

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 SENATE BILL 1809

By: Myers

4  
5  
6 AS INTRODUCED

7 An Act relating to public health and safety; amending  
8 21 O.S. 2001, Section 1247, as last amended by  
9 Section 1, Chapter 70, O.S.L. 2007 (21 O.S. Supp.  
10 2009, Section 1247), and 63 O.S. 2001, Sections 1-  
11 1522, as amended by Section 3, Senate Joint  
12 Resolution No. 21, p. 2357, O.S.L. 2003, and 1-1523,  
13 as last amended by Section 2, Chapter 70, O.S.L.  
14 2007, (63 O.S. Supp. 2009, Sections 1-1522 and 1-  
15 1523), which relate to smoking in public places;  
16 deleting language permitting designated smoking rooms  
17 in certain buildings; clarifying language; deleting  
18 certain exemptions; deleting language permitting  
19 employers to provide smoking rooms; deleting obsolete  
20 language; providing certain time limit; prohibiting  
21 certain addition; deleting definitions; defining  
22 term; providing for smoking exemption in cigar bars;  
23 repealing Section 3, Chapter 517, O.S.L. 2004 (3A  
24 O.S. Supp. 2009, Section 208.12), which relates to  
smoking in gaming areas; providing an effective date;  
and declaring an emergency.

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.  
2009, 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

1 prohibited when such possession is in any indoor place used by or  
2 open to the public, all parts of a zoo to which the public may be  
3 admitted, whether indoors or outdoors, public transportation, or any  
4 indoor workplace, except where specifically allowed by law.

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

20 B. ~~All buildings, or portions thereof, owned or operated by~~  
21 ~~this state shall be designated as nonsmoking; provided, however,~~  
22 ~~each building may have one designated smoking room. As used in this~~  
23 ~~paragraph, "buildings" shall not include up to twenty five percent~~  
24 ~~(25%) of any hotel or motel rooms rented to guests if the rooms are~~

1 ~~properly ventilated so that smoke is not circulated to nonsmoking~~  
2 ~~areas.~~

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

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

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

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

16 ~~3. Shall be verified for compliance with the provisions of this~~  
17 ~~subsection by the Department of Central Services for state~~  
18 ~~buildings, by a county entity designated by the board of county~~  
19 ~~commissioners for county buildings, or by a municipal entity~~  
20 ~~designated by the municipal governing body for municipal buildings.~~

21 ~~E. No smoking shall be allowed within twenty-five (25) feet of~~  
22 ~~the entrance or exit of any building specified in subsection B or C~~  
23 ~~of this section owned or operated by state, county or city~~

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1 governments or containing spaces owned or operated by state, county  
2 or city governments.

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

6 ~~G. D.~~ The restrictions provided in this section shall not apply  
7 to the following:

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

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

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

17 4. ~~Workplaces where only the owner or operator of the~~  
18 ~~workplace, or the immediate family of the owner or operator,~~  
19 ~~performs any work in the workplace, and the workplace has only~~  
20 ~~incidental public access. "Incidental public access" means that a~~  
21 ~~place of business has only an occasional person, who is not an~~  
22 ~~employee, present at the business to transact business or make a~~  
23 ~~delivery. It does not include businesses that depend on walk-in~~  
24 ~~customers for any part of their business;~~

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

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

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

7       ~~8.~~ 2. Medical research or treatment centers, if smoking is  
8 integral to the research or treatment;

9       ~~9.~~ 3. A facility operated by a post or organization of past or  
10 present members of the Armed Forces of the United States which is  
11 exempt from taxation pursuant to Sections 501(c)(8), 501(c)(10) or  
12 501(c)(19) of the Internal Revenue Code, 26 U.S.C., Sections  
13 501(c)(8), 501(c)(10) or 501(c)(19), when such facility is utilized  
14 exclusively by its members and their families and for the conduct of  
15 post or organization nonprofit operations except during an event or  
16 activity which is open to the public; and

17       ~~10.~~ 4. Any outdoor seating area of a restaurant; provided,  
18 smoking shall not be allowed within fifteen (15) feet of any  
19 exterior public doorway or any air intake of a restaurant.

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

1 ~~circulate into a nonsmoking area. No exhaust from a smoking room~~  
2 ~~shall be located within fifteen (15) feet of any entrance, exit or~~  
3 ~~air intake.~~

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

17 ~~J. Notwithstanding any other provision of this section, until~~  
18 ~~March 1, 2006, restaurants may have designated smoking and~~  
19 ~~nonsmoking areas or may be designated as being a totally nonsmoking~~  
20 ~~area. Beginning March 1, 2006, restaurants Restaurants shall be~~  
21 ~~totally nonsmoking or, until September 1, 2012, may provide~~  
22 ~~nonsmoking areas and designated smoking rooms. Food and beverage~~  
23 ~~may be served in such designated smoking rooms which shall be in a~~  
24 ~~location which is fully enclosed, directly exhausted to the outside,~~

1 under negative air pressure so smoke cannot escape when a door is  
2 opened, and no air is recirculated to nonsmoking areas of the  
3 building. No exhaust from such room shall be located within twenty-  
4 five (25) feet of any entrance, exit or air intake. Such room shall  
5 be subject to verification for compliance with the provisions of  
6 this subsection by the State Department of Health. No new or  
7 existing restaurant shall add a designated smoking room after  
8 September 1, 2010.

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

14 ~~L.~~ F. Responsibility for posting signs or decals shall be as  
15 follows:

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

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

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

22 ~~M.~~ G. Any person who knowingly violates this act is guilty of a  
23 misdemeanor, and upon conviction thereof, shall be punished by a  
24

1 fine of not less than Ten Dollars (\$10.00) nor more than One Hundred  
2 Dollars (\$100.00).

3 SECTION 2. AMENDATORY 63 O.S. 2001, Section 1-1522, as  
4 amended by Section 3, Senate Joint Resolution No. 21, p. 2357,  
5 O.S.L. 2003 (63 O.S. Supp. 2009, Section 1-1522), is amended to read  
6 as follows:

7 Section 1-1522. As used in ~~this act~~ the Smoking in Public  
8 Places and Indoor Workplaces Act:

9 1. "Cigar bar" means an establishment that derives more than  
10 eighty percent (80%) of its gross receipts, subject to verification  
11 by competent authority, from the sale of alcoholic beverages, low-  
12 point beer, and tobacco products for consumption on the premises,  
13 including the rental of on-site humidors and excluding sales from  
14 vending machines, with a minimum of twenty percent (20%) of these  
15 gross receipts from tobacco products and rental of on-site humidors.

16 No establishment shall qualify for smoking exemption pursuant to  
17 Section 1-1523 of this title as a cigar bar unless it met these  
18 conditions for the year ending December 31, 2009, and unless it  
19 meets these conditions continuously for each subsequent year,  
20 providing information to the State Department of Health as needed  
21 for such assessment;

22 2. ~~"Health facility" means an entity which provides health~~  
23 ~~services, including, but not limited to, hospitals, nursing homes,~~  
24 ~~long term care facilities, kidney disease treatment centers, health~~



1 ~~maintenance organizations and ambulatory treatment centers~~

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

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

19 4. "Meeting" means a meeting as defined in the Oklahoma Open  
20 Meeting Act;

21 5. "Public body" means a public body as defined in the Oklahoma  
22 Open Meeting Act;

23 6. "Public place" means any enclosed indoor area where  
24 individuals other than employees are invited or permitted;

1 7. "Restaurant" means any eating establishment regardless of  
2 seating capacity; and

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

5 ~~9. "Stand-alone bar", "stand-alone tavern", and "cigar bar"~~  
6 ~~mean an establishment that derives more than sixty percent (60%) of~~  
7 ~~its gross receipts, subject to verification by competent authority,~~  
8 ~~from the sale of alcoholic beverages and low point beer and no~~  
9 ~~person under twenty one (21) years of age is admitted, except for~~  
10 ~~members of a musical band employed or hired as provided in paragraph~~  
11 ~~2 of subsection B of Section 537 of Title 37 of the Oklahoma~~  
12 ~~Statutes and that is not located within, and does not share any~~  
13 ~~common entryway or common indoor area with, any other enclosed~~  
14 ~~indoor workplace, including a restaurant.~~

15 SECTION 3. AMENDATORY 63 O.S. 2001, Section 1-1523, as  
16 last amended by Section 2, Chapter 70, O.S.L. 2007 (63 O.S. Supp.  
17 2009, Section 1-1523), is amended to read as follows:

18 Section 1-1523. A. Except as specifically provided in the  
19 Smoking in Public Places and Indoor Workplaces Act, no person shall  
20 smoke in a public place, in any part of a zoo to which the public  
21 may be admitted, whether indoors or outdoors, in an indoor  
22 workplace, in any vehicle providing public transportation, at a  
23 meeting of a public body, in a nursing facility licensed pursuant to  
24 the Nursing Home Care Act, or in a child care facility licensed

1 pursuant to the Oklahoma Child Care Facilities Licensing Act. A  
2 nursing facility licensed pursuant to the Nursing Home Care Act may  
3 designate smoking rooms for residents and their guests. Such rooms  
4 shall be fully enclosed, directly exhausted to the outside, and  
5 shall be under negative air pressure so that no smoke can escape  
6 when a door is opened and no air is recirculated to nonsmoking areas  
7 of the building.

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

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

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

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

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

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

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

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

12 1. ~~Stand alone bars, stand alone taverns or cigar bars,~~ Cigar  
13 bars.

14 a. If a cigar bar is within a building also containing  
15 spaces required to be smoke-free, in order to permit  
16 smoking, the cigar bar shall be inspected and approved  
17 by the State Department of Health as meeting the  
18 following requirements with respect to the spaces  
19 required to be smoke-free within the building. The  
20 space in which smoking is to be allowed shall be  
21 considered a smoking lounge and shall:

22 (1) be fully enclosed,

23 (2) have a maximum occupancy of seventy (70) persons  
24 per one thousand (1,000) square feet and

1                   ventilation capacity for such occupancy at sixty  
2                   (60) cubic feet per minute of fresh air per  
3                   person,

4                   (3) be ventilated with at least sixty (60) cubic feet  
5                   per minute of fresh air times the actual number  
6                   of occupants,

7                   (4) be directly exhausted to the outside, at least  
8                   twenty-five (25) feet from any air intake,  
9                   entrance, or window that opens,

10                  (5) be one hundred percent (100%) exhausted, with no  
11                  return air,

12                  (6) be under continuous negative air pressure strong  
13                  enough that no smoke can escape to spaces  
14                  required to be smoke-free through normal cracks  
15                  and openings or when a door is opened between the  
16                  smoking lounge and spaces required to be smoke-  
17                  free, and

18                  (7) be maintained under negative air pressure during  
19                  occupancy and for sufficient time after occupancy  
20                  until smoke has been exhausted from the smoking  
21                  lounge so that no smoke can migrate to spaces  
22                  required to be smoke-free when negative air  
23                  pressure is discontinued.

1           b. Any areas of a cigar bar designated by the  
2           establishment as outside of the smoking lounge shall  
3           be considered spaces required to be smoke-free.

4           c. Applications for the cigar bar exemption shall be made  
5           to the State Department of Health within ninety (90)  
6           days of the effective date of this act on forms to be  
7           made available by the Department within thirty (30)  
8           days of the effective date of this act. Initial  
9           approvals shall be until September 1, 2011, with  
10           annual renewals thereafter, provided that the  
11           Department may suspend or revoke a smoking exemption  
12           in the interim for noncompliance with the requirements  
13           of this section;

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

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

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

23           ~~5. Workplaces where only the owner or operator of the~~  
24 ~~workplace, or the immediate family of the owner or operator,~~

1 ~~performs any work in the workplace, and the workplace has only~~  
2 ~~incidental public access;~~

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

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

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

13 ~~9. 3. A facility operated by a post or organization of past or~~  
14 ~~present members of the Armed Forces of the United States which is~~  
15 ~~exempt from taxation pursuant to Sections 501(c)(8), 501(c)(10) or~~  
16 ~~501(c)(19) of the Internal Revenue Code, 26 U.S.C., Section~~  
17 ~~501(c)(8), 501(c)(10) or 501(c)(19), when such facility is utilized~~  
18 ~~exclusively by its members and their families and for the conduct of~~  
19 ~~post or organization nonprofit operations except during an event or~~  
20 ~~activity which is open to the public;~~

21 ~~10. 4. Any outdoor seating area of a restaurant; provided,~~  
22 ~~smoking shall not be allowed within fifteen (15) feet of any~~  
23 ~~exterior public doorway or any air intake of a restaurant; and~~

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1       ~~11.~~ 5. Medical research or treatment centers, if smoking is  
2 integral to the research or treatment.

3       ~~H. Notwithstanding any other provision of the Smoking in Public~~  
4 ~~Places and Indoor Workplaces Act, until March 1, 2006, restaurants~~  
5 ~~may have designated smoking and nonsmoking areas or may be~~  
6 ~~designated as being a totally nonsmoking area. Beginning March 1,~~  
7 ~~2006, restaurants~~ Restaurants shall be totally nonsmoking or, until  
8 September 1, 2012, may provide nonsmoking areas and designated  
9 smoking rooms. Food and beverage may be served in such designated  
10 smoking rooms which shall be in a location which is fully enclosed,  
11 directly exhausted to the outside, under negative air pressure so  
12 smoke cannot escape when a door is opened, and no air is  
13 recirculated to nonsmoking areas of the building. No exhaust from  
14 such room shall be located within twenty-five (25) feet of any  
15 entrance, exit or air intake. Such room shall be subject to  
16 verification for compliance with the provisions of this subsection  
17 by the State Department of Health. No new or existing restaurant  
18 shall add a designated smoking room after September 1, 2010.

19       SECTION 4.       REPEALER       Section 3, Chapter 517, O.S.L. 2004  
20 (3A O.S. Supp. 2009, Section 208.12), is hereby repealed.

21       SECTION 5. This act shall become effective July 1, 2010.

22       SECTION 6. It being immediately necessary for the preservation  
23 of the public peace, health and safety, an emergency is hereby  
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1 declared to exist, by reason whereof this act shall take effect and  
2 be in full force from and after its passage and approval.

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