

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL 696

By: Robinson of the Senate

and

Vaughn and Eddins of the
House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to public health and safety and crimes and punishments; requiring certain state agencies to begin certain discussions and to make recommendations; amending 63 O.S. 2001, Section 1-1521, 1-1522, 1-1523, 1-1524, 1-1525, 1-1526 and 1-1526.1, which relate to the Smoking in Public Places Act; expanding and modifying definitions.....; amending 21 O.S. 2001, Section 1247, which relates to punishments for smoking in certain areas; expanding list of places where smoking is prohibited; providing for codification; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-334 of Title 63, unless there is created a duplication in numbering, reads as follows:

Not later than November 1, 2002, the State Department of Health and the Administrative Office of the Courts shall begin discussions regarding the identification, collection and analysis of nonidentifiable aggregate data related to marriage and divorce in this state and shall make recommendations regarding alternatives to the establishment of such statistical reports to the Governor and the Legislature on or before February 1, 2003.

SECTION 2. AMENDATORY 63 O.S. 2001, Section 1-1521, is amended to read as follows:

Section 1-1521. This act shall be known and may be cited as the "~~Smoking in Public Places~~ Smoke-Free Indoor Air Act".

SECTION 3. AMENDATORY 63 O.S. 2001, Section 1-1522, is amended to read as follows:

Section 1-1522. A. As used in this act:

1. "Attached bar" means a bar area of a restaurant;

2. "Bar" means an establishment, other than an attached bar as defined in this section, that is devoted to the serving of alcoholic beverages or low-point beer for consumption by guests on the premises, and in which the serving of food is only incidental to the consumption of those beverages, including, but not limited to, taverns, nightclubs and cocktail lounges;

3. "Educational facility" means a building owned, leased or under the control of a public or private school system, college or university;

~~2.~~ 4. "Health facility" means an entity which provides health services, including, but not limited to, hospitals, nursing homes, long-term care facilities, kidney disease treatment centers, health maintenance organizations, residential care homes, continuum of care facilities, assisted living centers, adult day care facilities, and ambulatory treatment centers;

~~3. "Licensed premises" means any portion of a building, structure, room or enclosure located on real estate which is owned, leased, used, controlled or operated by a licensee authorized by the Alcoholic Beverage Laws Enforcement Commission to sell liquor for consumption on the premises, but shall not include a separate or enclosed lounge or bar area as specified in Section 598 of Title 37 of the Oklahoma Statutes, service organizations or fraternal beneficiary societies which are exempt under Section 501(c)(8)(10) or (19) of the Internal Revenue Code, a licensed premises that is part of a bowling alley area, or a racetrack licensed by the Oklahoma Racing Commission;~~

~~4.~~ 5. "Meeting" means a meeting as defined in the Open Meeting Act, ~~Section 304 of Title 25 of the Oklahoma Statutes;~~

~~5.~~ 6. "Public body" means a public body as defined in the Open Meeting Act, ~~Section 304 of Title 25 of the Oklahoma Statutes;~~

~~6.~~ 7. "Public place" means:

a. an enclosed, indoor area owned or operated by a state or local governmental agency and used by the general public or serving as a place of work for public employees or a meeting place for a public body, including an office, educational facility, health facility, auditorium, arena, meeting room or public conveyance, or

b. an enclosed, indoor area which is not owned or operated by a state or local governmental agency which is used by the general public and which is:

(1) an educational facility,

(2) a health facility,

(3) an auditorium,

(4) an arena,

(5) a theater,

(6) a museum,

(7) a restaurant,

(8) ~~licensed premises,~~

~~(9)~~ a concert hall, and

~~(10)~~ (9) any other facility during the period of its use for a performance or exhibit of the arts;

~~7.~~ 8. "Restaurant" means any ~~eating establishment with a seating capacity of fifty persons or more~~ food service establishment licensed by the State Department of Health, except a bar as defined in this section; and

~~8.~~ 9. "Smoking" means the carrying by a person of a lighted cigar, cigarette, pipe or other lighted smoking device.

B. Public place shall not include a private, enclosed room or office occupied exclusively by a smoker or smokers, even if the room or enclosed office may be visited by a nonsmoker.

SECTION 4. AMENDATORY 63 O.S. 2001, Section 1-1523, is amended to read as follows:

Section 1-1523. A. No person shall smoke in a designated nonsmoking area in a public place, at a meeting of a public body, in a nursing facility licensed pursuant to the Nursing Home Care Act, or in a child care facility, during hours of operation, licensed pursuant to the Oklahoma Child Care Facilities Licensing Act. A nursing facility licensed pursuant to the Nursing Home Care Act may designate smoking areas for residents and their guests. Nursing facilities may designate smoking areas for employees if such designated areas are in separate rooms that are not used by residents.

B. A health facility may prohibit all smoking in such facility or may designate smoking and nonsmoking areas within the facility.

C. 1. Except as otherwise provided in paragraph 2 of this subsection, an educational facility which offers an early childhood education program or in which children in grades kindergarten through twelve are educated shall prohibit smoking, the use of snuff, chewing tobacco or any other form of tobacco product in the buildings and on the grounds of the facility by all persons including, but not limited to, full-time, part-time, and contract employees, during the hours of 7:00 a.m. to 4:00 p.m., during the school session, or when class or any program established for students is in session.

2. Career and technology centers may designate smoking areas outside of buildings, away from general traffic areas and completely out of sight of children under eighteen (18) years of age, for use by adults attending training courses, sessions, meetings or seminars.

3. An educational facility may designate smoking areas outside the buildings for the use of adults during certain activities or functions, including, but not limited to, athletic contests.

D. This section shall not apply to ~~a~~:

1. A room, hall or building used for a private function if the seating arrangements are under the control of the sponsor of the function and not under the control of the state or local governmental agency or the person who owns or operates the room, hall or building, ~~or to a licensed premises;~~

2. Service or organizations or fraternal beneficiary societies that are exempt under the provisions of Section 501(c) (8), (10) or Revenue Code;

3. A bar that is a part of a bowling alley area, ~~or to a;~~

4. A racetrack licensed by the Oklahoma Racing Commission.

E. This section shall not apply to areas in which prisoners are housed in municipal jails or county jails as defined in Section 502 of Title 57 of the Oklahoma Statutes.

This section shall not apply to a separate or enclosed bar area of a licensed premises, as provided in Section 241 of Title 37 of the Oklahoma Statutes, which has as its main purpose the selling or serving of low-point beer for consumption on the premises.

F. Nothing in this section shall be construed to prohibit educational facilities from having more restrictive policies regarding smoking and the use of other tobacco products in the buildings or on the grounds of the facility.

SECTION 5. AMENDATORY O.S. 2001, Section 1-1524, is amended to read as follows:

Section 1-1524. A. Smoking and nonsmoking areas shall be designated by the state or local governmental agency or the person who owns or operates a public place, except in a public place in which smoking is prohibited by law. ~~A restaurant may have designated smoking and nonsmoking areas or may be designated as~~

~~being a totally smoking area or a totally nonsmoking area. Existing physical barriers and ventilation systems shall be used to minimize smoke in both smoking and adjacent nonsmoking areas.~~

B. In the case of a public place consisting of a single room, ~~the state or local governmental agency or~~ other than a restaurant, the person who owns or operates the single room shall be in compliance with this act if an area of the room is reserved and posted as a nonsmoking area.

C. 1. Unless otherwise prohibited by law, a smoking room may be provided in restaurants if:

- a. the room is fully enclosed, and
- b. the room is separately ventilated and exhausted directly to the outside with negative pressure sufficient to prevent tobacco smoke from drifting into other areas of the building when a internal door is opened.

2. No exhaust from a smoking room shall be located within twenty-five (25) feet of any air intake for a restaurant.

D. No person shall smoke within twenty-five (25) feet of any entrance to a restaurant or within twenty-five (25) feet of any air intake of a restaurant; provided, however this provision shall not apply to outside patios used for dining.

SECTION 6. AMENDATORY 63 O.S. 2001, Section 1-1525, is amended to read as follows:

Section 1-1525. The state or local governmental agency or the person who owns or operates a public place shall, at a minimum, do the following in order to prevent smoking ~~in nonsmoking areas~~ or tobacco use where prohibited by law:

1. Post ~~signs which state~~ a sign or decal, at least four (4) inches by two (2) inches in size, at each entrance to the building indicating that ~~smoking in that public~~ the place is smoke-free or

~~tobacco-free prohibited in designated nonsmoking areas, pursuant to this act;~~ and

2. Ask smokers to refrain from smoking upon request of a client or employee suffering discomfort from the smoke or who has hypersensitivity to smoke.

SECTION 7. AMENDATORY 63 O.S. 2001, Section 1-1526, is amended to read as follows:

Section 1-1526. The State Board of Health shall promulgate rules ~~and regulations~~ necessary to implement the provisions of this act. The Oklahoma State Board of Examiners for Nursing Home Administrators shall establish and adopt a policy to effectuate compliance with the Smoking in Public Places Act, Section 1-1521 et seq. of this title, which shall be applicable to nursing homes and long-term care facilities.

SECTION 8. AMENDATORY 63 O.S. 2001, Section 1-1526.1, is amended to read as follows:

Section 1-1526.1 In addition to any other penalties authorized by law, the State Board of Health or the Department of Human Services, whichever is the appropriate entity, shall impose administrative fines against nursing facilities, employees of nursing facilities, or both, and child care facilities for violations of the provisions of Section 1-1521 et seq. of ~~Title 63 of the Oklahoma Statutes~~ this title, in accordance with the provisions of this section. If after a hearing in accordance with the provisions of the Administrative Procedures Act, ~~Section 250 et seq. of Title 75 of the Oklahoma Statutes,~~ the appropriate entity as specified in this section shall find any person to be in violation of the provisions of subsection A of Section ~~14~~ 1-1523 of this ~~act~~ title, such person shall be subject to an administrative penalty of Fifty Dollars (\$50.00) for the first offense within a one-year period, One Hundred Dollars (\$100.00) for the second offense within

a one-year period, and Two Hundred Dollars (\$200.00) for a third or subsequent offense within a one-year period.

SECTION 9. AMENDATORY 21 O.S. 2001, Section 1247, as amended by Section 1 of Enrolled Senate Bill No. 1553 of the 2nd Session of the 48th Oklahoma Legislature, is amended to read as follows:

Section 1247. A. The possession of lighted tobacco in any form is a public nuisance and dangerous to public health when such possession is in any of the following places used by or open to the public:

1. Elevators;
2. Indoor movie theaters and other indoor theaters;
3. Libraries, art galleries, museums, indoor roller skating rinks of a permanent structure with permanent walls and concert halls;
4. Buses; and
5. Any food service establishment licensed by the State Department of Health other than an establishment that is devoted to the serving of alcoholic beverages or low-point beer for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages including, but not limited to, taverns, nightclubs and cocktail lounges.

6. a. All buildings, or portions thereof, owned or operated by this state shall be designated as nonsmoking; however, each building may have one designated smoking room. As used in this paragraph, "buildings" shall not include up to twenty-five percent (25%) of any hotel or motel rooms rented to guests and rooms associated with the facilities in which the rooms are located in which children under twenty-one (21) years of age are not allowed if the rooms are properly

ventilated so that smoke is not circulated to nonsmoking areas.

- b. All buildings, or portions thereof, owned or operated by a county or municipal government, at the discretion of the county or municipal governing body, may be designated as entirely nonsmoking, may be designated as nonsmoking with one designated smoking room, or may remain under the smoking policy in effect on the effective date of this act.
- c. A smoking room as provided for in subparagraphs a and b of this paragraph:
 - (1) shall not be used for the conduct of public business,
 - (2) shall be in a location which is fully enclosed, directly exhausted to the outside, under negative air pressure so smoke cannot escape when a door is opened, and no air is recirculated to nonsmoking areas of the building. No smoking exhaust shall be located within twenty-five (25) feet of any air intake, and
 - (3) shall be verified for compliance with the provisions of this paragraph by the Department of Central Services for state buildings, by a county entity designated by the board of county commissioners for county buildings, or by a municipal entity designated by the municipal governing body for municipal buildings.
- d. No smoking shall be allowed within twenty-five (25) feet of the entrance or exit of any building specified in this subsection.

Provided, however, that in indoor movie theaters and other indoor theaters, libraries, art galleries, museums, indoor roller

skating rinks of a permanent structure with permanent walls ~~and,~~
concert halls, ~~certain areas~~ and food service establishments, a room
separated from the principal room or rooms of the facility may be
posted as "SMOKING PERMITTED" areas; ~~provided~~ if the room is in a
location that is fully enclosed, directly exhausted to the outside,
under negative pressure so no smoke can escape when a door is opened
and no air is recirculated to nonsmoking areas of the building.
Provided further, that portions of buses may be posted "SMOKING
PERMITTED" if such posting is pursuant to authorization by the
Interstate Commerce Commission, the Oklahoma Corporation Commission
or a city ordinance.

~~B. There shall be posted prominently in all public places~~
~~included in subsection A of this section, a "NO SMOKING" sign or "NO~~
~~SMOKING" signs in sufficient numbers as to be visible from all~~
~~sections of the "no smoking" area.~~

~~C. "NO SMOKING" signs, as required by this act, shall be no~~
~~smaller than eight (8) inches by ten (10) inches with lettering no~~
~~smaller than one (1) inch. The letters shall be of contrasting~~
~~colors to the sign~~ The person who owns or operates a place where
smoking or tobacco use is prohibited by law shall be responsible for
posting a sign or decal, at least four (4) inches by two (2) inches
in size, at each entrance to the building indicating that the place
is smoke-free or tobacco-free.

~~D. C.~~ Responsibility for posting "NO SMOKING" signs or decals
shall be as follows:

1. In privately owned facilities, the owner or lessee, if a
lessee is in possession of the facilities, shall be responsible;

2. In corporately owned facilities, the manager and/or
supervisor of the facility involved shall be responsible; and

3. In publicly owned facilities, the manager and/or supervisor
of the facility shall be responsible.

E. Any person who knowingly violates this act is guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than Ten Dollars (\$10.00) nor more than One Hundred Dollars (\$100.00).

SECTION 9. This act shall become effective July 1, 2002.

SECTION 10. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

48-2-3476

CJ

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