

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

SENATE JOINT
RESOLUTION 21

By: Hobson and Morgan of the
Senate

and

Adair of the House

AS INTRODUCED

A Joint Resolution ordering a legislative referendum pursuant to the Oklahoma Constitution; 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 smoking in public places; restricting places where smoking is permitted; amending 63 O.S. 2001, Sections 1-1521, 1-1522, 1-1523, as amended by Section 2, Chapter 96, O.S.L. 2002, 1-1525 and 1-1526 (63 O.S. Supp. 2002, Section 1-1523), which relate to the Smoking in Public Places Act; modifying short title; restricting areas in which smoking is permitted; modifying requirements for signs prohibiting smoking; removing requirement for adoption of certain policy; repealing 63 O.S. 2001, Sections 1-1524, as amended by Section 3, Chapter 96, O.S.L. 2002, and 1-1527 (63 O.S. Supp. 2002, Section 1-1524), which relate to designation of smoking and nonsmoking areas and legislative intent; providing ballot title; and directing filing.

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

SECTION 1. Pursuant to Section 3 of Article V of the Oklahoma Constitution, there is hereby ordered the following legislative referendum which shall be filed with the Secretary of State and addressed to the Governor of the state, who shall submit the same to the people for their approval or rejection at an election to be held on _____, 2003.

SECTION 2. 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~~ 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.~~

1. 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.~~ 2. 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.~~ 3. A smoking room as provided for in paragraphs 1 and 2 of this subsection:

~~(1)~~

a. shall not be used for the conduct of public business,

~~(2)~~

b. 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)~~

c. 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 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~~ A private residence is not a "public place" within the meaning of this section except that areas in a private residence which are licensed to conduct any type of business by any agency or political subdivision of the state and areas in a private residence which constitute common areas of a multiple dwelling containing four or more dwelling units are "public places" within the meaning of this section.

B. 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.

C. 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.~~ D. 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 3. 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 Places of Employment Act".

SECTION 4. 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;~~

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 any area to which individuals other than employees are invited or permitted, including, but not limited to:

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

8. "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 5. 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 Places of Employment Act, 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 All educational facility which offers an early childhood education program or in which children in grades kindergarten through twelve are educated facilities 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. 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 at all times.~~

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

D. Smoking is prohibited in all indoor places of employment. For purposes of this act, indoor places of employment shall not include places of employment in which all employees are related within the third degree of consanguinity or affinity. Provided, nothing in this subsection shall authorize smoking in any area which is generally accessible to the public.

E. Provided, nothing in this section shall prohibit smoking in a separate smoking room which is an enclosed room, the exclusive purpose of which is for smoking. No business transactions, including, but not limited to, the sale, including by vending machines or service of food, beverages or any other product or collection of any payments, shall be conducted in such room. Such room shall:

1. Be completely enclosed on all sides by solid floor-to-ceiling walls;

2. Comply with all applicable fire and building code requirements and have a sprinkler system for fire safety (which may be part of a sprinkler system of the premises in which the room is located);

3. Have a separate ventilation system whereby the air from such enclosed room is directly exhausted to the outside, under negative air pressure, and no air is recirculated to nonsmoking areas of the building. Such room shall not contain the sole indoor waiting area of the premises. Any doors in such room shall be self-closing and

shall remain closed except to the extent necessary to permit ingress and egress to such room.

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~~ public places:

1. Post signs which state that smoking in ~~that public place~~ places is prohibited in ~~designated nonsmoking areas~~, pursuant to ~~this act~~ the Smoking in Public Places and Places of Employment 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~~ observation of anyone violating the provisions of this act.

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 Smoking in Public Places and Places of Employment 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. REPEALER 63 O.S. 2001, Sections 1-1524, as amended by Section 3, Chapter 96, O.S.L. 2002, and 1-1527 (63 O.S. Supp. 2002, Section 1-1524), are hereby repealed.

SECTION 9. The Ballot Title for the proposed act shall be in the following form:

BALLOT TITLE

Legislative Referendum No. _____

State Question No. _____

THE GIST OF THE PROPOSITION IS AS FOLLOWS:

This measure would change the current law on smoking. It would prohibit smoking in any public place. It would prohibit smoking in any indoor place of work. It would prohibit smoking in all vehicles owned by the state.

SHALL THIS ACT BE APPROVED BY THE PEOPLE?

YES, FOR THE ACT

NO, AGAINST THE ACT

SECTION 10. The President Pro Tempore of the Senate, immediately after the passage of this order for legislative referendum, shall prepare and file in accordance with Section 3 of Article V of the Oklahoma Constitution one copy thereof, including the Ballot Title set forth in SECTION 9 hereof, with the Secretary of State and one copy with the Attorney General.

49-1-901

RWT

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