

REFERENCE TITLE: smoking ban; meeting place exemption

State of Arizona
Senate
Forty-eighth Legislature
Second Regular Session
2008

SB 1383

Introduced by
Senator Burns

AN ACT

AMENDING SECTION 36-601.01, ARIZONA REVISED STATUTES; RELATING TO SMOKING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Subject to the requirements of article IV, part 1, section
3 1, Constitution of Arizona, section 36-601.01, Arizona Revised Statutes, is
4 amended to read:

5 36-601.01. Smoke-free Arizona act

6 A. ~~Definitions. The following words and phrases, whenever used in this~~
7 ~~section, shall be construed as defined in this section~~ FOR THE PURPOSES OF
8 THIS SECTION:

9 1. "Employee" means any person who performs any service on a
10 full-time, part-time or contracted basis whether or not the person is
11 denominated an employee, ~~OR~~ independent contractor or otherwise and whether
12 or not the person is compensated or is a volunteer.

13 2. "Employer" means a person, A business, A partnership, AN
14 association, ~~the THIS state of Arizona~~ and its political subdivisions,
15 ~~corporations~~ A CORPORATION, including a municipal ~~corporations~~ CORPORATION, A
16 trust, ~~or non-profit~~ A NONPROFIT entity that employs the services of one or
17 more individual persons.

18 3. "Enclosed area" means all space between a floor and ceiling that is
19 enclosed on all sides by permanent or temporary walls or windows, ~~(exclusive~~
20 ~~of doorways)~~, ~~which~~ THAT extend from the floor to the ceiling. Enclosed
21 area includes a reasonable distance from any entrances, windows and
22 ventilation systems so that persons entering or leaving the building or
23 facility shall not be subjected to breathing tobacco smoke and so that
24 tobacco smoke does not enter the building or facility through entrances,
25 windows, ventilation systems or any other means.

26 4. "Health care facility" means any enclosed area ~~utilized~~ USED by any
27 health care institution licensed ~~according~~ PURSUANT to ~~title 36~~ chapter 4 OF
28 THIS TITLE, ~~chapter 6~~ article 7 OF THIS CHAPTER, ~~or~~ chapter 17 OF THIS
29 TITLE, ~~or~~ BY any health care professional licensed ~~according~~ PURSUANT to
30 title 32, ~~chapters~~ CHAPTER 7, 8, 11, 13, 14, 15, 15.1, 16, 17, 18, 19, 19.1,
31 21, 25, 28, 29, 33, 34, 35, 39, 41, ~~or~~ 42.

32 5. "Person" means an individual, partnership, corporation, limited
33 liability company, entity, association, governmental subdivision or unit of a
34 governmental subdivision, or a public or private organization of any
35 character.

36 6. "Physically separated" means all space between a floor and ceiling
37 ~~which~~ THAT is enclosed on all sides by solid walls or windows, ~~(exclusive of~~
38 ~~door or passageway,)~~ and independently ventilated from smoke-free areas, so
39 that air within permitted smoking areas does not drift or get vented into
40 smoke-free areas.

41 7. "Places of employment" means an enclosed area under the control of
42 a public or private employer that employees normally frequent during the
43 course of employment, including office buildings, work areas, auditoriums,
44 employee lounges, restrooms, conference rooms, meeting rooms, classrooms,
45 cafeterias, hallways, stairs, elevators, health care facilities, private

1 offices and vehicles owned and operated by the employer during working hours
2 when the vehicle is occupied by more than one person. A private residence is
3 not a ~~"place of employment"~~ unless it is used as a child care, adult day
4 care,~~—~~ or health care facility.

5 ~~9.~~ 8. "Public place" means any enclosed area to which the public is
6 invited or in which the public is permitted, including airports, banks, bars,
7 common areas of apartment buildings, condominiums or other multifamily
8 housing facilities, educational facilities, entertainment facilities or
9 venues, health care facilities, hotel and motel common areas, laundromats,
10 public transportation facilities, reception areas, restaurants, retail food
11 production and marketing establishments, retail service establishments,
12 retail stores, shopping malls, sports facilities, theaters,~~—~~ and waiting
13 rooms. A private residence is not a ~~"public place"~~ unless it is used as a
14 child care, adult day care,~~—~~ or health care facility.

15 ~~10.~~ 9. "Retail tobacco store" means a retail store that derives the
16 majority of its sales from tobacco products and accessories.

17 ~~11.~~ 10. "Smoking" means inhaling, exhaling, burning,~~—~~ or carrying or
18 possessing any lighted tobacco product, including cigars, cigarettes, pipe
19 tobacco and any other lighted tobacco product.

20 ~~12.~~ 11. "Sports facilities" means enclosed areas of sports pavilions,
21 stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and
22 ice rinks, billiard halls, bowling alleys,~~—~~ and other similar places where
23 members of the general public assemble to engage in physical exercise,
24 participate in athletic competition,~~—~~ or witness sporting events.

25 ~~8.~~ 12. "Veteran and fraternal clubs" means a club as defined in
26 ~~A.R.S. 4-101(7)(a)(b) or (c)~~ SECTION 4-101, PARAGRAPH 7, SUBDIVISION (a), (b)
27 OR (c).

28 B. Smoking is prohibited in all public places and places of employment
29 ~~within the~~ IN THIS state ~~of Arizona~~, except the following:

30 1. Private residences, except when used as a licensed child care,
31 adult day care,~~—~~ or health care facility.

32 2. Hotel and motel rooms that are rented to guests and THAT are
33 designated as smoking rooms; provided, however, that not more than fifty
34 ~~percent~~ PER CENT of rooms rented to guests in a hotel or motel are so
35 designated.

36 3. Retail tobacco stores that are physically separated so that smoke
37 from retail tobacco stores does not infiltrate into areas where smoking is
38 prohibited under ~~the provisions of~~ this section.

39 4. Veterans and fraternal clubs when they are not open to the general
40 public.

41 5. Smoking when associated with a religious ceremony practiced
42 pursuant to the American Indian religious freedom act of 1978.

43 6. Outdoor patios ~~so long as~~ IF tobacco smoke does not enter areas
44 where smoking is prohibited through entrances, windows, ventilation systems,~~—~~
45 or other means.

1 7. A theatrical performance ~~upon~~ ON a stage or in the course of a film
2 or television production if the smoking is part of the performance or
3 production.

4 8. A PLACE WHERE A GROUP OF PEOPLE MEET ON A REGULAR BASIS TO OFFER
5 MUTUAL AND CONFIDENTIAL SUPPORT TO OVERCOME ADDICTION TO ALCOHOL OR DRUGS
6 PURSUANT TO THE GUIDELINES OF A PRIVATE NONPROFIT ORGANIZATION.

7 C. The prohibition on smoking in places of employment shall be
8 communicated to all existing employees by ~~the effective date of this section~~
9 MAY 1, 2007 and to all prospective employees ~~upon~~ ON their application for
10 employment.

11 D. Notwithstanding any other provision of this section, an owner,
12 operator, manager, ~~or~~ or other person or entity in control of an establishment,
13 facility, ~~or~~ or outdoor area may declare that entire establishment, facility, ~~or~~
14 or outdoor area as a nonsmoking place.

15 ~~E. Posting of signs and ashtray removal.~~

16 ~~1.~~ E. "No smoking" signs or the international "no smoking" symbol,
17 ~~(consisting of a pictorial representation of a burning cigarette enclosed in~~
18 ~~a red circle with a red bar across it,)~~ shall be clearly and conspicuously
19 posted by the owner, operator, manager, ~~or~~ or other person in control of that
20 place identifying where smoking is prohibited by this section and where
21 complaints regarding violations may be registered.

22 ~~2.~~ F. Every public place and place of employment where smoking is
23 prohibited by this section shall have posted at every entrance a conspicuous
24 sign clearly stating that smoking is prohibited.

25 ~~3.~~ G. All ashtrays shall be removed from any area where smoking is
26 prohibited by this section by the owner, operator, manager, ~~or~~ or other person
27 having control of the area.

28 ~~F.~~ H. No employer may discharge or retaliate against an employee
29 because that employee exercises any rights afforded by this section or
30 reports or attempts to prosecute a violation of this section.

31 ~~G.~~ I. ~~The law~~ THIS SECTION shall be implemented and enforced by the
32 department of health services as follows:

33 1. The department shall design and implement a program, including the
34 establishment of an internet website, to educate the public regarding the
35 provisions of this ~~law~~ SECTION.

36 2. The department shall inform persons who own, manage, operate or
37 otherwise control a public place or place of employment of the requirements
38 of this ~~law~~ SECTION and how to comply with its provisions, including making
39 information available and providing a toll-free telephone number and e-mail
40 address to be used exclusively for this purpose.

41 3. Any member of the public may report a violation of this ~~law~~ SECTION
42 to the department. The department shall accept oral and written reports of
43 violation and establish an e-mail ~~address(es)~~ ADDRESS OR ADDRESSES and A
44 toll-free telephone ~~number(s)~~ NUMBER OR NUMBERS to be used exclusively for

1 the purpose of reporting violations. A person ~~shall not be~~ IS NOT required
 2 to disclose the person's identity when reporting a violation.

3 4. If the department has reason to believe a violation of this ~~law~~
 4 SECTION exists, the department may enter ~~upon and into~~ any public place or
 5 place of employment for purposes of determining compliance with this ~~law~~
 6 SECTION. However, the department may inspect public places where food or
 7 alcohol is served at any time to determine compliance with this ~~law~~ SECTION.

8 5. If the department determines that a violation of this ~~law~~ SECTION
 9 exists at a public place or place of employment, the department shall issue a
 10 notice of violation to the person who owns, manages, operates or otherwise
 11 controls the public place or place of employment. The notice shall include
 12 the nature of each violation, date and time each violation occurred, ~~and~~
 13 department contact person.

14 6. The department shall impose a civil penalty on the person in an
 15 amount of not less than ~~\$100~~ ONE HUNDRED DOLLARS, but not more than ~~\$500~~ FIVE
 16 HUNDRED DOLLARS for each violation. In considering whether to impose a ~~fine~~
 17 CIVIL PENALTY and the amount of the ~~fine~~ CIVIL PENALTY, the department may
 18 consider whether the person has been cited previously and what efforts the
 19 person has taken to prevent or cure the violation including reporting the
 20 violation or taking action under subsection ~~J~~ L OF THIS SECTION. Each day
 21 that a violation occurs constitutes a separate violation. The director may
 22 issue a notice that includes the proposed amount of the civil penalty
 23 assessment. A person may appeal the assessment of a civil penalty by
 24 requesting a hearing. If a person requests a hearing to appeal an
 25 assessment, the director shall not take further action to enforce and collect
 26 the assessment until the hearing process is complete. The director shall
 27 impose a civil penalty only for those days on which the violation has been
 28 documented by the department.

29 7. If a civil penalty imposed by this section is not paid, the
 30 attorney general or a county attorney shall file an action to collect the
 31 civil penalty in a justice court or the superior court in the county in which
 32 the violation occurred.

33 8. The department may apply for injunctive relief to enforce ~~these~~
 34 ~~provisions~~ THIS SECTION in the superior court in the county in which the
 35 violation occurred. The court may impose appropriate injunctive relief and
 36 impose a penalty of not less than ~~\$100~~ ONE HUNDRED DOLLARS but not more than
 37 ~~\$500~~ FIVE HUNDRED DOLLARS for each violation. Each day that a violation
 38 occurs constitutes a separate violation. If the superior court finds the
 39 violations are willful or evidence a pattern of noncompliance, the court may
 40 impose a ~~fine~~ CIVIL PENALTY OF up to ~~\$5000~~ FIVE THOUSAND DOLLARS per
 41 violation.

42 9. The department may contract with a third party to determine
 43 compliance with this ~~law~~ SECTION.

1 10. The department may delegate to a state agency or political
2 subdivision of this state any functions, powers or duties under this ~~law~~
3 ~~SECTION~~.

4 11. The director of the department may ~~promulgate~~ ADOPT rules for the
5 implementation and enforcement of this ~~law~~ SECTION. The department is exempt
6 from the ~~rulemaking~~ RULE MAKING procedures PRESCRIBED in ~~A.R.S. §~~ title 41,
7 chapter 6, except the department shall publish draft rules and thereafter
8 take public input including hold at least two public hearings ~~prior to~~ BEFORE
9 implementing the rules. This exemption expires May 1, 2007.

10 ~~H.~~ J. Beginning on June 1, 2008 and every other June 1 thereafter, the
11 director of the Arizona department of health services shall issue a report
12 analyzing its activities to enforce this ~~law~~ SECTION, including the
13 activities of all of the state agencies or political subdivisions to whom the
14 department has delegated responsibility under this ~~law~~ SECTION.

15 ~~I.~~ K. An owner, manager, operator or employee of place regulated by
16 this ~~law~~ SECTION shall inform any person who is smoking in violation of this
17 ~~law~~ SECTION that smoking is illegal and request that the illegal smoking stop
18 immediately.

19 ~~J.~~ L. This ~~law~~ SECTION does not create any new private right of
20 action nor does it extinguish any existing common law causes of action.

21 ~~K.~~ M. A person who smokes where smoking is prohibited is guilty of a
22 petty offense with a fine of not less than fifty dollars and not more than
23 three hundred dollars.

24 ~~L. — Smoke-free Arizona fund~~

25 ~~I.~~ N. The smoke-free Arizona fund is established consisting of all
26 revenues deposited in the fund pursuant to ~~—§~~ SECTION 42-3251.02 and interest
27 earned on those monies. The ~~Arizona~~ department of health services shall
28 administer the fund. On notice from the department, the state treasurer
29 shall invest and divest monies in the fund as provided by ~~—§~~ SECTION 35-313,
30 and monies earned from investment shall be credited to the fund.

31 ~~2.~~ O. All ~~money~~ MONIES in the smoke-free Arizona fund shall be used
32 to enforce ~~the provisions of~~ this section provided however that if there is
33 money remaining after the department has met its enforcement obligations,
34 that remaining money shall be deposited in the tobacco products tax fund and
35 used for education programs to reduce and eliminate tobacco use and for no
36 other purpose.

37 ~~3.~~ P. Monies in this fund are continuously appropriated, are not
38 subject to further approval, do not revert to the STATE general fund and are
39 exempt from the provisions of ~~§36-190~~ SECTION 35-190 relating to the lapsing
40 of appropriations.

41 ~~M.~~ Q. This section does not prevent a political subdivision of ~~the~~
42 THIS state from adopting ordinances or regulations that are more restrictive
43 than this section nor does this section repeal any existing ordinance or
44 regulation that is more restrictive than this section.

1 ~~N. R. Tribal sovereignty~~— This section has no application on Indian
2 reservations as defined in ~~ARS 42-3301(2)~~ SECTION 42-3301.

3 Sec. 2. Requirements for enactment; three-fourths vote

4 Pursuant to article IV, part 1, section 1, Constitution of Arizona,
5 section 36-601.01, Arizona Revised Statutes, as amended by this act, is
6 effective only on the affirmative vote of at least three-fourths of the
7 members of each house of the legislature.