

ASSEMBLY BILL NO. 571—COMMITTEE ON WAYS AND MEANS

MAY 20, 2011

Referred to Committee on Ways and Means

SUMMARY—Revises provisions governing prohibitions on smoking tobacco. (BDR 15-1294)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State: Contains Appropriation not included in Executive Budget.

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to smoking; revising the definition of “stand-alone bar, tavern or saloon” as used in provisions regulating smoking tobacco; revising provisions governing the areas in which smoking is not prohibited; revising, removing and reenacting certain provisions of the Nevada Clean Indoor Air Act; providing civil and criminal penalties; making an appropriation; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

The Nevada Clean Indoor Air Act, which is currently codified as NRS 202.2483, was proposed by an initiative petition and approved by the voters at the 2006 General Election. The Act generally prohibits smoking tobacco within indoor places of employment, within school buildings and on school property but allows smoking tobacco in certain areas or establishments, including: (1) stand-alone bars, taverns and saloons; and (2) in certain circumstances, the area of a convention facility in which a meeting or trade show is being held. (NRS 202.2483)

Section 1 of this bill revises provisions governing the areas in which smoking is allowed. **Section 1** extends the provisions allowing smoking tobacco to: (1) age-restricted stand-alone bars, taverns and saloons; and (2) completely enclosed areas within other stand-alone bars, taverns and saloons in which patrons under 21 years of age are prohibited from entering. **Section 1** also revises the definition of “stand-alone bar, tavern or saloon” to provide that food service or sales in the bar, tavern or saloon may or may not be incidental services or sales, as determined by the operator. Under **section 1**, if a supervisor on duty or employee of an age-restricted stand-alone bar, tavern or saloon or a stand-alone bar, tavern or saloon permits a person under 21 years of age to loiter in an area in which smoking is prohibited: (1) the supervisor or employee is guilty of a misdemeanor; and (2) the age-restricted stand-alone bar, tavern or saloon or stand-alone bar, tavern or saloon is liable for a



civil penalty. **Section 1** also removes the provisions which allow smoking in certain circumstances in the area of a convention facility in which a meeting or trade show is being held.

Section 2 of this bill reenacts the provisions which allow smoking in certain circumstances in the area of a convention facility in which a meeting or trade show is being held.

Section 3 of this bill makes an appropriation of \$15,000 from the State General Fund to the Interim Finance Committee to contract, through competitive bidding, with a qualified independent consultant to conduct a study regarding the implementation of the Nevada Clean Indoor Air Act.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 202.2483 is hereby amended to read as follows:

202.2483 1. Except as otherwise provided in subsection 3, smoking tobacco in any form is prohibited within indoor places of employment including, but not limited to, the following:

- (a) Child care facilities;
- (b) Movie theatres;
- (c) Video arcades;
- (d) Government buildings and public places;
- (e) Malls and retail establishments;
- (f) All areas of grocery stores; and
- (g) All indoor areas within restaurants.

2. Without exception, smoking tobacco in any form is prohibited within school buildings and on school property.

3. Smoking tobacco is not prohibited in:

(a) Areas within casinos where loitering by minors is already prohibited by state law pursuant to NRS 463.350;

(b) ~~Stand-alone~~ *Completely enclosed areas within stand-alone bars, taverns and saloons in which patrons under 21 years of age are prohibited from entering* ;

(c) *Age-restricted stand-alone bars, taverns and saloons;*

~~(e)~~ (d) Strip clubs or brothels;

~~(d)~~ (e) Retail tobacco stores; *and*

~~(e)~~ (f) Private residences, including private residences which may serve as an office workplace, except if used as a child care, an adult day care or a health care facility. ~~f; and~~

~~(f) The area of a convention facility in which a meeting or trade show is being held, during the time the meeting or trade show is occurring, if the meeting or trade show:~~

~~(1) Is not open to the public;~~

~~(2) Is being produced or organized by a business relating to tobacco or a professional association for convenience stores; and~~



~~— (3) Involves the display of tobacco products.]~~

4. *A supervisor on duty or employee of an age-restricted stand-alone bar, tavern or saloon or a stand-alone bar, tavern or saloon shall not allow a person who is under 21 years of age to loiter in an age-restricted stand-alone bar, tavern or saloon or an area of a stand-alone bar, tavern or saloon where smoking is allowed pursuant to this section. A person who violates the provisions of this subsection is guilty of a misdemeanor.*

5. *If a supervisor on duty or employee of an age-restricted stand-alone bar, tavern or saloon or a stand-alone bar, tavern or saloon violates the provisions of subsection 4, the age-restricted stand-alone bar, tavern or saloon or stand-alone bar, tavern or saloon is liable for a civil penalty of:*

(a) *For the first offense, \$1,000.*

(b) *For a second or subsequent offense, \$2,000.*

6. *In any prosecution or other proceeding for a violation of the provisions of subsection 4 or 5, it is no excuse for a supervisor, employee, age-restricted bar, tavern or saloon, or stand-alone bar, tavern or saloon alleged to have committed the violation to plead that a supervisor or employee believed that the person who was permitted to loiter was 21 years of age or older.*

7. In areas or establishments where smoking is not prohibited by this section, nothing in state law shall be construed to prohibit the owners of said establishments from voluntarily creating nonsmoking sections or designating the entire establishment as smoke free.

~~[5.]~~ 8. Nothing in state law shall be construed to restrict local control or otherwise prohibit a county, city or town from adopting and enforcing local tobacco control measures that meet or exceed the minimum applicable standards set forth in this section.

~~[6.]~~ 9. "No Smoking" signs or the international "No Smoking" symbol shall be clearly and conspicuously posted in every public place and place of employment where smoking is prohibited by this section. Each public place and place of employment where smoking is prohibited shall post, at every entrance, a conspicuous sign clearly stating that smoking is prohibited. All ashtrays and other smoking paraphernalia shall be removed from any area where smoking is prohibited.

~~[7.]~~ 10. Health authorities, police officers of cities or towns, sheriffs and their deputies shall, within their respective jurisdictions, enforce the provisions of this section and shall issue citations for violations of this section pursuant to NRS 202.2492 and 202.24925.

~~[8.]~~ 11. No person or employer shall retaliate against an employee, applicant or customer for exercising any rights afforded by, or attempts to prosecute a violation of, this section.



* A B 5 7 1 R 1 *

~~19-1~~ 12. For the purposes of this section, the following terms have the following definitions:

(a) *“Age-restricted stand-alone bar, tavern or saloon” means an establishment:*

(1) Devoted primarily to the sale of alcoholic beverages to be consumed on the premises;

(2) In which food service or sales may or may not be incidental food service or sales, in the discretion of the operator of the establishment;

(3) In which patrons under 21 years of age are prohibited at all times from entering the premises; and

(4) That must be located within:

(I) A physically independent building that does not share a common entryway or indoor area with a restaurant, public place or any other indoor workplace where smoking is prohibited by this section; or

(II) A completely enclosed area of a larger structure, which may include, without limitation, a strip mall or an airport, provided that indoor windows must remain closed at all times and doors must remain closed when not actively in use.

(b) “Casino” means an entity that contains a building or large room devoted to gambling games or wagering on a variety of events. A casino must possess a nonrestricted gaming license as described in NRS 463.0177 and typically uses the word ‘casino’ as part of its proper name.

~~(b)~~ (c) “Child care facility” has the meaning ascribed to it in NRS 432A.024.

~~(c)~~ (d) “Completely enclosed area” means an area that is enclosed on all sides by any combination of solid walls, windows or doors that extend from the floor to the ceiling.

~~(d)~~ (e) “Government building” means any building or office space owned or occupied by:

(1) Any component of the Nevada System of Higher Education and used for any purpose related to the System;

(2) The State of Nevada and used for any public purpose; or

(3) Any county, city, school district or other political subdivision of the State and used for any public purpose.

~~(e)~~ (f) “Health authority” has the meaning ascribed to it in NRS 202.2485.

~~(f)~~ (g) “Incidental food service or sales” means the service of prepackaged food items including, but not limited to, peanuts, popcorn, chips, pretzels or any other incidental food items that are exempt from food licensing requirements pursuant to subsection 2 of NRS 446.870.



* A B 5 7 1 R 1 *

~~[(e)]~~ (h) "Place of employment" means any enclosed area under the control of a public or private employer which employees frequent during the course of employment including, but not limited to, work areas, restrooms, hallways, employee lounges, cafeterias, conference and meeting rooms, lobbies and reception areas.

~~[(h)]~~ (i) "Public places" means any enclosed areas to which the public is invited or in which the public is permitted.

~~[(i)]~~ (j) "Restaurant" means a business which gives or offers for sale food, with or without alcoholic beverages, to the public, guests or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere.

~~[(j)]~~ (k) "Retail tobacco store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

~~[(k)]~~ (l) "School building" means all buildings on the grounds of any public school described in NRS 388.020 and any private school as defined in NRS 394.103.

~~[(l)]~~ (m) "School property" means the grounds of any public school described in NRS 388.020 and any private school as defined in NRS 394.103.

~~[(m)]~~ (n) "Stand-alone bar, tavern or saloon" means an establishment ~~[devoted]~~ :

(1) *Devoted* primarily to the sale of alcoholic beverages to be consumed on the premises ~~[, in]~~ ;

(2) *In* which food service ~~[is]~~ *or sales may or may not be* incidental ~~[to its operation, and provided that]~~ *food service or sales, in the discretion of the operator of the establishment;*

(3) *In which* smoke from such establishments does not infiltrate into areas where smoking is prohibited under the provisions of this section ~~[, In addition, a stand-alone bar, tavern or saloon]~~ ; and

(4) *That* must be housed in either:

~~[(1)]~~ (I) A physically independent building that does not share a common entryway or indoor area with a restaurant, public place or any other indoor workplaces where smoking is prohibited by this section; or

~~[(2)]~~ (II) A completely enclosed area of a larger structure, such as a strip mall or an airport, provided that indoor windows must remain shut at all times and doors must remain closed when not actively in use.

~~[(n)]~~ (o) "Video arcade" has the meaning ascribed to it in paragraph (d) of subsection 3 of NRS 453.3345.

~~[(0)]~~ 13. Any statute or regulation inconsistent with this section is null and void.



~~14.1~~ 14. The provisions of this section are severable. If any provision of this section or the application thereof is declared by a court of competent jurisdiction to be invalid or unconstitutional, such declaration shall not affect the validity of the section as a whole or any provision thereof other than the part declared to be invalid or unconstitutional.

Sec. 2. NRS 202.2483 is hereby amended to read as follows:

202.2483 1. Except as otherwise provided in subsection 3, smoking tobacco in any form is prohibited within indoor places of employment including, but not limited to, the following:

- (a) Child care facilities;
- (b) Movie theatres;
- (c) Video arcades;
- (d) Government buildings and public places;
- (e) Malls and retail establishments;
- (f) All areas of grocery stores; and
- (g) All indoor areas within restaurants.

2. Without exception, smoking tobacco in any form is prohibited within school buildings and on school property.

3. Smoking tobacco is not prohibited in:

(a) Areas within casinos where loitering by minors is already prohibited by state law pursuant to NRS 463.350;

(b) Completely enclosed areas within stand-alone bars, taverns and saloons in which patrons under 21 years of age are prohibited from entering;

(c) Age-restricted stand-alone bars, taverns and saloons;

(d) Strip clubs or brothels;

(e) Retail tobacco stores; ~~and~~

(f) *The area of a convention facility in which a meeting or trade show is being held, during the time the meeting or trade show is occurring, if the meeting or trade show:*

(1) Is not open to the public;

(2) Is being produced or organized by a business relating to tobacco or a professional association for convenience stores; and

(3) Involves the display of tobacco products; and

(g) Private residences, including private residences which may serve as an office workplace, except if used as a child care, an adult day care or a health care facility.

4. A supervisor on duty or employee of an age-restricted stand-alone bar, tavern or saloon or a stand-alone bar, tavern or saloon shall not allow a person who is under 21 years of age to loiter in an age-restricted stand-alone bar, tavern or saloon or an area of a stand-alone bar, tavern or saloon where smoking is allowed pursuant to this section. A person who violates a provision of this section is guilty of a misdemeanor.



* A B 5 7 1 R 1 *

5. If a supervisor on duty or employee of an age-restricted stand-alone bar, tavern or saloon or a stand-alone bar, tavern or saloon violates the provisions of subsection 4, the age-restricted stand-alone bar, tavern or saloon or stand-alone bar, tavern or saloon is liable for a civil penalty of:

(a) For the first offense, \$1,000.

(b) For a second or subsequent offense, \$2,000.

6. In any prosecution or other proceeding for a violation of the provisions of subsection 4 or 5, it is no excuse for a supervisor, employee, age-restricted bar, tavern or saloon, or stand-alone bar, tavern or saloon alleged to have committed the violation to plead that a supervisor or employee believed that the person who was permitted to loiter was 21 years of age or older.

7. In areas or establishments where smoking is not prohibited by this section, nothing in state law shall be construed to prohibit the owners of said establishments from voluntarily creating nonsmoking sections or designating the entire establishment as smoke free.

8. Nothing in state law shall be construed to restrict local control or otherwise prohibit a county, city or town from adopting and enforcing local tobacco control measures that meet or exceed the minimum applicable standards set forth in this section.

9. "No Smoking" signs or the international "No Smoking" symbol shall be clearly and conspicuously posted in every public place and place of employment where smoking is prohibited by this section. Each public place and place of employment where smoking is prohibited shall post, at every entrance, a conspicuous sign clearly stating that smoking is prohibited. All ashtrays and other smoking paraphernalia shall be removed from any area where smoking is prohibited.

10. Health authorities, police officers of cities or towns, sheriffs and their deputies shall, within their respective jurisdictions, enforce the provisions of this section and shall issue citations for violations of this section pursuant to NRS 202.2492 and 202.24925.

11. No person or employer shall retaliate against an employee, applicant or customer for exercising any rights afforded by, or attempts to prosecute a violation of, this section.

12. For the purposes of this section, the following terms have the following definitions:

(a) "Age-restricted stand-alone bar, tavern or saloon" means an establishment:

(1) Devoted primarily to the sale of alcoholic beverages to be consumed on the premises;



* A B 5 7 1 R 1 *

(2) In which food service or sales may or may not be incidental food service or sales, in the discretion of the operator of the establishment;

(3) In which patrons under 21 years of age are prohibited at all times from entering the premises; and

(4) That must be located within:

(I) A physically independent building that does not share a common entryway or indoor area with a restaurant, public place or any other indoor workplace where smoking is prohibited by this section; or

(II) A completely enclosed area of a larger structure, which may include, without limitation, a strip mall or an airport, provided that indoor windows must remain closed at all times and doors must remain closed when not actively in use.

(b) "Casino" means an entity that contains a building or large room devoted to gambling games or wagering on a variety of events. A casino must possess a nonrestricted gaming license as described in NRS 463.0177 and typically uses the word 'casino' as part of its proper name.

(c) "Child care facility" has the meaning ascribed to it in NRS 432A.024.

(d) "Completely enclosed area" means an area that is enclosed on all sides by any combination of solid walls, windows or doors that extend from the floor to the ceiling.

(e) "Government building" means any building or office space owned or occupied by:

(1) Any component of the Nevada System of Higher Education and used for any purpose related to the System;

(2) The State of Nevada and used for any public purpose; or

(3) Any county, city, school district or other political subdivision of the State and used for any public purpose.

(f) "Health authority" has the meaning ascribed to it in NRS 202.2485.

(g) "Incidental food service or sales" means the service of prepackaged food items including, but not limited to, peanuts, popcorn, chips, pretzels or any other incidental food items that are exempt from food licensing requirements pursuant to subsection 2 of NRS 446.870.

(h) "Place of employment" means any enclosed area under the control of a public or private employer which employees frequent during the course of employment including, but not limited to, work areas, restrooms, hallways, employee lounges, cafeterias, conference and meeting rooms, lobbies and reception areas.

(i) "Public places" means any enclosed areas to which the public is invited or in which the public is permitted.



(j) "Restaurant" means a business which gives or offers for sale food, with or without alcoholic beverages, to the public, guests or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere.

(k) "Retail tobacco store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

(l) "School building" means all buildings on the grounds of any public school described in NRS 388.020 and any private school as defined in NRS 394.103.

(m) "School property" means the grounds of any public school described in NRS 388.020 and any private school as defined in NRS 394.103.

(n) "Stand-alone bar, tavern or saloon" means an establishment:

(1) Devoted primarily to the sale of alcoholic beverages to be consumed on the premises;

(2) In which food service or sales may or may not be incidental food service or sales, in the discretion of the operator of the establishment;

(3) In which smoke from such establishments does not infiltrate into areas where smoking is prohibited under the provisions of this section; and

(4) That must be housed in either:

(I) A physically independent building that does not share a common entryway or indoor area with a restaurant, public place or any other indoor workplaces where smoking is prohibited by this section; or

(II) A completely enclosed area of a larger structure, such as a strip mall or an airport, provided that indoor windows must remain shut at all times and doors must remain closed when not actively in use.

(o) "Video arcade" has the meaning ascribed to it in paragraph (d) of subsection 3 of NRS 453.3345.

13. Any statute or regulation inconsistent with this section is null and void.

14. The provisions of this section are severable. If any provision of this section or the application thereof is declared by a court of competent jurisdiction to be invalid or unconstitutional, such declaration shall not affect the validity of the section as a whole or any provision thereof other than the part declared to be invalid or unconstitutional.

Sec. 3. 1. There is hereby appropriated from the State General Fund to the Interim Finance Committee the sum of \$15,000 to contract, through competitive bidding, with a qualified independent consultant to conduct a study regarding the



1 implementation of the Nevada Clean Indoor Air Act,
2 NRS 202.2483.

3 2. Any remaining balance of the appropriation made by
4 subsection 1 must not be committed for expenditure after June 30,
5 2013, by the entity to which the appropriation is made or any
6 entity to which money from the appropriation is granted or
7 otherwise transferred in any manner, and any portion of the
8 appropriated money remaining must not be spent for any purpose
9 after September 20, 2013, by either the entity to which the money
10 was appropriated or the entity to which the money was subsequently
11 granted or transferred, and must be reverted to the State General
12 Fund on or before September 20, 2013.

13 **Sec. 4.** 1. This section and sections 1 and 3 of this act
14 become effective upon passage and approval.

15 2. Section 2 of this act becomes effective one minute after
16 passage and approval of this act.

