

SB 1875

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THE STATE SENATE
Wednesday, February 20, 2008

Senate Bill No. 1875
As Amended

SENATE BILL NO. 1875 - By: MYERS of the Senate and COX of the House.

[smoking - deleting language permitting designated smoking
areas in restaurants - effective date]

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

SECTION 1. AMENDATORY 21 O.S. 2001, Section 1247, as
last amended by Section 1, Chapter 70, O.S.L. 2007 (21 O.S. Supp.
2007, 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 indoor place used by or
open to the public, all parts of a zoo to which the public may be
admitted, whether indoors or outdoors, 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,

1 trainee, associate, servant or volunteer. An indoor workplace
2 includes work areas, employee lounges, restrooms, conference rooms,
3 classrooms, employee cafeterias, hallways, any other spaces used or
4 visited by employees, and all space between a floor and ceiling that
5 is predominantly or totally enclosed by walls or windows, regardless
6 of doors, doorways, open or closed windows, stairways, or the like.
7 The provisions of this section shall apply to such indoor workplace
8 at any given time, whether or not work is being performed.

9 B. ~~All buildings, or portions thereof, owned or operated by~~
10 ~~this state shall be designated as nonsmoking; provided, however,~~
11 ~~each building may have one designated smoking room. As used in this~~
12 ~~paragraph, "buildings" shall not include up to twenty five percent~~
13 ~~(25%) of any hotel or motel rooms rented to guests if the rooms are~~
14 ~~properly ventilated so that smoke is not circulated to nonsmoking~~
15 ~~areas.~~

16 C. ~~All buildings, or portions thereof, owned or operated by a~~
17 ~~county or municipal government, at the discretion of the county or~~
18 ~~municipal governing body, may be designated as entirely nonsmoking~~
19 ~~or may be designated as nonsmoking with one designated smoking room.~~

20 D. ~~A smoking room as provided for in subsections B and C of~~
21 ~~this section:~~

22 1. ~~Shall not be used for the conduct of public business,~~

1 ~~2. Shall be in a location which is fully enclosed, directly~~
2 ~~exhausted to the outside, under negative air pressure so smoke~~
3 ~~cannot escape when a door is opened, and no air is recirculated to~~
4 ~~nonsmoking areas of the building. No smoking exhaust shall be~~
5 ~~located within twenty-five (25) feet of any entrance, exit or air~~
6 ~~intake; and~~

7 ~~3. Shall be verified for compliance with the provisions of this~~
8 ~~subsection by the Department of Central Services for state~~
9 ~~buildings, by a county entity designated by the board of county~~
10 ~~commissioners for county buildings, or by a municipal entity~~
11 ~~designated by the municipal governing body for municipal buildings.~~

12 ~~E.~~ No smoking shall be allowed within twenty-five (25) feet of
13 the entrance or exit of any building ~~specified in subsection B or C~~
14 ~~of this section~~ owned or operated by state, county or city
15 governments or containing spaces owned or operated by state, county
16 or city governments.

17 ~~F.~~ The restrictions provided in this section shall not apply to
18 ~~stand alone bars, stand alone taverns and cigar bars as defined in~~
19 ~~Section 1-1522 of Title 63 of the Oklahoma Statutes.~~

20 ~~G.~~ C. The restrictions provided in this section shall not apply
21 to the following:

- 1 1. ~~The room or rooms where licensed charitable bingo games are~~
2 ~~being operated, but only during the hours of operation of such~~
3 ~~games;~~
- 4 2. ~~Up to twenty five percent (25%) of the guest rooms at a~~
5 ~~hotel or other lodging establishment;~~
- 6 3. ~~Retail tobacco stores predominantly engaged in the sale of~~
7 ~~tobacco products and accessories and in which the sale of other~~
8 ~~products is merely incidental and in which no food or beverage is~~
9 ~~sold or served for consumption on the premises;~~
- 10 4. ~~Workplaces where only the owner or operator of the~~
11 ~~workplace, or the immediate family of the owner or operator,~~
12 ~~performs any work in the workplace, and the workplace has only~~
13 ~~incidental public access. "Incidental public access" means that a~~
14 ~~place of business has only an occasional person, who is not an~~
15 ~~employee, present at the business to transact business or make a~~
16 ~~delivery. It does not include businesses that depend on walk in~~
17 ~~customers for any part of their business;~~
- 18 5. ~~Workplaces occupied exclusively by one or more smokers, if~~
19 ~~the workplace has only incidental public access;~~
- 20 6. ~~Private offices occupied exclusively by one or more smokers;~~
- 21 7. Workplaces within private residences, except that smoking
22 shall not be allowed inside any private residence that is used as a
23 licensed child care facility during hours of operation;

1 ~~8.~~ 2. Medical research or treatment centers, if smoking is
2 integral to the research or treatment;

3 ~~9.~~ ~~A facility operated by a post or organization of past or~~
4 ~~present members of the Armed Forces of the United States which is~~
5 ~~exempt from taxation pursuant to Sections 501 (c) (8), 501 (c) (10) or~~
6 ~~501 (c) (19) of the Internal Revenue Code, 26 U.S.C., Sections 501~~
7 ~~(c) (8), 501 (c) (10) or 501 (c) (19), when such facility is utilized~~
8 ~~exclusively by its members and their families and for the conduct of~~
9 ~~post or organization nonprofit operations except during an event or~~
10 ~~activity which is open to the public; and~~

11 ~~10.~~ 3. Any outdoor seating area of a restaurant; provided,
12 smoking shall not be allowed within fifteen (15) feet of any
13 exterior public doorway or any air intake of a restaurant.

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

22 ~~I.~~ ~~If smoking is to be permitted in any space exempted in~~
23 ~~subsections F or G of this section or in a smoking room pursuant to~~

1 ~~subsection H of this section, such smoking space must either occupy~~
2 ~~the entire enclosed indoor space or, if it shares the enclosed space~~
3 ~~with any nonsmoking areas, the smoking space shall be fully~~
4 ~~enclosed, exhausted directly to the outside with no air from the~~
5 ~~smoking space circulated to any nonsmoking area, and under negative~~
6 ~~air pressure so that no smoke can drift or circulate into a~~
7 ~~nonsmoking area when a door to an adjacent nonsmoking area is~~
8 ~~opened. Air from a smoking room shall not be exhausted within~~
9 ~~fifteen (15) feet of any entrance, exit or air intake. Any employer~~
10 ~~may choose a more restrictive smoking policy, including being~~
11 ~~totally smoke free.~~

12 ~~J. Notwithstanding any other provision of this section, until~~
13 ~~March 1, 2006, restaurants may have designated smoking and~~
14 ~~nonsmoking areas or may be designated as being a totally nonsmoking~~
15 ~~area. Beginning March 1, 2006, restaurants Restaurants shall be~~
16 ~~totally nonsmoking or, until March 1, 2013, may provide nonsmoking~~
17 ~~areas and designated smoking rooms. Food and beverage may be served~~
18 ~~in such designated smoking rooms which shall be in a location which~~
19 ~~is fully enclosed, directly exhausted to the outside, under negative~~
20 ~~air pressure so smoke cannot escape when a door is opened, and no~~
21 ~~air is recirculated to nonsmoking areas of the building. No exhaust~~
22 ~~from such room shall be located within twenty-five (25) feet of any~~
23 ~~entrance, exit or air intake. Such room shall be subject to~~

1 verification for compliance with the provisions of this subsection
2 by the State Department of Health. No new or existing restaurant
3 shall add a designated smoking room after July 1, 2008.

4 ~~K.~~ D. The person who owns or operates a place where smoking or
5 tobacco use is prohibited by law shall be responsible for posting a
6 sign or decal, at least four (4) inches by two (2) inches in size,
7 at each entrance to the building indicating that the place is smoke-
8 free or tobacco-free.

9 ~~L.~~ E. Responsibility for posting signs or decals shall be as
10 follows:

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

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

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

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

21 SECTION 2. AMENDATORY 63 O.S. 2001, Section 1-1522, as
22 amended by Section 3, Senate Joint Resolution No. 21, p. 2357,

1 O.S.L. 2003 (63 O.S. Supp. 2007, Section 1-1522), is amended to read
2 as follows:

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

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

7 2. ~~"Health facility" means an entity which provides health~~
8 ~~services, including, but not limited to, hospitals, nursing homes,~~
9 ~~long-term care facilities, kidney disease treatment centers, health~~
10 ~~maintenance organizations and ambulatory treatment centers;~~

11 3. "Indoor workplace" means any indoor place of employment or
12 employment-type service for or at the request of another individual
13 or individuals, or any public or private entity, whether part-time
14 or full-time and whether for compensation or not. Such services
15 shall include, without limitation, any service performed by an
16 owner, employee, independent contractor, agent, partner, proprietor,
17 manager, officer, director, apprentice, trainee, associate, servant
18 or volunteer. An indoor workplace includes work areas, employee
19 lounges, restrooms, conference rooms, classrooms, employee
20 cafeterias, hallways, any other spaces used or visited by employees,
21 and all space between a floor and ceiling that is predominantly or
22 totally enclosed by walls or windows, regardless of doors, doorways,
23 open or closed windows, stairways, or the like. The provisions of

1 this section shall apply to such indoor workplace at any given time,
2 whether or not work is being performed;

3 ~~4.~~ 3. "Meeting" means a meeting as defined in the Oklahoma Open
4 Meeting Act;

5 ~~5.~~ 4. "Public body" means a public body as defined in the
6 Oklahoma Open Meeting Act;

7 ~~6.~~ 5. "Public place" means any enclosed indoor area where
8 individuals other than employees are invited or permitted;

9 ~~7.~~ 6. "Restaurant" means any eating establishment regardless of
10 seating capacity;

11 ~~8.~~ 7. "Smoking" means the carrying by a person of a lighted
12 cigar, cigarette, pipe or other lighted smoking device; and

13 ~~9.~~ 8. "Stand-alone bar", "stand-alone tavern", and "cigar bar"
14 mean an establishment that derives more than sixty percent (60%) of
15 its gross receipts, subject to verification by competent authority,
16 from the sale of alcoholic beverages and low-point beer and no
17 person under twenty-one (21) years of age is admitted, except for
18 members of a musical band employed or hired as provided in paragraph
19 2 of subsection B of Section 537 of Title 37 of the Oklahoma
20 Statutes and that is not located within, and does not share any
21 common entryway or common indoor area with, any other enclosed
22 indoor workplace, including a restaurant.

1 SECTION 3. AMENDATORY 63 O.S. 2001, Section 1-1523, as
2 last amended by Section 2, Chapter 70, O.S.L. 2007 (63 O.S. Supp.
3 2007, Section 1-1523), is amended to read as follows:

4 Section 1-1523. A. Except as specifically provided in the
5 Smoking in Public Places and Indoor Workplaces Act, no person shall
6 smoke in a public place, in any part of a zoo to which the public
7 may be admitted, whether indoors or outdoors, in an indoor
8 workplace, in any vehicle providing public transportation, at a
9 meeting of a public body, in a nursing facility licensed pursuant to
10 the Nursing Home Care Act, or in a child care facility licensed
11 pursuant to the Oklahoma Child Care Facilities Licensing Act. A
12 nursing facility licensed pursuant to the Nursing Home Care Act may
13 designate smoking rooms for residents and their guests. Such rooms
14 shall be fully enclosed, directly exhausted to the outside, and
15 shall be under negative air pressure so that no smoke can escape
16 when a door is opened and no air is recirculated to nonsmoking areas
17 of the building.

18 B. 1. Except as otherwise provided in paragraph 2 of this
19 subsection, an educational facility which offers an early childhood
20 education program or in which children in grades kindergarten
21 through twelve are educated shall prohibit smoking, the use of
22 snuff, chewing tobacco or any other form of tobacco product in the
23 buildings and on the grounds of the facility by all persons

1 including, but not limited to, full-time, part-time, and contract
2 employees, during the hours of 7:00 a.m. to 4:00 p.m., during the
3 school session, or when class or any program established for
4 students is in session.

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

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

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

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

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

3 ~~F. An employer not otherwise restricted from doing so may elect
4 to provide smoking rooms where no work is performed except for
5 cleaning and maintenance during the time the room is not in use for
6 smoking, provided each smoking room is fully enclosed and exhausted
7 directly to the outside, in such manner that no smoke can drift or
8 circulate into a nonsmoking area. No exhaust from a smoking room
9 shall be located within fifteen (15) feet of any entrance, exit or
10 air intake. If smoking is to be permitted in any space exempted in
11 subsection G of this section or in a smoking room pursuant to
12 subsection H of this section, such smoking space must either occupy
13 the entire enclosed indoor space or, if it shares the enclosed space
14 with any nonsmoking areas, the smoking space shall be fully
15 enclosed, exhausted directly to the outside with no air from the
16 smoking space circulated to any nonsmoking area, and under negative
17 air pressure so that no smoke can drift or circulate into a
18 nonsmoking area when a door to an adjacent nonsmoking area is
19 opened. Air from a smoking room shall not be exhausted within
20 fifteen (15) feet of any entrance, exit or air intake.~~

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

23 1. ~~Stand-alone bars, stand-alone taverns or cigar bars;~~

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

4 ~~3. Up to twenty five percent (25%) of the guest rooms at a~~
5 ~~hotel or other lodging establishment;~~

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

10 ~~5. Workplaces where only the owner or operator of the~~
11 ~~workplace, or the immediate family of the owner or operator,~~
12 ~~performs any work in the workplace, and the workplace has only~~
13 ~~incidental public access;~~

14 ~~6. Workplaces occupied exclusively by one or more smokers, if~~
15 ~~the workplace has only incidental public access. "Incidental public~~
16 ~~access" means that a place of business has only an occasional~~
17 ~~person, who is not an employee, present at the business to transact~~
18 ~~business or make a delivery. It does not include businesses that~~
19 ~~depend on walk-in customers for any part of their business;~~

20 ~~7. Private offices occupied exclusively by one or more smokers;~~

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

1 ~~9. A facility operated by a post or organization of past or~~
2 ~~present members of the Armed Forces of the United States which is~~
3 ~~exempt from taxation pursuant to Sections 501 (c) (8), 501 (c) (10) or~~
4 ~~501 (c) (19) of the Internal Revenue Code, 26 U.S.C., Section 501~~
5 ~~(c) (8), 501 (c) (10) or 501 (c) (19), when such facility is utilized~~
6 ~~exclusively by its members and their families and for the conduct of~~
7 ~~post or organization nonprofit operations except during an event or~~
8 ~~activity which is open to the public;~~

9 ~~10.~~ 2. Any outdoor seating area of a restaurant; provided,
10 smoking shall not be allowed within fifteen (15) feet of any
11 exterior public doorway or any air intake of a restaurant; and

12 ~~11.~~ 3. Medical research or treatment centers, if smoking is
13 integral to the research or treatment.

14 ~~H. Notwithstanding any other provision of the Smoking in Public~~
15 ~~Places and Indoor Workplaces Act, until March 1, 2006, restaurants~~
16 ~~may have designated smoking and nonsmoking areas or may be~~
17 ~~designated as being a totally nonsmoking area. Beginning March 1,~~
18 ~~2006, restaurants~~ Restaurants shall be totally nonsmoking or, until
19 March 1, 2013, may provide nonsmoking areas and designated smoking
20 rooms. Food and beverage may be served in such designated smoking
21 rooms which shall be in a location which is fully enclosed, directly
22 exhausted to the outside, under negative air pressure so smoke
23 cannot escape when a door is opened, and no air is recirculated to

1 nonsmoking areas of the building. No exhaust from such room shall
2 be located within twenty-five (25) feet of any entrance, exit or air
3 intake. Such room shall be subject to verification for compliance
4 with the provisions of this subsection by the State Department of
5 Health. No new or existing restaurant shall add a designated
6 smoking room after July 1, 2008.

7 SECTION 4. AMENDATORY 63 O.S. 2001, Section 1-1527, is
8 amended to read as follows:

9 Section 1-1527. The State Legislature by adopting this act
10 intends to not preempt any other regulation promulgated to control
11 ~~smoking in public places and to standardize laws that permit~~
12 governmental subdivisions ~~may to~~ adopt local ordinances to further
13 control smoking. ~~Cities and towns may enact and enforce laws~~
14 ~~prohibiting and penalizing conduct under provisions of this act, but~~
15 the provisions of such laws shall be the same as provided in this
16 ~~act and the enforcement provisions under such laws~~ shall not be more
17 less stringent than those of this act.

18 SECTION 5. REPEALER Section 3, Chapter 517, O.S.L. 2004
19 (3A O.S. Supp. 2007, Section 208.12), is hereby repealed.

20 SECTION 6. This act shall become effective November 1, 2008.

21 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS & LABOR, dated 2-18-08 -
22 DO PASS, As Amended and Coauthored.