

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 HOUSE BILL 1311

By: Luttrell

4  
5  
6 AS INTRODUCED

7 An Act relating to smoking; amending 21 O.S. 2001,  
8 Section 1247, as last amended by Section 1, Chapter  
9 70, O.S.L. 2007 (21 O.S. Supp. 2008, Section 1247)  
10 and 63 O.S. 2001, Section 1-1523, as last amended by  
11 Section 2, Chapter 70, O.S.L. 2007 (63 O.S. Supp.  
2008, Section 1-1523), which relate to smoking in  
public places; prohibiting persons under the age of  
eighteen from being in a designated smoking room; and  
providing an effective date.

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

15 SECTION 1. AMENDATORY 21 O.S. 2001, Section 1247, as  
16 last amended by Section 1, Chapter 70, O.S.L. 2007 (21 O.S. Supp.  
17 2008, Section 1247), is amended to read as follows:

18 Section 1247. A. The possession of lighted tobacco in any form  
19 is a public nuisance and dangerous to public health and is hereby  
20 prohibited when such possession is in any indoor place used by or  
21 open to the public, all parts of a zoo to which the public may be  
22 admitted, whether indoors or outdoors, public transportation, or any  
23 indoor workplace, except where specifically allowed by law.

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

16       B. All buildings, or portions thereof, owned or operated by  
17 this state shall be designated as nonsmoking; provided, however,  
18 each building may have one designated smoking room. As used in this  
19 paragraph, "buildings" shall not include up to twenty-five percent  
20 (25%) of any hotel or motel rooms rented to guests if the rooms are  
21 properly ventilated so that smoke is not circulated to nonsmoking  
22 areas.

23       C. All buildings, or portions thereof, owned or operated by a  
24 county or municipal government, at the discretion of the county or

1 municipal governing body, may be designated as entirely nonsmoking  
2 or may be designated as nonsmoking with one designated smoking room.

3 D. A smoking room as provided for in subsections B and C of  
4 this section:

5 1. Shall not be used for the conduct of public business;

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

12 3. Shall be verified for compliance with the provisions of this  
13 subsection by the Department of Central Services for state  
14 buildings, by a county entity designated by the board of county  
15 commissioners for county buildings, or by a municipal entity  
16 designated by the municipal governing body for municipal buildings.

17 E. No smoking shall be allowed within twenty-five (25) feet of  
18 the entrance or exit of any building specified in subsection B or C  
19 of this section.

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

23 G. The restrictions provided in this section shall not apply to  
24 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;

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1 8. 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~~ Section 501 (c) (8), 501  
6 (c) (10) or 501 (c) (19) of the Internal Revenue Code, 26 U.S.C.,  
7 ~~Sections~~ Section 501 (c) (8), 501 (c) (10) or 501 (c) (19), when such  
8 facility is utilized exclusively by its members and their families  
9 and for the conduct of post or organization nonprofit operations  
10 except during an event or activity which is open to the public; and

11 10. Any outdoor seating area of a restaurant; provided, smoking  
12 shall not be allowed within fifteen (15) feet of any exterior public  
13 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~~ subsection F or G of this section or in a smoking room  
24 pursuant to subsection H of this section, such smoking space must

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

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

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

8 L. Responsibility for posting signs or decals shall be as  
9 follows:

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

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

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

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

20 SECTION 2. AMENDATORY 63 O.S. 2001, Section 1-1523, as  
21 last amended by Section 2, Chapter 70, O.S.L. 2007 (63 O.S. Supp.  
22 2008, Section 1-1523), is amended to read as follows:

23 Section 1-1523. A. Except as specifically provided in the  
24 Smoking in Public Places and Indoor Workplaces Act, no person shall

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

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

23 2. Career and technology centers may designate smoking areas  
24 outside of buildings, away from general traffic areas and completely

1 out of sight of children under eighteen (18) years of age, for use  
2 by adults attending training courses, sessions, meetings or  
3 seminars.

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

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

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

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

19 F. An employer not otherwise restricted from doing so may elect  
20 to provide smoking rooms where no work is performed except for  
21 cleaning and maintenance during the time the room is not in use for  
22 smoking, provided each smoking room is fully enclosed and exhausted  
23 directly to the outside, in such manner that no smoke can drift or  
24 circulate into a nonsmoking area. No exhaust from a smoking room

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

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

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

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

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

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

1 5. Workplaces where only the owner or operator of the  
2 workplace, or the immediate family of the owner or operator,  
3 performs any work in the workplace, and the workplace has only  
4 incidental public access;

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

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

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

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

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

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

6 H. Notwithstanding any other provision of the Smoking in Public  
7 Places and Indoor Workplaces Act, until March 1, 2006, restaurants  
8 may have designated smoking and nonsmoking areas or may be  
9 designated as being a totally nonsmoking area. Beginning March 1,  
10 2006, restaurants shall be totally nonsmoking or may provide  
11 nonsmoking areas and designated smoking rooms. Food and beverage  
12 may be served in such designated smoking rooms which shall be in a  
13 location which is fully enclosed, directly exhausted to the outside,  
14 under negative air pressure so smoke cannot escape when a door is  
15 opened, and no air is recirculated to nonsmoking areas of the  
16 building. No exhaust from such room shall be located within twenty-  
17 five (25) feet of any entrance, exit or air intake. Persons under  
18 eighteen (18) years of age are prohibited from entering a designated  
19 smoking room. Such room shall be subject to verification for  
20 compliance with the provisions of this subsection by the State  
21 Department of Health.

22 SECTION 3. This act shall become effective November 1, 2009.  
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24 52-1-5234 SDR 12/01/08