

SENATE BILL 2255

By Kyle

AN ACT to amend Tennessee Code Annotated, Title 68,
relative to the smoking of tobacco products in
public places.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 68, Chapter 1, is amended by adding Sections 2 through 18 of this act as a new, appropriately designated part.

SECTION 2. This Act shall be known and may be cited as the "Tennessee Smokefree Air Law of 2007."

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

(1) "Employer" means a person, business, partnership, association, corporation, including a municipal corporation, educational institution, trust, or non-profit entity that employs the services of one or more individual persons.

(2) "Enclosed Area" means all space between a floor and ceiling that is enclosed on all sides by solid walls or windows (exclusive of doorways), which extend from the floor to ceiling.

(3) "Place of Employment" means an area under the control of a public or private employer that employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles. A private residence is not a "place of employment" unless it is used as a child care facility, adult day care, or health care facility.

(4) "Public Place" means an enclosed area to which the public is invited or in which the public is permitted which is not a public building, including but not limited to banks,

educational facilities, health care facilities, hotel and motel lobbies, Laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, recreational facilities, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms.

(5) "Environmental tobacco smoke" (ETS), or 'secondhand smoke' is the complex mixture formed from the escaping smoke of a burning tobacco product (termed as side stream smoke) and smoke exhaled by the smoker. Exposure to ETS is also frequently referred to as 'passive smoking' or 'involuntary smoking'.

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

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

(8) "Service Line" means an indoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money.

(9) "Shopping Mall" means an enclosed public walkway or hall area that serves to connect retail or professional establishments.

(10) "Smoking" means inhaling, exhaling, burning, or carrying any lighted

cigar, cigarette, pipe, or other lighted tobacco product in any manner or in any form.

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

(12) "Private Club" means an organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain, and which only sells alcoholic beverages incidental to its operation. The affairs and management of the organization are conducted by a board of directors, executive committee, or similar body chosen by the members at an annual meeting. The organization has established bylaws and/or a constitution to govern its activities. The organization has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501.

(13) "Health Care Facility" means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions.

SECTION 4.

(a) Smoking shall be prohibited in all enclosed public places within the State of Tennessee, including but not limited to, the following places:

- (1) Aquariums, galleries, libraries, and museums;
- (2) Areas available to and customarily used by the general public in businesses and non-profit entities patronized by the public, including but not

limited to, banks, laundromats, factories, professional offices, and retail service establishments;

(3) Bars;

(4) Child care and adult day care facilities;

(5) Convention facilities;

(6) Educational facilities, both public and private;

(7) Elevators;

(8) Health care facilities;

(9) Hotels and motels;

(10) Lobbies, hallways, and other common areas in apartment

buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities;

(11) Polling places;

(12) Private clubs when being used for a function to which the

general public is invited;

(13) Public and Private transportation facilities, including trains, buses, taxicabs and airports, under the authority of state or local governments and ticket, boarding, and waiting areas of public transit

depots;

(14) Restaurants;

(15) Restrooms, lobbies, reception areas, hallways, and other common-use areas;

- (16) Retail stores;
 - (17) Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of the State of Tennessee or a political subdivision of the State, to the extent the place is subject to the jurisdiction of the State;
 - (18) Service lines;
 - (19) Shopping malls;
 - (20) Sports arenas, including enclosed places in outdoor arenas;
and
 - (21) Theaters and other facilities primarily used for exhibiting motion pictures, stage dramas, lectures, musical recitals, or other similar performances.
- (b) This prohibition on smoking shall be communicated to all existing employees by the effective date of this Act and to all prospective employees upon their application of employment.

SECTION 5. Notwithstanding any other provision of this Act to the contrary, the following areas shall be exempt from the provisions of Section 4:

- (a) Private homes, private residences and private automobiles, provided however it shall only apply when such homes, residences or vehicles are being used for child care or day care or when the private vehicle is being used for the public transportation of children or as part of health care or day care transportation;
- (b) Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more

than twenty-five percent (25%) of rooms rented to guests in a hotel or motel may be so designated. All smoking rooms on the same floor must be contiguous and smoke from these rooms must not infiltrate into areas where smoking is prohibited under the provisions of this Act.

(c) Private and semiprivate rooms in nursing homes and long-term care facilities that are occupied by one (1) or more persons, all of whom are smokers and have requested in writing to be placed in a room where smoking is permitted; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this Act.

(d) Private clubs that have no employees, except when being used for a function to which the general public is invited. This exemption shall not apply to any organization that is established for the purpose of avoiding compliance with this Act.

(e) By a person, organization or other entity that conducts medical or scientific research on tobacco products, if the research is conducted in an enclosed space not open to the public, in a laboratory facility at an accredited college or university, or in a professional testing laboratory as regulated by the Department of Health.

(f) Religious ceremonies where smoking is part of the ritual;

SECTION 6.

(a) In each Public Place, Public Meeting, and Place of Employment in which smoking is prohibited by this Act, the Employer, proprietor or other person in charge of

the premises shall post or cause to be posted in a conspicuous place, including, but not limited to every public entrance and exit, signs clearly stating that smoking is prohibited by state law. All signs required to be posted under this Section shall have letters at least four inches high with the principal strokes of letters not less than one-half inch wide. The color and design of such signs shall be left to the discretion of the Employer or person in charge of the premises.

(b) All ashtrays shall be removed from any area where smoking is prohibited by this Act by the owner, operator, manager, or other person having control of the area.

SECTION 7.

(a) No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or customer because that employee, applicant, or customer exercises any rights afforded by this Act or reports or attempts to prosecute a violation of this Act.

(b) An employee who works in a setting where an employer allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

SECTION 8. Smoking is prohibited within a distance of 20 feet outside entrances and operable windows of enclosed areas where smoking is prohibited, so as to insure that tobacco smoke does not enter those areas.

SECTION 9.

- (a) This act shall be enforced by department of health with respect to the prohibition against smoking in a public place and by the department of labor and workforce development with respect to the prohibition against smoking in places of employment.
- (b) Notice of the provisions of this act shall be given to all applicants for a business license pursuant to Tennessee Code Annotated, Title 67, Chapter 4, Part 7.
- (c) Any citizen who desires to register a complaint under this act may initiate enforcement with either department of health or the department of labor and workforce development, as appropriate.
- (d) Any mandated inspection by state law of an establishment shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this act.
- (e) An owner, manager, operator, or employee of an establishment regulated by this act shall inform persons violating this act of the appropriate provisions thereof.
- (f) Notwithstanding any other provision of this act, an employee or private citizen may bring legal action to enforce this act.
- (g) In addition to the remedies provided by this act, the commissioner of the department of health or the department of labor and workforce development, or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of employment to comply with the provisions of this act may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.
- (h) The commissioner of the department of health and the commissioner of the department of labor and workforce development are authorized to promulgate

rules to effectuate the provisions of this act in accordance with the uniform administrative procedures act, compiled in title 4, chapter 5.

SECTION 10.

(a) A person who knowingly smokes in an area where smoking is prohibited by the provisions of this act shall be subject to a civil fine not exceeding fifty dollars (\$50).

(b) A person who owns, manages, operates, or otherwise controls a public place or place of employment and who knowingly fails to comply with the provisions of this act shall be subject to a civil fine:

(1) Not exceeding one hundred dollars (\$100) for a first violation;

(2) Not exceeding two hundred dollars (\$200) for a second violation within one (1) year; or

(3) Not exceeding five hundred dollars (\$500) for each additional violation within one (1) year.

(c) In addition to the fines established by this section, a knowing violation of this act by a person who owns, manages, operates, or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.

(d) Each day on which a knowing violation of this act occurs shall be considered a separate and distinct violation.

SECTION 11. The department of health in conjunction with the department of labor and workforce development shall engage in a continuing program to explain and clarify the purposes and requirements of this act to citizens affected by it, and to guide owners, operators, and managers of places of employment in their compliance with it.

SECTION 12. The commissioners of the departments of health and labor and workforce development shall annually request other governmental and educational agencies within the

state to establish local operating procedures in cooperation and compliance with this act. This includes urging all municipalities and local education agencies to update any existing smoking control regulations or policies to be consistent with the current health findings regarding secondhand smoke.

SECTION 13. This Act shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

SECTION 14. If any provision of this Act or the application thereof to any person, thing or circumstance is held invalid, such invalidity shall not affect the provisions or application of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

SECTION 15. This Act shall take effect 90 days after becoming law, the public welfare requiring it.