

**CONFIDENTIAL**  
**LEGISLATIVE BILL REVIEW FORM: 2014**

Bill Number: H.217 Name of Bill: An act relating to smoking in partially enclosed structures, lodging establishments, and state lands

Agency/ Dept: AHS – VDH HPDP Author of Bill Review: Harry Chen, Commissioner

Date of Bill Review: 3/6/13 Status of Bill: (check one):

☒ Upon Introduction      ☐ As passed by 1<sup>st</sup> body      ☐ As passed by both bodies      ☐ Fiscal

**Recommended Position:**

☒ Support      ☐ Oppose      ☐ Remain Neutral      ☒ Support with modifications identified in #8 below

**Analysis of Bill**

**1. Summary of bill and issue it addresses.** *Describe what the bill is intended to accomplish and why.*

H.217 expands workplace and public place protections against secondhand smoke exposure to cover partially enclosed structures and guest quarters in lodging establishments. This bill defines “enclosed” and “partially enclosed” for the purpose of workplace and public place smoking restrictions. H.217 also establishes areas with publicly owned buildings and offices as smoke-free, including all outside property and grounds leased by the state.

**2. Is there a need for this bill?** *Please explain why or why not.*

H.217 would provide necessary clarity to Vermont’s secondhand smoke protections and provide more comprehensive coverage in workplaces and public places. Secondhand smoke exposure in public places remains a significant health issue for Vermonters. According to the U.S. Surgeon General 2006 Report, there is no safe level of exposure to secondhand smoke, and exposure remains a major cause of disease, disability, and premature death among nonsmokers.<sup>1</sup> Despite Vermont’s existing smoking restrictions, Vermont data from 2010 show that 44% of Vermonters still report exposure to secondhand smoke in a public place in the last week.<sup>2</sup> Smoking restrictions in public places are associated with health improvements on the population level, contribute to smoking cessation, and change social norms around tobacco use and secondhand smoke.<sup>3,4,5</sup>

H.217 expands public place and workplace protections to cover enclosed and partially enclosed spaces. This would decrease secondhand smoke exposure for the public and employees in areas such as patios, porches, covered decks, and walkways. Research shows that particulate matter from smoking can reach harmful levels in outdoor venues, and additional exposure occurs when those venues are semi-enclosed.<sup>6,7</sup> The Vermont Tobacco Control Program receives public complaints about exposure in these areas; H.217 would make such complaints enforceable. In addition, H.217 adds a definition of “enclosed or partially enclosed” to statute, which would facilitate smoking ban enforcement. The Vermont Tobacco Control Program regularly receives questions and complaints about the definition of an “enclosed” area. Clear statutory language is important for communication with the public about smoking regulations and would make violations clearer and more easily enforceable.

H.217 also expands workplace and public place protections for lodging establishments. More than 15,000 Vermonters currently work in the Accommodation Industry, which includes lodging and short-term accommodations for travelers,

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vacationers, and others.<sup>8</sup> Vermont's current workplace protections do not cover guest quarters, and employees are at risk of secondhand smoke exposure when they clean, maintain, or are otherwise assigned to perform services for an employer. Four states (Indiana, Michigan, North Dakota, and Wisconsin), over 60 municipalities, and several major national hotel and motel chains (Comfort Inns, Marriott, Westin) have enacted 100% smoking bans to protect employees and guests.<sup>9</sup> The Vermont Tobacco Control Program has received queries from motel managers who are concerned about staff exposure to secondhand smoke; managers cannot always enact their own smoking ban because national chains may determine policy based on state law. H.217 would provide the same workplace protections for accommodations employees that already cover Vermont employees in other sectors.

An additional secondhand smoke protection measure in H.217 is to establish all areas of publicly owned buildings and offices, including outside property or grounds leased by the State, as smoke-free. Creating smoke-free state properties will improve the health and wellness of employees, as well as clients, volunteers, and visitors who use state property. While some Vermont state office buildings have established no-smoking zones or followed the 50 foot stipulation, H.217 would send a strong and consistent message that Vermont supports healthy smoke-free environments. Oregon recently enacted a ban on all tobacco products on state property.<sup>10</sup>

### **3. What are likely to be the fiscal and programmatic implications of this bill for this Department?**

Fiscal and programmatic implications would be minimal, especially with a strong communication strategy. As with all secondhand smoke laws, the best enforcement strategy is public outreach and communication. Previous expansions of Vermont's smoke-free laws have resulted in a brief initial uptick in complaints that diminishes as the public becomes aware and accustomed to new restrictions. Depending on enforcement protocol, enforcement for H.217 might be shared by the Tobacco Control Program in Health Promotion and Disease Prevention (for enclosed and partially enclosed public places and worksites) and the Food and Lodging Program in Environmental Health (for accommodations). For both programs, enforcement could be incorporated into existing protocol and staff resources.

### **4. What might be the fiscal and programmatic implications of this bill for other departments in state government, and what is likely to be their perspective on it?**

There are limited fiscal or programmatic implications of this bill for other departments in state government. The bill might have limited positive financial implications through improving health and reducing healthcare costs for conditions exacerbated by secondhand smoke exposure with modest fiscal benefit for Department of Children and Families and Department of Vermont Health Access. All state employees would also benefit from reduced secondhand smoke exposure on state property. The bill could result in modest fiscal gains for the State through violation fines.

### **5. What might be the fiscal and programmatic implications of this bill for others, and what is likely to be their perspective on it? (for example, public, municipalities, organizations, business, regulated entities, etc)**

H.217 could have positive fiscal implications for the hospitality industry.<sup>11,12</sup> As more hotels nationwide go smoke-free, travelers and tourists have come to prefer smoke-free guest rooms.<sup>13</sup> In addition, some professional organizations will only hold conferences in cities or states that have comprehensive smoke-free laws, including in hotels and motels. Employees in the accommodations industry would experience health benefits from a 100% smoke-free workplace. Employees in other sectors, such as the restaurant industry, could also experience benefits from protection in partially enclosed areas. H.217 would also benefit employees, clients, and visitors of state office buildings and grounds by limiting secondhand smoke exposure.

### **6. Other Stakeholders:**

#### **6.1 Who else is likely to support the proposal and why?**

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Supporters and advocates include the public health and medical communities that see the health impacts of secondhand smoke exposure firsthand. The network of Vermont tobacco control advocates and community coalitions would be supportive (Coalition for Tobacco-Free Vermont, American Lung Association, American Heart Association, and American Cancer Society, among others). Some managers of hotels and motels would also support the measure, as demonstrated by managers who have called the Tobacco Control Program about employee protection.

## 6.2 Who else is likely to oppose the proposal and why?

Members of the public who oppose governmental regulation of smoking may oppose the bill. However, the majority of Vermonters support complete smoking bans in building entryways (80%) and complete or partial bans on smoking on outdoor worksite campuses (71%).<sup>14</sup> There could also be union opposition for the state campus, partially enclosed worksites, and accommodations ban although smoke-free workplaces and public places, in particular the campus approach, is increasingly common and the language is easier to enforce than the 50 foot stipulation that applies to some state buildings.

## 7. Rationale for recommendation: *Justify recommendation stated above.*

Support of H.217 is recommended to improve workplace and public place protections against secondhand smoke exposure and provide clear definitions and guidance for areas covered under law. Vermont's current workplace and public place protections do not fully cover employees of hotels and motels. Statutory language around what constitutes an "enclosed" area is also unclear in Title 18 as written. H.217 would resolve these gaps; result in health benefits and clearer enforcement protocols; and provide a leadership message that the state of Vermont supports healthy, smoke-free environments for its employees, clients, and visitors.

## 8. Specific modifications that would be needed to recommend support of this bill: *Not meant to rewrite bill, but rather, an opportunity to identify simple modifications that would change recommended position.*

- Possible modifications
  - Is it necessary to clarify whether hotels or motels where there are long-term residents are included under "lodging establishments used for transient traveling or public vacationing".
  - Modify the section concerning lands to allow the Department of Fish and Wildlife to exercise the same rights as Forest and Parks to create non-smoking areas.
  - Prohibit the use of "tobacco alternatives" – which includes e-cigarettes – on school grounds and at license child care facilities
  - Prohibit smoking some distance (25 of 50 feet) from all state buildings.
  - Page 3, Lines 19-20: "...any other area of publicly owned buildings and offices" is interpreted as applying to the entire campus of publicly owned buildings and offices. Will this be clear to legislators?

**Secretary/Commissioner has reviewed this document:** \_\_\_\_\_ **Date:** \_\_\_\_\_

<sup>1</sup> U.S. Department of Health and Human Services. *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General – Executive Summary*. U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, Coordinating Center for Health Promotion, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2006.

<sup>2</sup> Vermont Department of Health Tobacco Control Program. *2010 Adult Tobacco Survey Report*. October 2011.

<sup>3</sup> Vander Weg MW, Rosenthal GE, Sarrazin MV. Smoking bans linked to lower hospitalizations for heart attacks and lung disease among Medicare beneficiaries. *Health Affairs*. 2012;31(12):2699-2707.

<sup>4</sup> Hopkins DP, Briss PA, Ricard CJ, Husten CG, Carande-Kulis VG, Fielding JE, Alao MO, McKenna JW, Sharp DJ, Harris JR, Woolery TA, Harris KW. Reviews of Evidence Regarding Interventions to Reduce Tobacco Use and Exposure to Environmental Tobacco Smoke. *Am J Prev Med*. 2001;20(2S).

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- <sup>5</sup> Head P, Bradford BE, Bae S, Cherry D. Hospital discharge rates before and after implementation of a city-wide smoking ban in a Texas city, 2004-2008. *Prev Chronic Dis*. 2012;9:120079.
- <sup>6</sup> Edwards R, Wilson N. Smoking outdoors at pubs and bars: is it a problem? An air quality study. *N Z Med J*. 2011;124(1347):27-37.
- <sup>7</sup> Cameron M, Brennan E, Durkin SJ, Borland R, Travers MJ, Hyland A, Spittal MJ, Wakefield MA. Secondhand smoke exposure (PM2.5) in outdoor dining areas and its correlates. *Tob Control*. [Epub ahead of print] October 21, 2009.
- <sup>8</sup> Vermont Department of Labor. *Nonfarm Payroll Employment*. Available at: <http://www.vtلمي.info/ces.cfm>. Accessed February 8, 2013.
- <sup>9</sup> Americans for Nonsmokers' Rights. *Smoke-free travel: Hotels*. Available at: <http://no-smoke.org/learnmore.php?id=188>. Accessed February 8, 2013.
- <sup>10</sup> State of Oregon: Office of the Governor. Executive Order 12-13: Tobacco-free Properties. Available at: [http://www.oregon.gov/gov/docs/executive\\_orders/eo\\_12-13.pdf](http://www.oregon.gov/gov/docs/executive_orders/eo_12-13.pdf). Accessed February 8, 2013.
- <sup>11</sup> Hyland A, Puli V, Cummings M, Sciandra R. New York's smoker-free regulations: effect on employment and sales in the hospitality industry. *Cornell Hotel and Restaurant Administration Quarterly*. 2003;44(3):9-16.
- <sup>12</sup> Christophi CA, Pasi M, Pampaka D, Kehigias M, Vardavas C, Connolly GN. The impact of the Cyprus comprehensive smoking ban on air quality and economic business of hospitality venues. *BMC Public Health*. 2013;13(76).
- <sup>13</sup> Stoller G. More hotels go completely smoke-free. *USA Today*. Published February 16, 2011. Available at: <http://travel.usatoday.com/hotels/story/2011/02/More-hotels-go-completely-smoke-free/43823744/1>. Accessed February 8, 2013.
- <sup>14</sup> Vermont Department of Health. Tobacco Control Program Macro Poll, April 2012.