

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

COMMITTEE SUBSTITUTE
FOR
SENATE BILL 752

By: Robinson

COMMITTEE SUBSTITUTE

An Act relating to public health and safety and crimes and punishments; amending 63 O. S. 1991, Sections 1-1521, 1-1522, 1-1523, as last amended by Section 1, Chapter 229, O.S.L. 2000, 1-1525, 1-1256 and Section 16, Chapter 137, O.S.L. 1994 (63 O. S. Supp. 2000, Sections 1-1523 and 1-526.1), which relate to the Smoking in Public Places Act; providing short title; modifying and expanding definitions; modifying locations where no smoking is allowed and deleting exceptions thereto; modifying action to prevent or stop smoking in areas where smoking is prohibited; requiring the State Board of Health to promulgate rules necessary to implement provisions of the Clean Indoor Air Act; modifying powers and duties of the State Department of Health; authorizing specified entities to assist in enforcement of provisions of act; repealing 63 O.S. 1991, Sections 1-1524, as amended by Section 15, Chapter 137, O.S.L. 1994, and 1-1527 (63 O.S. Supp. 2000, Section 1-1524), which relate to the designation of smoking and nonsmoking areas and preemption; and providing an effective date.

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

SECTION 1. AMENDATORY 63 O.S. 1991, 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~~ "Clean Indoor Air Act".

SECTION 2. AMENDATORY 63 O.S. 1991, Section 1-1522, is amended to read as follows:

Section 1-1522. ~~A.~~ As used in ~~this act~~ the Clean Indoor Air Act:

1. "Bar" means an establishment that is licensed by the Alcoholic Beverage Laws Enforcement Commission to sell alcoholic beverages for consumption on the premises;

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

3 "Enclosed indoor space" means all space between a floor and ceiling which is enclosed by walls or windows, exclusive of doors or passageways;

~~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 and ambulatory treatment centers;

~~3.~~ 5. "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.~~ 6. "Meeting" means a meeting as defined in the Open Meeting Act, Section 304 of Title 25 of the Oklahoma Statutes;

~~5.~~ 7. "Public body" means a public body as defined in the Open Meeting Act, Section 304 of Title 25 of the Oklahoma Statutes;

~~6.~~ 8. "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) any other facility during the period of its use for a performance or exhibit of the arts;

~~7. 9.~~ "Restaurant" means any eating establishment ~~with a seating capacity of fifty persons or more;~~ and

~~8. 10.~~ "Smoking" means the ~~carrying by a person~~ possession 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 3. AMENDATORY 63 O.S. 1991, Section 1-1523, as last amended by Section 1, Chapter 229, O.S.L. 2000 (63 O.S. Supp. 2000, Section 1-1523), is amended to read as follows:

Section 1-1523. A. ~~No~~ Pursuant to the provisions of the Clean Indoor Air Act and rules promulgated by the State Board of Health, no person shall smoke in a designated nonsmoking area in a public

~~place, at a meeting of a public body,~~ an enclosed indoor space in a nursing:

1. Nursing facility licensed pursuant to the Nursing Home Care Act, Section 1-1901 et seq. of this title, or in a child care facility, during hours of operation, licensed pursuant to the Oklahoma Child Care Facilities Licensing Act, Section 401 et seq. of Title 10 of the Oklahoma Statutes. 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; or

2. Restaurant, bar or any facility owned or operated by a state or local governmental agency or any facility serving as a place of work for public employees or a meeting place for a public body.

Provided, however, an indoor area may be designated as a smoking lounge where possession of a lighted tobacco product is permitted if the area is:

- a. completely enclosed, and
- b. exhausted directly to the outside of the building and maintained at all times under negative pressure sufficient to prevent any tobacco smoke from entering non-smoking areas of the building.

Provided further, no employee may be required to work in any smoking lounge.

~~B. A health facility may prohibit all smoking in such facility or may designate smoking and nonsmoking areas within the facility~~ 1. Upon application to the State Department of Health, a restaurant or bar shall be exempt from the provisions of subsection A of this section. An acceptable application shall consist of a written letter requesting an exemption from the provisions of subsection A of this section, that has been signed by the owner, manager or operator of the restaurant or bar, and that provides the name and

complete street address of the restaurant or bar. The Department shall approve all applications received and shall periodically make available to the public a list of all restaurants or bars requesting such an exemption. An exemption shall be in effect for three (3) years from the date of application, except that an exemption may be terminated by the Department if requested in writing by the owner or manager of the restaurant or bar. An exemption shall continue without interruption if an application for renewal of the exemption is submitted to the Department prior to the expiration date of the exemption.

2. Any restaurant or bar that is exempt from the provisions of subsection A of this section shall designate the entire facility as a smoking area or shall designate both non-smoking and smoking areas.

3. No person shall smoke in a designated non-smoking area.

C. 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. 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 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 that~~

~~is a part of a bowling alley area, or to a racetrack licensed by the Oklahoma Racing Commission.~~

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

~~F. 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.~~

~~G. 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 4. AMENDATORY 63 O.S. 1991, Section 1-1525, is amended to read as follows:

Section 1-1525. A. The state or local governmental agency or the person who owns or operates or is an employee of a public place shall, at a minimum, do the following in order to prevent or stop smoking in ~~nonsmoking~~ areas where smoking is prohibited:

1. Post signs which state that smoking ~~in that public place~~ is prohibited ~~in designated nonsmoking areas,~~ pursuant to ~~this act~~ the provisions of the Clean Indoor Air Act; and

2. Ask ~~smokers~~ a person to refrain from holding a lit tobacco product or smoking upon request of a client or employee suffering discomfort from the smoke or who has hypersensitivity to smoke and to extinguish the tobacco product which the person is holding or smoking.

B. If a person fails to comply with the provisions of paragraph 2 of subsection A of this section, the state or local governmental agency or the person who owns or operates or is an employee of a public place shall request that the person leave the premises. The person who owns or operates or is an employee of a public place

shall not be required to take any further action to enforce the provisions of this act.

SECTION 5. AMENDATORY 63 O.S. 1991, Section 1-1526, is amended to read as follows:

Section 1-1526. A. 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~~ the Clean Indoor Air Act.

B. The State Department of Health shall:

1. Enforce the provisions of this act and coordinate efforts to promote the most effective enforcement of this act; and

2. Impose penalties pursuant to the provisions of Section 1-1526.1 of this title and in accordance with the provisions of this section.

C. All state, county and municipal law enforcement members are authorized to assist in the enforcement of the provisions of this act.

D. Administrative penalties collected pursuant to the provisions of this section by the Department shall be utilized for administration and enforcement of the provisions of this act and for smoking prevention and related programs.

SECTION 6. REPEALER 63 O.S. 1991, Section 1-1524, as amended by Section 15, Chapter 137, O.S.L. 1994 (63 O.S. Supp. 2000, Section 1-1524), is hereby repealed.

SECTION 7. REPEALER 63 O.S. 1991, Section 1-1527, is hereby repealed.

SECTION 8. This act shall become effective November 1, 2001.