

1 State of Arkansas
2 85th General Assembly
3 First Extraordinary Session, 2006
4

As Engrossed: S4/4/06 H4/6/06

Call Item 27

A Bill

SENATE BILL 19

5 By: Senators Steele, Miller, *Womack*
6 By: Representatives Rosenbaum, George, Bradford
7
8

For An Act To Be Entitled

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

Subtitle

16 THE ARKANSAS CLEAN INDOOR AIR ACT OF
17 2006.
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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
22

23 SECTION 1. Arkansas Code Title 20, Chapter 27, is amended to add an
24 additional subchapter as follows:

25 20-27-1801. Title.

26 This subchapter shall be known as the "Arkansas Clean Indoor Air Act of
27 2006".

28
29 20-27-1802. Findings.

30 (1) Information available to the General Assembly based upon
31 scientific research data has shown that nonsmokers often receive damage to
32 their health from the smoking of tobacco by others;

33 (2) Direct smoking of tobacco and indirect smoking of tobacco
34 through inhaling the smoke of those who are smoking nearby are major causes
35 of preventable diseases and death;

36 (3) Secondhand smoke is a known cause of lung cancer, heart



1 disease, chronic lung ailments such as bronchitis and asthma, particularly in
2 children, and low birth-weight births;

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

6 (5) It is therefore declared to be the public policy of the
7 State of Arkansas that the rights of Arkansans be protected in the manner
8 provided in this subchapter.

9
10 20-27-1803. Definitions.

11 As used in this subchapter:

12 (1) "Bar" means an establishment that is devoted to the serving
13 of alcoholic beverages for consumption by guests on the premises and in which
14 the serving of food is only incidental to the consumption of those beverages,
15 including, but not limited to:

16 (A) Taverns;

17 (B) Nightclubs;

18 (C) Cocktail lounges; and

19 (D) Cabarets;

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

24 (3) "Employee" means an individual who is employed by a business
25 in consideration for direct or indirect monetary wages or profit;

26 (4) "Employer" means an individual or a business that employs
27 one (1) or more individuals;

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

31 (6)(A) "Health care facility" means an office or institution
32 providing care or treatment of diseases, whether physical, mental, or
33 emotional, or other medical, physiological, or psychological conditions,
34 including weight control clinics, homes for the chronically ill,
35 laboratories, and offices of surgeons, chiropractors, physical therapists,
36 physicians, dentists, and all specialists within these professions.

1 (B) "Health care facility" includes the building or
2 buildings in which a medical facility operates, together with all property
3 owned or operated by a medical facility that is contiguous to the building or
4 buildings in which medical services are provided.

5 (C) "Health care facility" does not include:

6 (i) Medical facilities under § 20-27-704 et seq.;

7 (ii) Psychiatric hospitals as defined by the Division
8 of Health of the Department of Health and Human Services' rules for hospitals
9 and related institutions; or

10 (iii) Long-term care facilities;

11 (7) "Infiltrate" means to permeate an enclosed area by passing
12 through its walls, ceilings, floors, windows, or ventilation systems to the
13 extent that an individual can smell secondhand smoke;

14 (8) "Local governing authority" means a county or municipal
15 corporation of the state;

16 (9)(A) "Place of employment" means an enclosed area under the
17 control of a public or private employer that employees utilize during the
18 course of employment, including, but not limited to:

19 (i) Work areas;

20 (ii) Employee lounges;

21 (iii) Restrooms;

22 (iv) Conference rooms;

23 (v) Meeting rooms;

24 (vi) Classrooms;

25 (vii) Employee cafeterias; and

26 (viii) Hallways.

27 (B) A private residence is not a place of employment
28 unless it is used as a licensed child care, adult day care, or health care
29 facility;

30 (10)(A) "Public place" means an enclosed area to which the
31 public is invited or in which the public is permitted, including, but not
32 limited to:

33 (i) Banks;

34 (ii) Bars;

35 (iii) Educational facilities;

36 (iv) Health care facilities;

- 1 (v) Laundromats;
- 2 (vi) Public transportation facilities;
- 3 (vii) Reception areas;
- 4 (viii) Restaurants;
- 5 (ix) Retail food production and marketing
- 6 establishments;
- 7 (x) Retail service establishments;
- 8 (xi) Retail stores;
- 9 (xii) Shopping malls;
- 10 (xiii) Sports arenas;
- 11 (xiv) Theaters; and
- 12 (xv) Waiting rooms.

13 (B) A private residence is not a public place unless it is
14 used as a licensed child care, adult day care, or health care facility;

15 (11)(A) "Restaurant" means:

- 16 (i) An eating establishment that gives or offers for
- 17 sale food to the public, guests, or employees; and
- 18 (ii) A kitchen or a catering facility in which food
- 19 is prepared on the premises for serving elsewhere.

20 (B) "Restaurant" includes, but is not limited to:

- 21 (i) Coffee shops;
- 22 (ii) Cafeterias;
- 23 (iii) Sandwich stands; and
- 24 (iv) Private and public school cafeterias.

25 (C) "Restaurant" does include a bar area within any
26 restaurant;

27 (12) "Retail tobacco store" means a retail store utilized
28 primarily for the sale of tobacco products and accessories and in which the
29 sale of other products is merely incidental;

30 (13) "Secondhand smoke" means smoke:

31 (A) Emitted from lighted, smoldering, or burning tobacco
32 when the person smoking is not inhaling;

33 (B) Emitted at the mouthpiece during puff drawing; and

34 (C) Exhaled by the person smoking;

35 (14) "Service line" means an indoor line in which one (1) or
36 more persons are waiting for or receiving service of any kind, whether or not

1 the service involves the exchange of money;

2 (15) "Shopping mall" means an enclosed public walkway or hall
3 area that serves to connect retail or professional establishments;

4 (16) "Smoking" means inhaling, exhaling, burning, or carrying
5 any:

6 (A) Lighted tobacco product, including cigarettes, cigars,
7 and pipe tobacco; and

8 (B) Other lighted combustible plant material; and

9 (17) "Sports arena" means a stadium, sports pavilion, gymnasium,
10 health spa, boxing arena, swimming pool, roller and ice rink, bowling alley,
11 and other similar place where members of the general public assemble to
12 engage in physical exercise, participate in athletic competition, or witness
13 sports or other events.

14
15 20-27-1804. Prohibitions on smoking.

16 (a) Upon the effective date of this act, smoking is prohibited in all
17 vehicles and enclosed areas owned, leased, or operated by the State of
18 Arkansas, its agencies and authorities, and any political subdivision of the
19 state, municipal corporation, or local board or authority created by general,
20 local, or special act of the General Assembly or by ordinance or resolution
21 of the governing body of a county or municipal corporation individually or
22 jointly with other political subdivisions or municipalities of the state.

23 (b)(1) Smoking is prohibited in all public places and enclosed areas
24 within places of employment, including, but not limited to;

25 (A) Common work areas;

26 (B) Auditoriums;

27 (C) Classrooms;

28 (D) Conference and meeting rooms;

29 (E) Private offices;

30 (F) Elevators;

31 (G) Hallways;

32 (H) Health care facilities;

33 (I) Cafeterias;

34 (J) Employee lounges;

35 (K) Stairs;

36 (L) Restrooms; and

1 (M) All other enclosed areas.

2 (2) An individual, person, entity, or business subject to the
3 smoking prohibitions of this section shall not discriminate or retaliate in
4 any manner against a person for making a complaint of a violation of this
5 section or furnishing information concerning a violation to a person, entity,
6 or business or to an enforcement authority.

7 (3) The prohibitions on smoking in subsections (a) and (b) of
8 this section and the provisions of subdivision (b)(2) of this section shall
9 be communicated to all current employees by their employer within thirty (30)
10 days of the effective date of this act, and to each prospective employee upon
11 application for employment.

12
13 20-27-1805. Exemptions.

14 An owner or operator of any of the following areas may exempt itself
15 from this subchapter:

16 (1) Private residences, except when used as a licensed child
17 care, adult daycare, or health care facility;

18 (2)(A) Hotel and motel rooms that are rented to guests and are
19 designated as smoking rooms.

20 (B) However, if a hotel or motel has more than twenty-five
21 (25) guest rooms, not more than twenty percent (20%) of rooms rented to
22 guests in a hotel or motel may be designated as exempt from this subchapter;

23 (3)(A) All workplaces of any employer with fewer than three (3)
24 employees.

25 (B) This exemption does not apply to any public place;

26 (4) A retail tobacco store, if secondhand smoke from the store
27 does not infiltrate into areas where smoking is prohibited under this
28 subchapter;

29 (5) Areas within long-term care facilities that are designated
30 by the facility as a smoking area or for supervised patient smoking only;

31 (6) Outdoor areas of places of employment;

32 (7) All workplaces of any manufacturer, importer, or wholesaler
33 of tobacco products, of any tobacco leaf dealer or processor, and all tobacco
34 storage facilities; and

35 (8)(A) All restaurants and bars licensed by the State of
36 Arkansas that prohibit at all times all persons less than twenty-one (21)

1 years of age from entering the premises, if secondhand smoke does not
2 infiltrate into areas where smoking is prohibited under this subchapter.

3 (B) All restaurants and bars that are exempt under this
4 subdivision (8) shall prominently display a health warning sign as defined by
5 the State Board of Health; and

6 (9) Designated smoking areas on the gaming floor of any
7 franchisee of the Arkansas Racing Commission.

8
9 20-27-1806. Notice of prohibition of smoking.

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

15 (b) The owner, operator, manager, or other person in control of any
16 area where smoking is prohibited by this subchapter shall remove all ashtrays
17 from the area, unless an ashtray is permanently affixed to an existing
18 structure before the effective date of this act.

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

22
23 20-27-1807. Rules - Promulgation and enforcement authority.

24 (a) The State Board of Health may adopt reasonable rules and
25 regulations that it determines are necessary or useful to carry out the
26 purposes or facilitate enforcement of this subchapter.

27 (b)(1) The Department of Health and Human Services and its authorized
28 agents may enforce compliance with this subchapter and any rules and
29 regulations adopted and promulgated under this subchapter by the board.

30 (2) Under rules of the board, the department and its authorized
31 agents may enter upon and inspect the premises of any public place or
32 enclosed area within a place of employment at any reasonable time and in a
33 reasonable manner.

34
35 20-27-1808. Subchapter deemed cumulative.

36 (a) This subchapter is cumulative to and does not prohibit the

1 enactment of any other general or local laws, rules, or regulations of state
2 or local governing authorities or local ordinances prohibiting smoking that
3 are more restrictive than or are in direct conflict with this subchapter.

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

6
7 20-27-1809. Penalties.

8 Any person who violates any provision of this subchapter is guilty of a
9 violation and upon conviction shall be punished by a fine of not less than
10 one hundred dollars (\$100) nor more than five hundred dollars (\$500).

11
12 SECTION 2. Arkansas Code §§ 20-27-701 through 20-27-703 are repealed:
13 ~~20-27-701. Public policy.~~

14 ~~(a) Information available to the General Assembly based upon~~
15 ~~scientific research data has shown that nonsmokers often receive damage to~~
16 ~~their health from the smoking of tobacco by others.~~

17 ~~(b) It is therefore declared to be the public policy of the State of~~
18 ~~Arkansas that the rights of nonsmokers be protected in the manner provided in~~
19 ~~this subchapter.~~

20 ~~20-27-702. Penalty.~~

21 ~~Any person violating this subchapter shall be guilty of a violation and~~
22 ~~upon conviction shall be punished by a fine of not less than ten dollars~~
23 ~~(\$10.00) nor more than one hundred dollars (\$100).~~

24 ~~20-27-703. Public smoking prohibited—Exceptions.~~

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

29 ~~(b) The provisions of this subchapter shall not prohibit smoking in~~
30 ~~any of the aforementioned areas if the smoking is assigned to areas~~
31 ~~designated as smoking areas.~~

32 ~~(c) The provisions of this subchapter shall not apply to hotels,~~
33 ~~motels, and restaurants.~~

34
35 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the
36 Eighty-fifth General Assembly that there is a pressing and immediate need to

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

11
12 */s/ Steele*
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