

# HOUSE RESEARCH

## Bill Summary

**FILE NUMBER:** H.F. 405

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**Version:** First engrossment

**Authors:** Meslow and others

**Subject:** Freedom to Breathe Act of 2005

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### Overview

This bill establishes the Freedom to Breathe Act of 2005. It expands the prohibition on smoking in public places, including restaurants and bars with some exceptions.

#### Section

- 1 **Public place.** Amends § 144.413, subd 2. Adds "bars" to the list of public places where smoking is prohibited.
- 2 **Smoking.** Amends § 144.413, subd. 4. Clarifies the definition of smoking by adding to the definition "inhaling, exhaling, or combustion of any cigar, cigarette, pipe, or any other lighted smoking equipment."
- 3 **Responsibilities of proprietors.** Amends § 144.416. Makes proprietors of public places subject to requirements to prevent smoking. Modifies the list of "reasonable efforts" proprietors must take to prevent smoking by:
  - Arranging seating to provide a smoke free area as an option
  - Requiring proprietors to ask anyone smoking to refrain from smoking (under current law this was required at the request of a client or employee)
  - Requiring proprietors to ask those smoking who have been told to refrain from smoking to leave the premises if they do not refrain from smoking

## Section

- Adds that if the smoker does not leave, the proprietor shall use lawful methods consistent with handling disorderly persons or trespassers
- Allowing proprietors to adopt more stringent measures than those in sections 144.414 to 144.417 to protect individuals from second-hand smoke
- Prohibiting a proprietor of a restaurant or bar from serving those in violation of sections 144.411 to 144.417
- Prohibiting a proprietor from providing smoking equipment (ashtrays, matches, etc.) where smoking is prohibited

### **4 Permitted smoking.** Adds a new section to combine and clarify exceptions to prohibited smoking.

**Subd. 1. Scientific study participants.** Retains the exception for smoking done by participants of peer-reviewed scientific studies related to the health effects of smoking provided certain requirements are met. The exception was added in 1995.

**Subd. 2. Traditional Native American ceremonies.** Retains the exception for smoking done by an Indian adult as part of a traditional Indian spiritual or cultural ceremony. The exception was added in 1993.

**Subd. 3. Bars.** Adds an exception for smoking in bars provided the bar has an on-sale intoxicating liquor license, an on-sale non-intoxicating malt liquor license, an on-sale 3.2 percent malt liquor license, a wine license, or a strong beer liquor license and either:

(1) has liquor sales that are projected to be (for new licenses) or are demonstrated to be (for existing licenses) more than 50 percent of total sales for the most recent calendar year; OR

(2) has a separate room, separate ventilation system, does not permit minors, and has a food or beverage license separate from the restaurant.

**Subd. 4. Private clubs.** Adds an exception for smoking in private clubs (provided the club is not open to the public serving food or drink) and the club:

- has more than 25 members
- has owned/rented a space in a building able to accommodate its members for more than one year
- is directed by a board of directors or similar body chosen by its members (no member/employee may profit from the sale of beverages to members/guests beyond a reasonable salary)

**Section**

- does not restrict membership on the basis of race, color, creed, religion, or national origin
- was not established to avoid compliance with §§ 144.414 to 144.417

**Subd. 5. Restaurants.** Adds an exception for smoking in restaurants that are closed to the public while being used for a private event.

**Subd. 6. Private places.** States that smoking is not prohibited in private homes, private residences or private automobiles; or in hotels/motel sleeping rooms rented to one or more guests.

- 5 Commissioner of health, enforcement, violations.** Amends § 144.417 by modifying the sections applicable for determining repeated violations subject to injunction by the courts.
- 6 Local government ordinances.** States that nothing in sections 144.414 to 144.417 prohibits statutory or home rule charter cities or counties from enacting and enforcing more stringent measures; and that local governments may permit smoking for an event at facilities they own and manage when they have declared portions of the building are exempt for the event.
- 7 Freedom to Breathe Act.** States that the act shall be referred to as the "Freedom to Breathe Act of 2005."
- 8 Repealer.** Repeals section 144.415, which allowed proprietors of public places to designate smoking areas.