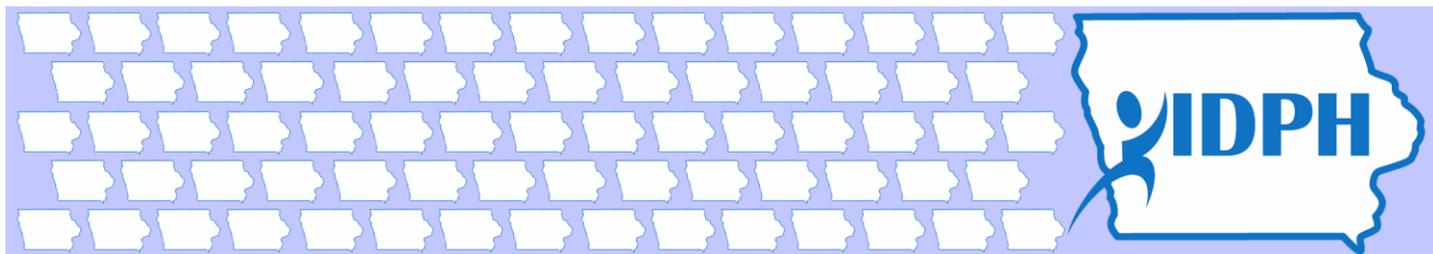


IOWA SMOKEFREE AIR ACT

First Year Report

Prepared by the
Iowa Department of Public Health
Division of Tobacco Use Prevention & Control

August 2009





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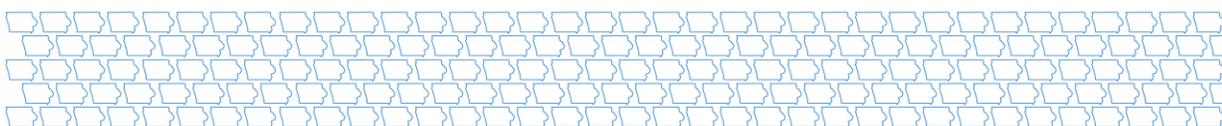
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INTRODUCTION

The Iowa Smokefree Air Act, enacted on July 1, 2008, protects the health of the public and of employees by preventing exposure to secondhand smoke (also known as environmental tobacco smoke) and the 4,000 chemicals and 69 cancer-causing compounds it is known to contain. The 2006 U.S. Surgeon General report, *The Health Consequences of Involuntary Exposure to Tobacco Smoke*, confirmed that secondhand smoke is a proven cause of disease in nonsmokers: "The scientific evidence is now indisputable; secondhand smoke is not a mere annoyance. It is a serious health hazard that can lead to disease and premature death in children and nonsmoking adults." The Surgeon General determined that there is no risk-free level of exposure and that the only method which can fully protect people from exposure is the elimination of smoking in indoor spaces.

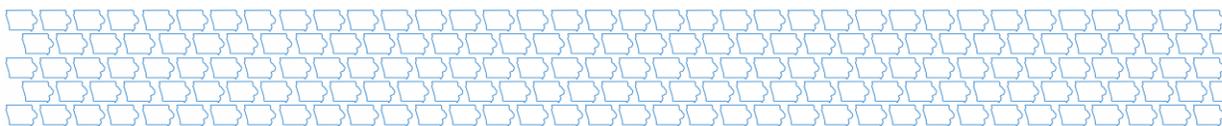
"The purpose of this chapter is to reduce the level of exposure by the public and employees to environmental tobacco smoke in order to improve the public health of Iowans."

Protecting the citizens of Iowa from the harmful effects of secondhand smoke is a central goal of the Iowa Department of Public Health and of the Iowa General Assembly, which found that: "...environmental tobacco smoke causes and exacerbates disease in nonsmoking adults and children. These findings are sufficient to warrant measures that regulate smoking in public places, places of employment, and outdoor areas in order to protect the public health."

**THE GENERAL
ASSEMBLY OF THE
STATE OF IOWA**

Of the twenty three states that now have smokefree workplace laws in effect (as of July 1, 2009), Iowa's Smokefree Air Act is one of the most comprehensive. The Act prohibits smoking in nearly all enclosed public places and workplaces and in certain outdoor areas, including: restaurants, bars, daycare facilities, outdoor stadiums, school campuses, and the grounds of government buildings. There are a few, limited exemptions, including the gaming floor of casinos and up to 20 percent of hotel rooms. "No smoking" signs which meet the specifications of the law must also be placed at entrances to all indoor and outdoor areas where smoking is prohibited. More information about the Smokefree Air Act can be found at www.IowaSmokefreeAir.gov.

The Iowa Department of Public Health (IDPH) is the agency designated in the Act with the responsibility for educating employers and the public about the law and for facilitating enforcement of the law. This report summarizes the education and enforcement activities under-taken by IDPH and partner agencies just prior to and during the first year of implementation of the Act—July 1, 2008 to June 30, 2009. Data included in the report were collected primarily from the Smokefree Air Act enforcement database maintained by IDPH in partnership with the Iowa Alcoholic Beverages Division.





TIMELINE OF SIGNIFICANT EVENTS

FEBRUARY 2008

2.11.2008 | House File 2212, the Smokefree Air Act, is introduced in the Iowa House of Representatives.

2.19.2008 | House File 2212 is passed by the Iowa House of Representatives by a vote of 56-44.

APRIL 2008

4.08.2008 | House File 2212 is passed by the Iowa Senate by a vote of 28-22.

4.15.08 | House File 2212 – the Smokefree Air Act – is signed into law by Governor Chet Culver, effective July 1, 2008.

MAY 2008

5.06.2008 | The Iowa Department of Public Health (IDPH), in collaboration with the Iowa Attorney General’s Office, initiates the process of drafting Administrative Rules to implement the Smokefree Air Act.

JUNE 2008

6.02.2008 | The Draft of the Administrative Rules is publically released. The Iowa Smokefree Air Act Web site, www.iowasmokefreeair.gov and the Smokefree Air Act helpline, 1-866-944-2247, are activated. IDPH begins to accept public comments about the Administrative Rules via the Iowa Smokefree Air Act Web site and helpline.

6.27.2008 | The Administrative Rules are adopted by the Iowa State Board of Health as “emergency rules,” pursuant to Chapter 17A’s expedited rulemaking process.

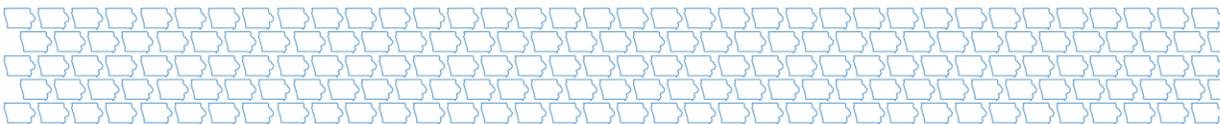
6.30.2008 | IDPH files a Notice of Intended Action for the standard rulemaking process.

JULY 2008

7.01.2008 | The Smokefree Air Act goes into effect.

The system for accepting public complaints about potential violations of the Act is activated by IDPH.

7.02.2008 | The Iowa Restaurant Association submits a request to IDPH pursuant to Iowa Code section 17A.4A (1) to conduct a regulatory analysis of the Administrative Rules.



AUGUST 2008

8.20-22.2008 | IDPH holds five formal hearings at 32 Iowa Communication Network sites across the state to gather public comment on the Administrative Rules.

SEPTEMBER 2008

9.10.2008 | The Regulatory Analysis of the Administrative Rules is completed and published in the Iowa Administrative Bulletin.

9.30.2008 | The public comment period on the Administrative Rules ends.

NOVEMBER 2008

11.12.2008 | The Iowa State Board of Health adopts the final Administrative Rules as amended.

JANUARY 2009

1.7.2009 | The Administrative Rules go into effect.

IDPH begins accepting anonymous complaints about potential violations of the law.





EDUCATION

To ensure the success of the Act, a high level of compliance must be achieved and maintained. The goal of the Iowa Department of Public Health is to promote compliance with the law primarily through education—providing tens of thousands of employers, community organizations, governmental agencies, and the public with the information they need to assure compliance with the law. Education about the Act is an ongoing effort; however, a great deal of information had to be developed and disseminated and a rush of questions from businesses and the public had to be responded to in the fewer than 12 weeks between April 15, 2008 when the Act was signed by Governor Culver and July 1, 2008 when the Act went into effect.

The goal of the Iowa Department of Public Health is to promote compliance with the law primarily through education...

The official Act toll-free helpline, 1-888-944-2247, and Web site, www.iowaSmokefreeAir.gov were initiated by IDPH on June 2, 2008. Hundreds of questions and comments began coming in each day (see Figures 21 and 23). The Web site offers a wide range of downloadable materials, including a copy of the Act, the Administrative Rules, fact sheets, sample signage, frequently asked questions, important updates, and links to submit questions or complaints about violations. The public can also utilize the helpline to ask questions or to submit complaints.

In the weeks prior to and immediately after implementation of the Act, IDPH met with numerous business, law enforcement, and community organizations and with many state and local government agencies to discuss the Act and how it might affect their operations and to clarify issues of concern. The Iowa Consortium for Comprehensive Cancer Control supported a series of 21 workshops across the state in which IDPH staff presented an overview of the law for local businesses, governments, and the public. More than 14,000 food service licenses and 415 law enforcement agencies were mailed information packets, and the Attorney General's Office sent a letter to all county attorneys concerning enforcement of the Act. (A complete listing of these activities is available upon request.)

The Alcoholic Beverages Division (ABD) has also established a Web site, www.iowaabd.com/tobacco/regulation/smokefree, to provide information about the Act specifically for liquor license holders. (The page provides a link to the Smokefree Air Act Web site.)

The enforcement process begins when the Iowa Department of Public Health (IDPH) receives a complaint about a potential violation of the law from a member of the public or receives a report of an observed violation from a law enforcement officer or inspector.



The goal of the enforcement process is to gain compliance with the law through education. Establishments against which validated complaints are received are sent a minimum of two notices providing information about how to come into compliance with the law and can take advantage of a voluntary educational visit offered by IDPH before an on-site inspection by a law enforcement officer is initiated. Only after all these steps have been taken is further enforcement action considered.

COMPLAINT PROCESS

Public complaints about potential violations can be submitted at www.iowaSmokefreeAir.gov or by calling 1-888-944-2247.

As permitted by Iowa Code section 22.7, IDPH can protect the identity of a complainant.

An individual filing a complaint (complainant) has three options when submitting information. The first option allows the complainant to submit a complaint in the public domain. The name and contact information of the complainant can be released if a request for information about the complaint is made. The second option allows the complainant to request that his or her name and contact information remain confidential. As permitted by Iowa Code section 22.7, IDPH can protect the complainant's identity. The third option allows for anonymous complaints. No name or contact information is required when the complaint is submitted.

After a complaint is received, IDPH staff evaluates the contents to determine if it appears to contain information about a potential violation of the Act. If the complainant elected to leave contact information, IDPH staff will contact him or her to confirm the details of his or her observations. Complaints submitted anonymously are evaluated by cross-checking with prior valid complaints submitted about the same business or by conducting a site visit to observe if violations are occurring. Occasionally a complaint contains information about smoking in a location or under circumstances where smoking is not prohibited by the Act. In that case, IDPH informs the complainant (whenever possible) and purges the complaint from the system.

The Act requires that inspectors working for state or local government agencies assess compliance with the Act when conducting routine inspections and report any observed violations to IDPH. These inspection reports are generally determined to be valid upon receipt.

Once a complaint is determined to be valid, IDPH sends a Notice of Potential Violation letter (NOPV) to the business owner. This document is educational; it is not a citation or fine. The business owner is provided with details about the nature of the complaint, a brochure

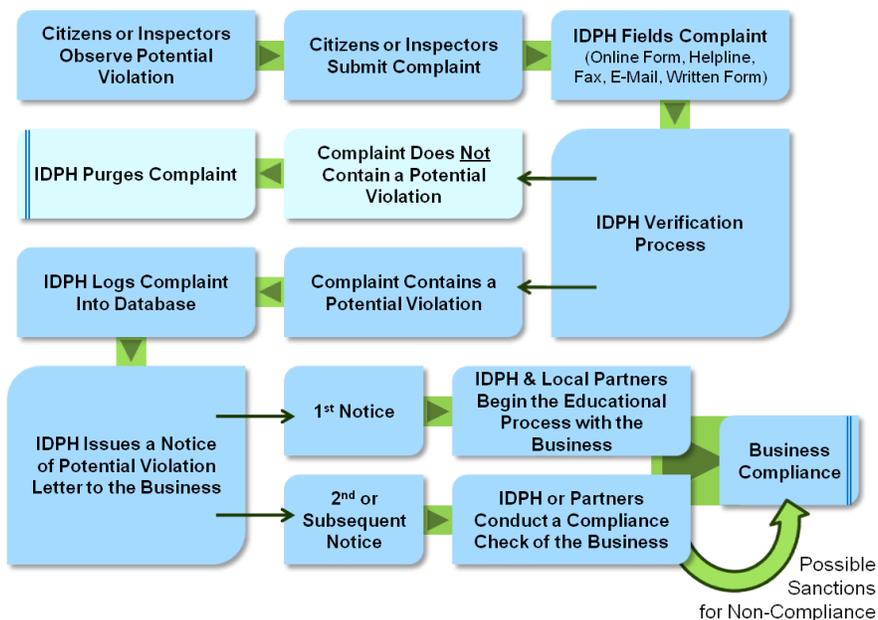
that outlines the basic requirements of the Act, and a fact sheet that summarizes requirements for that specific business category (e.g., bar, restaurant, hotel/motel, etc.). The letter includes an offer of an educational visit from local tobacco control program staff who can provide further education and assistance, if the business owner consents.

If a business receives a second valid complaint within a 12-month period, a second NOPV letter is sent. IDPH may then arrange for a compliance check to be conducted at the business by a local law enforcement officer or state tobacco investigator. The purpose of the visit is to confirm the establishment’s compliance or noncompliance with the law. Third and subsequent complaints about the same business received within a 12-month period follow the same procedure as the second complaint—in response to each, an NOPV letter is generated, and a compliance check is completed.

Once a complaint is determined to be valid, IDPH sends a Notice of Potential Violation letter (NOPV) to the business. This document is educational; it is not a citation or fine.

IDPH maintains a secure online system to manage validated complaints, compliance check reports, and NOPV letters. Other pertinent information, such as photographs that an inspector may have taken to illustrate a violation, is also maintained in the system.

Figure 1 below illustrates a summary of the complaint process:



ENFORCEMENT ACTIONS

A series of civil penalties for violations by individuals and by employers are established in the Act. An individual who smokes in an area where smoking is prohibited is subject to a fine of \$50 for each violation. The owner, operator, or manager of a public place or place of employment is subject to a fine of up to \$100 for a first offense, \$200 for a second offense, and \$500 for third and subsequent offenses within a 12-month period. The Act also allows for “the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.”

The Iowa Department of Public Health is designated as the agency responsible for enforcement of the Act...

While the Iowa Department of Public Health is designated as the agency responsible for enforcement of the Act, the Department does not have authority under the Act to directly cite individuals or employers for violations. Law enforcement officers have the authority to cite individuals who are smoking in non-smoking areas. Authority to determine violations by employers is granted to “judicial magistrates” (judicial officers in every county who handle civil infractions, small claims, simple misdemeanors, and other minor infractions).

Law enforcement agencies and judicial magistrates are under no obligation to report Smokefree Air Act citations issued or judicial actions pursued to IDPH. Therefore, no data on county-level enforcement activities are available for this report.

The Iowa Attorney General’s Office, acting on behalf of IDPH, issued settlement offers to 11 employers for alleged violations of the Act. These offers inform the business owner that the State is prepared to file an action against the business in District Court and offers the opportunity for the business to pay the \$100 civil penalty for a first violation instead of having the case go to court. Six businesses have paid the \$100 fine. One business chose to have the case heard in court. The four remaining settlements were not pursued for various reasons (change of business ownership, gone out-of-business, etc.).

Iowa’s liquor code requires that all businesses which hold liquor licenses obey all relevant state and local laws, including the Smokefree Air Act. The Iowa Alcoholic Beverages Division initiated Administrative Hearing Complaints against several liquor licensees for violations of the Act. Visit the ABD Web site for more information about these hearings: www.iowaabd.com/tobacco/regulation/smokefree/hearings.



COMPLAINT DETAILS

FIG 2. Complaints Submitted to IDPH

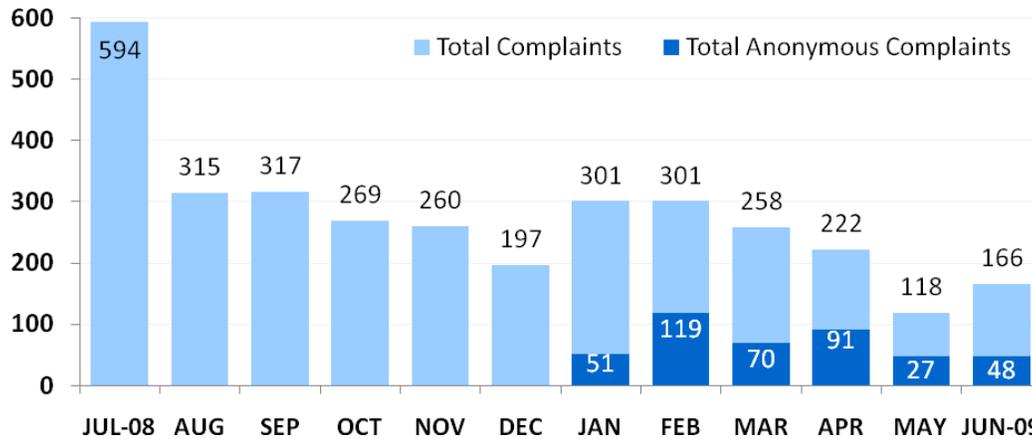


FIG 2. The total number of complaints submitted to IDPH between July 1, 2008 and June 30, 2009, was 3,318. IDPH began accepting anonymous complaints on January 7, 2009.

FIG 3. Valid Complaints Recorded

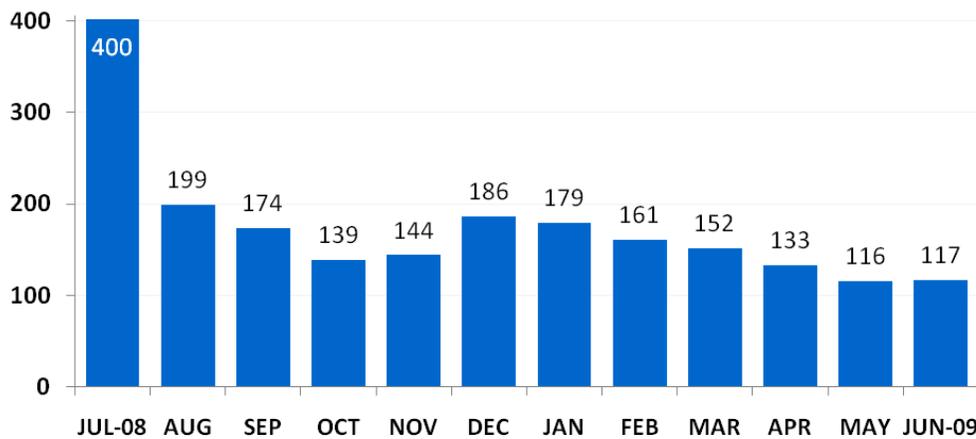


FIG 3. The total number of valid complaints recorded between July 1, 2008 and June 30, 2009, was 2,100. About two-thirds of the complaints submitted were determined to be valid (to contain information about a potential violation of the law).

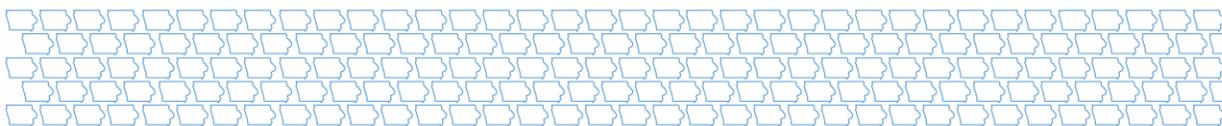


FIG 4. Valid Complaints by Report Type



FIG 4. Of the 2,100 valid complaints recorded, the vast majority (76%) were submitted by the public. Only 9% were anonymous complaints.

FIG 5. Valid Complaints Reported by Business Category



FIG 5. The majority (61%) of valid complaints concerned smoking at bars and restaurants.

FIG 6. Location of Violations Reported in Valid Complaints



FIG 6. The vast majority of potential violations reported, 79%, were about smoking in enclosed areas.

FIG 7. Top Five Violations Reported in Valid Complaints



FIG 7. Proprietors must inform customers that they cannot smoke in areas where smoking is prohibited. Infiltration refers to smoke entering a no-smoking area from an area where smoking is allowed in four specific types of establishments only: tobacco retail store, hotel/motel, private club and long-term care facility. Note: A single complaint may address more than one type of violation.



FIG 8. Alleged Violations by Type in the Most Frequently Reported Business Category

Business Category	Smoking Violations		Ashtray Violations		Signage Violations		Infiltration Violations		Proprietors Not Informing Smokers		Retaliation Violations		Hotel Room Violations	
	Count	Percentage	Count	Percentage	Count	Percentage	Count	Percentage	Count	Percentage	Count	Percentage	Count	Percentage
Bar/Restaurant	1,095	41%	828	31%	478	18%	25	1%	217	8%	10	0%	-	-
Retail Store/Service	5	2%	50	19%	196	73%	0	0%	13	5%	3	1%	-	-
Private Club/Membership Club	69	38%	58	32%	38	21%	7	4%	8	4%	0	0%	-	-
Educational Facility	70	69%	4	4%	27	26%	1	1%	0	0%	0	0%	-	-
Government	49	53%	9	10%	34	37%	0	0%	1	1%	0	0%	-	-
Outdoor Entertainment Event	46	46%	6	6%	39	39%	1	1%	9	9%	0	0%	-	-
Business Office	23	34%	16	24%	24	35%	1	1%	4	6%	0	0%	-	-
Hotel/Motel	10	16%	8	13%	26	41%	9	14%	1	2%	0	0%	10	16%
Childcare Provider	15	33%	12	27%	17	38%	0	0%	1	2%	0	0%	-	-
Factory	19	49%	2	5%	16	41%	0	0%	1	3%	1	3%	-	-

FIG 8. The type of valid complaints received varies widely by business category. For example, in the retail store/service, only 2% of complaints alleged smoking in a prohibited area, while 69% of complaints about educational facilities alleged smoking in a prohibited area.

FIG 9. Percentage of Businesses Receiving a Valid Complaint by County

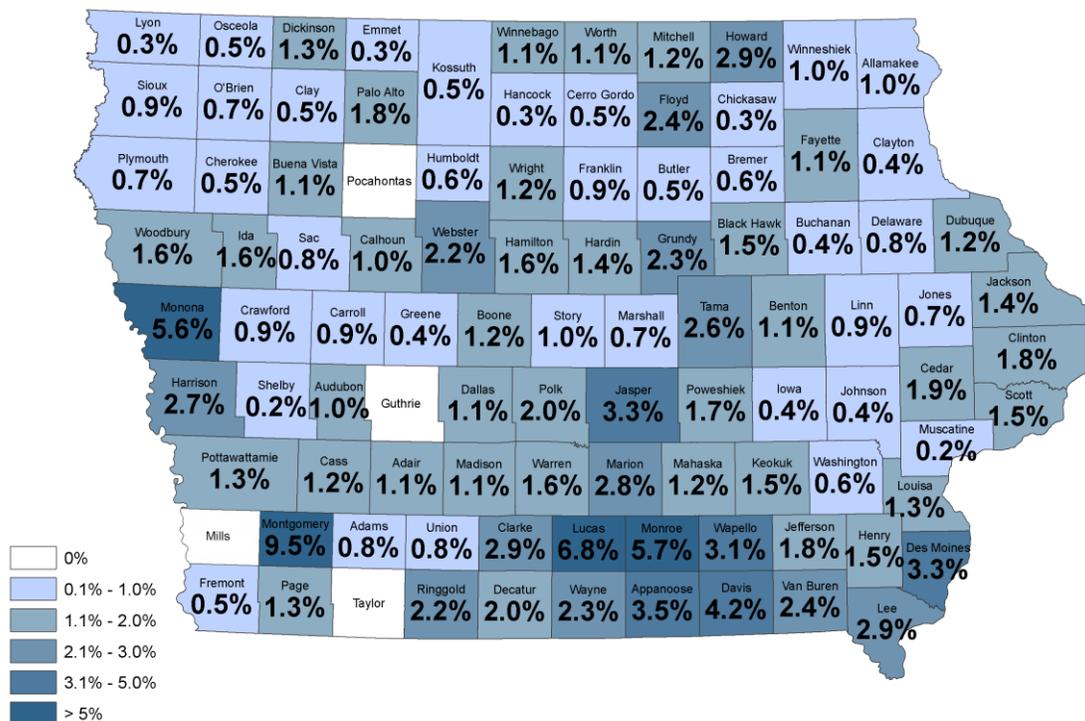


FIG 9. The map illustrates the percentage of business establishments in each county about which a valid Smokefree Air Act complaint has been recorded





NOPV LETTER DETAILS

FIG 10. Total Number of NOPV Letters Sent

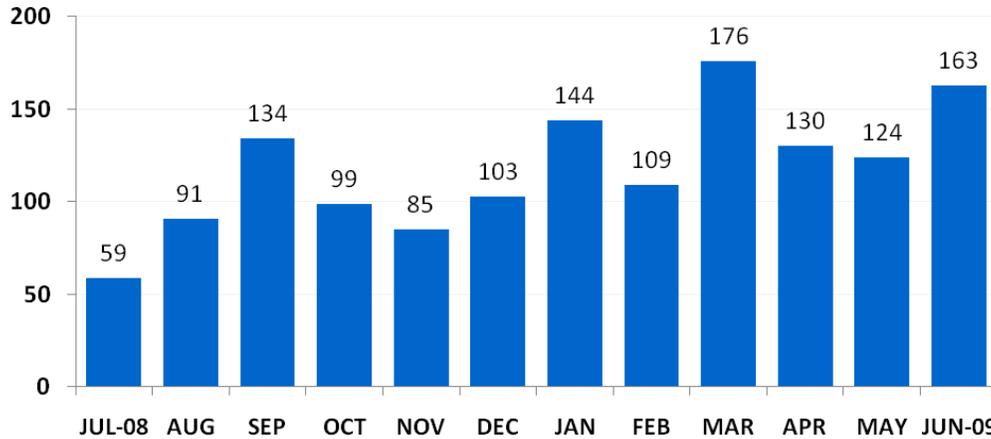


FIG 10. The data represented includes all NOPV letters sent (1st, 2nd, 3rd notice, etc.). A total of 1,417 NOPV letters were sent between July 1, 2008 and June 30, 2009. Note: During the first six weeks after the law went into effect, NOPV letters were not sent to businesses in response to “sign only” complaints. Rather, the businesses were contacted directly with information about how to obtain and place the required signs.

FIG 11. Business Categories Receiving a NOPV Letter



FIG 11. Note: A NOPV letter may refer to information contained in more than one valid complaint. For example, bars and restaurants accounted for 61% of the valid complaints but received only 52% of the NOPV letters.

FIG 12. NOPV Letter by Type

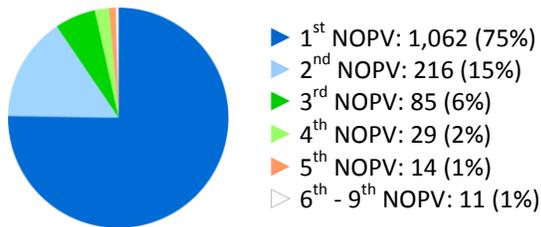


FIG 12. About 80% of the businesses that receive a 1st NOPV do not receive a 2nd NOPV. In other words, out of the 1,062 businesses that received a 1st NOPV, only 216 businesses received a 2nd NOPV.



FIG 13. Number of Businesses Receiving a NOPV Letter by County

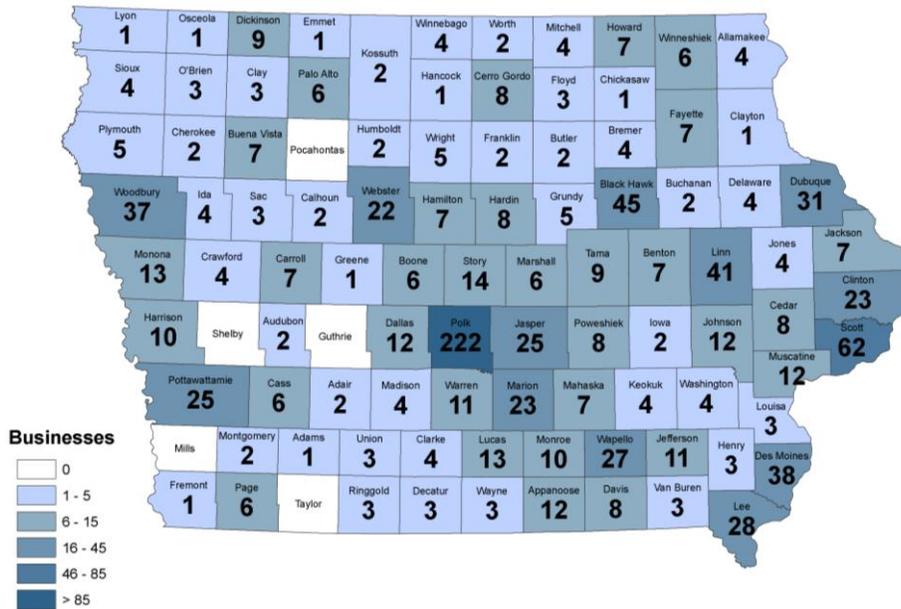


FIG 13. The map displays the total number of businesses, per county, that have received a NOPV letter. Because more populated counties (such as Polk, Scott, Woodbury, and Pottawattamie) generally have more businesses than less populated counties, more NOPV letters have been sent to businesses in those counties.

FIG 14. Percentage of Businesses Receiving a NOPV Letter by County

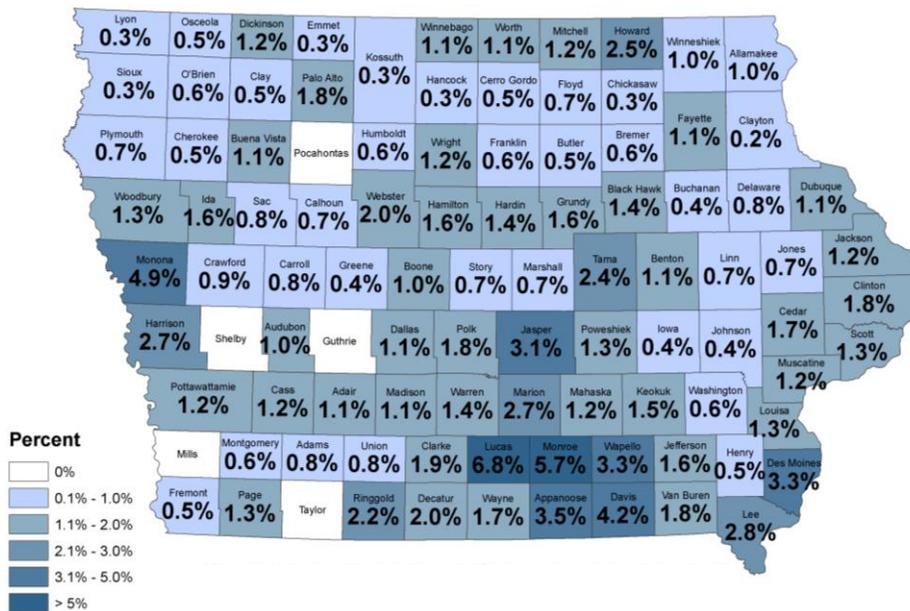


FIG 14. The map displays the percentage of business establishments in each county that have received an NOPV letter.





COMPLIANCE CHECK DETAILS

FIG 15. Number of Compliance Checks Conducted

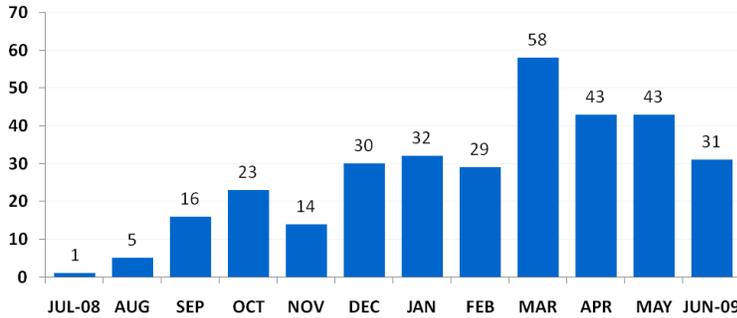


FIG 15. A compliance check is conducted by IDPH tobacco enforcement partners after the business is sent a 2nd or subsequent NOPV letter. A total of 325 visits were conducted between July 1, 2008 and June 30, 2009.

FIG 16. Compliance Checks Conducted by Business Category



FIG 16. Because the bar/restaurant business category received more valid complaints and thus 2nd/subsequent NOPV letters, they also received the most compliance checks.

FIG 17. Type of Violation Observed



FIG 17. Forty-five percent of the compliance checks conducted resulted in no violations observed. In fifteen percent of the non-compliant checks only sign violations were observed. In forty percent of the non-compliant checks evidence of smoking was observed.

FIG 18. Specific Violations Observed



FIG 18. This is a breakdown of the 55 percent of compliance checks in which violations were observed. Note: A single check may encompass more than one observed violation.



FIG 19. Breakdown of Violations Observed During Compliance Checks

Business Category	Compliance Rate	Smoking Violations		Ashtray Violations		Signage Violations		Infiltration Violations		Not Addressing Smokers		Retaliation Violations		Hotel Room Violations (>20%/Contiguous)	
		Count	Rate	Count	Rate	Count	Rate	Count	Rate	Count	Rate	Count	Rate	Count	Rate
Bar/Restaurant	44%	72	25%	102	36%	62	22%	38	13%	13	5%	0	0%	-	-
Private/Membership Club	29%	10	28%	11	31%	10	28%	2	6%	2	6%	1	3%	-	-
Educational Facility	100%	0	-	0	-	0	-	0	-	0	-	0	-	-	-
Government	29%	1	50%	0	0%	1	50%	0	0%	0	0%	0	0%	-	-
Gambling Facility	67%	0	0%	1	50%	1	50%	0	0%	0	0%	0	0%	-	-
Outdoor Entertainment Venue	33%	0	0%	0	0%	1	100%	0	0%	0	0%	0	0%	-	-
Factory	0%	0	0%	1	50%	0	0%	1	50%	0	0%	0	0%	-	-
Public Transportation	50%	1	100%	0	0%	0	0%	0	0%	0	0%	0	0%	-	-
Retail Store/Service	50%	0	0%	0	0%	1	100%	0	0%	0	0%	0	0%	-	-
Bingo Parlor	100%	0	-	0	-	0	-	0	-	0	-	0	-	-	-
Business Office	100%	0	-	0	-	0	-	0	-	0	-	0	-	-	-
Childcare Provider	100%	0	-	0	-	0	-	0	-	0	-	0	-	-	-
Hotel/Motel	0%	1	20%	1	20%	1	20%	1	20%	1	20%	0	0%	0	0%
Multi-Unit Residential Facility	0%	0	0%	0	0%	1	100%	0	0%	0	0%	0	0%	-	-
Tobacco Store	0%	0	0%	1	50%	1	50%	0	0%	0	0%	0	0%	-	-
Vehicle Dealership	100%	0	-	0	-	0	-	0	-	0	-	0	-	-	-

FIG 19. The information categorized above shows the breakdown of violations observed during compliance checks by business category. Forty-Five percent of compliance checks resulted in no violations observed.

FIG 20. Total Number of Businesses Receiving a Compliance Check by County

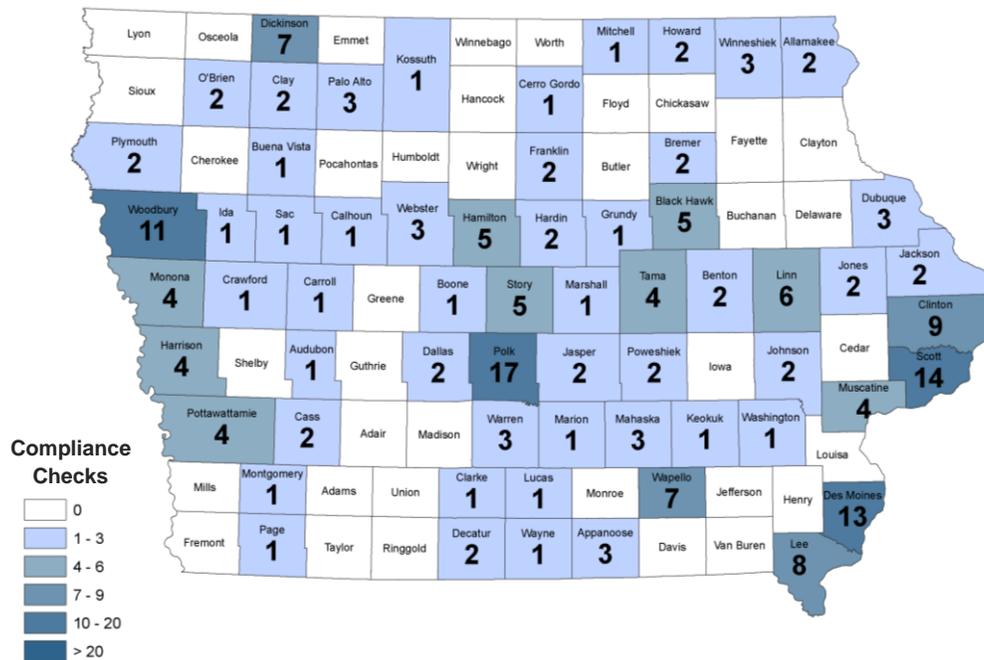


FIG 20. The map above illustrates the total number of businesses receiving a compliance check by county. Compliance checks were conducted at 203 businesses in 62 counties across Iowa. Businesses in Polk County, which has the most business establishments in the state, received the most compliance checks.



SUMMARY OF ACTIVITIES

FIG 21. Combined Summary of Activities

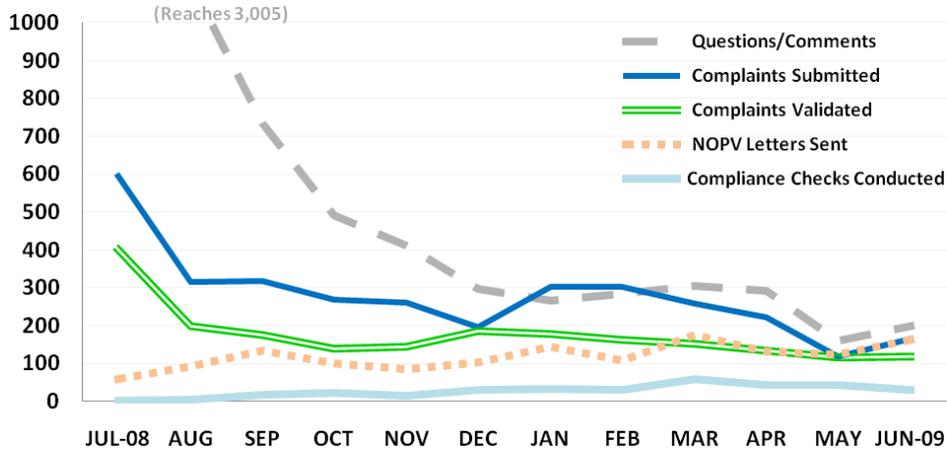


FIG 21. The information illustrated here shows the monthly distribution of questions and comments fielded by IDPH (7,554 total), complaints submitted (3,318 total), complaints validated (2,100 total), NOPV letters sent (1,417 total), and enforcement site visits conducted (325 total). The small increase in June for questions and comments and complaints submitted are likely due to the increase in outdoor activities, such as summer festivals and concerts. Questions and comments are literally “off the chart” for July (3,005) and August (1,108).

FIG 22. www.iowaSmokefreeAir.gov Web Site Hits

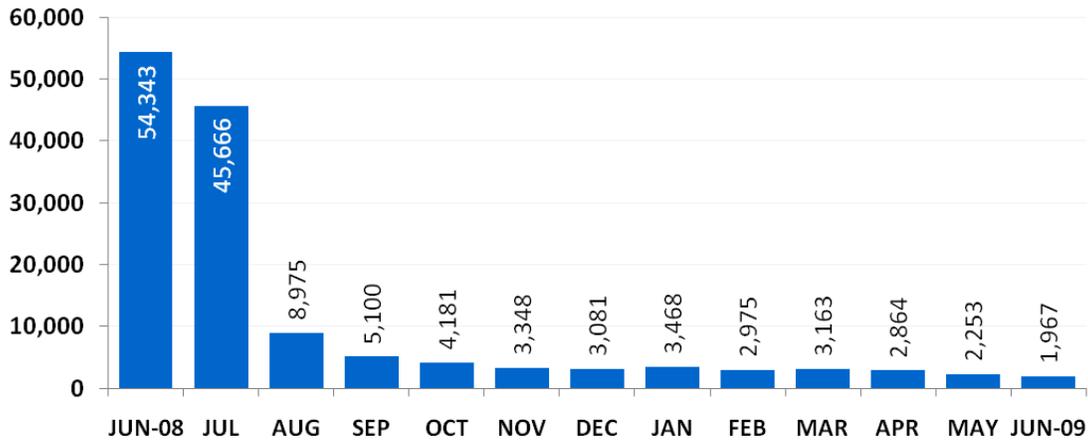


FIG 22. IDPH launched the Web site www.iowaSmokefreeAir.gov on June 2, 2008. Users were able to download the required “no smoking” signage, which accounted for a large number of the hits, as well as fact sheets and frequently asked questions section. The Web site received a total of 141,384 visits.

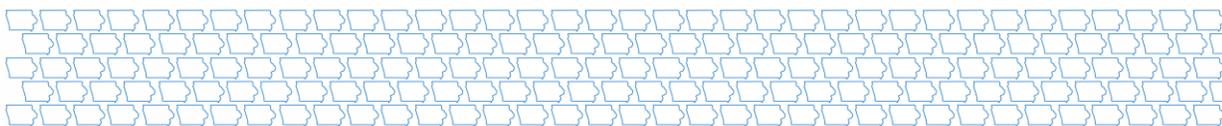


FIG 23. Smokefree Air Act First Year Totals

Questions & Comments Fielded:	7,554
Educational Opportunities Provided*:	45
www.IowaSmokefreeAir.gov Web Site Hits:	141,384
Partnership Educational Visits Attempted or Conducted:	1,054

Complaints Submitted:	3,318
Complaints Validated:	2,100
Businesses Receiving Valid Complaints:	1,187
Portion of Business Establishments Receiving Valid Complaints:	1%
Violations Alleged in Complaints:	3,965
Anonymous Complaints Submitted:	406
Anonymous Complaints Validated:	175

NOPV Letters Sent:	1,417
Businesses Receiving NOPV Letters:	1,062
Portion of Business Establishments Receiving an NOPV Letter:	1%

Compliance Checks Conducted:	325
Businesses Receiving a Compliance Check:	203
Violations Observed During Compliance Checks:	340
Portion of Compliance Check Resulting in No Violations Observed:	45%
No. of Counties Compliance Checks were Conducted:	62

* Includes conferences, trainings, meetings and direct mailings

FIG 23. Totals summarizing first year figures are displayed here. An incredible amount of education was provided in the first year, reflected in the questions and comments fielded, educational opportunities provided, Web site hits, and partnership educational visits attempted.





CONCLUSION

“Protecting Iowans from the dangers of secondhand smoke is an important pillar of my administration’s goal of making Iowa the healthiest state in the nation,” said Governor Culver. “The high level of compliance with the Smokefree Air Act means that we as a state are well on our way to achieving that goal. Additionally, it demonstrates that the vast majority of employers in Iowa abide by this law, and I think that is something we can all be very proud of.”

Governor Chester J. Culver

The Iowa Smokefree Air Act applies to more than 83,000 employers and thousands of state, county and local government agencies in Iowa. The daily lives of all Iowans are positively impacted by provisions of the Act which require their workplaces, the day care centers and schools they attend, and nearly all the businesses and public events they patronize to be smokefree.

Prior to passage of the Act, 74 percent of adult Iowans reported that their workplaces had policies restricting smoking.¹ Employees in most office buildings, health care facilities, and retail businesses were protected from the harmful effects of exposure to secondhand smoke. However, employees in only 34 percent of food service establishments in the state were protected by smokefree workplace policies (excluding national fast food chains).² With passage of the Act, approximately 99 percent of Iowa employees and their employers now benefit from the health and economic advantages of smokefree workplaces.

Compliance with the Act in the first year of its implementation has been remarkable. Only one percent of Iowa’s employers who are subject to the Act received a first Notice of Potential Violation. Of those, the vast majority (80 percent) have not received another complaint about potential violations.

Since 1900, the average life expectancy for Americans has increased by about 30 years, 25 of which can be attributed to public health initiatives. Iowa’s Smokefree Air Act is a public health policy that is making a significant contribution to the Iowa Department of Public Health’s mission to promote and protect the health of Iowans, not just in its inaugural year, but well into the future.

¹ *2008 Iowa Adult Tobacco Survey*, February 2009, Center for Social and Behavioral Research, University of Northern Iowa Prepared for the Iowa Department of Public Health, Division of Tobacco Use Prevention and Control

² *Smoking Policies at Food-Serving Businesses in Iowa*, February 2007, Center for Social and Behavioral Research, University of Northern Iowa, Prepared for the Iowa Department of Public Health, Division of Tobacco Use Prevention and Control

