



Iowa
Smokefree Air Act



OUTLINE

- **HF2212: The Iowa Smokefree Air Act Law Review**
- **Administrative Rules Review**
- **Compliance Checklist**

NOTE: “®” symbol means an Administrative Rule provides further clarification.



TITLE-FINDINGS-PURPOSE | Section 1

- **Findings:** The Iowa State Legislature found that secondhand smoke causes and exacerbates disease in nonsmoking adults and children adequately sufficient to warrant measures that regulate smoking in public places, places of employment, and outdoor areas in order to protect the public health and the health of employees
- **Purpose:** The Iowa State Legislature, therefore, enacted the Smokefree Air Act to reduce secondhand smoke exposure by the general public and employees in order to improve the public health of Iowans.
- **Gov. Chet Culver Signed the Bill on April 15, 2008**
- **Effective Date was July 1, 2008**
- **IDPH Had About 50 Business Days to Prepare**



DEFINITIONS | Section 2

- **Employee:** A person who is employed by an employer in consideration for direct or indirect monetary wages or profit, or a person who provides services to an employer on a voluntary basis.
- **Employer:** A person including a sole proprietorship, partnership, joint venture, corporation, association, or other business entity whether for-profit or not-for-profit, including state government and its political subdivisions, that employs the services of one or more individuals as employees.
- **Enclosed Area:** All space between a floor and ceiling that is contained on all sides by solid walls or windows, exclusive of doorways, which extend from the floor to the ceiling.



DEFINITIONS | Section 2

- **Place of Employment:** An area under the control of an employer and includes all areas that an employee frequents during the course of employment or volunteering...and vehicles owned, leased, or provided by the employer unless otherwise provided under this chapter. “Place of employment does not include a private residence, unless the private residence is used as a child care facility, a child care home, or as health care provider location.
- **Public Place:** An enclosed area to which the public is invited or in which the public is permitted, including common areas. Examples include: bars, restaurants, retail stores, retail service establishments, laundromats, entertainment venues, and government buildings.



PROHIBITION OF SMOKING - PUBLIC PLACES, PLACES OF EMPLOYMENT, & OUTDOOR AREAS | Section 3

- **Smoking is prohibited and a person shall not smoke in any of the following areas:**
 - Public Places
 - Enclosed Areas within Places of Employment
- **In addition, smoking is prohibited and a person shall not smoke in or on any of the following outdoor areas:**
 - Seating Areas of Entertainment Venues ®
 - Seating or Serving Area of Restaurants
 - Public Transit Shelters
 - All School/Educational Facility Property
 - The Grounds of City, County & State Government Buildings ®
 - Not Including State & County Fairgrounds, Corrections Grounds, & Iowa National Guard Grounds



AREAS WHERE SMOKING NOT REGULATED | Section 4

- **Prohibitions in Section 3 Shall Not Apply To:**
 - **Private Residences**
 - Unless used as a child care home or facility, or a health care provider location.
 - **Up to 20% of Hotel/Motel Rooms**
 - Smoking rooms need to be contiguous on the same floor.
 - Smoke from these rooms cannot infiltrate into areas where smoking is prohibited.
 - Cannot add additional smoking rooms after July 1st.
 - **Retail Tobacco Stores ®**
 - Smoke from these stores cannot infiltrate into areas where smoking is prohibited.
 - **Private & Semi-Private Rooms in Long Term Care Facilities**
 - Individual(s) in these room must request in writing to be placed in such rooms.
 - Smoke from these rooms cannot infiltrate into areas where smoking is prohibited
 - **Private Clubs** (continued on next slide)



AREAS WHERE SMOKING NOT REGULATED | Section 4

- **Prohibitions in Section 3 Shall Not Apply To:**

- **Private Clubs**

- Must have no employees.
- Must occupy a location used exclusively for club purposes at all times.
- Must be operated solely for recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for economic gain.
- Must only sell alcoholic beverages only as incidental to its operation.
- Must be managed by a board of directors, executive committee, or similar body chosen by the members.
- Must have established bylaws or another document to govern its activities.
- Must have been granted an exemption from the payment of federal income tax as a club pursuant to 26 U.S.C. } 501.

NOTE:

This exemption does not apply when being used for a function to which the general public is invited, and smoke from private areas must not infiltrate into these public areas.

This exemption does not apply to any entity that is established for the purposes of avoiding compliance with the Smokefree Air Act.



AREAS WHERE SMOKING NOT REGULATED | Section 4

- **Prohibitions in Section 3 Shall Not Apply To:**
 - **Outdoor Areas that are Places of Employment**
 - This exemption does not apply to: Seating areas of entertainment venues; Seating or serving areas of restaurants; Public transit shelters; All school/educational facility property; grounds of city, county & state government buildings.
 - **Limousines Under Private Hire**
 - **Sole Use Vehicles that are Provided by a Private Employer**
 - Vehicles owned, leased or provided by the employer must be for the sole use of that driver and is not used by more than one person in the course of employment either as a driver or passenger.
 - **Privately Owned Vehicles Not Otherwise Defined as a Place of Employment or Public Place**
 - **Cabs of Motor Trucks or Truck Tractors if No Nonsmoking Employees are Present**



AREAS WHERE SMOKING NOT REGULATED | Section 4

- **Prohibitions in Section 3 Shall Not Apply To:**
 - An enclosed area within a place of employment or public place that provides a smoking cessation program or a medical or scientific research or therapy program, if smoking is an integral part of the program. ®
 - Farm Tractors, Farm Trucks & Implements of Husbandry
 - Gaming Floor of Gambling Boats, Gambling Structures & Racetrack Enclosures
 - The Iowa Veterans Home



DECLARATION OF AREA AS NONSMOKING | Section 5

- An owner, operator, manager, or other person having custody or control of an area not regulated by the Smokefree Air Act may declare the entire area as a nonsmoking place.
- Smoking will be prohibited in these places if a sign(s) is properly posted to inform persons they are entering the nonsmoking place.



NOTICE OF NONSMOKING REQUIREMENTS - POSTING OF SIGNS | Section 6

- Notice of the Smokefree Air Act will be provided to all applicants for a business license.
- All employers must communicate to all employees, existing and prospective, the applicable smoking prohibitions provided by the Smokefree Air Act.
- “No smoking” signs must be clearly and conspicuously posted at every entrance to nonsmoking places regulated by the Smokefree Air Act. ®
- “No Smoking” signs must be posted in every vehicle that constitutes a public place, place of employment or area declared nonsmoking. ®
 - Sign must be visible from the exterior of the vehicle.



NOTICE OF NONSMOKING REQUIREMENTS - POSTING OF SIGNS | Section 6

- “No Smoking” Signs Must Contain: ®
 - The words “No Smoking” or the Nonsmoking Symbol 
 - The Smokefree Helpline “1-888-944-2247”
 - The Office Website “www.IowaSmokefreeAir.gov”
- Ashtrays must be removed from nonsmoking places regulated by the Smokefree Air Act. ®



NONRETALIATION – NONWAIVER OF RIGHTS | Section 7

- An employer cannot discharge, refuse to employ, or in any manner retaliate against an existing or prospective employee, or customer, for exercising their rights provided by the Smokefree Air Act, including registering complaints or attempting to prosecute a Smokefree Air Act violation.
- An employee who works in a place where an employer allows smoking does not waive or surrender any legal rights the employee may have against the employer.



ENFORCEMENT | Section 8

- The Iowa Department of Public Health must adopt rules to administer the Smokefree Air Act, including rules regarding enforcement. ®
- Businesses subject to any state or local inspection will be inspected for compliance with the Smokefree Air Act. ®
- Persons having custody or control of a nonsmoking place regulated by the Smokefree Air Act must inform persons in violation of the Smokefree Air Act. ®
- An employee or private citizen may bring legal action to enforce the Smokefree Air Act.
- Any person may register a complaint by filing the complaint with the Iowa Department of Public Health. ®



CIVIL PENALTIES | Section 9

- A person who smokes in a nonsmoking place regulated by the Smokefree Air Act could receive a \$50 civil fine.
- A person who owns, operates, manages, or otherwise has custody or control of a nonsmoking place regulated by the Smokefree Air Act who fails to comply will be subject the following civil penalty structure:
 - \$100 for the 1st Violation
 - \$200 for the 2nd Violation Within 12 Months
 - \$500 for the 3rd & Subsequent Violation Within 12 Months
- An employer who discharges or discriminates against an employee or customer because the employee or customer has exercised any rights provided by the Smokefree Air Act, registers a complaint, or attempts to prosecute a violation, is subject to a civil fine between \$2,000 and \$10,000.



CIVIL PENALTIES | Section 9

- Violation of the Smokefree Air Act is a public nuisance. An entity abating the public nuisance may take action to recover the cost of such abatement.
- Failure to comply with the Smokefree Air Act may result in business license suspension or revocation.



ADMINISTRATIVE RULES | Scope & Purpose

- The purpose of the Administrative Rules is to implement Iowa's Smokefree Air Act, enacted to reduce the level of exposure by the general public and employees to environmental tobacco smoke in order to improve the public health of Iowans. These rules apply to public places, places of employment, and certain outdoor areas in the state.



ADMINISTRATIVE RULES | Definitions

- **Ashtray:** Any receptacle or other vessel that is used for extinguishing or disposing of any lighted cigar, cigarette, pipe, or other tobacco product in any manner or form including ash, cigarette butts or filters, or cigar stubs.
- **Entrance:** Any doorway to an enclosed area used by the public or employees for ingress to any public place or place of employment, but does not include any doorway designated for use as an exit in an emergency only. “Entrance” also includes the commonly understood points of entry to an outdoor area...but not including a street, road, highway, or sidewalk in the public right-of-way.



ADMINISTRATIVE RULES | Definitions

- **Grounds of Any Public Building:** An outdoor area of a public building that is used in connection with the building, including but not limited to a sidewalk or driveway immediately adjacent to the building, but not including a sidewalk in the public right-of-way; a sitting or standing area immediately adjacent to the building; a patio; a deck; a curtilage or courtyard; a swimming or wading pool; a beach; or any other outdoor area as designated by the person having custody or control of the public building. A person having custody or control of a public building may exclude from the designated grounds of any public building the following: a parking lot, the course of play at a golf course, a hiking trail, locations of an individual campsite or campfire, or a lake, river, or other body of water.



ADMINISTRATIVE RULES | Definitions

- **Public Building:** An enclosed area owned, leased, or operated by or under the control of the state government or its political subdivisions.



ADMINISTRATIVE RULES | Definitions

- **Incidental to the sale of tobacco products:** The gross revenue of a retail tobacco store derived from the sale of products other than tobacco products is not more than 20% of the retail tobacco store's total gross revenue.
- **Infiltrate:** To permeate an area where smoking is prohibited by passing through a wall, ceiling, floor, window, door, or ventilation system to the extent that an individual can smell secondhand smoke.
- **Seating Areas of Entertainment Venues:** Areas designated where individuals congregate to witness entertainment events, including (but not be limited to), chairs, seats, or bleachers (whether permanent or temporary); standing room only; general admission or festival style seating.



ADMINISTRATIVE RULES | Definitions

- **Serving of food incidental to the consumption of alcoholic beverages:** Food preparation that is limited to the service of ice, pre-packaged snack foods, popcorn, peanuts, and the reheating of commercially prepared foods that do not require assembly, such as frozen pizza, pre-packaged sandwiches, or other prepackaged, ready-to-serve products.
 - Used in the definition of “bar.”
- **Smoking Cessation Program:** A course of treatment that is capable of clinical review for evidence-based outcomes that individuals in the program stop smoking and that has been approved for coverage by a private or managed health care plan, Medicaid, Medicare, the Veterans Health Administration, or the United States Military.
 - Used in Section 4 – “Areas Where Smoking Not Regulated”



ADMINISTRATIVE RULES | Duties of Employers...

- **Sign Dimensions:** In addition to the requirements in the law, signs must also be at least 24 square inches and in legible font type.
 - >>> Vehicle signage can be at least 9 square inches.
- **Obligation to Inform Violators:** A person that has custody or control of a nonsmoking place regulated by the Smokefree Air Act must inform any individual smoking where smoking is prohibited that individual is violating the Smokefree Air Act and request that the individual stop smoking immediately.
- Continued on next slide...



ADMINISTRATIVE RULES | Duties of Employers...

- **Obligation to Inform Violators:** (continued)
 - If the individual refuses to stop smoking, the person having custody or control of the place where smoking is prohibited may discontinue service to that individual.
 - If the individual refuses to stop smoking, the person having custody or control of the place where smoking is prohibited may request that the individual leave the area where smoking is prohibited.
 - If the individual refuses to leave the area where smoking is prohibited, the person having custody or control of the place where smoking is prohibited may notify the state or local law enforcement agency with jurisdiction over the area where smoking is prohibited.



ADMINISTRATIVE RULES | Complaints & Enforcement

- **Complaints**

- **Manner of filing a complaint:** Any person may register a complaint by calling 1-888-944-2247, or registering a complaint on www.IowaSmokefreeAir.gov, or downloading a complaint form from the department's website and mailing it to the department at Department of Public Health.
- **Review of complaint:** Upon receipt of a complaint, the Iowa Department of Public Health may contact the individual making the complaint to confirm the details of the complaint and obtain any additional information.

- **Enforcement**

- **For the first verified complaint:** (1) A written notice of violation will be mailed to the business including the details of the complaint. (2) The notice will include educational materials about how to comply with Smokefree Air Act and information on whom to contact for further information and assistance for compliance.



ADMINISTRATIVE RULES | Complaints & Enforcement

- **Enforcement** (continued)

- **For the second complaint in one year:** (1) A second notice of violation will be mailed to the business. (2) In addition, the Iowa Department of Public Health may authorize one or more public agencies to conduct a compliance check of the location.

- **For the third and subsequent complaints of a violation within one year:** (1) A subsequent notice of violation will be mailed to the business. (2) In addition, the Iowa Department of Public Health may authorize one or more public agencies to conduct a compliance check of the location.



COMPLIANCE CHECKLIST | Recommended Steps

- Educate all current and prospective employees about the Smokefree Air Act.
- Post required signs at all public and employee entrances.
- Post required signs in all applicable vehicles.
- Remove ashtrays from areas where smoking is prohibited.
- Determine a uniform strategy to deal with violators.