

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 SENATE BILL 765

By: McCortney

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5
6 AS INTRODUCED

7 An Act relating to smoking in public places; amending
8 21 O.S. 2011, Section 1247, as last amended by
9 Section 1, Chapter 110, O.S.L. 2017 (21 O.S. Supp.
10 2018, Section 1247), which relates to prohibitions on
11 smoking; adding marijuana to certain provisions;
12 amending 63 O.S. 2011, Section 1-1523, as last
13 amended by Section 2, Chapter 110, O.S.L. 2017 (63
14 O.S. Supp. 2018, Section 1-1523), which relates to
15 prohibitions on smoking; adding marijuana to certain
16 provisions; amending 63 O.S. 2011, Section 1-1525, as
17 amended by Section 3, Chapter 369, O.S.L. 2017 (63
18 O.S. Supp. 2018, Section 1-1525), which relates to
19 measures to prevent smoking in nonsmoking areas;
20 adding marijuana to certain provisions; and declaring
21 an emergency.

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

23 SECTION 1. AMENDATORY 21 O.S. 2011, Section 1247, as
24 last amended by Section 1, Chapter 110, O.S.L. 2017 (21 O.S. Supp.
25 2018, Section 1247), is amended to read as follows:

26 Section 1247. A. The possession of lighted tobacco or lighted
27 marijuana in any form is a public nuisance and dangerous to public
28 health and is hereby prohibited when such possession is in any
29 indoor place used by or open to the public, all parts of a zoo to

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

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

23 B. All buildings and other properties, or portions thereof,
24 owned or operated by this state shall be designated as nonsmoking.

1 The tobacco smoking provisions of this subsection shall not apply to
2 veterans centers operated by this state pursuant to the provisions
3 of Section 221 et seq. of Title 72 of the Oklahoma Statutes, which
4 shall be designated nonsmoking effective January 1, 2015, at which
5 time veterans centers may establish outdoor designated smoking areas
6 for resident veterans only. Smoking tobacco shall only be allowed
7 in designated outdoor smoking areas.

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

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

1 E. No tobacco or marijuana smoking shall be allowed within
2 twenty-five (25) feet of the entrance or exit of any building
3 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 smokers, if
4 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 shall not be allowed inside any private
8 residence that is used as a licensed child care facility during
9 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 marijuana smoking provided in this section shall not
13 apply to medical research or treatment centers, if marijuana smoking
14 is integral to the research or treatment;

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

23 10. Any outdoor seating area of a restaurant; provided, smoking
24 tobacco or smoking marijuana shall not be allowed within fifteen

1 (15) feet of any exterior public doorway or any air intake of a
2 restaurant.

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

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

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

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

20 L. Responsibility for posting signs or decals shall be as
21 follows:

22 1. In privately owned facilities, the owner or lessee, if a
23 lessee is in possession of the facilities, shall be responsible;
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1 2. In corporately owned facilities, the manager and/or
2 supervisor of the facility involved shall be responsible; and

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

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

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

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

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

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

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

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

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

5 C. Nothing in this section shall be construed to prohibit
6 educational facilities from having more restrictive policies
7 regarding tobacco or marijuana smoking and the use of other
8 marijuana or tobacco products in the buildings or on the grounds of
9 the facility.

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

16 E. Smoking tobacco or marijuana is prohibited in all vehicles
17 owned by the State of Oklahoma and all of its agencies and
18 instrumentalities.

19 F. Veterans centers operated by this state pursuant to the
20 provisions of Section 221 et seq. of Title 72 of the Oklahoma
21 Statutes shall be designated nonsmoking effective January 1, 2015,
22 at which time veterans centers may establish outdoor designated
23 smoking areas for resident veterans only. Smoking tobacco shall
24 only be allowed in designated outdoor smoking areas.

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

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

- 23 1. Stand-alone bars, stand-alone taverns or cigar bars;
24
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1 2. The room or rooms where licensed charitable bingo games are
2 being operated, but only during the hours of operation of such
3 games;

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

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

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

14 6. Workplaces occupied exclusively by one or more smokers, if
15 the workplace has only incidental public access. "Incidental public
16 access" means that a place of business has only an occasional
17 person, who is not an employee, present at the business to transact
18 business or make a delivery. It does not include businesses that
19 depend on walk-in customers for any part of their business;

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

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

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

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

13 11. Medical research or treatment centers, if tobacco smoking
14 is integral to the research or treatment. Furthermore, the
15 restrictions on marijuana smoking provided in this section shall not
16 apply to medical research or treatment centers, if marijuana smoking
17 is integral to the research or treatment.

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

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

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

12 Section 1-1525. The state or local governmental agency or the
13 person who owns or operates a public place shall, at a minimum, do
14 the following in order to prevent tobacco or marijuana smoking in
15 public places:

16 1. Post conspicuous signs at entrances to and in prominent
17 locations within places where tobacco or marijuana smoking is
18 prohibited which state that tobacco or marijuana smoking is
19 prohibited or that the indoor environment is free of tobacco or
20 marijuana smoke; and

21 2. Ask tobacco or marijuana smokers to refrain from smoking
22 upon observation of anyone violating the provisions of Section 1-
23 1521 et seq. of this title.

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

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