirement. Customers should be able to try them within the tobacco retail outlet, especially given the way that tobacco customization may occur in how tobacco is blended and cigars are produced. The Legislature finds that exposure to second-hand smoke is inherent in the selling and sampling of cigars and pipe tobacco and that this exposure is inextricably connected to the nature of selling this legal product, similar to other inherent hazards in other professions and employment. (b) It is the intent of the Legislature to allow cigar and pipe smoking in tobacco retail outlets that meet specific statutory criteria not inconsistent with the fundamental nature of the business. This exception to the Nebraska Clean Indoor Air Act is narrowly tailored in accordance with the intent of the act to protect public places and places of employment.

(3)(a) The Legislature finds that allowing smoking in cigar shops as a limited exception to the Nebraska Clean Indoor Air Act does not interfere with the original intent that the general public and employees not be unwillingly subjected to second-hand smoke. This exception poses a de minimis restriction on the public and employees given the limited number of cigar shops compared to other businesses that sell alcohol, cigars, and pipe tobacco, and any member of the public should reasonably expect that there would be second-hand smoke in a cigar shop given the nature of the business and could choose to avoid such exposure.

(b) The Legislature finds that (i) cigars and pipe tobacco have different characteristics than other forms of tobacco such as cigarettes, (ii) cigars are customarily paired with various spirits such as cognac, single malt whiskey, bourbon, rum, rye, port, and others, and (iii) unlike cigarette smokers, cigar and pipe smokers may take an hour or longer to enjoy a cigar or pipe while cigarettes simply serve as a mechanism for delivering nicotine. Cigars paired with selected liquor creates a synergy unique to the particular pairing similar to wine paired with particular foods. Cigars are a pure, natural product wrapped in a tobacco leaf that is typically not inhaled in order to enjoy the taste of the smoke, unlike cigarettes that tend to be processed with additives and wrapped in paper and are inhaled. Cigars have a different taste and smell than cigarettes due to the fermentation process cigars go through during production. Cigars tend to cost considerably more than cigarettes, and their quality and characteristics vary depending on the type of tobacco plant, the geography and climate where the tobacco was grown, and the overall quality of the manufacturing process. Not only does the customized blending of the tobacco influence the smoking experience, so does the freshness of the cigars, which is dependent on how the cigars were stored and displayed. These variables are similar to fine wines, which can also be very expensive to purchase. It is all of these variables that warrant a customer wanting to sample the product before making such a substantial purchase.

(c) The Legislature finds that exposure to second-hand smoke is inherent in the selling and sampling of cigars and pipe tobacco and that this exposure is inextricably connected to the nature of selling this legal product, similar to other inherent hazards in other professions and employment.

(d) It is the intent of the Legislature to allow cigar and pipe smoking in cigar shops that meet specific statutory criteria not inconsistent with the fundamental nature of the business. This exception to the Nebraska Clean Indoor Air Act is narrowly tailored in accordance with the intent of the act to protect public places and places of employment. *Source: Laws 2008, LB395, § 15; Laws 2009, LB355, § 6; Laws 2010, LB861, § 82; Laws 2015, LB118, § 10. Effective Date: February 27, 2015*

**71-5731. Proprietor; duties.** A proprietor of a place of employment or public place where smoking is prohibited under the Nebraska Clean Indoor Air Act shall take necessary and appropriate steps to ensure compliance with the act at such place. *Source: Laws 2008, LB395, § 16.*

**71-5732. Department of Health and Human Services; local public health department; enjoin violations; retaliation prohibited; waiver of act.**

1) The Department of Health and Human Services or a local public health department as defined in section 71-1626 may institute an action in any court with jurisdiction to enjoin a violation of the Nebraska Clean Indoor Air Act. Any interested party may report possible violations of the act to such departments.

(2) No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or customer because such employee, applicant, or customer reports or attempts to report a violation of the act.

(3) The Department of Health and Human Services may waive provisions of the Nebraska Clean Indoor Air Act upon good cause shown and shall provide for appropriate protection of the public health and safety in the granting of such waivers. *Source: Laws 2008, LB395, § 17.*

**71-5733. Prohibited acts; penalties; act of employee or agent; how construed.**

(1) A person who smokes in a place of employment or a public place in violation of the Nebraska Clean Indoor Air Act is guilty of a Class V misdemeanor for the first offense and a Class IV misdemeanor for the second and any subsequent offenses. A person charged with such offense may voluntarily participate, at his or her own expense, in a smoking cessation program approved by the Department of Health and Human Services, and such charge shall be dismissed upon successful completion of the program.

(2) A proprietor who fails, neglects, or refuses to perform a duty under the Nebraska Clean Indoor Air Act is guilty of a Class V misdemeanor for the first offense and a Class IV misdemeanor for the second and any subsequent offenses.

(3) Each day that a violation continues to exist shall constitute a separate and distinct violation.

(4) Every act or omission constituting a violation of the Nebraska Clean Indoor Air Act by an employee or agent of a proprietor is deemed to be the act or omission of such proprietor, and such proprietor shall be subject to the same penalty as if the act or omission had been committed by such proprietor. *Source: Laws 2008, LB395, § 18.*

**71-5734. Rules and regulations.** The Department of Health and Human Services shall adopt and promulgate rules and regulations necessary to implement the Nebraska Clean Indoor Air Act. The department shall consult with interested persons and professional organizations before adopting such rules and regulations. *Source: Laws 2008, LB395, § 19.*

**71-5735. Tobacco retail outlet; sign required; waiver signed by employee; form; owner; duties.**

(1) The owner of a tobacco retail outlet shall post a sign on all entrances to the tobacco retail outlet, on the outside of each door, in a conspicuous location slightly above or next to the door, with the following statement: SMOKING OF CIGARS AND PIPES IS ALLOWED INSIDE THIS BUSINESS. SMOKING OF CIGARETTES IS NOT ALLOWED.

(2) Beginning November 1, 2015, the owner shall provide to the Division of Public Health a copy of a waiver signed prior to employment by each employee on a form prescribed by the division. The waiver shall expressly notify the employee that he or she will be exposed to second-hand smoke, and the employee shall acknowledge that he or she understands the risks of exposure to second-hand smoke.

(3) The owner shall not allow cigarette smoking in the tobacco retail outlet. *Source: Laws 2015, LB118, § 11. Effective Date: February 27, 2015*

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