

SENATE No. 430

By Mrs. Hicks, petition (accompanied by bill, Senate, No. 430) of Lucile P. Hicks, Patricia A. Walrath, Edward L. Sweda, Jr., and Marc D. Draisen for legislation to establish policies for the use of tobacco and tobacco products in the workplace. Health Care.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Two.

AN ACT ESTABLISHING POLICIES FOR THE USE OF TOBACCO AND TOBACCO PRODUCTS 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 111G, the following new chapter: —

3 **CHAPTER 111 G.**

4 The following words shall, unless the context clearly requires
5 otherwise, have the following meanings:

6 “Department” means the department of public health.

7 “Employee” means any person who is employed by any
8 employer in consideration for direct or indirect monetary wage
9 or profit, and any person who volunteers his or her services;

10 “Employer” means any employer defined in section one of
11 chapter one hundred and fifty-one A of the Massachusetts
12 General Laws;

13 “Enclosed” means an area, other than a public lobby, which
14 is closed in by a roof and four walls or sides or partitions, either
15 complete or partial, with appropriate openings for ingress and
16 egress;

17 “Smoking” or “smoke” means the inhaling, exhaling, burning
18 or carrying or any lighted cigarette, cigar, pipe, or other article,
19 or paraphernalia for tobacco or any other weed or plant; and,

20 “Workplace” means any enclosed area of a structure or portion
21 thereof intended for occupancy by employees of any private or
22 public business entities which will provide primarily, but not
23 exclusively, clerical, professional or business services of the
24 business entity, or which will provide primarily, but not
25 exclusively, clerical, professional or business services to other
26 business entities or to the public, at that location. The workplace
27 also includes, but is not limited to municipal office buildings; all
28 public office buildings; medical office waiting rooms; doctors or
29 dentist office spaces and all office spaces within clinics, physical
30 therapy facilities and other medical or psychiatric treatment
31 facilities or hospitals; and all manufacturing plant office spaces.
32 Workplace shall also include include any area occupied by an
33 employee during the course of his or her employment, including,
34 but not limited to, hallways, waiting areas, restrooms, lounges,
35 eating areas, conference and class rooms, as well as enclosed
36 motor vehicles, ships, boats and airplanes.

1 SECTION 2. (a) Each employer who operates a workplace in
2 the Commonwealth shall within six (6) months of the effective
3 date of this act, implement, maintain and post a written policy
4 governing smoking in such workplace. The policy may be uniform
5 throughout the workplace or may vary from location to location
6 within the workplace, and may include the designation of smoking
7 and no-smoking areas within the workplace. However, the
8 employer shall not be required to make any structural changes
9 to the workplace. The policy shall be readily available for viewing
10 by said employer’s employees, and the employer shall provide a
11 copy to any such employee upon request. The written smoking
12 policy shall take into consideration the following:

13 (1) Employers shall give preference to non-smoking employees
14 who, as a result of either a cardiovascular illness, pulmonary
15 illness, or any other physical condition affecting the eyes, nose
16 and throat, are sensitive to the discomfort of tobacco smoke and
17 for medical reasons require a non-smoking atmosphere.

18 (2) If an employee objects to the impact of tobacco smoke
19 and/or the employer’s smoking policy upon his health and/or
20 comfort while in the workplace or workplaces operated by such

21 employee's employer, he may give written notice to the said
22 employer of such objection. Upon receipt of such notice, the
23 employer shall make a reasonable and diligent attempt to mediate
24 the employee's objection by following any grievance procedure
25 which may be set forth in the policy.

26 (3) When the employer prohibits smoking in either the entire
27 workplace or in any portion therein, the area(s) in which smoking
28 is prohibited shall be conspicuously marked with signs.

29 (4) If the employer's decision resulting from the grievance
30 procedure does not satisfy the objecting employee, or if the
31 employer has failed to take any action within thirty (30) days after
32 receiving written notice of the employee's objection, such
33 employee may file a complaint with the department of public
34 health.

35 (a) Anyone who becomes an employer in the Commonwealth
36 after the passage of this Act, shall, within three (3) months of
37 becoming an employer, implement, maintain and conspicuously
38 post for all employees, a written smoking policy with all the
39 provisions mentioned herein.

40 (b) Each employer shall review and revise if necessary its policy
41 governing smoking in its workplace or workplaces not later than
42 twelve (12) months after the original implementation of such
43 policy, and not less than every two (2) years thereafter.

1 SECTION 3. The department, upon receipt of written
2 complaint from an employee, shall determine through telephone
3 contact or informal conference with the employer and employee,
4 whether the complaint is frivolous.

5 If the department determines that the employee's complaint is
6 not frivolous, it shall refer a copy of the complaint to the Board
7 of Conciliation and Arbitration, under the Executive Office of
8 Labor, in order to initiate grievance mediation between employer
9 and employee by that board.

10 If the Board of Conciliation and Arbitration does not succeed
11 in resolving the dispute between employer and employee, the case
12 will be referred back to the department.

13 The department shall conduct an adjudicatory hearing pursuant
14 to sections 10 and 11 of Chapter 30A of the General Laws. After

15 said adjudicatory hearing, the Department may order the
16 employer to implement a policy which is, in the view of the
17 Department, adequate to provide reasonable protection for the
18 health of the complaining employee, giving due consideration to
19 the reasonable needs of the employer's business. The employer
20 shall implement any such order of the Department, provided,
21 however, that the employer shall not be required to make any
22 structural changes to the workplace.

23 Any party to a complaint proceeding undertaken pursuant to
24 the provisions of section 3 who is aggrieved by the order of the
25 department in such proceeding may seek relief therefrom by any
26 court of competent jurisdiction as provided by the laws of the
27 Commonwealth.

28 Employers found after the adjudicatory hearing referred to in
29 section 3 not to be in compliance with the provisions of this
30 section by failing to post a policy required by this section or by
31 violating an order issued pursuant to this section shall be subject
32 to a fine of not more than fifty dollars (\$50) for each day of
33 noncompliance. The Commissioner of the department or any
34 affected party may institute an action in the Superior Court to
35 enjoin repeated violations of this chapter.

1 SECTION 4. The following workplaces shall be exempted
2 from the provisions of this chapter:

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

6 (b) any office space leased or rented by a sole independent
7 contractor for his or her own use; or

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

1 SECTION 5. Nothing in this Act shall make smoking lawful
2 in any area in which smoking is or may hereafter be prohibited
3 by law including, without limiting the generality of the foregoing,
4 any other provisions of the General Laws or ordinance or by-law,
5 or any fire, health or safety regulation.

1 SECTION 6. The department of public health shall promul-
2 gate such rules and regulations as may be necessary to implement
3 and enforce the provision of this Act. Said rules and regulations
4 shall include the provision that copies of any complaints under
5 chapter 111H of the General Laws shall be filed with the
6 department of public health.

1 SECTION 7. It shall be unlawful for an employer to discharge,
2 refuse to hire, or in any manner discriminate against any employee
3 or applicant for employment who exercises his or her rights under
4 this chapter.

The first part of the history of the... the second part... the third part...

The fourth part of the history... the fifth part... the sixth part...

The seventh part of the history... the eighth part... the ninth part...

The tenth part of the history... the eleventh part... the twelfth part...

The thirteenth part of the history... the fourteenth part... the fifteenth part...

The sixteenth part of the history... the seventeenth part... the eighteenth part...

The nineteenth part of the history... the twentieth part... the twenty-first part...

The twenty-second part of the history... the twenty-third part... the twenty-fourth part...

