

HOUSE No. 6390

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, October 9, 1986.

The committee on Ways and Means, to whom was referred the Bill to require smoking policies in the workplace (House, No. 2018, changed), reports that the same ought to pass, with an amendment, substituting therefor the accompanying bill (6390).

For the committee,

BARBARA E. GRAY.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-Six.

AN ACT TO REQUIRE SMOKING POLICIES 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 The General Laws are hereby amended by adding, after chapter
2 111G, the following chapter:

3 Chapter 111H. Smoking Policies in the Workplace.

4 Section 1. Definitions.

5 The following words as used in this chapter, unless a different
6 meaning is required by the context or is specifically prescribed,
7 shall have the following meanings:

8 "Commissioner," the commissioner of public health.

9 "Employer," an individual person, partnership, association,
10 corporation, trust, or other organized group of individuals,
11 including the Commonwealth or any agency thereof, which
12 utilizes the services of two (2) or more employees.

13 "Employee," any individual person who performs services for
14 an employer.

15 "Workplace," any enclosed area of a structure or portion
16 thereof at which fifteen (15) or more employees perform services
17 for their employer, or any enclosed area of a structure or portion
18 thereof at which two (2) or more employees perform services for
19 their employer if and when an employee requests in writing that
20 the employer establish a policy on smoking in that enclosed area,
21 but not including areas within the personal residence of the
22 employer.

23 "Smoking," the lighting of any cigar, cigarette, pipe or other
24 tobacco product or having the possession of any lighted cigar,
25 cigarette, pipe or other tobacco product.

26 Section 2. Smoking Policies in the Workplace.

27 (a) Each employer who operates a workplace in the
28 Commonwealth shall establish and post a written policy
29 governing smoking in such workplace. The policy may be uniform

30 throughout the workplace or may vary from location to location
31 within the workplace, and may include the designation of smoking
32 and no-smoking areas within the workplace. The policy shall be
33 readily available for viewing by said employer's employees, and
34 the employer shall provide a copy to any such employee upon
35 request.

36 (b) In drafting the policy governing smoking in the workplace,
37 each employer shall make a reasonable effort to determine the
38 needs of his employees located in such workplace relative to the
39 required policy. An employer may satisfy this requirement by
40 utilizing one or more of the following procedures in establishing
41 a policy:

- 42 (1) a joint committee of labor and management;
- 43 (2) interviews with employees;
- 44 (3) written questionnaires completed by employees; and
- 45 (4) any other appropriate method which allows for broad
46 employee participation.

47 (c) Each employer shall, within six (6) months of the effective
48 date of this act, adopt and implement a policy governing smoking
49 in the workplace or workplaces operated by such employer in the
50 Commonwealth. Employers not in existence or not covered by
51 this act at the date of its taking effect shall have ninety (90) days
52 from the date this act does apply to them in which to adopt and
53 implement the required policy.

54 (d) Each employer shall review and revise if necessary its policy
55 governing smoking in its workplace or workplaces not later than
56 twelve (12) months after the original implementation of such
57 policy, and not less than every two (2) years thereafter.

58 (e) If an employee objects to the impact of tobacco smoke upon
59 himself while in the workplace or workplaces operated by such
60 employee's employer, he may give written notice to the said
61 employer of such objection. Upon receipt of such notice, the
62 employer shall make a reasonable and diligent attempt to mediate
63 the employee's objection by following any grievance procedure
64 which may be set forth in the policy or by informal conference.

65 (f) If the employer's decision resulting from the grievance
66 procedure or informal conference referred to in paragraph (e) does
67 not satisfy the objecting employee, or if the employer has failed
68 to take any action within thirty (30) days after receiving written

69 notice of the employee's objection, such employee may file a
70 complaint with the Department of Public Health. The
71 Commissioner shall promptly thereafter designate a person from
72 the Department of Public Health to investigate the employee's
73 complaint, said investigation to include a hearing to be held before
74 the Commissioner if such hearing is requested by either the
75 employee or employer. The Commissioner shall then determine
76 if the complaint is reasonable, giving due consideration to
77 reasonable protection of the health of the complaining employee
78 and to the reasonable needs of the employer's business. If the
79 Commissioner determines that the complaint is reasonable, the
80 Commissioner shall order the employer to implement a policy
81 which is, in the view of the Commissioner, adequate to provide
82 reasonable protection for the health of the complaining employee,
83 giving due consideration to the reasonable needs of the employer's
84 business. The employer shall implement any such order of the
85 Commissioner, provided, however, that the employer shall not be
86 required to make any structural changes to the workplace.

87 (g) Any party to a complaint proceeding undertaken pursuant
88 to the provisions of paragraph (f) who is aggrieved by the order
89 of the Commissioner in such proceeding may seek relief therefrom
90 by any court of competent jurisdiction as provided by the laws
91 of the Commonwealth.

92 (h) Employers found not to be in compliance with the
93 provisions of this act shall be subject to a fine of not more than
94 fifty dollars (\$50) for each day of noncompliance. The
95 Commissioner or any affected party may institute an action in the
96 Superior Court to enjoin repeated violations of this chapter.

97 Section 3. Rules and Regulations.

98 The Department of Public Health shall promulgate such rules
99 and regulations as may be necessary to implement the provisions
100 of this act. Said rules and regulations shall include the provision
101 that copies of any complaints under chapter 111H shall be filed
102 with said department.

103 Section 4. Effect on Other Laws.

104 Nothing in this act shall make lawful smoking in any area in
105 which smoking is or may hereafter be prohibited by law including,
106 without limiting the generality of the foregoing, any other
107 provision of the general laws or ordinance or by-law, or any fire,
108 health or safety regulation.

109 Section 5. Retaliatory Discharge or Discrimination Prohibited.
110 It shall be unlawful for an employer to discharge or in any
111 manner discriminate against any employee who exercises his
112 rights under this chapter if the dominant intent of the employer
113 is retaliation against the employee for exercising those rights.

114 Section 6. Severability.

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

