

August 1994

**SMOKING PREEMPTION LANGUAGE****California**

The smoking prohibition set forth in this section shall constitute a uniform statewide standard for regulating the smoking of tobacco products in enclosed places of employment and shall supersede and render unnecessary the local enactment or enforcement of local ordinances regulating the smoking of tobacco products in enclosed places of employment.

**Applicability**

The law covers all enclosed places of employment. Employers may designate smoking break rooms with special ventilation so that the smoke can be exhausted to the outside by an exhaust fan and the air is not recirculated. The rooms also must comply with any ventilation standard adopted by OSHA and/or EPA, and be located in non-work areas so that no one must enter it as a part of their work, and sufficient nonsmoking breakrooms are provided for nonsmoking employees.

"Places of employment" does not include 65 percent of hotel/motel guest rooms, 25 or 50 percent (depending on size) of lobby areas of hotel/motel designated for smoking, meeting and banquet rooms of hotel/motel, restaurants (except dining area), convention centers, except while food or beverage functions are taking place or when being used for exhibit purposes, retail or wholesale tobacco shops, private smokers' lounges, truck cabs if no nonsmoking employees are present, warehouse facilities with more than 100,000 square feet and 20 or fewer employees, gaming clubs and bingo facilities that do not permit access to minors, bars and taverns, theaters and medical research or treatment sites if smoking is integral to function, and patient smoking areas in long-term health care facilities.

**Connecticut**

The provisions of this section shall supersede and preempt the provisions of any municipal law or ordinance relative to smoking effective prior to, on or after October 1, 1993.

**Applicability**

The law would allow, but does not require, smoking areas to be designated in buildings leased and operated by the state or any political subdivision. "Smoking areas" are defined as separately designated rooms which need not be entered in order to conduct business, are designated as a smoking area and when designated as a smoking area does not deprive employees or the public of an existing nonsmoking lounge or waiting area. The building owner or operator is not required to make any expenditure or structural changes to create a smoking area. Would allow restaurants with seating capacity of 75 or more to designate a smoking area. Restaurant would not be allowed to designate the entire restaurant as a smoking area. The law exempts correctional facilities,

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college dormitories, psychiatric facilities and public housing projects. Prohibits smoking in school buildings during hours that school activities are in session.

Delayer:

The provisions of this Chapter shall preempt and supersede any provisions of any municipal or county ordinance or regulation on the subject of this Chapter enacted or adopted after the effective date of this Chapter. [Effective date is June 28, 1994.]

Applicability

Smoking shall not be permitted in any public place, except in designated smoking areas. "Public place" is any indoor area open to the public, exclusive of lobbies, including but not limited to public buildings, auditoria, theaters, museums, libraries, and all public schools, exclusive of faculty lounges and private offices.

Employers are required to adopt and implement a written smoking policy that the employer shall provide a work area where no smoking occurs for each employee who requests one; that employers may set aside a work area for smoking; and that employers shall provide for nonsmoking areas in employee cafeterias, lunch rooms, and lounges. The nonsmoking areas in employee cafeteria and lunchrooms shall be sufficient to meet employee demand. Food service establishments shall designate a nonsmoking area sufficient to meet customer demand and may designate a separate enclosed room or rooms without a nonsmoking area.

"Smoking area" means an enclosed indoor area in which smoking is permitted. In a place of employment, the smoking area shall be separated from a smoke-free work area by walls or some other means equally effective in reducing the effects of smoke on the smoke-free work area, other than ventilation systems or air cleaning devices.

Florida

This part expressly preempts regulation of smoking to the state and supersedes any municipal or county ordinance on the subject.

Applicability

The law prohibits smoking in a public place or at a public meeting except in designated smoking areas. The law does not require the designation of smoking areas. The law does not apply when an entire room or hall is used for a private functions. No more than one-half of the total square footage in any public place with a single enclosed indoor area used for a common purpose shall be reserved and designated as a smoking area. Restaurants with seating for more than 50 persons must ensure that no more than 65 percent of the seats in the dining room are located in an area designated as a smoking area.

Employers are required to develop, implement and post a policy regarding designation of smoking and nonsmoking areas. An entire

area may be designated as a smoking area if all workers routinely assigned to work in that area at the same time agree. Private offices are exempt from square footage requirement.

### Illinois

A home rule or non-home rule unit of local government in this State shall not have the power and authority, after the effective date of this Act, to regulate smoking in public places. Pursuant to Article VII, Section 6, paragraph (h) of the Illinois Constitution of 1970, it is declared to be the law of this State that the regulation of smoking as provided by this Act is a power which preempts home rule units from exercising such power subject to the limitations provided in the Act, provided that any home rule unit that has passed an ordinance concerning the regulation of smoking prior to October 1, 1989, is exempt from pre-emption.

### Applicability

State law permits designated smoking areas in office workplaces and all places open to the public. The person in charge may designate a smoking area by utilizing existing physical barriers, ventilation systems and other physical elements to minimize the intrusion of smoking into nonsmoking areas. Exempts bowling alleys, bars, taverns, hotel/motel sleeping rooms, private offices occupied solely by smokers, and factories, warehouses and similar places of work not usually frequented by the public.

### Idaho

A 1991 Opinion by the state Attorney General's office concluded that by enacting the Clean Indoor Air Act, the Idaho legislature has preempted the regulation of indoor smoking to the exclusion of local government.

### Applicability

The law prohibits smoking in public places or at a public meetings except in designated smoking areas. The law provides that smoking areas may be designated by proprietors or other persons in charge of public places except in places in which smoking is prohibited by the fire marshal or other law, ordinance or regulation. Bars, bowling alleys and entire rooms or halls when being used for a private function may be designated as smoking areas in their entirety.

"Public place" is defined as any enclosed indoor area used by the general public including but not limited to restaurant with a seating capacity of 30 or more customers, retail stores, grocery stores, public conveyances, educational facilities, hospitals, nursing homes, auditoriums, arenas and public meeting rooms.

### Iowa

Enforcement of this chapter shall be implemented in an equitable manner throughout the state. For the purpose of equitable and uniform implementation, application, and enforcement of state and

local laws and regulations, the provisions of this chapter shall supersede any local law or regulation which is inconsistent with or conflicts with the provisions of this chapter.

Applicability

The law prohibits smoking in a public place or in a public meeting except in designated smoking areas. Smoking areas may be designated by persons having custody or control of public places, except in places where smoking is prohibited by the state fire marshal or by other law. Where smoking areas are designated, existing physical barriers and existing ventilation systems shall be used to minimize the toxic effect of smoke in adjacent nonsmoking rooms. No public place other than a bar or rooms or halls when used for a private function may be designated as a smoking area in its entirety.

"Public place" means any enclosed indoor area used by the general public or serving as a place of work containing 250 or more square feet of floor space, including, but not limited to, all restaurants with a seating capacity greater than 50, all retail stores, lobbies and malls, offices, including waiting rooms, and other commercial establishments, public conveyances with departures, travel, and destination entirely within the state, educational facilities, hospitals, clinics, nursing homes and health care facilities, auditoriums, indoor arenas, concert halls, art museums and meeting rooms. The law does not apply to tobacco retail shops, private offices occupied exclusively by smokers, dormitories, hotel/motel sleeping rooms, resident's rooms in a health care facility.

Kentucky

It is the intent of the Legislature that Sections 2 and 10 of this Act shall be enforced in an equitable and uniform manner throughout the Commonwealth. For the purpose of equitable and uniform enforcement, the provisions of Sections 2 and 10 of this Act shall supersede any subsequently enacted local law, ordinance or regulation which relates to the use, sale, or distribution of tobacco products.

Applicability

A policy for smoking in governmental office buildings or workplaces may be adopted by state, county, municipal, special district or urban-county governments. Any policy relating to smoking in governmental office buildings or workplaces of counties, municipalities, special districts, or urban-county government must be adopted by the legislative body of the government and be in writing, among other provisions. Any policy relating to smoking in state office buildings or workplaces must be by executive order of the Governor or action of the General Assembly and be in writing, among other provisions. The law does not apply to state universities, state hospitals and institutions, state veterans' nursing homes and health facilities, and jails or detention facilities.

The Executive Branch smoking policy restricts smoking to designated areas in state government buildings under the control of the Executive Branch. Would require accommodation of both smokers and nonsmokers to the extent feasible.

### Louisiana

No state agency, parish, municipality, or other political subdivision of this state may impose ordinances or regulations relating to smoking in an office workplace which are more restrictive or stringent than provided in this Part.

In addition, the provisions of this Part shall not be deemed or construed to supersede or repeal, or otherwise affect, any ordinance of a local governing body which is adopted prior to September 1, 1993.

[Same language is included in separate statute restricting smoking in public places.]

### Applicability

The law requires state, parish or municipal government offices to provide separate smoking rooms for employees if allowable under lease provisions and fire safety regulations. The law does not require designated smoking areas in educational and health care facilities, or in areas used by judicial branch of government. Would allow gaming and horse racing facilities to designate nonsmoking areas. Would allow taxis and limousines to be designated by owner or operator as smoking or nonsmoking. Would allow restaurateurs to maintain flexible smoking and nonsmoking areas according to customer demand. Bars may be designated entirely as smoking areas. Would allow designated smoking rooms on each floor of other public places.

Smoking is prohibited in school buildings and buses, public elevators, public transportation vehicles, child care facilities, and any area designated as hazardous

### Mississippi

It is the intent of the legislature that enforcement of this act shall be implemented in an equitable manner throughout the state. For the purpose of equitable and uniform implementation, application of state and local laws and regulations, the provisions of this act shall supersede any existing or subsequently enacted local law, ordinance or regulation which relates to the use, sale, promotion and distribution of tobacco and tobacco products.

### Applicability

State law prohibits smoking of cigars and pipes on passenger buses.

**Nevada**

The county board of health of each county shall enforce the provisions of NRS 202.2491 and 202.2492. The governing body of a local government may not impose more stringent restrictions on the smoking of tobacco than are provided by those sections NRS 202.2491 and 202.2492.

**Applicability**

The law requires that the person in control of a public building to designate a separate area which may be used for smoking. The law restricts smoking in public waiting rooms or lobbies or hallways of any medical facility, medical office, hotel or motel, and public area of a store principally devoted to the sale of food for human consumption off the premises, but permits the person in control of the building or area to designate separate rooms or portions of the area which may be used for smoking. Restaurants with seating for 50 or more persons are required to maintain smoking and nonsmoking areas. Cigar smoking is prohibited in restaurants. Businesses deriving more than 50-percent of gross receipts from either sale of alcoholic beverages or gaming may be designated entirely as smoking areas. Smoking is banned on public elevators and school buses. The law bans smoking in child care facilities but permits the person in control of the facility to designate a separately ventilated smoking room which children are prohibited from entering.

**New Jersey**

The provisions of this act shall supersede any other statute, municipal ordinance, and rule or regulation adopted pursuant to law concerning smoking in places of employment except where smoking is prohibited by municipal ordinance under authority of R.S. 40:48-1 and R.S. 40:48-2 or other statute or regulation adopted pursuant to law for purposes of protecting life and property from fire.

[Same language is included in separate statutes restricting smoking in restaurants and other public places.]

**Applicability**

The law requires employers with 50 or more employees to establish workplace smoking policies. Policies must include designated nonsmoking areas and may include smoking areas. Buildings used for state or local government offices must provide nonsmoking areas and may provide smoking areas. Smoking must be prohibited in rooms where public meetings are held, offices where the public does business, and in libraries, museums, concert halls, and similar facilities. Smoking is prohibited in buses and other public conveyances, except in chartered vehicles, specially marked railroad cars and limousines. School boards must prohibit smoking in school district buildings. Smoking is prohibited in pharmacies and drugstores. Smoking areas may be provided for employees in non-public areas.

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Restaurants must post signs stating whether or not they provide nonsmoking areas, or if they have "approved" air cleaning equipment in place of a nonsmoking area. Bars and gambling, racing and other indoor sporting event facilities, bowling alleys and dance halls are exempt from the law.

In public indoor places, nonsmoking areas must be provided for nonsmoking persons to conduct business or participate in activities. Smoking is prohibited in public areas of retail food and marketing stores that have selling area exceeding 4,000 square feet.

North Carolina

Applicability of Article: local government may enact.

(a) This Article shall not supersede nor prohibit the enactment or enforcement of any otherwise valid local law, rule or ordinance enacted prior to October 15, 1993, regulating the use of tobacco products. However, no local law, rule or ordinance enacted and placed in operation prior to October 15, 1993, shall be amended to impose a more stringent standard than in effect on the date of ratification of this Article.

(b) Any local ordinance, law, or rule that regulates smoking adopted on or after October 15, 1993, shall not contain restrictions regulating smoking which exceed those established in this Article. Any such local ordinance, law, or rule may restrict smoking in accordance with this subsection only in the following facilities pursuant to G.S. 143-597:

- (1) Buildings owned, leased or occupied by local government.
- (2) A public meeting.
- (3) The indoor space in an auditorium, arena, or coliseum, or an appurtenant building thereof.
- (4) A library or museum open to the public.
- (5) Any place on a public transportation vehicle owned or leased by local government and used by the public.

Applicability

The law applies to public buildings owned, leased or occupied by state government and would allow the following areas to be designated as nonsmoking: any library open to the public, any museum open to the public, any area established as a nonsmoking area, so long as at least 20 percent of the interior space of equal quality to that of the nonsmoking area shall be designated as a smoking area, unless physically impracticable (if physically impracticable the person in charge of the facility shall provide an adequate smoking area within the facility as near as feasible to twenty percent of the interior space); any indoor space in a state-controlled building such as an indoor auditorium, arena or coliseum except that a designated area for smoking shall be established in lobby areas; and any educational building primarily involved in

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health care instruction. Any area designated for smoking or nonsmoking shall be established by the person in charge of the facility.

#### North Dakota

Legislation adopted in 1993 deleted previous law's language allowing smoking to be prohibited by local law or corporate policy: "No smoking area may be designated in a place in which smoking is prohibited by the state fire marshal, by other governing law, rules, or ordinance, or by corporate or private policy." [1993 law also deleted requirement that smoking areas be provided.]

#### Applicability

State law allows smoking areas to be designated in enclosed places open to public, defined as theaters, auditoriums, gymnasiums, elevators, libraries, public transportation vehicles and waiting rooms, patient rooms and lobbies of health care facilities and nursing homes, buildings owned or leased by state or local government, and restaurants with seating for 50 or more persons. Smoking areas may not be designated in child care facilities when children are present to receive services, and smoking areas may not be designated where prohibited by state fire marshal. Designated smoking areas may not occupy more than 50-percent of total area available to public; restaurants may temporarily expand smoking areas to meet needs during course of daily business. By Executive Order, smoking is prohibited in all state vehicles and state government buildings under executive branch control.

#### Oklahoma

The State Legislature by adopting this act intends to preempt any other regulation promulgated to control smoking in public places and to standardize laws that governmental subdivisions may adopt to control smoking. Cities and towns may enact and enforce laws prohibiting and penalizing conduct under provisions of this act, but the provisions of such laws shall be the same as provided in this act and the enforcement provisions under such laws shall not be more stringent than those of this act. Fire codes are exempt from preemption "to the extent that such regulation is substantially similar to nationally recognized standard fire codes."

#### Applicability

State law prohibits smoking in designated nonsmoking areas. Smoking and nonsmoking areas shall be designated in certain public places, including state and local government offices and buildings; public conveyances; auditoriums; museums, concert halls, and licensed premises (but nonsmoking areas are not required in separate bar areas and such premises as bowling alleys racetracks). Areas where prisoners are held in jails and correctional institutions are exempt. Smoking is prohibited in public meetings and in child care facilities during hours of operation. Nursing homes may designate smoking areas for residents and their guests and in separate employee areas. Would allow health care facilities

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and educational facilities to be all nonsmoking; schools may designate staff smoking areas that have separate ventilation. Smoking and nonsmoking areas were required in restaurants with seating for 50 or more persons until passage of 1994 law; new law allows restaurants to designate both, be all smoking, or all nonsmoking.

Pennsylvania

Preemption. --(a). This act shall preempt and supersede any local ordinance or rule concerning the subject matter of sections 3.5 and 10.1 of this act.

(b) This act shall preempt and supercede any local ordinance or rule concerning the subject matter of section 10.1 of this act except that:

(1) The provisions of section 10.1 of this act shall not apply to local rules or ordinances concerning the subject matter of section 10.1 of this act which have been adopted by cities of the second class and were in effect prior to September 1, 1988.

(2) In the event that the local rule or ordinance is amended, suspended, rescinded or rendered, in whole or in part, ineffective by a court decision, the exemption shall not apply; and the city of the second class shall be subject to the provisions of section 10.1 of this act.

Applicability

State law prohibits smoking in areas designated as nonsmoking by person in charge. Employers must implement a smoking policy in workplace, subject to collective bargaining. Restaurants with 75 or more seats shall provide smoking and nonsmoking areas "reasonably calculated to address the needs of their clientele." Smaller restaurants are exempt if policy is posted at entrances. Persons in charge of other public places must implement policy on smoking. Exempted are places used for private social functions; factories, warehouses and similar places of work not frequented by public; bar areas in licensed establishments; lobbies and hallways; hotel and motel rooms; and, retail tobacconist shops. Smoking is prohibited in public conveyances, except in club cars on commuter trains. Smoking is prohibited in school buildings and other school district property, except in areas that may be designated for employees.

South Carolina

Attorney General's Opinion No. 90-69: The General Assembly intended the Clean Indoor Air Act of 1990 to be of statewide applicability and, except for health care facilities, to preempt local political subdivisions from further regulation of smoking in public indoor areas.

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**Applicability**

Smoking shall be allowed in private offices and designated areas of employee break rooms in buildings owned or operated by state or local governments. State law limits smoking to areas that may be designated in private offices and teacher lounges of public schools; break areas of health care facilities; elevators; public transportation vehicles, except taxicabs; and, in foyers, lobbies or other common areas of theaters or performing arts facilities. Smoking is prohibited in child day care facilities.

**Tennessee**

State occupies and preempts "the entire field of legislation concerning the regulation of tobacco products." All laws or regulations promulgated by subdivision after March 15, 1994 is voided. However, cities and counties with metropolitan form of government may regulate use of tobacco in buildings owned or leased by such government. Also, airport authorities and special school districts may regulate use of tobacco products in their buildings.

**Applicability**

State law allows heads of state government agencies and public institutions of higher education to establish policies on smoking in their buildings. Such policies "shall protect the rights of people who smoke and people who do not smoke; provided, however, that each such policy shall provide at least one (1) area indoors in each such building where smokers are permitted to smoke. If a policy is established that permits smoking in the workplace, such policy shall also provide a non-smoking area in the workplace."

**Utah**

State law "supersedes any ordinance enacted by the governing body of a political subdivision that restricts smoking that is not essentially identical to the provisions of this chapter."

**Applicability**

Effective July 1, 1995, state law prohibits smoking in publicly-owned buildings and any enclosed, indoor place open to the public, including restaurants, with certain exceptions. In private sector workplaces open to the public, smoking may be prohibited; allowed in enclosed areas; or, allowed in unenclosed areas if the layout of the workplace prevents smoke from entering work areas of nonsmoking employees and three-fourths of all employees agrees to allow the smoking area. Local Health Departments can prohibit smoking if they determine that smoke is entering the nonsmoking area. Smoking areas may be provided at international airports if area is separate, enclosed and vented to outdoors. Exempted are buildings used by social, fraternal or religious organizations when not open to public; facilities used for private functions; guest rooms of overnight accommodations; taverns; and, private clubs (so long as such clubs constructed after July 1, 1995, do not share air space or ventilation with a public places where smoking must be

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prohibited). Until July 1, 1995, smoking is restricted to areas that may be provided in workplaces and public places, in proportion to preference of users.

### Virginia

State law limits the scope of local ordinances regulating smoking:

A. No ordinances enacted by a county, city or town prior to January 1, 1990, shall be deemed invalid or unenforceable because of lack of consistency with the provisions of this chapter.

B. Unless specifically permitted herein, local ordinances adopted after January 1, 1990, shall not contain provisions or standards which exceed those established in this chapter. Local ordinances may not regulate smoking in offices or work areas not open to public, bars or lounges, private function rooms, common areas of shopping malls, lobby areas of hotels, or places exempt from state law. Local ordinances may provide that employees may regulate smoking in private workplaces if designation of smoking and nonsmoking areas is subject of written agreement and smoking may be totally banned only by affirmative vote of majority of affected employees voting, unless smoking is part of contract of employment. Local ordinances may not affect smoking policies previously established by employers.

### Applicability

State law requires restaurants with seating for 50 or more persons, excluding bar seating and private rooms, to provide nonsmoking area sufficient to meet demand. State and local government buildings (except Department of Corrections) must provide reasonable nonsmoking areas. Reasonable nonsmoking areas must be provided in recreational facilities; day care centers; higher education institutions; health care facilities; and, retail establishments with 15,000 square feet or more serving the public. Designated smoking areas must be separate to the extent possible from those areas entered by the public in normal course of using that business or facility. Smoking is prohibited in elevators, except for open freight elevators not used by public; in public school buses; in public schools (except in non-common areas after student activities have concluded); in hospital emergency rooms; local and district health departments; polling rooms; and, indoor service and cashier lines. Exempt are retail tobacco stores, tobacco warehouses and tobacco manufacturing facilities.

NOTE: Misspellings of "supersede" are in the original legislation.