

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 57th Legislature (2019)

4 ENGROSSED SENATE
5 BILL NO. 765

By: McCortney and **Sharp** of the
Senate

6 and

7 Echols of the House

8
9
10 **[smoking in public places - adding marijuana smoking**
11 **and vaping to certain provisions -**
12 **emergency]**

13
14
15 ~~BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:~~

16 SECTION 1. AMENDATORY 21 O.S. 2011, Section 1247, as
17 last amended by Section 1, Chapter 110, O.S.L. 2017 (21 O.S. Supp.
18 2018, Section 1247), is amended to read as follows:

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

1 workplace, except where specifically allowed by law. Commercial
2 airport operators may prohibit the use of lighted tobacco or lighted
3 marijuana or the vaping of marijuana in any area that is open to or
4 used by the public whether located indoors or outdoors, provided
5 that the outdoor area is within one hundred seventy-five (175) feet
6 from an entrance.

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

22 B. All buildings and other properties, or portions thereof,
23 owned or operated by this state shall be designated as nonsmoking.
24 The tobacco smoking provisions of this subsection shall not apply to

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

7 C. All buildings and other properties, or portions thereof,
8 owned or operated by a county or municipal government, at the
9 discretion of the county or municipal governing body, may be
10 designated as entirely nonsmoking.

11 D. All educational facilities or portions thereof as defined in
12 the Smoking in Public Places and Indoor Workplaces Act and all
13 educational facilities as defined in the 24/7 Tobacco-free Schools
14 Act shall be designated as nonsmoking as provided for in Section 1-
15 1523 of Title 63 of the Oklahoma Statutes. All campuses, buildings
16 and grounds, or portions thereof, owned or operated by an
17 institution within The Oklahoma State System of Higher Education may
18 be designated as tobacco and marijuana free, including smoking or
19 smokeless tobacco or marijuana or marijuana products, by the
20 institution upon adoption of a policy stating the tobacco
21 restrictions for the institution and an intent to enforce the
22 penalty for violations as set forth in subsection M of this section.

1 E. No tobacco or marijuana smoking or marijuana vaping shall be
2 allowed within twenty-five (25) feet of the entrance or exit of any
3 building specified in subsection B, C or D of this section.

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

8 G. The restrictions on tobacco smoking provided in this section
9 shall not apply to the following:

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

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

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

19 4. Workplaces where only the owner or operator of the
20 workplace, or the immediate family of the owner or operator,
21 performs any work in the workplace, and the workplace has only
22 incidental public access. "Incidental public access" means that a
23 place of business has only an occasional person, who is not an
24 employee, present at the business to transact business or make a

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

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

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

6 7. Workplaces within private residences, except that smoking
7 tobacco or marijuana or vaping marijuana shall not be allowed inside
8 any private residence that is used as a licensed child care facility
9 during hours of operation;

10 8. Medical research or treatment centers, if tobacco smoking is
11 integral to the research or treatment. Furthermore, the
12 restrictions on smoking or vaping of marijuana provided in this
13 section shall not apply to medical research or treatment centers, if
14 marijuana smoking or vaping is integral to the research or
15 treatment;

16 9. A facility operated by a post or organization of past or
17 present members of the Armed Forces of the United States which is
18 exempt from taxation pursuant to Section 501(c)(8), 501(c)(10) or
19 501(c)(19) of the Internal Revenue Code, 26 U.S.C., Section
20 501(c)(8), 501(c)(10) or 501(c)(19), when such facility is utilized
21 exclusively by its members and their families and for the conduct of
22 post or organization nonprofit operations except during an event or
23 activity which is open to the public; and
24

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

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

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

1 restrictive tobacco smoking policy, including being totally tobacco
2 smoke free.

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

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

22 L. Responsibility for posting signs or decals shall be as
23 follows:
24

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

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

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

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

10 SECTION 2. AMENDATORY 63 O.S. 2011, Section 1-1523, as
11 last amended by Section 2, Chapter 110, O.S.L. 2017 (63 O.S. Supp.
12 2018, Section 1-1523), is amended to read as follows:

13 Section 1-1523. A. Except as specifically provided in the
14 Smoking in Public Places and Indoor Workplaces Act, no person shall
15 smoke tobacco or marijuana or vape marijuana in a public place, in
16 any part of a zoo to which the public may be admitted, whether
17 indoors or outdoors, in an indoor workplace, in any vehicle
18 providing public transportation, at a meeting of a public body, in a
19 nursing facility licensed pursuant to the Nursing Home Care Act, or
20 in a child care facility licensed pursuant to the Oklahoma Child
21 Care Facilities Licensing Act. A nursing facility licensed pursuant
22 to the Nursing Home Care Act may designate tobacco smoking rooms for
23 residents and their guests. Such rooms shall be fully enclosed,
24 directly exhausted to the outside, and shall be under negative air

1 pressure so that no tobacco smoke can escape when a door is opened
2 and no air is recirculated to nonsmoking areas of the building.
3 Commercial airport operators may prohibit the use of lighted tobacco
4 or lighted marijuana or the vaping of marijuana in any area that is
5 open to or used by the public whether located indoors or outdoors,
6 provided that the outdoor area is within one hundred seventy-five
7 (175) feet from an entrance.

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

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

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

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

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

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

20 E. Smoking tobacco or marijuana or vaping marijuana is
21 prohibited in all vehicles owned by the State of Oklahoma and all of
22 its agencies and instrumentalities.

23 F. Veterans centers operated by this state pursuant to the
24 provisions of Section 221 et seq. of Title 72 of the Oklahoma

1 Statutes shall be designated nonsmoking effective January 1, 2015,
2 at which time veterans centers may establish outdoor designated
3 smoking areas for resident veterans only. Smoking tobacco shall
4 only be allowed in designated outdoor smoking areas.

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

1 H. The Smoking in Public Places and Indoor Workplaces Act shall
2 not prohibit tobacco smoking in:

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

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

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

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

13 5. Workplaces where only the owner or operator of the
14 workplace, or the immediate family of the owner or operator,
15 performs any work in the workplace, and the workplace has only
16 incidental public access;

17 6. Workplaces occupied exclusively by one or more tobacco
18 smokers, if the workplace has only incidental public access.

19 "Incidental public access" means that a place of business has only
20 an occasional person, who is not an employee, present at the
21 business to transact business or make a delivery. It does not
22 include businesses that depend on walk-in customers for any part of
23 their business;

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

1 8. Workplaces within private residences, except that smoking
2 tobacco or marijuana or vaping marijuana shall not be allowed inside
3 any private residence that is used as a licensed child care facility
4 during hours of operation;

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

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

17 11. Medical research or treatment centers, if tobacco smoking
18 is integral to the research or treatment. Furthermore, the
19 restrictions on smoking or vaping of marijuana provided in this
20 section shall not apply to medical research or treatment centers, if
21 marijuana smoking or vaping is integral to the research or
22 treatment.

23 I. Notwithstanding any other provision of the Smoking in Public
24 Places and Indoor Workplaces Act, until March 1, 2006, restaurants

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

14 SECTION 3. AMENDATORY 63 O.S. 2011, Section 1-1525, as
15 amended by Section 3, Chapter 369, O.S.L. 2017 (63 O.S. Supp. 2018,
16 Section 1-1525), is amended to read as follows:

17 Section 1-1525. The state or local governmental agency or the
18 person who owns or operates a public place shall, at a minimum, do
19 the following in order to prevent tobacco or marijuana smoking or
20 marijuana vaping in public places:

21 1. Post conspicuous signs at entrances to and in prominent
22 locations within places where tobacco or marijuana smoking or
23 marijuana vaping is prohibited which state that tobacco or marijuana
24 smoking or marijuana vaping is prohibited or that the indoor

1 environment is free of tobacco or marijuana smoke or marijuana
2 vapor; and

3 2. Ask tobacco or marijuana smokers or marijuana vapers to
4 refrain from smoking upon observation of anyone violating the
5 provisions of Section 1-1521 et seq. of this title.

6 SECTION 4. It being immediately necessary for the preservation
7 of the public peace, health or safety, an emergency is hereby
8 declared to exist, by reason whereof this act shall take effect and
9 be in full force from and after its passage and approval.

10
11 COMMITTEE REPORT BY: COMMITTEE ON RULES, dated 04/09/2019 - DO PASS,
12 As Amended and Coauthored.