

ARTICLE 16 CLEAN INDOOR AIR

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24-16-1. Short title. (1985)

Statute text

This act [24-16-1 to 24-16-11 NMSA 1978] may be cited as the "Clean Indoor Air Act".

History

History: Laws 1985, ch. 85, § 1.

Annotations

Banning smoking entirely in schools. - Although the Clean Indoor Air Act allows the use of tobacco products by adults in smoking-permitted areas of public buildings, including school buildings, owned or leased by the state or any of its political subdivisions, the state board of education or local school boards can choose to ban smoking by both adults and minors on public school campuses. 1994 Op. Att'y Gen. No. 94-03.

Am. Jur. 2d, A.L.R. and C.J.S. references. - Validity, construction, and application of nonsmoking regulations, 65 A.L.R.4th 1205.

Secondary smoke as battery, 46 A.L.R.5th 813.

24-16-2. Declaration of policy and intent; public health. (1985)

Statute text

The legislature finds and declares that the smoking of tobacco, or any other weed or plant, is a positive danger to health and a health hazard to those who are present in enclosed places and that smoking in such areas should be confined to designated smoking areas. The legislature further declares its intention to protect the public health from such hazards in public places and places of employment without imposing exorbitant costs on persons in management and control of the places subject to the Clean Indoor Air Act [24-16-1 to 24-16-11 NMSA 1978]. It is not the intent of the legislature to preempt the field of regulation of smoking in public from the enactment of ordinances by local governing bodies which are not inconsistent with the Clean Indoor Air Act.

History

History: Laws 1985, ch. 85, § 2.

24-16-3. Definitions. (1985)

Statute text

As used in the Clean Indoor Air Act [24-16-1 to 24-16-11 NMSA 1978]:

- A. "employer" means the state or any political subdivision of the state who employs the services of more than fifteen persons;
- B. "place of employment" means any enclosed indoor area under the control of a public employer which employees normally frequent during the course of employment, including but not limited to work areas, employee lounges, conference rooms and employee cafeterias;
- C. "public meeting" means any meeting required by law to be an open meeting;
- D. "public place" means any enclosed indoor area in a building owned or leased by the state or any of its political subdivisions;
- E. "smoke" or "smoking" means the carrying or holding of a lighted pipe, cigar or cigarette of any kind, or any other lighted smoking equipment or the lighting or emitting or exhaling the smoke of a pipe, cigar or cigarette of any kind; and
- F. "smoking-permitted area" means that portion of a public place in which smoking may be permitted.

History

History: Laws 1985, ch. 85, § 3.

Annotations

Public place. - State law regulating smoking does not impose controls on Indians who sell jewelry on the portal of the Palace of the Governors, because the portals are not a "public place" for the purposes of this article. 1987 Op. Att'y Gen. No. 87-21.

A jail is a "public place" within the meaning of Subsection D. 1989 Op. Att'y Gen. No. 89-03.

Municipal ordinance which was broader than the Clean Air Act, in that the ordinance applied to private businesses and work areas, was permissible because it contemplated rather than conflicted with the purpose of the act. 1989 Op. Att'y Gen. No. 89-03.

24-16-4. Smoking prohibited except in permitted areas. (2002)

Statute text

It is unlawful for a person to smoke in a public place or at a public meeting except in smoking-permitted areas. No part of the state capitol or capitol north shall be designated as a smoking-permitted area.

History

History: Laws 1985, ch. 85, § 4; 1999, ch. 250, § 1; 2002, ch. 2, § 1.

Annotations

The 1999 amendment, effective June 18, 1999, added the last sentence.

The 2002 amendment, effective May 15, 2002, made a minor stylistic change in the first sentence, and in the second sentence deleted "Except for private offices and the house and senate lounges" and added "or capitol north".

24-16-5. Smoking-permitted areas. (1985)

Statute text

Smoking-permitted areas in public places are:

- A. fully enclosed offices or rooms occupied exclusively by smokers, although the offices or rooms may be visited by nonsmokers;
- B. rooms or halls being used by a person or group for a nongovernmental function where the seating arrangements are under the control of the sponsor of the function;

C. smoking-permitted areas designated by the proprietor or person in charge of a public place or public meeting pursuant to Section 6 [24-16-6 NMSA 1978] of the Clean Indoor Air Act; and

D. smoking-permitted areas designated in a place of employment by an employer pursuant to Section 7 [24-16-7 NMSA 1978] of the Clean Indoor Air Act.

History

History: Laws 1985, ch. 85, § 5.

24-16-6. Designation of smoking-permitted area. (1985)

Statute text

The person in charge of a public place or public meeting shall designate as a smoking-permitted area, by appropriate signs, a contiguous area or areas which shall not exceed fifty percent of the public place.

History

History: Laws 1985, ch. 85, § 6.

24-16-7. Smoking in places of employment. (1985)

Statute text

A. For places of employment, within one year after the effective date of the Clean Indoor Air Act, each employer shall adopt, implement and maintain a written smoking policy which shall contain, at a minimum, provisions relating to the following:

(1) the prohibition of smoking in elevators and nurses aid stations or similar facilities for treatment of employees;

(2) the provision and maintenance of a contiguous nonsmoking area of not less than one-half of the seating capacity and floor space in cafeterias, lunchrooms and employee lounges; and

(3) in places of work in which smokers and nonsmokers work in the same office or room, providing smoke-free work areas to accommodate employees who request such areas.

B. It is the responsibility of employers to provide smoke-free work areas for nonsmokers where possible but employers are not required to make structural or other physical modifications in providing these areas. An employer who makes reasonable efforts to develop and promulgate a policy regarding smoking and nonsmoking in the work place shall be deemed to be in compliance with this subsection, provided that a policy which designates an entire work place as a smoking area shall not be deemed in compliance with this subsection.

C. An employer shall post "No Smoking" signs in any area designated as a nonsmoking area.

D. Notwithstanding the provisions of Subsection B of this section, every employer shall have the authority to designate any work area as a nonsmoking area.

E. An employer who fails to adopt a smoking policy, or who fails to post signs in any area designated as a nonsmoking area as required by Section 8 [24-16-8 NMSA 1978] of the Clean Indoor Air Act is in violation of this section.

History

History: Laws 1985, ch. 85, § 7.

Annotations

"Effective date of the Clean Indoor Air Act". - The phrase "effective date of the Clean Indoor Air Act", referred to in the introductory paragraph in Subsection A, means the effective date of Laws 1985, Chapter 85, which was January 1, 1986.

Am. Jur. 2d, A.L.R. and C.J.S. references. - Employer's liability to employee for failure to provide work environment free from tobacco smoke, 63 A.L.R.4th 1021.

24-16-8. Required signs. (1985)

Statute text

To advise persons of the existence of nonsmoking areas or smoking-permitted areas, signs shall be posted as follows:

- A. in public places where the person in charge prohibits smoking in the entire establishment, a sign using the words "No Smoking" or the international no-smoking symbol or both shall be conspicuously posted either on all public entrances or in a position where the sign is clearly visible on entry into the establishment;
- B. in public places where certain areas are designated as smoking-permitted areas pursuant to the provisions of the Clean Indoor Air Act [24-16-1 to 24-16-11 NMSA 1978], the statement "No Smoking Except in Designated Areas" shall be conspicuously posted on all public entrances or in a position where it is clearly visible on entry into the establishment; and
- C. in public places where smoking is permitted in the entire establishment, a sign using the words "Smoking Permitted" or the international smoking symbol or both shall be conspicuously posted either on all public entrances or in a position where it is clearly visible on entry into the establishment.

History

History: Laws 1985, ch. 85, § 8.

24-16-9. Person in charge; compliance. (1985)

Statute text

The person in charge of a public place or public meeting shall make reasonable efforts to secure compliance with the provisions of the Clean Indoor Air Act [24-16-1 to 24-16-11 NMSA 1978] by:

- A. posting appropriate signs;
- B. arranging seating and work areas to provide smoke-free areas;
- C. asking smokers to refrain from smoking upon request of a client or an employee suffering discomfort from the smoke;
- D. affirmatively directing smokers to smoking-permitted areas; and
- E. using existing physical barriers and ventilation systems to minimize the toxic effect of transient smoke in adjacent no-smoking areas.

History

History: Laws 1985, ch. 85, § 9.

24-16-10. Evidence. (1985)

Statute text

Violation of any of the provisions of the Clean Indoor Air Act [24-16-1 to 24-16-11 NMSA 1978] shall not constitute evidence of negligence nor sustain an action for nuisance.

History

History: Laws 1985, ch. 85, § 10.

Annotations

Am. Jur. 2d, A.L.R. and C.J.S. references. - Employer's liability to employee for failure to provide work environment free from tobacco smoke, 63 A.L.R.4th 1021.

24-16-11. Penalties. (1985)

Statute text

Any person who commits an unlawful act under any of the provisions of the Clean Indoor Air Act [24-16-1 to 24-16-11 NMSA 1978] shall be fined in an amount not less than ten dollars (\$10.00) or more than twenty-five dollars (\$25.00) for each violation.

History

History: Laws 1985, ch. 85, § 11.

Annotations

Severability clauses. - Laws 1985, ch. 85, § 12 provides for the severability of the act if any part or application thereof is held invalid.
