

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

HOUSE BILL 2541

By: West (Rick)

AS INTRODUCED

An Act relating to tobacco in prisons; amending 21 O.S. 2011, Section 1247, as last amended by Section 1, Chapter 110, O.S.L. 2017 (21 O.S. Supp. 2017, Section 1247), which relates to smoking in public places; providing an exemption for institutions of the Department of Corrections; amending 57 O.S. 2011, Section 21, as last amended by Section 2, Chapter 226, O.S.L. 2015 (57 O.S. Supp. 2017, Section 21), which relates to penalties for possessing contraband in jails or prisons; providing exception for inmates who purchase and possess authorized tobacco products; authorizing correctional facility canteens to sell tobacco products to inmates; prohibiting the purchase of tobacco products from unauthorized vendors or sources; providing penalty; providing guidelines for tobacco product sales and purchases; directing transfer of profits to certain revolving fund; defining term; amending 63 O.S. 2011, Section 1-1523, as last amended by Section 2, Chapter 110, O.S.L. 2017 (63 O.S. Supp. 2017, Section 1-1523), which relates to the Smoking in Public Places and Indoor Workplaces Act; providing an exemption for institutions of the Department of Corrections; providing for codification; and providing an effective date.

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

1 SECTION 1. AMENDATORY 21 O.S. 2011, Section 1247, as
2 last amended by Section 1, Chapter 110, O.S.L. 2017 (21 O.S. Supp.
3 2017, Section 1247), is amended to read as follows:

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

10 Commercial airport operators may prohibit the use of lighted tobacco
11 in any area that is open to or used by the public whether located
12 indoors or outdoors, provided that the outdoor area is within one
13 hundred seventy-five (175) feet from an entrance.

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

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

5 B. All buildings and other properties, or portions thereof,
6 owned or operated by this state shall be designated as nonsmoking.
7 The provisions of this subsection shall not apply to ~~veterans~~ the
8 following:

9 1. Veterans centers operated by this state pursuant to the
10 provisions of Section 221 et seq. of Title 72 of the Oklahoma
11 Statutes, which shall be designated nonsmoking effective January 1,
12 2015, at which time veterans centers may establish outdoor
13 designated smoking areas for resident veterans only. Smoking shall
14 only be allowed in designated outdoor smoking areas; and

15 2. Institutions and facilities under the jurisdiction and
16 control of the Department of Corrections. On or after November 1,
17 2018, the Department of Corrections may establish outdoor designated
18 smoking areas for inmates who have been sentenced to the care and
19 custody of the Department of Corrections. Smoking shall only be
20 allowed in outdoor designated smoking areas.

21 C. All buildings and other properties, or portions thereof,
22 owned or operated by a county or municipal government, at the
23 discretion of the county or municipal governing body, may be
24 designated as entirely nonsmoking.

1 D. All educational facilities or portions thereof as defined in
2 the Smoking in Public Places and Indoor Workplaces Act and all
3 educational facilities as defined in the 24/7 Tobacco-free Schools
4 Act shall be designated as nonsmoking as provided for in Section 1-
5 1523 of Title 63 of the Oklahoma Statutes. All campuses, buildings
6 and grounds, or portions thereof, owned or operated by an
7 institution within The Oklahoma State System of Higher Education may
8 be designated as tobacco free, including smoking or smokeless
9 tobacco, by the institution upon adoption of a policy stating the
10 tobacco restrictions for the institution and an intent to enforce
11 the penalty for violations as set forth in subsection M of this
12 section.

13 E. No smoking shall be allowed within twenty-five (25) feet of
14 the entrance or exit of any building specified in subsection B, C or
15 D of this section.

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

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

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

24

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

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

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

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

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

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

21 8. Medical research or treatment centers, if smoking is
22 integral to the research or treatment;

23 9. A facility operated by a post or organization of past or
24 present members of the Armed Forces of the United States which is

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

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

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

18 I. If smoking is to be permitted in any space exempted in
19 subsection F or G of this section or in a smoking room pursuant to
20 subsection H of this section, such smoking space must either occupy
21 the entire enclosed indoor space or, if it shares the enclosed space
22 with any nonsmoking areas, the smoking space shall be fully
23 enclosed, exhausted directly to the outside with no air from the
24 smoking space circulated to any nonsmoking area, and under negative

1 air pressure so that no smoke can drift or circulate into a
2 nonsmoking area when a door to an adjacent nonsmoking area is
3 opened. Air from a smoking room shall not be exhausted within
4 fifteen (15) feet of any entrance, exit or air intake. Any employer
5 may choose a more restrictive smoking policy, including being
6 totally smoke free.

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

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

3 L. Responsibility for posting signs or decals shall be as
4 follows:

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

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

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

11 M. Any person who knowingly violates the provisions of this
12 section shall be punished by a citation and fine of not more than
13 One Hundred Dollars (\$100.00).

14 SECTION 2. AMENDATORY 57 O.S. 2011, Section 21, as last
15 amended by Section 2, Chapter 226, O.S.L. 2015 (57 O.S. Supp. 2017,
16 Section 21), is amended to read as follows:

17 Section 21. A. Any person who, without authority, brings into
18 or has in his or her possession in any jail or state penal
19 institution or other place where prisoners are located, any gun,
20 knife, bomb or other dangerous instrument, any controlled dangerous
21 substance as defined by Section 2-101 et seq. of Title 63 of the
22 Oklahoma Statutes, any intoxicating beverage or low-point beer as
23 defined by Sections 163.1 and 163.2 of Title 37 of the Oklahoma
24 Statutes, money or financial documents for a person other than the

1 inmate or a spouse of the inmate, including but not limited to tax
2 returns, shall be guilty of a felony and, upon conviction, shall be
3 punished by imprisonment in the custody of the Department of
4 Corrections for a term of not less than one (1) year nor more than
5 five (5) years, or by a fine of not less than One Hundred Dollars
6 (\$100.00) nor more than One Thousand Dollars (\$1,000.00), or by both
7 such fine and imprisonment. Provided, the provisions of this
8 subsection shall not prohibit any Department of Corrections employee
9 who has a valid handgun license pursuant to the Oklahoma Self-
10 Defense Act to keep a firearm in a vehicle on any property set aside
11 for the parking of any vehicle, whether occupied or unoccupied, at
12 any state-owned prison facility, provided the employee has provided
13 annual notification to the Department of Corrections of the brand
14 name, model, serial number, and owner identification information of
15 the firearm, and the firearm is secured and stored in a locked metal
16 storage container located in a locked vehicle. The storage
17 container will be secured in the vehicle by a lockable chain or
18 cable or by utilizing hardware provided by the manufacturer.

19 B. ~~¶¶~~ With the exception of authorized tobacco products
20 available for purchase by an inmate from a canteen system operation
21 of a correctional facility as provided in Section 3 of this act, if
22 an inmate is found to be in possession of any item prohibited by
23 this section, upon conviction, such inmate shall be guilty of a
24 felony and shall be punished by imprisonment for a term of not less

1 than five (5) years nor more than twenty (20) years in the custody
2 of the Department of Corrections.

3 C. If the person found to be in possession of any item
4 prohibited by this section has committed, prior to the commission of
5 an offense in violation of this section, two or more felony
6 offenses, and the possession of contraband in violation of this
7 section is within ten (10) years of the completion of the execution
8 of the sentence for any prior offense, such person, upon conviction,
9 shall be guilty of a felony and shall be punished by imprisonment in
10 the custody of the Department of Corrections for a term of not less
11 than twenty (20) years. Felony offenses relied upon shall not have
12 arisen out of the same transaction or occurrence or series of events
13 closely related in time and location.

14 D. Any person who, without authority, brings into or has in his
15 or her possession in any jail or state penal institution or other
16 place where prisoners are located, cigarettes, cigars, snuff,
17 chewing tobacco or any other form of tobacco product shall, upon
18 conviction, be guilty of a misdemeanor punishable by imprisonment in
19 the county jail not to exceed one (1) year, or by a fine not
20 exceeding Five Hundred Dollars (\$500.00), or by both such fine and
21 imprisonment.

22 E. Any person who knowingly, willfully and without authority
23 brings into or has in his or her possession in any secure area of a
24 jail or state penal institution or other secure place where

1 prisoners are located any cellular phone or electronic device
2 capable of sending or receiving any electronic communication shall,
3 upon conviction, be guilty of a felony punishable by imprisonment in
4 the custody of the Department of Corrections for a term not
5 exceeding two (2) years, or by a fine not exceeding Two Thousand
6 Five Hundred Dollars (\$2,500.00), or by both such fine and
7 imprisonment.

8 F. Any electronic communication device which has no
9 identifiable owner and which is seized as a result of a violation of
10 this section may be disposed of or sold by the agency that seized
11 the device.

12 G. "Electronic communication" means any transfer of signs,
13 signals, writings, images, sounds, data or intelligence of any
14 nature transmitted in whole or part by a wire, radio,
15 electromagnetic, photo-electronic or photo-optical system, and
16 includes, but is not limited to, the transfer of that communication
17 through the Internet.

18 SECTION 3. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 537.2 of Title 57, unless there
20 is created a duplication in numbering, reads as follows:

21 A. Each correctional facility that has a canteen system
22 operation may offer tobacco products for purchase by inmates of the
23 correctional facility. All sales of tobacco products at a
24 correctional facility shall be purchased from the canteen system

1 operation of the facility. Under no circumstances shall tobacco
2 products be purchased by an inmate from any unauthorized outside
3 vendor or any other source. Any unauthorized purchase of tobacco
4 products by an inmate shall result in disciplinary action and
5 confiscation of all tobacco products in the possession of the
6 inmate.

7 B. All profits generated from the sale of tobacco products at a
8 correctional facility canteen shall be subject to the guidelines
9 established by the Canteen System Board of Directors pursuant to
10 Section 537 of Title 57 of the Oklahoma Statutes and transferred
11 periodically from the canteen system account to the Department of
12 Corrections Inmate and Employee Welfare and Canteen System Support
13 Revolving Fund created in Section 537.1 of Title 57 of the Oklahoma
14 Statutes.

15 C. As used in this section, "tobacco products" means any
16 product that contains tobacco and is intended for human consumption.

17 SECTION 4. AMENDATORY 63 O.S. 2011, Section 1-1523, as
18 last amended by Section 2, Chapter 110, O.S.L. 2017 (63 O.S. Supp.
19 2017, Section 1-1523), is amended to read as follows:

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

1 meeting of a public body, in a nursing facility licensed pursuant to
2 the Nursing Home Care Act, or in a child care facility licensed
3 pursuant to the Oklahoma Child Care Facilities Licensing Act. A
4 nursing facility licensed pursuant to the Nursing Home Care Act may
5 designate smoking rooms for residents and their guests. Such rooms
6 shall be fully enclosed, directly exhausted to the outside, and
7 shall be under negative air pressure so that no smoke can escape
8 when a door is opened and no air is recirculated to nonsmoking areas
9 of the building. Commercial airport operators may prohibit the use
10 of lighted tobacco in any area that is open to or used by the public
11 whether located indoors or outdoors, provided that the outdoor area
12 is within one hundred seventy-five (175) feet from an entrance.

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

23 2. A technology center school district may designate smoking
24 areas outside of buildings, away from general traffic areas and

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

4 3. A technology center school district or college or university
5 may designate smoking areas outside the educational facility
6 buildings for the use of adults during certain activities or
7 functions, including, but not limited to, athletic contests.

8 4. Smoking shall be prohibited in an educational facility as
9 defined in the 24/7 Tobacco-free Schools Act and as provided for in
10 Section 1210.213 of Title 70 of the Oklahoma Statutes.

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

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

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

23 2. Smoking shall be permitted at institutions and facilities
24 under the jurisdiction and control of the Department of Corrections.

1 On or after November 1, 2018, the Department of Corrections may
2 establish outdoor designated smoking areas for inmates who have been
3 sentenced to the care and custody of the Department of Corrections.
4 Smoking shall only be allowed in outdoor designated smoking areas.

5 F. Veterans centers operated by this state pursuant to the
6 provisions of Section 221 et seq. of Title 72 of the Oklahoma
7 Statutes shall be designated nonsmoking effective January 1, 2015,
8 at which time veterans centers may establish outdoor designated
9 smoking areas for resident veterans only. Smoking shall only be
10 allowed in designated outdoor smoking areas.

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

1 air pressure so that no smoke can drift or circulate into a
2 nonsmoking area when a door to an adjacent nonsmoking area is
3 opened. Air from a smoking room shall not be exhausted within
4 fifteen (15) feet of any entrance, exit or air intake.

5 H. The Smoking in Public Places and Indoor Workplaces Act shall
6 not prohibit smoking in:

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

8 2. 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 3. Up to twenty-five percent (25%) of the guest rooms at a
12 hotel or other lodging establishment;

13 4. 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 5. 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;

21 6. Workplaces occupied exclusively by one or more smokers, if
22 the workplace has only incidental public access. "Incidental public
23 access" means that a place of business has only an occasional
24 person, who is not an employee, present at the business to transact

1 business or make a delivery. It does not include businesses that
2 depend on walk-in customers for any part of their business;

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

4 8. 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 9. A facility operated by a post or organization of past or
8 present members of the Armed Forces of the United States which is
9 exempt from taxation pursuant to Sections 501(c)(8), 501(c)(10) or
10 501(c)(19) of the Internal Revenue Code, 26 U.S.C., Section
11 501(c)(8), 501(c)(10) or 501(c)(19), when such facility is utilized
12 exclusively by its members and their families and for the conduct of
13 post or organization nonprofit operations except during an event or
14 activity which is open to the public;

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

18 11. Medical research or treatment centers, if smoking is
19 integral to the research or treatment.

20 I. Notwithstanding any other provision of the Smoking in Public
21 Places and Indoor Workplaces Act, until March 1, 2006, restaurants
22 may have designated smoking and nonsmoking areas or may be
23 designated as being a totally nonsmoking area. Beginning March 1,
24 2006, restaurants shall be totally nonsmoking or may provide

1 nonsmoking areas and designated smoking rooms. Food and beverage
2 may be served in such designated smoking rooms which shall be in a
3 location which is fully enclosed, directly exhausted to the outside,
4 under negative air pressure so smoke cannot escape when a door is
5 opened, and no air is recirculated to nonsmoking areas of the
6 building. No exhaust from such room shall be located within twenty-
7 five (25) feet of any entrance, exit or air intake. Such room shall
8 be subject to verification for compliance with the provisions of
9 this subsection by the State Department of Health.

10 SECTION 5. This act shall become effective November 1, 2018.

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12 56-2-8096 GRS 11/21/17
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