

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 SENATE BILL 111

By: Myers

4
5 AS INTRODUCED

6 An Act relating to smoking in public places; amending
7 21 O.S. 2001, Section 1247, as last amended by
8 Section 1, Chapter 95, O.S.L. 2010 (21 O.S. Supp.
9 2010, Section 1247), and 63 O.S. 2001, Sections 1-
10 1522, as amended by Section 3, Senate Joint
11 Resolution No. 21, p. 2357, O.S.L. 2003, and 1-1523,
12 as last amended by Section 2, Chapter 70, O.S.L. 2007
13 (63 O.S. Supp. 2010, Sections 1-1522 and 1-1523),
14 which relate to smoking in public places; deleting
15 language permitting designated smoking rooms in
16 certain buildings; clarifying language; deleting
17 certain exemptions; deleting language permitting
18 employers to provide smoking rooms; deleting obsolete
19 language; providing certain time limit; prohibiting
20 certain addition; deleting definitions; defining
21 term; providing for smoking exemption in cigar bars;
22 repealing Section 3, Chapter 517, O.S.L. 2004 (3A
23 O.S. Supp. 2010, Section 208.12), which relates to
24 smoking in gaming areas; providing an effective date;
and declaring an emergency.

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

19 SECTION 1. AMENDATORY 21 O.S. 2001, Section 1247, as
20 last amended by Section 1, Chapter 95, O.S.L. 2010 (21 O.S. Supp.
21 2010, Section 1247), is amended to read as follows:

22 Section 1247. A. The possession of lighted tobacco in any form
23 is a public nuisance and dangerous to public health and is hereby
24 prohibited when such possession is in any indoor place used by or

1 open to the public, all parts of a zoo to which the public may be
2 admitted, whether indoors or outdoors, public transportation, or any
3 indoor workplace, except where specifically allowed by law.

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

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

24

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. All buildings, or portions thereof, owned by an educational
8 facility as is defined in the Smoking in Public Places and Indoor
9 Workplaces Act shall be designated as nonsmoking as provided for in
10 Section 1-1523 of Title 63 of the Oklahoma Statutes. All campuses,
11 buildings and grounds, or portions thereof, owned or operated by an
12 institution within The Oklahoma State System of Higher Education may
13 be designated as tobacco free, including smoking or smokeless
14 tobacco, by the institution upon adoption of a policy stating the
15 tobacco restrictions for the institution and an intent to enforce
16 the penalty for violations as set forth in subsection N of this
17 section.

18 ~~E. A smoking room as provided for in subsections B and C of~~
19 ~~this section:~~

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

21 ~~2. 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~~
24 ~~nonsmoking areas of the building. No smoking exhaust shall be~~

1 ~~located within twenty five (25) feet of any entrance, exit or air~~
2 ~~intake; and~~

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

8 ~~F. C.~~ No smoking shall be allowed within twenty-five (25) feet
9 of the entrance or exit of any building ~~specified in subsection B, C~~
10 ~~or D of this section~~ owned or operated by state, county or city
11 governments containing spaces owned or operated by state, county or
12 city governments.

13 ~~G. D.~~ The restrictions provided in this section shall not apply
14 to ~~stand alone bars, stand alone taverns and cigar bars as defined~~
15 in Section 1-1522 of Title 63 of the Oklahoma Statutes.

16 ~~H. E.~~ The restrictions provided in this section shall not apply
17 to the following:

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

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

23 3. ~~Retail tobacco stores predominantly engaged in the sale of~~
24 ~~tobacco products and accessories and in which the sale of other~~

1 ~~products is merely incidental and in which no food or beverage is~~
2 ~~sold or served for consumption on the premises;~~

3 ~~4. Workplaces where only the owner or operator of the~~
4 ~~workplace, or the immediate family of the owner or operator,~~
5 ~~performs any work in the workplace, and the workplace has only~~
6 ~~incidental public access. "Incidental public access" means that a~~
7 ~~place of business has only an occasional person, who is not an~~
8 ~~employee, present at the business to transact business or make a~~
9 ~~delivery. It does not include businesses that depend on walk-in~~
10 ~~customers for any part of their business;~~

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

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

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

17 ~~8. 2. Medical research or treatment centers, if smoking is~~
18 ~~integral to the research or treatment;~~

19 ~~9. 3. A facility operated by a post or organization of past or~~
20 ~~present members of the Armed Forces of the United States which is~~
21 ~~exempt from taxation pursuant to Section 501(c)(8), 501(c)(10) or~~
22 ~~501(c)(19) of the Internal Revenue Code, 26 U.S.C., Section~~
23 ~~501(c)(8), 501(c)(10) or 501(c)(19), when such facility is utilized~~
24 ~~exclusively by its members and their families and for the conduct of~~

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

3 ~~10.~~ 4. Any outdoor seating area of a restaurant; provided,
4 smoking shall not be allowed within fifteen (15) feet of any
5 exterior public doorway or any air intake of a restaurant.

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

14 ~~J. If smoking is to be permitted in any space exempted in
15 subsection G or H of this section or in a smoking room pursuant to
16 subsection I of this section, such smoking space must either occupy
17 the entire enclosed indoor space or, if it shares the enclosed space
18 with any nonsmoking areas, the smoking space shall be fully
19 enclosed, exhausted directly to the outside with no air from the
20 smoking space circulated to any nonsmoking area, and under negative
21 air pressure so that no smoke can drift or circulate into a
22 nonsmoking area when a door to an adjacent nonsmoking area is
23 opened. Air from a smoking room shall not be exhausted within
24 fifteen (15) feet of any entrance, exit or air intake. Any employer~~

1 ~~may choose a more restrictive smoking policy, including being~~
2 ~~totally smoke free.~~

3 ~~K. Notwithstanding any other provision of this section, until~~
4 ~~March 1, 2006, restaurants may have designated smoking and~~
5 ~~nonsmoking areas or may be designated as being a totally nonsmoking~~
6 ~~area. Beginning March 1, 2006, restaurants Restaurants shall be~~
7 ~~totally nonsmoking or, until September 1, 2013, may provide~~
8 ~~nonsmoking areas and designated smoking rooms. Food and beverage~~
9 ~~may be served in such designated smoking rooms which shall be in a~~
10 ~~location which is fully enclosed, directly exhausted to the outside,~~
11 ~~under negative air pressure so smoke cannot escape when a door is~~
12 ~~opened, and no air is recirculated to nonsmoking areas of the~~
13 ~~building. No exhaust from such room shall be located within twenty-~~
14 ~~five (25) feet of any entrance, exit or air intake. Such room shall~~
15 ~~be subject to verification for compliance with the provisions of~~
16 ~~this subsection by the State Department of Health. No new or~~
17 ~~existing restaurant shall add a designated smoking room after~~
18 ~~September 1, 2011.~~

19 ~~L. F.~~ The person who owns or operates a place where smoking or
20 tobacco use is prohibited by law shall be responsible for posting a
21 sign or decal, at least four (4) inches by two (2) inches in size,
22 at each entrance to the building indicating that the place is smoke-
23 free or tobacco-free.

24

1 ~~M.~~ G. Responsibility for posting signs or decals shall be as
2 follows:

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

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

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

9 ~~N.~~ H. Any person who knowingly violates this ~~act~~ section is
10 guilty of a misdemeanor, and upon conviction thereof, shall be
11 punished by a fine of not less than Ten Dollars (\$10.00) nor more
12 than One Hundred Dollars (\$100.00).

13 SECTION 2. AMENDATORY 63 O.S. 2001, Section 1-1522, as
14 amended by Section 3, Senate Joint Resolution No. 21, p. 2357,
15 O.S.L. 2003 (63 O.S. Supp. 2010, Section 1-1522), is amended to read
16 as follows:

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

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

1 gross receipts from tobacco products and rental of on-site humidors.
2 No establishment shall qualify for smoking exemption pursuant to
3 Section 1-1523 of this title as a cigar bar unless it met these
4 conditions for the year ending December 31, 2010, and unless it
5 meets these conditions continuously for each subsequent year,
6 providing information to the State Department of Health as needed
7 for such assessment;

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

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

15 3. "Indoor workplace" means any indoor place of employment or
16 employment-type service for or at the request of another individual
17 or individuals, or any public or private entity, whether part-time
18 or full-time and whether for compensation or not. Such services
19 shall include, without limitation, any service performed by an
20 owner, employee, independent contractor, agent, partner, proprietor,
21 manager, officer, director, apprentice, trainee, associate, servant
22 or volunteer. An indoor workplace includes work areas, employee
23 lounges, restrooms, conference rooms, classrooms, employee
24 cafeterias, hallways, any other spaces used or visited by employees,

1 and all space between a floor and ceiling that is predominantly or
2 totally enclosed by walls or windows, regardless of doors, doorways,
3 open or closed windows, stairways, or the like. The provisions of
4 this section shall apply to such indoor workplace at any given time,
5 whether or not work is being performed;

6 4. "Meeting" means a meeting as defined in the Oklahoma Open
7 Meeting Act;

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

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

12 7. "Restaurant" means any eating establishment regardless of
13 seating capacity; and

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

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

24

1 ~~common entryway or common indoor area with, any other enclosed~~
2 ~~indoor workplace, including a restaurant.~~

3 SECTION 3. AMENDATORY 63 O.S. 2001, Section 1-1523, as
4 last amended by Section 2, Chapter 70, O.S.L. 2007 (63 O.S. Supp.
5 2010, Section 1-1523), is amended to read as follows:

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

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

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

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

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

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

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

24

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,~~ Cigar
24 bars.

1 a. If a cigar bar is within a building also containing
2 spaces required to be smoke-free, in order to permit
3 smoking, the cigar bar shall be inspected and approved
4 by the State Department of Health as meeting the
5 following requirements with respect to the spaces
6 required to be smoke-free within the building. The
7 space in which smoking is to be allowed shall be
8 considered a smoking lounge and shall:

9 (1) be fully enclosed,

10 (2) have a maximum occupancy of seventy (70) persons
11 per one thousand (1,000) square feet and
12 ventilation capacity for such occupancy at sixty
13 (60) cubic feet per minute of fresh air per
14 person,

15 (3) be ventilated with at least sixty (60) cubic feet
16 per minute of fresh air times the actual number
17 of occupants,

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

21 (5) be one hundred percent (100%) exhausted, with no
22 return air,

23 (6) be under continuous negative air pressure strong
24 enough that no smoke can escape to spaces

1 required to be smoke-free through normal cracks
2 and openings or when a door is opened between the
3 smoking lounge and spaces required to be smoke-
4 free, and

5 (7) be maintained under negative air pressure during
6 occupancy and for sufficient time after occupancy
7 until smoke has been exhausted from the smoking
8 lounge so that no smoke can migrate to spaces
9 required to be smoke-free when negative air
10 pressure is discontinued.

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

14 c. Applications for the cigar bar exemption shall be made
15 to the State Department of Health within ninety (90)
16 days of the effective date of this act on forms to be
17 made available by the Department within thirty (30)
18 days of the effective date of this act. Initial
19 approvals shall be until September 1, 2012, with
20 annual renewals thereafter, provided that the
21 Department may suspend or revoke a smoking exemption
22 in the interim for noncompliance with the requirements
23 of this section;

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.~~ 3. 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
5 501(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.~~ 4. 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.~~ 5. 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~~

19 G. Restaurants shall be totally nonsmoking or, until September
20 1, 2013, may provide nonsmoking areas and designated smoking rooms.
21 Food and beverage may be served in such designated smoking rooms
22 which shall be in a location which is fully enclosed, directly
23 exhausted to the outside, under negative air pressure so smoke
24 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 September 1, 2011.

7 SECTION 4. REPEALER Section 3, Chapter 517, O.S.L. 2004
8 (3A O.S. Supp. 2010, Section 208.12), is hereby repealed.

9 SECTION 5. This act shall become effective July 1, 2011.

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

14
15 53-1-150 JM 1/3/2011 4:04:24 PM
16
17
18
19
20
21
22
23
24