

1 State of Arkansas Call Item 1
2 84th General Assembly
3 First Extraordinary Session, 2006

A Bill

Bill

4
5 By: Senator
6 Representative

For An Act To Be Entitled

10 THE ARKANSAS CLEAN INDOOR AIR ACT OF 2006; AN ACT TO
11 PROTECT WORKERS IN ARKANSAS FROM SECONDHAND SMOKE IN
12 THE WORKPLACE; AN ACT TO PROTECT THE CITIZENS OF
13 ARKANSAS FROM SECONDHAND SMOKE IN PUBLIC PLACES; AND
14 FOR OTHER PURPOSES.

Subtitle

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17 THE ARKANSAS CLEAN INDOOR AIR ACT OF 2006.
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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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21 SECTION 1. Title:

22 This subchapter shall be known as "The Arkansas Clean Indoor Air Act of
23 2006".

24 Section 2. Findings.

25 (a) Information available to the General Assembly based upon
26 scientific research data has shown that nonsmokers often receive damage to
27 their health from the smoking of tobacco by others;

28 (b) Direct smoking of tobacco and indirect smoking of tobacco through
29 inhaling the smoke of those who are smoking nearby are major causes of
30 preventable diseases and death;

1 (c) Secondhand smoke is a known cause of lung cancer, heart disease,
2 chronic lung ailments such as bronchitis and asthma (particularly in
3 children), and low birth-weight births;

4 (d) Implementing laws that prohibit tobacco usage in certain public
5 areas, buildings and facilities is an effective approach to reduce secondhand
6 smoke exposure among nonsmokers; and

7 (e) It is therefore declared to be the public policy of the State of
8 Arkansas that the rights of workers and nonsmokers be protected in the manner
9 provided in this subchapter.

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11 SECTION 3. Definitions.

12 For purposes of this subchapter:

13 (1) "Bar" means an establishment that is devoted to the serving of
14 alcoholic beverages for consumption by guests on the premises and in which
15 the serving of food is only incidental to the consumption of those beverages,
16 including, but not limited to, taverns, nightclubs, cocktail lounges, and
17 cabarets.

18 (2) "Business" means any corporation, sole proprietorship,
19 partnership, limited partnership, professional corporation, enterprise,
20 franchise, association, trust, joint venture, or other entity, whether for
21 profit or nonprofit.

22 (3) "Employee" means an individual who is employed by a business in
23 consideration for direct or indirect monetary wages or profit.

24 (4) "Employer" means an individual or a business that employs one or
25 more individuals.

26 (5) "Enclosed area" means all space between a floor and ceiling that
27 is enclosed on all sides by solid walls or windows, exclusive of doorways,
28 that extend from the floor to the ceiling.

1 (6) "Health care facility" means an office or institution providing
2 care or treatment of diseases, whether physical, mental, or emotional, or
3 other medical, physiological, or psychological conditions, including weight
4 control clinics, homes for the chronically ill, laboratories, and offices of
5 surgeons, chiropractors, physical therapists, physicians, dentists, and all
6 specialists within these professions. This definition includes the buildings
7 in which medical facilities operate, together with all property owned or
8 operated by a medical facility that is contiguous to the buildings in which
9 medical services are provided. This definition shall not include medical
10 facilities as defined by § 20-27-705(2)(A) or psychiatric hospitals as
11 defined by the Division of Health of the Department of Health and Human
12 Services rules for hospitals and related institutions or long-term care
13 facilities.

14 (7) "Infiltrate" means to permeate an enclosed area by passing through
15 its walls, ceilings, floors, windows, or ventilation systems to the extent
16 that an individual can smell secondhand smoke.

17 (8) "Local governing authority" means a county or municipal
18 corporation of the state.

19 (9) "Place of employment" means an enclosed area under the control of
20 a public or private employer that employees utilize during the course of
21 employment, including, but not limited to, work areas, employee lounges,
22 restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias,
23 and hallways. A private residence is not a place of employment unless it is
24 used as a licensed child care, adult day-care, or health care facility.

25 (10) "Public place" means an enclosed area to which the public is
26 invited or in which the public is permitted, including, but not limited to,
27 banks, bars, barbershops, cosmetological establishments, educational
28 facilities, health care facilities, laundromats, public transportation
29 facilities, reception areas, restaurants, retail food production and

1 marketing establishments, retail service establishments, retail stores,
2 shopping malls, sports arenas, theaters, and waiting rooms. A private
3 residence is not a public place unless it is used as a licensed child are,
4 adult day-care, or health care facility.

5 (11) "Restaurant" means an eating establishment, including, but not
6 limited to, coffee shops, cafeterias, sandwich stands, and private and public
7 school cafeterias, that gives or offers for sale food to the public, guests,
8 or employees, as well as kitchens and catering facilities in which food is
9 prepared on the premises for serving elsewhere. The term shall include a bar
10 area within any restaurant.

11 (12) "Retail tobacco store" means a retail store utilized primarily
12 for the sale of tobacco products and accessories and in which the sale of
13 other products is merely incidental.

14 (13) "Secondhand smoke" means smoke emitted from lighted, smoldering,
15 or burning tobacco when the person smoking is not inhaling, smoke emitted at
16 the mouthpiece during puff drawing, and smoke exhaled by the person smoking.

17 (14) "Service line" means an indoor line in which one or more persons
18 are waiting for or receiving service of any kind, whether or not the service
19 involves the exchange of money.

20 (15) "Shopping mall" means an enclosed public walkway or hall area
21 that serves to connect retail or professional establishments.

22 (16) "Smoking" means inhaling, exhaling, burning, or carrying any
23 lighted tobacco product including cigarettes, cigars, and pipe tobacco.

24 (17) "Smoking area" means a separately designated enclosed room that
25 need not be entered by an employee in order to conduct business that is
26 designated as a smoking area and, when so designated as a smoking area, shall
27 not be implemented as to deprive employees of a nonsmoking lounge, waiting
28 area, or break room.

1 (18) "Sports arena" means stadiums, sports pavilions, gymnasiums,
2 health spas, boxing arenas, swimming pools, roller and ice rinks, bowling
3 alleys, and other similar places where members of the general public assemble
4 to engage in physical exercise, participate in athletic competition, or
5 witness sports or other events.

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7 SECTION 4. Tobacco use - Prohibitions.

8 (a) Upon the effective date of this Act, smoking shall be prohibited
9 in all vehicles and enclosed areas owned, leased, or operated by the State of
10 Arkansas, its agencies and authorities, and any political subdivision of the
11 state, municipal corporation, or local board or authority created by general,
12 local, or special act of the General Assembly or by ordinance or resolution
13 of the governing body of a county or municipal corporation individually or
14 jointly with other political subdivisions or municipalities of the state.

15 (b)(1) Smoking shall be prohibited in all public places and enclosed
16 areas within places of employment, including, but not limited to, common work
17 areas, auditoriums, classrooms, conference and meeting rooms, private
18 offices, elevators, hallways, medical facilities, cafeterias, employee
19 lounges, stairs, restrooms, and all other enclosed facilities.

20 (2) An individual, person, entity or organization subject to the
21 smoking prohibitions of this section shall not discriminate or retaliate in
22 any manner against a person for making a complaint of a violation of this
23 section or furnishing information concerning a violation, to a person, entity
24 or organization or to an enforcement authority.

25 (3) Such prohibitions on smoking, along with the provisions of
26 subsection (b)(2) of this section, shall be communicated to all current
27 employees by their employer within thirty (30) days of the effective date of
28 this act, and to each prospective employee upon their application for
29 employment.

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2 SECTION 5. Public smoking prohibited - Exceptions.

3 (a) Notwithstanding any other provision of this subchapter, the owners
4 or operators of the following areas may exempt themselves from the provisions
5 of this subchapter:

6 (1) Private residences, except when used as a licensed child
7 care, adult day-care, or health care facility;

8 (2) Hotel and motel rooms that are rented to guests and are
9 designated as smoking rooms; provided, however, that not more than 20 percent
10 of rooms rented to guests in a hotel or motel may be so designated;

11 (3) All workplaces of any employer with less than three
12 employees. This exemption does not apply to any public place;

13 (4) Retail tobacco stores, provided that secondhand smoke from
14 such stores does not infiltrate into areas where smoking is prohibited under
15 the provisions of this subchapter;

16 (5) Areas within long-term care facilities that are designated
17 by the facility for supervised patient smoking only;

18 (6) Outdoor areas of places of employment;

19 (7) All workplaces of any manufacturer, importer, or wholesaler
20 of tobacco products, of any tobacco leaf dealer or processor, and all tobacco
21 storage facilities; and

22 (8) All restaurants and bars licensed by the State of Arkansas
23 that strictly prohibit all persons less than 21 years of age from entering
24 the premises, provided that secondhand smoke does not infiltrate into areas
25 where smoking is prohibited under the provisions of this subchapter. All
26 restaurants and bars that are exempt under this subsection shall prominently
27 display a health warning sign as defined by the Arkansas Board of Health.

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29 SECTION 6. Notice of tobacco use prohibition.

1 (a) "No Smoking" signs or the international "No Smoking" symbol
2 consisting of a pictorial representation of a burning cigarette enclosed in a
3 red circle with a red bar across it may be clearly and conspicuously posted
4 by the owner, operator, manager, or other person in control in every public
5 place and place of employment where smoking is prohibited by this subchapter.

6 (b) All ashtrays shall be removed from any area where smoking is
7 prohibited by this subchapter by the owner, operator, manager, or other
8 person in control of the area, unless such ashtray is permanently affixed to
9 an existing structure prior to the effective date of this act.

10 (c) The Department of Health and Human Services may treat a violation
11 of this section as a deficiency to be assessed against any licensee or
12 facility over which it has statutory jurisdiction.

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14 SECTION 7. Rules and Regulations Promulgation and Enforcement Authority.

15 (a) The State Board of Health is authorized to adopt reasonable rules
16 and regulations which it determines will be necessary or useful to carry out
17 the purposes or facilitate enforcement of the subchapter;

18 (b) The Arkansas Department of Health and Human Services and its duly
19 authorized agents are authorized and empowered to enforce compliance with
20 this subchapter and any rules and regulations adopted and promulgated under
21 this subchapter by the State Board of Health and, in connection therewith, to
22 enter upon and inspect the premises of any establishment or business at any
23 reasonable time and in a reasonable manner.

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25 SECTION 8. Provisions Deemed Cumulative.

26 (a) This Act shall be cumulative to and shall not prohibit the
27 enactment of any other general or local laws, rules, and regulations of state
28 or local governing authorities or local ordinances prohibiting smoking that

1 are more restrictive than this chapter or are not in direct conflict with
2 this subchapter.

3 (b) This Act shall not be construed to permit smoking where it is
4 otherwise restricted by other applicable laws or employer policies.

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6 SECTION 9. Penalties.

7 (a) Any person violating the provisions of this subchapter shall be
8 guilty of a violation and upon conviction shall be punished by a fine of not
9 less than one hundred dollars (\$100.00) nor more than five hundred dollars
10 (\$500.00).

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12 SECTION 10. Arkansas Code 20-27-703, pertaining to public smoking
13 prohibitions is repealed:

14 ~~**20-27-703. Public smoking prohibited — Exceptions.**~~

15 ~~—(a) Smoking of tobacco or products containing tobacco in any form in a~~
16 ~~doctor's or dentist's waiting room, in hospital corridors, in nurses'~~
17 ~~stations in hospitals and clinics, in all hospital rooms, except private~~
18 ~~patient rooms in this state, and on school buses is prohibited.~~

19 ~~—(b) The provisions of this subchapter shall not prohibit smoking in any of~~
20 ~~the aforementioned areas if the smoking is assigned to areas designated as~~
21 ~~smoking areas.~~

22 ~~—(c) The provisions of this subchapter shall not apply to hotels, motels,~~
23 ~~and restaurants.~~

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25 SECTION 11. EMERGENCY CLAUSE.

26 It is found and determined by the Eighty-fourth General Assembly that
27 there is a pressing and immediate need to protect workers in Arkansas from
28 secondhand smoke in the workplace and to protect the citizens of Arkansas

1 from secondhand smoke in public places. Therefore, an emergency is declared
2 to exist and this Act being immediately necessary for the preservation of the
3 public peace, health, and safety shall become effective sixty (60) days
4 after:

5 (1) The date of its approval by the Governor;

6 (2) If the bill is neither approved nor vetoed by the Governor, the
7 expiration of the period of time during which the Governor may veto the bill;
8 or

9 (3) If the bill is vetoed by the Governor and the veto is overridden,
10 the date the last house overrides the veto.