

1 State of Arkansas
2 80th General Assembly
3 Regular Session, 1995
4 By: Senator Keet

A Bill

SENATE BILL 379

For An Act To Be Entitled

8 "AN ACT TO PROMOTE INDOOR AIR QUALITY; TO PROHIBIT SMOKING
9 INSIDE CERTAIN PUBLIC BUILDINGS; TO DISCOURAGE ACCESS TO
10 TOBACCO BY YOUTH; TO AUTHORIZE THE BOARD OF HEALTH TO
11 ADOPT AND ENFORCE REGULATIONS; TO AMEND ARKANSAS CODE § 6-
12 21-609 TO STRENGTHEN THE NO-SMOKING LIMITATIONS FOR
13 SCHOOLS; AND FOR OTHER PURPOSES."

Subtitle

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15 "TO PROMOTE INDOOR AIR QUALITY AND TO
16 PREVENT ACCESS TO TOBACCO BY YOUTH BY
17 REGULATING SMOKING AND THE USE OF
18 TOBACCO."
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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

22
23 SECTION 1. This act may be known and cited as the "Arkansas Indoor Air
24 and Youth Access to Tobacco Prevention Act".

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26 SECTION 2. Purpose. The Arkansas General Assembly recognizes
27 scientific and health organizations have concluded that passive smoking, or
28 involuntary exposure to tobacco smoke is a significant health hazard to
29 certain individuals. Further, they recognize that health hazards caused by
30 passive smoking include lung cancer, respiratory infections, decreased
31 respiratory function, problems with allergies, and other health ill effects
32 which may promote economic loss by the adverse effect it has on job
33 productivity. And finally, they find that smoking is a frequent cause of
34 fires, burns, and other personal and property damage and that restricting
35 smoking in certain public buildings and decreasing access to tobacco products

1 to our youth protects the public health, safety and welfare.

2

3 SECTION 3. As used in this act, unless the context otherwise requires:

4 (1) "Smoking in a place or vehicle" means the possession, in that place
5 or vehicle, of a lighted cigarette, cigarillo, cigar, or pipe.

6 (2) "Indoor public place" means any enclosed area of a public building
7 during times in which it is open to the general public.

8 (3) "Public building" means any building or structure or area of a
9 building or structure owned or leased by the State of Arkansas, an agency,
10 board or commission of the State, a state supported institution of higher
11 education, or by a political subdivision of the State or its departments or
12 agencies, *except the buildings and structures or areas of any buildings and*
13 *structures of the Arkansas Department of Corrections where inmates live,*
14 *sleep, and are housed full-time or the buildings or areas of buildings of any*
15 *county jail or county criminal detention facility where inmates live and are*
16 *housed full-time.*

17 (4) "Public vehicle" means any motor vehicle owned or leased by the
18 State of Arkansas, an agency, board or commission of the State, a state
19 supported institution of higher education, or by a political subdivision of
20 the State or its departments or agencies.

21 (5) "Work place" means any enclosed area of a public building in which
22 persons engage in work.

23

24 SECTION 4. (a) *Except as otherwise provided for in Sections 6 and 7 of*
25 *this act, no person shall smoke in an indoor public place in a public*
26 *building.*

27 (b) No person shall smoke in a public vehicle *if any person in the*
28 *vehicle is a nonsmoker.*

29 (c) The person in charge of an indoor public place or any public
30 vehicle shall take reasonable steps to ensure compliance with this section
31 by:

32 (1) Posting appropriate signs; and

33 (2) Requesting persons who are smoking unlawfully in violation of
34 this section to refrain from smoking.

35 (d) The Arkansas State Board of Health may adopt regulations reasonably

1 necessary to implement this section.

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3 SECTION 5. (a) *Except as otherwise provided for in Sections 6 and 7*
4 *of this act, no person shall smoke in a work place within a public building.*

5 (b) *The Director of the Arkansas Department of Labor shall, after*
6 *consulting with the Director of the Arkansas Department of Health, adopt*
7 *regulations to restrict smoking in work places within a public building.*

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9 SECTION 6. (a) *The Director of the Arkansas Department of Labor shall,*
10 *after consulting with the Arkansas Department of Health, adopt regulations to*
11 *permit agency directors of any state agency or institution to set aside areas*
12 *within public buildings under their control as designated smoking areas. The*
13 *regulations shall prohibit the agency or institution directors from*
14 *designating any common areas which are open to the general public or which*
15 *are occupied by nonsmoking co-workers, as smoking areas. Further, the*
16 *regulations shall require the designated smoking areas to be located within a*
17 *building or area of a building to minimize the exposure of nonsmokers to any*
18 *tobacco smoke.*

19 (b) *The designation or not of any smoking areas within public*
20 *buildings shall be strictly within the discretion of the agency directors of*
21 *any state agency or institution. Nothing in this section shall be construed*
22 *to require any agency directors of any state agency or institution to*
23 *designate any area within public buildings under their control as a smoking*
24 *area, nor shall it be construed to preclude an agency director from*
25 *designating areas outside of the public building as a smoking area.*

26 (c) *The term "agency director" as used in this section means the*
27 *appointed executive or administrative head of each state government agency,*
28 *board, or commission, the president or head of each state-supported*
29 *institution of higher education, or the elected public official in charge of*
30 *a constitutional executive department of state government.*

31 (d) *Within the State Capitol, each elected public official in charge*
32 *of a constitutional executive department shall, subject to the conditions of*
33 *and regulations promulgated under subsection (a) of this section, have the*
34 *authority to designate smoking areas in those areas under their control,*
35 *except for those areas of the Capitol under the control of the General*

1 *Assembly. For those areas of the Capitol under the control of the Arkansas*
2 *General Assembly, the Senate and House of Representatives shall, subject to*
3 *the conditions of and regulations promulgated under subsection (a) of this*
4 *section, have the authority to designate smoking areas within the areas under*
5 *their control by the adoption of Senate or House Rules for that purpose.*

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7 *SECTION 7. (a) The Director of the Arkansas Department of Labor*
8 *shall, after consulting with the Arkansas Department of Health, adopt*
9 *regulations to permit:*

10 *(1) the mayors of cities or towns to designate smoking areas*
11 *within all city or town buildings, city or town libraries, city or town*
12 *jails, and other municipal buildings owned or leased by a board or commission*
13 *created by the city or town; or*

14 *(2) the county judges to designate smoking areas within all*
15 *county buildings, county or regional libraries, or other buildings owned or*
16 *leased by a board or commission created by the county, except for county*
17 *jails or county criminal detention facilities under the control of the county*
18 *sheriff. The designated smoking areas shall be subject to the conditions of*
19 *and regulations promulgated under subsection (b) of this section.*

20 *(b) The regulations shall prohibit the city or town mayors or county*
21 *judges from designating any common areas which are open to the general public*
22 *or which are occupied by nonsmoking co-workers, as smoking areas within*
23 *county or municipal buildings. Further, the regulations shall require the*
24 *designated smoking areas to be located within a building or area of a*
25 *building to minimize the exposure of nonsmokers to any tobacco smoke.*

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27 *SECTION 8. (a) Any person who owns or operates a retail establishment*
28 *selling or distributing tobacco products shall notify each individual*
29 *employed in the retail establishment that the sale of tobacco products to any*
30 *person under eighteen (18) years of age is prohibited by law. Each retail*
31 *establishment shall maintain records confirming that each employee has*
32 *signified receipt of the notice required by this section by signing a form*
33 *stating: "I understand that under the law of the State of Arkansas that it is*
34 *illegal to sell or distribute tobacco products to persons under eighteen (18)*
35 *years of age."*

1 (b) The Arkansas Department of Health shall annually conduct random,
2 unannounced inspections of each location where tobacco products are sold or
3 distributed to ensure compliance with this section. Persons under eighteen
4 (18) years of age may be enlisted to test compliance with the laws of
5 Arkansas regarding the sale of tobacco to underage individuals. However,
6 these persons may only be used to test compliance, if they are under the
7 direct supervision of the personnel of the Department of Health and if they
8 have the written consent of their parent or guardian. The Department of
9 Health shall provide each consenting parent or guardian prior to the consent
10 a written, detailed information about the duties the persons under eighteen
11 (18) years of age will be asked to perform and the methods and procedures to
12 be employed in carrying out these duties.

13 (c) The Arkansas Department of Health shall prepare annually for
14 submission to the Secretary of the U.S. Department of Health and Human
15 Services the report required by Section 1926 of subpart 1 of part B of Title
16 XIX of the Federal Public Health Service Act (42 U.S.C. 300x-26). The report
17 shall be promptly transmitted to the Secretary of the U.S. Department of
18 Health and Human Services.

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20 *SECTION 9.* Every person, firm, corporation, organization, or
21 institution who violates any of the provisions of *Sections 4, 5, 6, or 7* of
22 this act or any rules or regulations promulgated under *them* may be assessed a
23 civil penalty by the State Board of Health *or by the Director of the*
24 *Department of Labor.* The penalty shall not exceed one thousand dollars
25 (1,000.00) per violation. Each day of a continuing violation may be deemed a
26 separate violation for purposes of penalty assessment. However, no civil
27 penalty shall be assessed until the person, firm, corporation, organization,
28 or institution charged with the violation has been given the opportunity for
29 a hearing on the violation pursuant to the Arkansas Administrative Procedure
30 Act, Arkansas Code §§ 25-15-201 et seq.

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32 *SECTION 10.* Arkansas Code § 6-21-609 is amended to read as follows:

33 "6-21-609. Prohibition against smoking on school property.

34 (a) Smoking of tobacco or products containing tobacco in any form in
35 enclosed areas, buildings, or facilities of a public elementary or secondary

1 school is prohibited.

2 (b) Smoking of tobacco or products containing tobacco in any form on a
3 public school bus is prohibited.

4 (c) Any person violating the provisions of this section shall be
5 guilty of a misdemeanor and, upon conviction thereof, shall be punished by a
6 fine of not less than ten dollars (\$10.00) nor more than one hundred dollars
7 (\$100)."

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9 SECTION 11. Arkansas Code § 25-2-102 is hereby repealed.

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11 SECTION 12. (a) *Recognizing the potential prison security problems and*
12 *potential for inmate litigation over an immediate moratorium on smoking*
13 *within inmate facilities, the Arkansas Department of Corrections and each*
14 *county sheriff shall be granted time under this act to phase-in the*
15 *nonsmoking requirements of this act for all other public buildings and*
16 *structures.*

17 (b) *The Arkansas Board of Corrections and Community Punishment and each*
18 *county sheriff shall have the authority to promulgate any necessary rules and*
19 *regulations under this act to designate smoking and non-smoking areas within*
20 *the inmate facilities of the Department or county and within the buildings*
21 *and structures or areas of any buildings and structures where inmates live,*
22 *sleep, and are housed full-time and areas of those buildings and structures*
23 *where Department or county personnel work. The rules and regulations shall*
24 *provide that the size and number of smoking areas shall gradually be reduced*
25 *over the next five (5) years after the effective date of this act with the*
26 *goal to gradually phase-in a totally smoke free environment within all inmate*
27 *facilities of the Department and county.*

28

29 SECTION 13. All provisions of this act of a general and permanent
30 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
31 Code Revision Commission shall incorporate the same in the Code.

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33 SECTION 14. If any provision of this act or the application thereof
34 to any person or circumstance is held invalid, such invalidity shall not
35 affect other provisions or applications of the act which can be given effect

1 without the invalid provision or application, and to this end the provisions
2 of this act are declared to be severable.

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4 SECTION 15. All laws and parts of laws in conflict with this act are
5 hereby repealed.

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/s/Keet

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