

ENROLLED SENATE
JOINT
RESOLUTION NO. 21

By: Hobson, Morgan and
Robinson of the Senate

and

Adair and Vaughn of the
House

A Joint Resolution relating to smoking in public places; amending 21 O.S. 2001, Section 1247, as last amended by Section 2, Chapter 377, O.S.L. 2002 (21 O.S. Supp. 2002, Section 1247), which relates to possession of lighted tobacco; modifying class of places where possession of lighted tobacco is prohibited; modifying statutory references; deleting certain exceptions to prohibition on possession of lighted tobacco; providing exceptions to prohibition on possession of lighted tobacco; authorizing provision of smoking rooms; authorizing certain employers to choose more restrictive smoking policy; providing phase-in period for restaurants to become smokefree; authorizing smoking rooms upon compliance with certain requirements; amending 63 O.S. 2001, Section 1-1521, which relates to the Smoking in Public Places Act; modifying title; amending 63 O.S. 2001, Section 1-1522, which relates to the Smoking in Public Places Act; adding, modifying and deleting definitions; amending 63 O.S. 2001, Section 1-1523, as amended by Section 2, Chapter 96, O.S.L. 2002 (63 O.S. Supp. 2002, Section 1-1523) which relates to places where smoking is prohibited; modifying class of places where persons are prohibited from smoking; specifying requirements for certain smoking rooms; removing certain exemptions from smoking prohibition; adding certain exemptions to smoking prohibition; providing phase-in period for restaurants to become smokefree; authorizing smoking rooms upon compliance with certain requirements; amending 63 O.S. 2001, Section 1-1525, which relates to enforcement of the prohibition on smoking in public places; modifying actions which must be taken to prevent smoking in public places; amending 63 O.S. 2001, Section 1-1526, which relates to administrative rules relating to the Smoking in Public Places Act; modifying entity responsible for promulgating certain rules; limiting liability which may be imposed by certain rules; repealing 63 O.S. 2001, Section 1-1524, as amended by Section 3, Chapter 96, O.S.L. 2002 (63 O.S. Supp. 2002, Section 1-1524), which relates to designated smoking and nonsmoking areas; and providing an effective date.

BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE 1ST SESSION OF THE 49TH OKLAHOMA LEGISLATURE:

SECTION 1. AMENDATORY 21 O.S. 2001, Section 1247, as last amended by Section 2, Chapter 377, O.S.L. 2002 (21 O.S. Supp. 2002, Section 1247), 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 and is hereby prohibited when such possession is in any ~~of the following places~~ indoor place 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. a., public transportation, or any indoor workplace, except where specifically allowed by law.

As used in this section, "indoor workplace" means any indoor place of employment or employment-type service for or at the request of another individual or individuals, or any public or private entity, whether part-time or full-time and whether for compensation or not. Such services shall include, without limitation, any service performed by an owner, employee, independent contractor, agent, partner, proprietor, manager, officer, director, apprentice, trainee, associate, servant or volunteer. An indoor workplace includes work areas, employee lounges, restrooms, conference rooms, classrooms, employee cafeterias, hallways, any other spaces used or visited by employees, and all space between a floor and ceiling that is predominantly or totally enclosed by walls or windows, regardless of doors, doorways, open or closed windows, stairways, or the like. The provisions of this section shall apply to such indoor workplace at any given time, whether or not work is being performed.

B. All buildings, or portions thereof, owned or operated by this state shall be designated as nonsmoking; provided, 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. C.~~ C. 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, or 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.~~

e. D. A smoking room as provided for in paragraphs 1 and 2 subsections B and C of this subsection section:

~~(1) shall~~ 1. Shall not be used for the conduct of public business;

~~(2) shall~~ 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 entrance, exit or air intake; and

~~(3) shall~~ 3. Shall be verified for compliance with the provisions of this paragraph subsection 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. E.~~ No smoking shall be allowed within twenty-five (25) feet of the entrance or exit of any building specified in this subsection B or C of this section.

~~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 separated from the principal room or rooms of the facility may be posted as "SMOKING PERMITTED" areas; 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. F. The restrictions provided in this section shall not apply to stand-alone bars, stand-alone taverns and cigar bars as defined in Section 1-1522 of Title 63 of the Oklahoma Statutes.

G. The restrictions provided in this section shall not apply to the following:

1. The room or rooms where licensed charitable bingo games are being operated, but only during the hours of operation of such games;

2. Up to twenty-five percent (25%) of the guest rooms at a hotel or other lodging establishment;

3. Retail tobacco stores predominantly engaged in the sale of tobacco products and accessories and in which the sale of other products is merely incidental and in which no food or beverage is sold or served for consumption on the premises;

4. Workplaces where only the owner or operator of the workplace, or the immediate family of the owner or operator,

performs any work in the workplace, and the workplace has only incidental public access. "Incidental public access" means that a place of business has only an occasional person, who is not an employee, present at the business to transact business or make a delivery. It does not include businesses that depend on walk-in customers for any part of their business;

5. Workplaces occupied exclusively by one or more smokers, if the workplace has only incidental public access;

6. Private offices occupied exclusively by one or more smokers;

7. Workplaces within private residences, except that smoking shall not be allowed inside any private residence that is used as a licensed child care facility during hours of operation;

8. Medical research or treatment centers, if smoking is integral to the research or treatment;

9. A facility operated by a post or organization of past or present members of the Armed Forces of the United States which is exempt from taxation pursuant to Sections 501 (c) (8), 501 (c) (10) or 501 (c) (19) of the Internal Revenue Code, 26 U.S.C., Sections 501 (c) (8), 501 (c) (10) or 501 (c) (19), when such facility is utilized exclusively by its members and their families and for the conduct of post or organization nonprofit operations except during an event or activity which is open to the public; and

10. Any outdoor seating area of a restaurant; provided, smoking shall not be allowed within fifteen (15) feet of any exterior public doorway or any air intake of a restaurant.

H. An employer not otherwise restricted from doing so may elect to provide smoking rooms where no work is performed except for cleaning and maintenance during the time the room is not in use for smoking, provided each smoking room is fully enclosed and exhausted directly to the outside in such a manner that no smoke can drift or circulate into a nonsmoking area. No exhaust from a smoking room shall be located within fifteen (15) feet of any entrance, exit or air intake.

I. If smoking is to be permitted in any space exempted in subsections F or G of this section or in a smoking room pursuant to subsection H of this section, such smoking space must either occupy the entire enclosed indoor space or, if it shares the enclosed space with any nonsmoking areas, the smoking space shall be fully enclosed, exhausted directly to the outside with no air from the smoking space circulated to any nonsmoking area, and under negative air pressure so that no smoke can drift or circulate into a nonsmoking area when a door to an adjacent nonsmoking area is opened. Air from a smoking room shall not be exhausted within fifteen (15) feet of any entrance, exit or air intake. Any employer may choose a more restrictive smoking policy, including being totally smoke free.

J. Notwithstanding any other provision of this section, until March 1, 2006, restaurants may have designated smoking and

nonsmoking areas or may be designated as being a totally nonsmoking area. Beginning March 1, 2006, restaurants shall be totally nonsmoking or may provide nonsmoking areas and designated smoking rooms. Food and beverage may be served in such designated smoking rooms which 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 exhaust from such room shall be located within twenty-five (25) feet of any entrance, exit or air intake. Such room shall be subject to verification for compliance with the provisions of this subsection by the State Department of Health.

K. 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.

~~E.~~ L. Responsibility for posting 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.~~ M. 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 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 and Indoor Workplaces 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. "Educational facility" means a building owned, leased or under the control of a public or private school system, college or university;

2. "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. ~~"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~~ "Indoor workplace" means any indoor place of employment or employment-type service for or at the request of another individual or individuals, or any public or private entity, whether part-time or full-time and whether for compensation or not. Such services shall include, without limitation, any service performed by an owner, employee, independent contractor, agent, partner, proprietor, manager, officer, director, apprentice, trainee, associate, servant or volunteer. An indoor workplace includes work areas, employee lounges, restrooms, conference rooms, classrooms, employee cafeterias, hallways, any other spaces used or visited by employees, and all space between a floor and ceiling that is predominantly or totally enclosed by walls or windows, regardless of doors, doorways, open or closed windows, stairways, or the like. The provisions of this section shall apply to such indoor workplace at any given time, whether or not work is being performed;

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

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

6. ~~"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 any enclosed indoor area where individuals other than employees are invited or permitted;~~

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

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

9. "Stand-alone bar", "stand-alone tavern", and "cigar bar" mean an establishment that derives more than sixty percent (60%) of its gross receipts, subject to verification by competent authority, from the sale of alcoholic beverages and low-point beer and no person under twenty-one (21) years of age is admitted, except for members of a musical band employed or hired as provided in paragraph 2 of subsection B of Section 537 of Title 37 of the Oklahoma Statutes and that is not located within, and does not share any common entryway or common indoor area with, any other enclosed indoor workplace, including a restaurant.

~~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, as amended by Section 2, Chapter 96, O.S.L. 2002 (63 O.S. Supp. 2002, Section 1-1523), is amended to read as follows:

Section 1-1523. A. ~~No~~ Except as specifically provided in the Smoking in Public Places and Indoor Workplaces Act, no person shall smoke in a designated nonsmoking area in a public place, in an indoor workplace, in any vehicle providing public transportation, 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~~ rooms 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~~ Such rooms shall be fully enclosed, directly exhausted to the outside, and shall be under negative air pressure so that no smoke can escape when a door is opened and no air is recirculated to nonsmoking areas of the building.

~~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 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 or county jails, unless otherwise authorized by the municipal government or county government having jurisdiction over such facility.~~

~~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. C.~~ 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.

D. A private residence is not a "public place" within the meaning of the Smoking in Public Places and Indoor Workplaces Act except that areas in a private residence that are used as a licensed child care facility during hours of operation are "public places" within the meaning of the Smoking in Public Places and Indoor Workplaces Act.

E. Smoking is prohibited in all vehicles owned by the State of Oklahoma and all of its agencies and instrumentalities.

F. An employer not otherwise restricted from doing so may elect to provide smoking rooms where no work is performed except for cleaning and maintenance during the time the room is not in use for

smoking, provided each smoking room is fully enclosed and exhausted directly to the outside, in such manner that no smoke can drift or circulate into a nonsmoking area. No exhaust from a smoking room shall be located within fifteen (15) feet of any entrance, exit or air intake. If smoking is to be permitted in any space exempted in subsection G of this section or in a smoking room pursuant to subsection H of this section, such smoking space must either occupy the entire enclosed indoor space or, if it shares the enclosed space with any nonsmoking areas, the smoking space shall be fully enclosed, exhausted directly to the outside with no air from the smoking space circulated to any nonsmoking area, and under negative air pressure so that no smoke can drift or circulate into a nonsmoking area when a door to an adjacent nonsmoking area is opened. Air from a smoking room shall not be exhausted within fifteen (15) feet of any entrance, exit or air intake.

G. The Smoking in Public Places and Indoor Workplaces Act shall not prohibit smoking in:

1. Stand-alone bars, stand-alone taverns or cigar bars;
2. The room or rooms where licensed charitable bingo games are being operated, but only during the hours of operation of such games;
3. Up to twenty-five percent (25%) of the guest rooms at a hotel or other lodging establishment;
4. Retail tobacco stores predominantly engaged in the sale of tobacco products and accessories and in which the sale of other products is merely incidental and in which no food or beverage is sold or served for consumption on the premises;
5. Workplaces where only the owner or operator of the workplace, or the immediate family of the owner or operator, performs any work in the workplace, and the workplace has only incidental public access;
6. Workplaces occupied exclusively by one or more smokers, if the workplace has only incidental public access. "Incidental public access" means that a place of business has only an occasional person, who is not an employee, present at the business to transact business or make a delivery. It does not include businesses that depend on walk-in customers for any part of their business;
7. Private offices occupied exclusively by one or more smokers;
8. Workplaces within private residences, except that smoking shall not be allowed inside any private residence that is used as a licensed child care facility during hours of operation;
9. A facility operated by a post or organization of past or present members of the Armed Forces of the United States which is exempt from taxation pursuant to Sections 501 (c) (8), 501 (c) (10) or 501 (c) (19) of the Internal Revenue Code, 26 U.S.C., Section 501 (c) (8), 501 (c) (10) or 501 (c) (19), when such facility is utilized exclusively by its members and their families and for the conduct of

post or organization nonprofit operations except during an event or activity which is open to the public;

10. Any outdoor seating area of a restaurant; provided, smoking shall not be allowed within fifteen (15) feet of any exterior public doorway or any air intake of a restaurant; and

11. Medical research or treatment centers, if smoking is integral to the research or treatment.

H. Notwithstanding any other provision of the Smoking in Public Places and Indoor Workplaces Act, until March 1, 2006, restaurants may have designated smoking and nonsmoking areas or may be designated as being a totally nonsmoking area. Beginning March 1, 2006, restaurants shall be totally nonsmoking or may provide nonsmoking areas and designated smoking rooms. Food and beverage may be served in such designated smoking rooms which 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 exhaust from such room shall be located within twenty-five (25) feet of any entrance, exit or air intake. Such room shall be subject to verification for compliance with the provisions of this subsection by the State Department of Health.

SECTION 5. 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~~ public places:

1. Post signs at entrances to places where smoking is prohibited which state that ~~smoking in that public place is prohibited in designated nonsmoking areas, pursuant to this act is prohibited~~ or that the indoor environment is free of tobacco smoke; 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~~ observation of anyone violating the provisions of this act.

SECTION 6. 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 Smoking in Public Places and Indoor Workplaces 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~~ Such rules shall not impose liability on the owner or operator of any facility for the violation of a provision of the

Smoking in Public Places and Indoor Workplaces Act by another person who is not an employee of such owner or operator.

SECTION 7. REPEALER 63 O.S. 2001, Section 1-1524, as amended by Section 3, Chapter 96, O.S.L. 2002 (63 O.S. Supp. 2002, Section 1-1524), is hereby repealed.

SECTION 8. This act shall become effective September 1, 2003.

Passed the Senate the 28th day of May, 2003.

Presiding Officer of the Senate

Passed the House of Representatives the 29th day of May, 2003.

Presiding Officer of the House
of Representatives