

Western Australia

**Health (Smoking in Enclosed Public Places)
Amendment Bill 2003**

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Western Australia

LEGISLATIVE ASSEMBLY

(Introduced by Dr Woollard, MLA)

**Health (Smoking in Enclosed Public Places)
Amendment Bill 2003**

A Bill for

**An Act to amend Part IXB and section 360 of the *Health Act 1911*
and for related purposes.**

The Parliament of Western Australia enacts as follows:

1. Short title

5 This Act may be cited as the *Health (Smoking in Enclosed
Public Places) Amendment Act 2003*.

2. Commencement

This Act comes into operation on a day which is the earlier
of —

- (a) a day fixed by proclamation; or

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- (b) the day that is 6 months from the day on which it receives the Royal Assent.

3. *Health Act 1911* amended

5 This Act amends Part IXB and section 360 of the *Health Act 1911*.

4. Part IXB* amended

- (1) Section 289E is amended by deleting in the definition of “regulations” the words “, if any,”.
- (2) After section 289E the following sections are inserted —

10 “

289EA. Smoking in enclosed public place prohibited

- (1) Smoking in an enclosed public place is prohibited.
- (2) A person who smokes in an enclosed public place at any time commits an offence.
- 15 (3) The offence under subsection (2) is committed —
 - (a) whether or not another person was present;
 - (b) despite entry to the enclosed public place being restricted to the guests or invitees of a person, and it is immaterial that the person charged
- 20 was, or was not, a guest or invitee.
- (4) The absence or non-visibility of prescribed signage is not a defence to a charge under subsection (2) but, on conviction, may be pleaded in mitigation of penalty.
- 25 (5) This section does not apply to a person who, while personating a character, smokes in the course of performing an artistic work.

289EB. Duty to display signs

- 5
- (1) The occupier of an enclosed public place must display signs as prescribed stating that smoking is prohibited.
- (2) The duty imposed by subsection (1) continues from day to day.
- (3) an occupier who or which contravenes subsection (1) without lawful excuse (proved by the occupier) commits an offence.
- 10
- (4) In this section “**occupier**” is the person having the control or management or overall responsibility for an enclosed public place, but does not include a person in temporary occupation of an enclosed public place for a specified purpose if entry during that period is restricted to the guests or invitees of that person.
- 15
- ”.

- (3) Section 289F is repealed and the following section is substituted —

“

289F. Regulations

- 20
- (1) The Governor is to make regulations under section 341 that —
- (a) prescribe the content, dimensions and location of signs that must be displayed under section 289EB;
- 25
- (b) confer powers on environmental health officers with respect to the enforcement of the provisions of section 289EA and 289EB.
- (2) Subsection (1) does not prevent the making of regulations under section 341 for a purpose with
- 30
- respect to the provisions of section 289EA or 289EB.

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- (3) Regulations may permit a fully-enclosed and adequately ventilated space that is part of, or adjacent to, an enclosed public place to be used as a smoking room on the terms and conditions prescribed.
- 5 (4) It is a condition of any approval given or provided for under subsection (3) that —
- (a) 2 self-closing doors at least 1.5 metres apart divide the smoking room from the enclosed public place;
- 10 (b) hospitality or other services provided at any time and from time to time in the enclosed public space are not provided to persons occupying the smoking room.
- (5) Regulations made under subsection (3) expire 12 months from the day on which the *Health (Smoking in Enclosed Public Places) Amendment Act 2003* comes into operation and any use authorized by those regulations is terminated on their expiry.

”.

- 20 (4) Section 289H is repealed.

[* *Inserted by section 5 of the Health Amendment Act 1998; Act No. 62 of 1998.*]

5. Section 360(5) amended

25 Section 360(5)* is amended by inserting in paragraph (a) the following subparagraph —

“

- (iii) if the same offence is committed more than twice, a penalty for a third or subsequent offence that does not exceed \$5 000.

30

”.

[* *Inserted by section 6 of the Health Amendment Act 1998; Act No. 62 of 1998.*]

6. Regulations revoked

The *Health (Smoking in Enclosed Public Places) Regulations 1999* are revoked.

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