

By Messrs. Businger of Brookline and McDonough of Boston, petition of the Group Against Smoking Pollution, John E. McDonough, other members of the General Court and others for legislation to restrict smoking in the workplace. Commerce and Labor.

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**The Commonwealth of Massachusetts**

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In the Year One Thousand Nine Hundred and Ninety.

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AN ACT TO RESTRICT SMOKING IN THE WORKPLACE.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. The General Laws are hereby amended by  
2 adding, after Chapter 111H, the following new chapter:

3 **CHAPTER 111I.**

4 Section 1. The following words as used in this chapter shall,  
5 unless the context clearly requires otherwise, have the following  
6 meanings:

7 "Commissioner" means the commissioner of public health;

8 "Department" means the department of public health;

9 "Employee" means any individual person who is employed by  
10 any employer in consideration for direct or indirect monetary  
11 wage or profit, and any individual person who volunteers his  
12 services;

13 "Employer" means any employer as defined in section one of  
14 chapter one hundred and fifty-one of the General Laws;

15 "Smoking" or "smoke" means the inhaling, exhaling, lighting,  
16 burning or carrying of any lighted cigar, cigarette, pipe or other  
17 article, or paraphernalia for tobacco or any other weed or plant;  
18 and

19 "Workplace" means any enclosed area of a structure or portion  
20 thereof intended for occupancy by employees of any private or

21 public business entities which will provide primarily, but not  
22 exclusively, clerical, professional or business services of the  
23 business entity, or which will provide primarily, but not  
24 exclusively, clerical, professional or business services to other  
25 business entities or to the public, at that location. "Workplace"  
26 also includes, but is not limited to: municipal office buildings; all  
27 public office buildings; medical office waiting rooms; doctor or  
28 dentist office spaces and all office spaces within clinics, physical  
29 therapy facilities and other medical or psychiatric treatment  
30 facilities or hospitals; and all manufacturing plant office spaces.  
31 "Workplace" also includes any area occupied by an employee  
32 during the course of his employment including, but not limited  
33 to, hallways, waiting areas, restrooms, lounges, eating areas,  
34 conference and class rooms, as well as enclosed motor vehicles,  
35 ships, boats and airplanes.

36 Section 2. (a) Each employer who operates a workplace in the  
37 Commonwealth shall, within six (6) months of the effective date  
38 of this act, establish, implement, maintain and post a written  
39 policy governing smoking in such workplace. The policy may be  
40 uniform throughout the workplace or may vary from location to  
41 location within the workplace, and may include the designation  
42 of smoking and no-smoking areas within the workplace. However,  
43 the employer shall not be required to make any structural changes  
44 to the workplace. The policy shall be readily available for viewing  
45 by said employer's employees, and the employer shall provide a  
46 copy to any such employee upon request.

47 (b) In establishing, implementing and maintaining a written  
48 smoking policy, employers shall give preference to nonsmoking  
49 employees who, as a result of either cardiovascular illness,  
50 pulmonary illness or any other physical illness affecting the eyes,  
51 nose and throat, are sensitive to the discomforts or other effects  
52 of tobacco smoke and for medical reasons require a nonsmoking  
53 atmosphere.

54 (c) If an employee objects to the impact of tobacco smoke and/  
55 or the employer's smoking policy upon his health and/or comfort  
56 while in the workplace or workplaces operated by such employee's  
57 employer, he may give written notice to the said employer of such  
58 objection. Upon receipt of such notice, the employer shall make

59 a reasonable and diligent attempt to mediate the employee's  
60 objection by following any grievance procedure which may be set  
61 forth in the policy.

62 (d) If an accommodation which is satisfactory to all affected  
63 nonsmoking employees cannot be reached in any given workplace,  
64 the preference and right of the nonsmoking employees to work  
65 in an atmosphere free from the hazards and discomforts of  
66 tobacco smoke shall prevail and the employer shall prohibit all  
67 smoking in the workplace. When the employer prohibits smoking  
68 in either the entire workplace or any portion therein, the area or  
69 areas in which smoking is prohibited shall be conspicuously  
70 marked with signs.

71 (e) If the employer's decision resulting from the grievance  
72 procedure does not satisfy the objecting employee or if the  
73 employer has failed to take any action within thirty (30) days after  
74 receiving written notice of the employee's objection, such  
75 employee may file a complaint with the department.

76 (f) Each employer shall, within six (6) months of the effective  
77 date of this act, adopt and implement a policy governing smoking  
78 in each workplace operated by such employer in the Common-  
79 wealth. Anyone who becomes an employer within the Common-  
80 wealth after the passage of this act shall, within (3) months of  
81 becoming an employer, establish, implement, maintain and post  
82 conspicuously a written smoking policy with all of the provisions  
83 required by this section.

84 (g) Each employer shall review and revise if necessary its policy  
85 governing smoking in its workplace or workplaces not later than  
86 twelve (12) months after the original implementation of such  
87 policy, and not less than every two (2) years thereafter.

88 Section 3. The department, upon receiving a signed letter of  
89 complaint from an employee alleging a violation of this chapter,  
90 shall enforce within thirty (30) days the provisions of this chapter  
91 by the following actions:

92 (a) The Commissioner shall promptly thereafter designate a  
93 person from the Department to investigate the employee's  
94 complaint. If the investigator initially determines that the  
95 employee's complaint is not frivolous, he shall serve a written  
96 notice to comply to an employer, with a copy of the notice to the

97 complainant, requiring the employer to correct within ten (10)  
98 days any violation of this chapter. The employer shall be sent a  
99 copy of this chapter at the time notice is served. Upon receiving  
100 a second signed complaint at the department for the same or  
101 continued violation by the same employer, having determined that  
102 the complaint is not frivolous and failing all other attempts by  
103 the department to mediate expeditiously and within thirty (30)  
104 days the complaint, the Commissioner shall resolve the complaint  
105 by;

106 (b) calling upon the Attorney General for the Commonwealth  
107 to maintain promptly an action for injunctive relief to enforce the  
108 provisions of this chapter and to prevent subsequent violations  
109 of this chapter by an employer and for the assessment and recovery  
110 of a civil penalty for such violation.

111 (c) Any party to a complaint proceeding undertaken pursuant  
112 to the provisions of this chapter who is aggrieved by the order of  
113 the Commissioner in such proceeding may seek relief therefrom  
114 by any court of competent jurisdiction as provided by the laws  
115 of the Commonwealth.

116 Section 4. An employer who violates this chapter shall be liable  
117 for a civil penalty of not less than fifty dollars (\$50) nor more than  
118 five hundred dollars (\$500), which penalty shall be assessed and  
119 recovered in a civil action brought by the Attorney General for  
120 the Commonwealth in any court of competent jurisdiction. Each  
121 day such violation is committed by an employer or permitted to  
122 continue by an employer shall constitute a separate offense and  
123 shall be punishable as such. Any penalty assessed and recovered  
124 in an action brought pursuant to this paragraph shall be paid over  
125 to and become part of the General Fund. The Commissioner or  
126 any affected party may institute an action in the Superior Court  
127 to enjoin repeated violations of this chapter.

128 Section 5. The following workplaces shall be exempted from  
129 the provisions of this chapter:

130 (a) a private home which may serve as a workplace, except when  
131 used as a family day care center licensed under section ten of  
132 chapter twenty-eight A of the General Laws; or

133 (b) any office space leased or rented by a sole independent  
134 contractor for his own use; or

135 (c) a sole business entity, the majority of whose revenue is  
136 derived from the sale of tobacco products.

137 Section 6. The department shall promulgate such rules and  
138 regulations as may be necessary to implement the provisions of this  
139 act. Said rules and regulations shall include the provision that  
140 copies of any complaints under chapter 1111 shall be filed with  
141 the department.

142 Section 7. Nothing in this act shall make lawful smoking in any  
143 area in which smoking is or may hereafter be prohibited by law  
144 including, without limited the generality of the foregoing, any  
145 other provision of the General Laws or ordinance or by-laws, or  
146 any fire, health or safety regulation.

147 Section 8. It shall be unlawful for an employer to discharge or  
148 in any manner discriminate against any employee who exercises  
149 his rights under this chapter if the dominant intent of the employer  
150 is retaliation against the employee for exercising those rights.

1 SECTION 2. If any provision of this act is declared invalid or  
2 unenforceable, the other provisions shall not be affected thereby  
3 but shall continue in full force and effect.

1 SECTION 3. This act shall take effect on January 11, 1991.





