

SB 105 - AS INTRODUCED

2015 SESSION

15-0203

01/09

SENATE BILL **105**

AN ACT revising the indoor smoking act.

SPONSORS: Sen. Pierce, Dist 5

COMMITTEE: Health and Human Services

ANALYSIS

This bill revises the indoor smoking act.

This bill is a request of the department of health and human services.

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Explanation: Matter added to current law appears in **bold italics**.

Matter removed from current law appears [~~in brackets and struck through.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

15-0203

01/09

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Fifteen*

AN ACT revising the indoor smoking act.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1 Indoor Smoking Act; Purpose. Amend RSA 155:64 to read as follows:

155:64 Purpose. The purpose of this subdivision is to protect the health of the public by [~~regulating~~] **prohibiting** smoking **of all combustible tobacco products and/or electronic nicotine delivery systems** in enclosed workplaces and enclosed places accessible to the public, regardless of whether publicly or privately owned[, ~~and in enclosed publicly owned buildings and offices. This subdivision also regulates smoking in public housing facilities, health care facilities, public primary and secondary educational facilities,~~] and in public conveyances

operating within the state. This subdivision shall not be construed as addressing airborne contaminants including toxic, chemical, or biological substances that may be present in indoor air other than tobacco smoke *or from electronic delivery systems*.

2 Indoor Smoking Act; Definitions. RSA 155:65 is repealed and reenacted to read as follows:

155:65 Definitions. In this subdivision:

I. “Child-resistant packaging” means packaging that is designed or constructed to be significantly difficult for children under 5 years of age to open or obtain a toxic or harmful amount of the substance contained therein within a reasonable time and not difficult for normal adults to use properly, but does not mean packaging which all such children cannot open or obtain a toxic or harmful amount within a reasonable time.

II. “Commissioner” means the commissioner of the department of health and human services, or designee.

III. “Department” means the department of health and human services.

IV. “Educational facility” means any enclosed place which is used for the instruction of students. This definition shall include areas within facilities supportive of instruction and subject to educational administration including, but not limited to, lounge areas, passageways, restrooms, laboratories, study areas, cafeterias, gymnasiums, libraries, maintenance rooms, and storage areas. Educational facilities also means child care agencies licensed under RSA 170-E during the hours of operation, except foster family homes and foster family group homes.

V. “Electronic nicotine delivery system” or “electronic cigarette” means an electronic or other device that contains liquid nicotine or another substance that, when used as intended, simulates smoking (aerosol emission), including but not limited to a device that:

(a) Is composed of a heating element, battery, or electronic circuit, or a combination of heating element, battery, or electronic circuit.

(b) Works in combination with a liquid nicotine delivery device composed either in whole or in part of nicotine and/or other compounds with the intent to be used with electronic cigarettes or any and all other devices named or described for oral use.

(c) Is manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or e-pens or under any other names/descriptors.

VI. “Enclosed place” means a structurally enclosed location, enclosed by a floor, ceiling, and 3 or 4 solid walls, partitions, or windows of which there is public access.

VII. “Health care facility” means any enclosed place used for the purpose of providing medical or dental treatment, physical or mental health services, or any combination of such treatment or services. This definition shall include buildings used exclusively for such purposes and buildings leased, rented, or otherwise made available for such purposes.

VIII. “Law enforcement authority” means the state, county, city, or town police having

authority over a given area in the state.

IX. “Nicotine liquid container” means a bottle or other container of a nicotine liquid or other substance containing nicotine that is sold, marketed, or intended for use in a tobacco substitute. The term shall not include a container containing nicotine in a cartridge that is sold, marketed, or intended for use in a tobacco substitute if the cartridge is prefilled and sealed by the manufacturer and not intended to be opened by the consumer

X. “Person in charge” means:

(a) For enclosed places that are not publicly owned buildings or offices, the person who has responsibility for, directly or by appointment, policy making and overseeing adherence to laws, rules, and regulations of an enclosed place of public access or a workplace. This definition shall not mean the owner of the property or place of public access or workplace unless he or she is routinely present and controls the day-to-day activities, or sets the policy, carried out within the enclosed place.

(b) For publicly owned buildings and offices, the person responsible for the operation of the building or office and the person responsible for the agency or organization occupying the building or office, or that person designated to act in the absence of the person in charge.

XI. “Public access” means any enclosed place, whether publicly or privately owned and whether operated for profit or not, to which there is public access, including, but not limited to, buildings, offices, means of transportation, common carrier waiting rooms, arcades, restaurants, retail stores, grocery stores, libraries, theaters, concert halls, auditoriums, arenas, barber shops, hair salons, laundromats, shopping malls, museums, art galleries, sports and fitness facilities, planetariums, historical sites, and common areas of resorts, hotels and motels, including the lobbies, hallways, elevators, restaurants, restrooms and cafeterias.

XII. “Public conveyance” means any air, land, or water vehicle of public access, which has enclosed sections, used for the transportation of persons in the state of New Hampshire, whether or not for compensation, including, but not limited to, airplanes, trains, buses, boats, vans, or taxis. This definition shall not include privately-owned vehicles when used for private purposes, but shall include all vehicles owned by the state and its political subdivisions.

XIII. “Smoking” means the use of a combustible tobacco product, including, but not limited to a lighted cigarette, cigar, or pipe, or any device designed to produce the effect of smoking. This definition shall include the use of an electronic nicotine delivery system, as defined in paragraph V.

XIV. “Workplace” means an enclosed place at which more than one individual performs any type of a service for consideration of payment under any type or term of employment and where there is public access to services. This definition also includes any enclosed place where more than one individual performs services in a volunteer capacity for which individuals are ordinarily paid.

3 Indoor Smoking Act; Smoking Prohibited. Amend RSA 155:66 to read as follows:

155:66 Smoking Prohibited.

I. Except as provided in [~~RSA 155:67 and~~] ***RSA 178:20-a*** notwithstanding any law to the contrary, smoking is prohibited in[~~:~~

~~(a) Public educational facilities at any time, and in child care agencies licensed under RSA 170-E during the hours of operation, except foster family homes and foster family group homes.~~

~~(b) Hospitals and other acute care facilities.~~

~~(c) Grocery stores by customers.~~

~~(d) Elevators, tramways, gondolas, and other such public conveyances.~~

~~(e) Public conveyances.~~

~~(f) Restaurants.~~

~~(g) Cocktail lounges.~~

~~(h) Enclosed places owned and operated by social, fraternal, or religious organizations when open to the general public. Purposes for which such places may be open to the general public may include, but not be limited to, public meetings, voting, suppers, bingo games, theatrical events, fairs, and bazaars.~~

~~II. Smoking may be permitted in enclosed places of public access and publicly-owned buildings and offices, including workplaces, other than those listed in paragraph I, in effectively segregated smoking-permitted areas designated by the person in charge. Smoking shall be totally prohibited in any such enclosed place, if smoking cannot be effectively segregated. The person in charge may declare any facility non-smoking in its entirety]~~ ***all enclosed places where there is public access at any time for any purpose including health care facilities, workplaces, and public conveyances.***

4 Indoor Smoking Act; Written Policies. RSA 155:68 is repealed and reenacted to read as follows:

155:68 Written Policies.

I. The person in charge of the enclosed place shall develop, or oversee the development of, written policies in accordance with RSA 155:71, to achieve compliance with this subdivision. Such policies shall include, but not be limited to, the following:

(a) A statement that use of combustible and/or electronic nicotine device systems is prohibited within the indoor area of an enclosed place.

(b) A clear and consistent enforcement policy relative to noncompliance by patrons and employees.

II. Staff or employees subject to written policies regarding smoking and use of electronic cigarettes restrictions shall receive orientation regarding the written policy to which they are required to adhere.

5 Indoor Smoking Act; Rulemaking. Amend RSA 155:71 to read as follows:

155:71 Rulemaking. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to:

~~I. [Criteria for smoking-permitted areas in a manner that effectively segregates areas, in accordance with RSA 155:65, V, where smoking may be permitted in the facilities under RSA 155:67, V, VI, VII, and X.~~

~~H.] Size and placement of appropriate signs to be used for notification of smoking restrictions.~~

~~[HH.] II. Procedures for resolving complaints and investigations of complaints under RSA 155:73 and 74.~~

~~[IV. Procedures for requesting a waiver and eligibility determination for a waiver requested under RSA 155:75, and stipulations of a waiver, including time stipulation.~~

~~V.] III. Procedures to ensure confidentiality under RSA 155:74.~~

~~[VI.] IV. A schedule of administrative fines which may be imposed under RSA 155:78 for violation of this subdivision or the rules adopted pursuant to it.~~

~~[VII.] V. Procedures for notice prior to the imposition of an administrative fine imposed under RSA 155:78.~~

6 Indoor Smoking Act; Retaliation. Amend RSA 155:72 to read as follows:

155:72 Retaliation Prohibited~~[-Applicability]~~.

~~[F.] No person in charge shall retaliate in any manner against, or otherwise discriminate against, a person, employee, or subordinate who exercises any rights under this subdivision or rules adopted pursuant to this subdivision, or by any policy or procedure promulgated under this subdivision for enclosed places.~~

~~[H. Nothing in this subdivision shall be construed to authorize an employee to refuse to discharge his ordinary and customary duties in the workplace, including, but not limited to, entering a smoking-permitted area in the discharge of such duties.]~~

7 Indoor Smoking Act; Enforcement; Penalties; Fire Protection. Amend RSA 155:76-RSA 155:77 to read as follows:

155:76 Enforcement; Penalties.

I. The person in charge or ~~[his]~~ designee may call law enforcement authorities if any person refuses to refrain from ~~[smoking in an area where smoking is prohibited]~~ **following the provisions of this subdivision.**

II. Any person who smokes in an enclosed public place where smoking is prohibited shall be guilty of a violation and subject to a fine of not less than \$100.

III. Any person in charge who fails to comply with any of the provisions of this subdivision or

rules adopted pursuant to it shall be subject to a fine imposed under RSA 155:78.

155:77 **Public Health**, Fire Protection, Safety and Sanitation. Nothing in this subdivision shall be construed to permit smoking where smoking is prohibited by any other provision of law or rule relative to **public health**, fire protection, safety and sanitation.

8 New Section; Indoor Smoking Act; Child-Resistant Packaging. Amend RSA 155 by inserting after section 78 the following new section:

155:79 Child-Resistant Packaging. Unless specifically preempted by federal law, no person shall manufacture, sell, or otherwise introduce in New Hampshire:

- (a) Any liquid or gel substance containing nicotine unless that product is contained in child-resistant packaging; or
- (b) Any nicotine liquid container unless that container constitutes child-resistant packaging.

9 Repeal. The following are repealed:

- I. RSA 155:67, relative to exemptions under the indoor smoking act.
- II. RSA 155:69 through RSA 155:70, relative to smoking-permitted areas and signs under the indoor smoking act.
- III. RSA 155:75, relative to waivers under the indoor smoking act.

10 Effective Date. This act shall take effect January 1, 2016.