

[Ms. Fargo gives notice that she will move to amend House Bill, No. 4256, printed as amended, by striking out all after the enacting clause and inserting in place thereof the following new text.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Three.

1 SECTION 1. Chapter 270 of the General Laws is hereby
2 amended by striking out section 22, as appearing in the 2002 Offi-
3 cial Edition, and inserting in place thereof the following
4 section:—

5 Section 22. (a) As used in this section, the following words
6 shall have the following meanings, unless the context requires
7 otherwise:

8 “Compensation”, money, gratuity, privilege, or benefit received
9 in return for work performed or services rendered.

10 “Employee”, an individual, including an individual who is both
11 the employee and employer, who performs services for compensa-
12 tion for an employer at the employer’s workplace, including a
13 contract employee, temporary employee, and vendor who per-
14 forms a service in the employer’s workplace for more than a de
15 minimis amount of time.

16 “Employer”, the owner, manager, or other person in charge of a
17 facility, building, or vehicle.

18 “Enclosed space”, a space bounded by walls, with or without
19 windows, continuous from floor to ceiling and enclosed by doors,
20 including but not limited to an office, room and function hall.

21 “Membership association”, a not-for-profit entity, which has
22 been created or organized for a charitable, philanthropic, educa-
23 tional, political, social, or other similar purpose.

24 “Smoking”, the lighting or possession of a lighted cigar, ciga-
25 rette, pipe or other tobacco product.

26 “Workplace”, any enclosed indoor area, vehicle, structure or
27 facility or any portion thereof at which 1 or more employees per-
28 forms a service for an employer, including the personal residence
29 of the employer during a time when the residence or part thereof

30 is used as a child care or health care office, or an enclosed space
31 owned or operated by a membership association during a time
32 when the enclosed space is rented or open to the public.

33 (b) A person shall not smoke in any public elevator, super-
34 market or retail food outlet, in or upon any public mass trans-
35 portation vehicle or indoor platform or enclosed outdoor platform,
36 at any open meeting of a governmental body as defined in
37 section 11A of chapter 30A, section 23A of chapter 39 and
38 section 9F of chapter 34 or in any courtroom.

39 (c) A person shall not smoke in a courthouse, school, college,
40 university, museum, library, airport, health care facility as defined
41 in section 9C of chapter 112, group child care center, school-aged
42 day care center, or family day care center or on premises where
43 activities are licensed under section 38 of chapter 10 or in a
44 public building.

45 (d) A person shall not smoke in the state house or in a building
46 owned by the commonwealth or in a space occupied by a state
47 agency or department of the commonwealth or in a space occu-
48 pied by a state agency or department of the commonwealth which
49 is located in another building, including a private office in such
50 building or space. This subsection shall not apply to a resident or
51 patient of a state hospital, the Soldiers' Home in Massachusetts,
52 the Soldiers' Home in Holyoke or a substance abuse treatment
53 center under the jurisdiction of the commonwealth.

54 (e) A person shall not smoke in a vehicle owned, leased, or
55 otherwise operated by the commonwealth or a political subdivi-
56 sion thereof.

57 (f) A person shall not smoke in a workplace unless explicitly
58 permitted in subsection (h).

59 (g) The owner, manager or other person in charge of a facility,
60 building, vehicle or place described in subsections (b) to (f),
61 inclusive, shall post conspicuously a notice or sign at each
62 entrance indicating that smoking is prohibited.

63 The owner, manager or other person in charge of a facility,
64 building, vehicle or place so described who violates this section
65 shall be fined \$100 for the first violation; \$200 for a second viola-
66 tion occurring within 2 years of the date of the first offense; and
67 \$300 for a third or subsequent violation within 2 years of the
68 second violation. Each calendar day on which a violation exists

69 shall be considered a separate offense. The commonwealth or its
70 agents, including but not limited to the department of public
71 health, the attorney general or the state police; a municipal gov-
72 ernment or its agent; a board of health or its agent; or local police
73 shall enforce this section. In the city of Boston, the commissioner
74 of health and his authorized agents shall enforce this section. A
75 violation of this section shall be considered a civil violation.

76 If the enforcing authority is a board of health or its authorized
77 agent, a violation of this section may be disposed of by the non-
78 criminal method of disposition procedures contained in
79 section 21D of chapter 40 without an enabling ordinance or by-
80 law. The disposition of fines assessed under this section shall be
81 subject to section 188 of chapter 111.

82 A person aggrieved by the failure or refusal to comply with this
83 section in any public building may complain in writing to the head
84 of the department or agency occupying the area wherein the viola-
85 tion occurs. The agency or department head shall respond to the
86 complainant in writing within 15 days, that the area described in
87 the complaint has been inspected and this section has been
88 enforced. The agency or department head shall file a copy of the
89 original complaint and the response thereto with the department of
90 public health.

91 (h) Notwithstanding subsections (b) to (g), inclusive, smoking
92 may be permitted in the following places and circumstances, but,
93 a place permitted to allow smoking under this subsection shall
94 submit documentation demonstrating compliance with all other
95 applicable provisions of this section as determined by the depart-
96 ment of public health:

97 (1) Membership associations employing 1 or more employees
98 on the premises that perform any of the duties with respect to the
99 operation of the association, including, but not limited to, the
100 preparation and service of food and beverages, reception and sec-
101 retarial work, and the security services for the membership.
102 Smoking may not be permitted in any enclosed space owned or
103 operated by the membership association facility during the time
104 more than 1 individual is hired to perform a service for the associ-
105 ation or the enclosed space is rented to an individual or group not
106 a member of not association.

107 (2) Private residential rooms in assisted living facilities
108 licensed under section 1 of chapter 19D.

109 (3) Nursing homes licensed under section 71 of chapter 111
110 may designate an area, not abutting a patient care area, where
111 smoking by residents shall be allowed, if the designated area is
112 not an employee workspace, such as an office, restroom, or other
113 area used primarily by employees or non-residents.

114 (4) A hotel, motel, inn, bed and breakfast or lodging home
115 room that are rented to a guest and designated as a smoking room.

116 (5) A retail tobacco store, used primarily for the sale of tobacco
117 products and paraphernalia, in which the sale of other products is
118 merely incidental, which prohibits the entry of persons under the
119 age of 18, maintains a valid permit for the sale of tobacco prod-
120 ucts issued by the appropriate authority in the city or town in
121 which the retail tobacco store is located.

122 (6) Smoking bars, so-called. For the purposes of this section, a
123 "smoking bar" shall mean an establishment whose business is pri-
124 marily devoted to the serving of tobacco products for consump-
125 tion by guests on the premises, in which the serving of food or
126 alcohol is incidental to the consumption of such tobacco products
127 and prohibits the entry of persons under the age of 18. The estab-
128 lishment shall annually demonstrate that revenue generated from
129 the serving of tobacco products are equal to or greater than 51 per
130 cent of the total combined revenue generated by the service of
131 such tobacco products, beverages, and food. The department of
132 public health, in conjunction with the department of revenue,
133 shall determine the process by which to determine the revenue
134 figures.

135 (7) A person or entity that manufactures, produces, or conducts
136 medical or academic research on tobacco products in the com-
137 monwealth; but, the person or entity shall apply to the commis-
138 sioner of the department of public health for a waiver for the
139 purpose of tobacco testing. The waiver shall designate a specific
140 location on the person's or entity's property as a tobacco testing
141 room.

142 (8) Performers engaged in a theatrical performance or artistic
143 production, if the smoking is part of the performance or produc-
144 tion.

145 (9) Religious ceremonies where smoking is part of the ritual.

146 (i) Nothing in this section shall be construed to permit smoking
147 in an area in which smoking is or may hereafter be prohibited by

148 law including, without limiting the generality of the foregoing,
149 any other law or ordinance or by-law or any fire, health or safety
150 regulation.

1 SECTION 2. There shall be a special commission to assist in
2 the efficient implementation and compliance of this act. The com-
3 mission shall consist of a representative from the Boston Public
4 Health Association, the Massachusetts Restaurant Association, the
5 Massachusetts Association of Health Boards, the Massachusetts
6 Municipal Association, the alcoholic beverages control commis-
7 sion, the Massachusetts Public Health Association, the department
8 of public health, the department of public safety, and representa-
9 tives from 15 local boards of health appointed by the commis-
10 sioner of the department of public health, in appointing whom the
11 commissioner shall take into account the size of the city or town
12 and other unique factors to ensure diversity on the commission.
13 The commissioner of the department of public health may appoint
14 additional members of the commission.

15 Said commission will report any recommendations to the com-
16 missioner 60 days prior to the effective date of this act.

1 SECTION 3. This act shall take effect on July 1, 2004.

