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Northeast Legislative Strategies, Inc.

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Dennis M. Dyer
President

May 21, 1992

(VIA FAX)

Marty Gleason, Manager
Public Affairs Division
The Tobacco Institute
Suite 800
1875 I Street, N.W.
Washington, D.C. 20006

Dear Marty,

I understand that there is still some confusion at the Tobacco Institute with regard to the text of the IAQ legislation being sponsored in Massachusetts by the National Energy Management Institute (NEMI). At your request, attached is a copy of the legislation, with the suggested changes included.

The original bill sponsored by NEMI and the Sheetmetal Workers Union is S 1159. This bill was pre-filed for the 1992 Legislative Session by Senator Robert Havern. The bill is currently in a Joint State Administration Committee "study". It is my intention to have the bill returned to the Committee, amended as indicated in the attached draft, and referred favorably to the Senate floor for action. For your information, the attached draft has been reviewed by the lobbyists for the Tobacco Institute, Philip Morris and R.J. Reynolds. They have been very helpful in developing the new draft and requesting that the bill be amended by the Committee and reported favorably. It is possible that the bill will begin to move as early as next Wednesday.

If you have any questions, please give me a call. I hope I can continue to enjoy the support of the Tobacco Institute for NEMI's legislation here in Massachusetts.

Sincerely,

Dennis M. Dyer

cc James Golden, NEMI
Robert Fanning, Sheetmetal Workers

Correspondence 92-003

Deletions are in italics
Additions are in **bold and underlined**

Gen DD
5/21/92

AN ACT RELATIVE TO THE POWERS AND DUTIES OF THE
DEPARTMENT OF LABOR AND INDUSTRIES

*Be it enacted by the Senate and House of Representatives in General Court
assembled, and by the authority of the same, as follows:*

1 Chapter 23 of the General Laws, as appearing in the 1988 Official
2 Edition of the Massachusetts General Laws, is hereby amended by
3 adding the following new sections:

4 **SECTION 25.** For the purpose of this Act the following words,

5 unless a different meaning is required by the context or is
6 specifically prescribed, shall have the following meanings:

7 (1) "Indoor air contaminant", any solid, liquid, semisolid
8 dissolved solid, biological organism, aerosol, or gaseous materials,
9 including tobacco smoke, and combinations or mixtures of
10 substances in indoor air which may reasonably be anticipated to
11 have an adverse effect on human health.

12 (2) "Public building", any building which is occupied or visited
13 by the public except those buildings or areas of buildings
14 specifically exempted in this Act;

15 (3) "Commissioner", the Commissioner of the Department of
16 Labor and Industry;

17 (4) "Proprietor", the owner, manager, or operator of a building
18 or an employer or other person in charge of a workplace.

19 (5) "Workplace", that portion of any building which is not
20 residential which is enclosed and indoors and in which 15 or more
21 persons are employed.

22 (6) "Public building", all buildings constructed in whole or in
23 part with public funds and all buildings occupied by the
24 Commonwealth or any political subdivision thereof.

25 (7) "Department", the Department of Labor and Industries.

26 (8) "Commissioner's Designee", the assistant commissioner, the
27 directors, inspectors and other representatives of the division of
28 industrial safety and division of occupational hygiene.

29 (9) "Employee", any person who is employed by an employer in
30 consideration for direct or indirect monetary wage of profit, and
31 any person who volunteers his or her services.

32 (10) "Employer", every for profit and not-for-profit business or
33 corporation in the Commonwealth, including all state and
34 municipal governmental bodies, agencies, boards, and authorities,
35 with fifteen full time employees or more.

36 (11) "Enclosed Area", an area which is enclosed by a roof and
37 four permanent walls or sides or partitions, either complete or
38 partial, with appropriate openings for fenestration ingress and
39 egress.

40 (12) "Smoking" or "smoke", the inhaling, exhaling, burning or
41 carrying of any lighted cigarette, cigar, pipe, or other article, or

42 paraphernalia for tobacco or any other weed or plant.

43 (13) "Collective Bargaining Unit": any lawful association,
44 organization, federation, council or labor union, including those
45 whose members are public employees, and assists the members to
46 improve their wages, hours and conditions of employment.

47 **SECTION 25A.** Within two years of the passage of this Act the
48 Commissioner of Labor and Industries shall develop, administer
49 and coordinate a comprehensive program designed to protect
50 workers from the harmful effects of poor indoor air quality. In

51 doing this he shall study technological and other methods of
52 reducing human exposure to indoor air contaminants in the
53 workplace, provide assessments of indoor air contamination in
54 specific buildings, provide training, education, information, and
55 technical assistance to the public and private sector, and develop
56 necessary programs to enforce the provisions of this Act.

57 **SECTION 25B.** The Department of Labor and Industries may
58 promulgate such rules and regulations as may be necessary to
59 implement and enforce the provision of this Act. *(Any such rules*
60 *and regulations promulgated under this Act shall recognize that*
61 *collective bargaining agreements and grievance procedures that*
62 *reference workplace smoking policies shall*

63 *supersede all other local regulations of smoking in the workplace,*

64 *except fire codes or other safety related regulations.)*

65 The Commissioner's authority under this Act shall include:

66 (1) the authority to develop procedures to grant variances from
67 the requirements of this Act,

68 (2) the authority to appoint a director of indoor air quality,

69 (3) the authority to appoint and employ such clerical, technical,
70 and professional assistance as shall be necessary to effectuate the
71 purposes of this Act, inclusive,

72 (4) the authority to solicit, select, and utilize any federal or non-
73 profit funds available to aid in the administration of this Act,

74 (5) the authority to adopt rules and regulations to implement the
75 requirements of this Act,

76 (6) the authority to develop procedures to respond to employee
77 complaints,

78 (7) the authority to enter into cooperative agreements or contracts,
79 and may provide financial assistance in the form of grants, to
80 public agencies and authorities, nonprofit institutions and
81 organizations, employee advocate organizations, local education
82 institutions, or other persons; and is authorized to demonstrate
83 practices, methods, technologies, or processes which may be
84 effective in controlling or reducing sources or

85 potential sources of indoor air contamination, and

86 (8) the authority to publish bulletins providing an assessment of

87 technologies and management practices for the control and
88 measurement of indoor air contaminants.

89 **SECTION 25C.** Every public building and every workplace
90 constructed or substantially renovated on or after January 1, 1993,
91 shall be designed and operated at all times during occupancy in
92 accordance with the ventilation standards in Massachusetts State
93 Building Code 780 CMR Article 707.1.

94 **SECTION 25D.** With regard to Section 25C, the Commissioner's
95 responsibilities shall include:

96 (1) The Commissioner or his designee shall review State and local
97 mechanical ventilation standards; and, within two years of the
98 effective date of this Act, the Commissioner or his designee shall
99 promulgate rules and regulations defining minimum standards of
100 maintenance and operation of ventilation systems for all buildings
101 or parts thereof which are workplaces as defined (*herein*). ~~in~~
102 Section 25 and which are constructed or substantially renovated
103 after January 1, 1993.

104 (2) Upon receipt of a written complaint from an individual
105 employee or group of employees, the Commissioner or his
106 designee shall:

107 (a) conduct or cause to be conducted a study assessing the indoor
108 air quality of the workplace, and

109 (b) the indoor air quality assessment required by this subsection

110 shall include an inventory of the significant sources
111 of indoor air contaminants which are present; including an analysis
112 of the adequacy of the design, maintenance and operation of
113 mechanical ventilation systems in each building to limit exposure
114 of employees to concentrations of contaminants which have been
115 found to be harmful to humans as defined by the National Institute
116 of Occupational Safety and Health or as otherwise determined
117 through rule-making procedures.

118 **SECTION 25E.** (1) Any employer or other person who is found
119 by the Commissioner or his designee, at a hearing pursuant to this
120 section, to violate the standards developed pursuant to Section 25D
121 of this Act may be fined not more than \$1,000 for each day the
122 violation continues.

123 (2) Any person who willfully or repeatedly
124 violates regulations developed pursuant to Section 25D of this Act,
125 shall upon conviction thereof, be subject to a fine of not more than
126 \$5,000 for each violation, or not more than one year in prison, or
127 both.

128 **SECTION 25F.** Each employer who operates a workplace in the
129 Commonwealth shall within six (6) months of the effective date of
130 this Act, implement, maintain and post a written policy governing
131 smoking in such workplace.

132 (a) The policy may be uniform throughout the workplace or may

133 vary from location to location within the workplace.

134 (b) The policy (*shall*) ~~may~~ include the designation of areas within
135 the workplace where smoking is permitted and not permitted;
136 employers shall not be required to make any structural or physical
137 changes to the workplace to accommodate smoking.

138 (c) The policy shall be readily available for viewing by said
139 employer's employees, and the employer shall provide a copy to
140 such employee upon request.

141 (d) Employers shall provide a copy of the policy to all prospective
142 employees in advance of their acceptance of employment with an
143 employer.

144 (e) In drafting the policy governing smoking in the workplace,
145 each employer shall make a reasonable effort to determine the
146 needs of his employees located in such workplace relative to the
147 required policy. Where employees are represented by a collective
148 bargaining unit, the employer shall develop the policy in
149 consultation with the duly appointed representatives of that unit.
150 An employer whose employees are not represented by a collective
151 bargaining unit may satisfy this requirement of the ordinance by
152 utilizing one or more of the following procedures in establishing
153 a policy:

154 (1) an appointing committee consisting of representatives of labor
155 and management

- 156 (2) interviews with employees
157 (3) written questionnaires completed by employees
158 (4) any other appropriate method which allows for broad
159 employee participation.

160 (f) The written policy shall, at a minimum, establish the
161 following:

162 (1) Reasonable accommodations for employees who demonstrate
163 an individual need based on hypersensitivity or other medical
164 condition documented by a licensed physician.

165 (2) A grievance procedure.

166 (3) Accommodate the reasonable needs of smoking and
167 nonsmoking employees.

168 (g) Each employer shall review and revise if necessary its policy
169 governing smoking in its workplace or workplaces not later than
170 twelve (12) months after the original implementation of such
171 policy, and not less than every two (2) years thereafter.

172 **SECTION 25G.** (a) After ~~(six)~~ ~~twelve~~ months of continuous
173 employment with an employer an employee may request an
174 employer to accommodate him on the basis of the need identified
175 in 25E (F) (1). He shall give written notice to the said employer
176 of such objection. Upon receipt of such notice, the employer shall
177 make a reasonable and diligent attempt to address the employee's
178 objection.

179 (b) If the employer's decision resulting
180 from the established grievance procedure does not attempt to
181 reasonably satisfy the objecting employee, or if the employer has
182 failed to take any action within thirty (30) days after receiving
183 written notice of the employee's objection, the employee may file
184 a complaint with the Department of Labor and Industries.

185 **SECTION 25H.** The Commissioner, upon receipt of written
186 complaint from an employee, shall:

187 (a) Hold a hearing within forty-five (45) days of the date of the
188 employee's complaint to determine whether the employer's
189 smoking policy conforms to the requirements of this chapter, and
190 whether the employer's smoking policy is being enforced by the
191 employer.

192 (b) Attempt to resolve the dispute to the satisfaction of the
193 employer and the employee.

194 **SECTION 25I.** The Commissioner and/or the Commissioner's
195 Designee shall:

196 (1) Have the right to enter any workplace to investigate, including
197 test the air quality in the workplace, any complaint made under
198 this chapter.

199 (2) When warranted, the Commissioner may order the employer
200 to implement or enforce a policy which is adequate to provide
201 reasonable protection for the demonstrable health

202 concerns of the complaining employee, giving due consideration
203 to the reasonable needs of other employees. The employer shall
204 implement any such order within 30 days or other such reasonable
205 time limit set by the Commissioner.

206 Based on the policy established, the employer shall
207 conspicuously mark with signs areas where smoking has been
208 prohibited within the workplace.

209 **SECTION 25J.** Anyone who becomes an employer in the
210 Commonwealth after the passage of this Act shall, within three (3)

211 months of becoming an employer develop, implement, maintain
212 and conspicuously post for all employees a written smoking with
213 the provisions mentioned herein.

214 **SECTION 25K.** The following workplaces shall be exempted
215 from sections 25 (E), F, G, H, I and J inclusive:

216 (1) a private home which may serve as a workplace, except when
217 used as a family day care center licensed under section ten of
218 chapter twenty-eight A of the Massachusetts General Law; or

219 (2) any office space leased or rented by a sole independent
220 contractor for his or her own use; or

221 (3) a corporation or sole business entity, the majority of whose
222 revenue is derived from the sale of tobacco products.

223 *((4) any employer in the Commonwealth whose employees are*
224 *represented by a collective bargaining unit, such unit having*

225 *established negotiation and grievance procedures.)*
226 ((5)) ~~(4)~~ any employer who employs 14 or fewer employees.
227 ((6)) ~~(5)~~ any employer whose workplace, not including private
228 offices, consists of a single open room of less than 750 square
229 feet.
230 ((7)) ~~(6)~~ manufacturing facilities regulated by the State or OSHA
231 standards regarding indoor air contaminants.
232 ((8)) ~~(7)~~ restaurants, bars, lounges, taverns, private rooms of
233 hotels and motels, function rooms rented solely for the use of a
234 private individual or business.

235 **SECTION 25L.** (1) It shall be unlawful for an employer in the
236 Commonwealth to discharge, refuse to hire, or in any manner
237 discriminate against any employee or applicant for employment
238 based on whether he or she is a smoker or non-smoker; or who
239 exercises his or her rights under this statute. This section shall not
240 apply to those employers within the Commonwealth which are
241 regulated under M.G.L. Chapter 22, Section 9A; Chapter 26,
242 Section 2; Chapter 31, Section 64; or Chapter 41, Section 101A.
243 Neither shall it apply to those employers within the
244 Commonwealth which is a non-profit organization which as one of
245 its primary purposes discourages the use of tobacco by the general
246 public.

247 (2) If the Commissioner and/or the

248 Commissioner's designee has reason to believe that any employer
249 dismissed, refused to hire, or in any manner discriminated against
250 any employee or applicant for employment because they are a
251 smoker or a non-smoker or for asserting his or her rights under
252 this chapter, the Commissioner and/or the Commissioner's
253 designee may, after hearing at which the employer has had an
254 opportunity to be heard, order the employer to take whatever
255 action is necessary to remedy the situation, including but not
256 limited to, reinstatement of the employee's former position, with
257 all rights appurtenant thereto, payment of lost wages, and civil
258 administrative fined not exceeding the employee's gross annual
259 income, or ten thousand dollars, whichever is larger.

260 (3) *(Notwithstanding any other ordinance or*
261 *regulation except fire or safety,)* This Act shall constitute the
262 exclusive system of regulating indoor air quality and smoking in
263 the workplace in the Commonwealth *(and all existing*
264 *nonconforming local ordinances or statutes are hereby repealed.)*
265 : provided, however, that all local ordinances, by-laws and
266 regulations controlling smoking in the workplace in effect on
267 January 1, 1992 shall be exempt from the provisions of this
268 paragraph.

269 SECTION 25M. No person shall discharge or in any manner
270 discriminate against any employee because such employee has filed

271 any complaint or instituted or caused to be instituted any
272 proceeding under or related to this Act or has testified or is about
273 to testify in any such proceeding or because of the exercise of such
274 employee on behalf of himself or others of any right afforded by
275 this Act.
