

## **Tennessee's Non-Smoker Protection Act (with Amendments)**

(reprinted from [www.legislature.state.tn.us](http://www.legislature.state.tn.us) on 8/30/07)

**Summary & FAQ also follows** – reprinted from  
[www.tennesseeanytime.org/govoffice/smokingban.html](http://www.tennesseeanytime.org/govoffice/smokingban.html))

**HB1851 by \*Bone, \*Baird, \*Fincher, \*Hackworth, \*Williams, \*Ford, \*Eldridge, \*Dean, \*Bibb, \*Shaw, \*Shepard, \*Sontany, \*DuBois, \*Montgomery, \*Casada, \*Odom, \*Gresham, \*Swafford, \*Watson, \*Hood, \*Coleman, \*Gilmore, \*Pruitt, \*Hensley, \*Floyd, \*Cobb J, \*Pitts, \*Fitzhugh. (\*SB1325 by \*Tracy, \*Stanley, \*Finney R., \*Kurita, \*Herron.)**

**Tobacco, Tobacco Products - Enacts the "Non-Smoker Protection Act." - Amends TCA Title 39, Chapter 17; Title 50 and Title 68.**

### **Fiscal Summary for HB1851 / \*SB1325**

(Corrected) Increase State Expenditures - Not Significant Increase State Revenues - Not Significant Increase Local Govt. Expenditures - \$25,000 One-Time\* Increase Local Govt. Revenues - Not Significant

### **Bill Summary for HB1851 / \*SB1325**

This bill prohibits smoking in any enclosed area of any place to which the public is invited or in which the public is permitted (public place) and in any enclosed area under the control of a public or private employer that employees normally frequent during the course of employment (place of employment) subject to the following exceptions:

- (1) Private residences, except when used as a licensed child care, adult day care, or health care facility, taxi or other commercial vehicle for hire;
- (2) Hotel and motel rooms that are designated as smoking rooms;
- (3) Retail tobacco stores that prohibit minors on their premises;
- (4) Non-enclosed areas of public spaces, so long as tobacco smoke is not reasonably expected to enter areas where smoking is prohibited;
- (5) Enclosed smoking areas of a building or facility that are physically separated and independently ventilated from areas of the building or facility where smoking is prohibited;
- (6) Venues that restrict access to persons who are 21 years of age or older;

- (7) Cigar bars;
- (8) Private clubs;
- (9) Private vehicles, except when used for the public transportation of children or for transportation by a health care facility or day care facility or when used as a taxi or other commercial vehicle for hire; and
- (10) All premises of any manufacturer, importer, or wholesaler of tobacco products, of any tobacco leaf dealer or processor, and all tobacco storage facilities.

This bill does not prohibit the designation of outdoor areas as nonsmoking areas by the owner or operator of any outdoor area.

This bill requires persons in control of enclosed public places and places of employment to post no-smoking signs and identify where complaints regarding violations of the smoking prohibition may be registered. This bill also requires the removal of ashtrays from areas where smoking is prohibited.

This bill requires any owner, manager, operator, or employee of a place where smoking is prohibited pursuant to this bill to inform any person who violates the smoking prohibition that smoking is not permitted and request that the violator stop smoking immediately.

Smoking in a prohibited area would be a Class C misdemeanor punishable only by a fine of \$50.00 to \$350. This bill authorizes any law enforcement officer to issue a citation for violation of the no-smoking prohibition.

**ON MAY 21, 2007, THE SENATE ADOPTED AMENDMENT #3 AND RESET SENATE BILL 1325, AS AMENDED.**

AMENDMENT #3 replaces this bill's prohibition against smoking in public places and places of employment with a prohibition against smoking in all enclosed public places in Tennessee and makes numerous other changes to this bill.

Under this amendment, a public place will be considered enclosed if all the space in the area is enclosed from floor to ceiling on all sides by solid walls, exclusive of doorways. This amendment replaces the prohibition against smoking for a reasonable distance from the entrance to an enclosed public place with a prohibition against smoking within 20 feet outside entrances and operable windows of enclosed areas where smoking is prohibited.

This amendment removes from this bill the following exemptions to the prohibition against smoking in enclosed public places:

- (1) Cigar bars;
- (2) Age-restricted venues;
- (3) Private clubs; and
- (4) Enclosed smoking areas that are physically separated and independently ventilated.

This amendment retains this bill's exemption for retail tobacco stores that derive the largest category of sales from tobacco products and accessories and that prohibit minors on their premises.

This amendment specifies that in order for designated smoking rooms in hotels and certain areas of nursing homes and long term health care facilities to be exempt from the prohibition against smoking, smoke from the areas where smoking is permitted shall not infiltrate into non-smoking areas. Also, this amendment limits the number of hotel rooms that may be designated as smoking rooms to 25 percent of the rooms rented.

This amendment requires the prohibition against smoking to be communicated to all existing employees by the effective date of this bill, and to all prospective employees upon their application for employment.

This amendment requires the department of health and the department of labor and workforce development to enforce the prohibition against smoking and receive complaints of violations. The departments will be required to inspect for compliance during any mandated inspection by state law. This amendment authorizes the commissioner of health and the commissioner of labor and workforce development to apply for injunctive relief to enforce the prohibition.

This amendment replaces this bill's penalty for a violation of the prohibition against smoking, which was a Class C misdemeanor punishable by a fine of \$50.00 to \$300. Under this amendment, a person who knowingly smokes in an enclosed public space is subject to a civil penalty of \$50.00. Any owner, manager, or operator of an enclosed public space and who knowingly fails to comply with the prohibition against smoking will be subject to:

- (1) For a first violation in any 12-month period, a written warning from the department;
- (2) For a second violation in any 12-month period, a civil penalty of \$100; and
- (3) For a third or subsequent violation in any 12-month period, a civil penalty of \$500.

In addition to the civil penalty, 5 or more knowing violations by any owner, manager, or operator of an enclosed public space may result in the suspension of any license or permit issued to the person for the premises where the violation occurred.

This amendment requires the department of health and the department of labor and workforce development to engage in a continuing program to explain and clarify the purposes and requirements of this bill.

This amendment authorizes the commissioner of health and the commissioner of labor and workforce development to promulgate rules and regulations to give effect to this bill. This amendment requires the commissioners to annually request other governmental and educational agencies to establish local operating procedures in cooperation and compliance with this part.

This amendment adds a severability clause to this bill.

This amendment changes the effective date of this bill from upon becoming a law to 90 days after becoming a law.

**ON MAY 24, 2007, THE SENATE FURTHER CONSIDERED SENATE BILL 1325, AS AMENDED BY AMENDMENT #3, AND PASSED SENATE BILL 1325, AS AMENDED.**

**ON MAY 31, 2007, THE HOUSE SUBSTITUTED SENATE BILL 1325 FOR HOUSE BILL 1851, ADOPTED AMENDMENT #2, AND PASSED SENATE BILL 1325, AS AMENDED.**

**AMENDMENT #2 adds exemptions to the prohibition against smoking in enclosed public places and makes several other changes to this bill.**

This amendment removes the prohibition against smoking within 20 feet outside entrances and operable windows of enclosed areas where smoking is prohibited.

This amendment adds an exemption to the prohibition against smoking in enclosed public places for private businesses with three or fewer employees where, in the discretion of the business owner, smoking may be permitted in an enclosed room that is not accessible to the general public so long as smoke does not infiltrate from such room into areas where smoking is prohibited.

This amendment restores the exemption for age-restricted venues. Under this amendment, the prohibition against smoking in enclosed public spaces would not apply to any legal establishment that restricts access to its buildings or facilities to persons who are 21 years of age or older.

This amendment restores the exemption for private clubs and adds the following requirements to which a club or organization must adhere in order to qualify for the exemption:

- (1) Have a permanent mechanism to carefully screen applicants for membership on subjective, rather than objective, factors;
- (2) Limit access and use of facilities, services, and activities of the organization to members and guests of members;
- (3) Be controlled by its membership and operate solely for the benefit and pleasure of its members; and
- (4) Advertise exclusively and only to its members, excluding membership drives.

This amendment specifically includes as a "private club" any organization of past and present members of the U.S. armed forces that is exempt from federal income tax pursuant to 26 U.S.C. 501 (c)(19).

This amendment adds an exemption for non-enclosed areas of public spaces so long as smoke from the non-enclosed areas does not infiltrate into areas where smoking is prohibited.

This amendment also adds an exemption for commercial vehicles when the vehicle is occupied solely by the operator.

This amendment removes the provisions of this bill that would:

- (1) Authorize suspension of a business license or permit in cases where five or more knowing violations occur within a year;
- (2) Require removal of ashtrays; and
- (3) Prohibit private rights of action to enforce the provisions of this bill.

This amendment clarifies that the department of labor and workforce development will enforce the prohibition against smoking in enclosed public places in all places that are not regulated by the department of health. This amendment authorizes the department of health and the department of labor and workforce development to promulgate rules, rather than authorizing the commissioners of those departments to promulgate rules.

This amendment changes the effective date of this bill from 90 days after becoming a law to upon becoming a law for rulemaking purposes only and October 1, 2007, for all other purposes.

## **Summary of Tennessee's Workplace Smoking Ban**

### **When does the smoking ban take effect?**

Public Chapter 410, known as the "Non-Smoker Protection Act", was signed into law by Governor Bredesen on June 11th, and will become effective on October 1, 2007.

### **Where is smoking prohibited under the new law?**

Under this new law, smoking is prohibited in all enclosed public places within the State of Tennessee with a few exceptions.

The smoking ban applies, but is not limited to:

- Restaurants
- Public and private educational facilities
- Health care facilities
- Hotels and motels
- Retail stores and shopping malls
- Sports arenas, including enclosed public areas in outdoor arenas
- Restrooms, lobbies, reception areas, hallways and other common-use areas
- Lobbies, hallways and other common areas in apartment buildings and other multiple-unit residential facilities
- Child care and adult day care facilities

### **What areas are exempt from the smoking ban?**

The following are exempt from the smoking ban provisions:

- Private homes, private residences and private motor vehicles unless used for child care or day care

- Non-enclosed areas of public places, including:
  - Open air patios, porches or decks
  - Any that are enclosed by garage type doors when all such doors are open
  - Any that are enclosed by tents or awnings with removable sides or vents when all such sides or vents are removed or open
  - Smoke from these areas must not infiltrate into areas where smoking is prohibited
- Venues that restrict access to persons who are 21 years of age or older at all times
- Private businesses with 3 or few employees, where smoking may be allowed only in an enclosed room not accessible to the general public; smoke from such a room must not infiltrate into areas where smoking is prohibited
- Private clubs
- Smoking rooms in hotels and motels, provided that no more than 25% of the rooms in a hotel or motel can be designated as smoking rooms
- Tobacco manufacturers, importers and wholesalers
- Retail tobacco stores that prohibit minors
- Nursing homes and long-term care facilities, which are subject to the policies and procedures established by those facilities.
- Commercial vehicles when the vehicle is occupied only by the operator

### **What is required of employers or business owners?**

- "No Smoking" signs must be posted at every entrance to every public place and place of employment where smoking is prohibited



- All existing and prospective employees must be notified that smoking is prohibited
- An owner, manager, operator or employee of an establishment where smoking is prohibited must inform anyone smoking in the establishment that smoking is prohibited on the premises

### **What are the penalties for violating the smoking ban?**

- A person who knowingly smokes in area where smoking is prohibited is subject to a civil penalty of \$50
- A business that knowingly fails to comply with the requirements of this act shall be subject to the following:
  - For a first violation in a twelve-month period, a written warning from the Department of Health or the Department of Labor and Workforce Development
  - For a second violation in a twelve-month period, a civil penalty of \$100
  - For a third or subsequent violation in a twelve-month period, a civil penalty of \$500

### **Who is responsible for enforcing the smoking ban?**

The Tennessee Department of Health and the Tennessee Department of Labor and Workforce Development

### **How do I register a complaint about a violation of the smoking ban?**

Complaints may be registered with the Department of Health or the Department of Labor and Workforce Development. The departments will have a process in place for accepting and processing complaints by October 1, when the smoking ban takes effect.