

SENATE BILL NO. 742 (Substitute of Senate Bill No. 105 by Senator Marionneaux)

BY SENATORS MARIONNEAUX, DARDENNE, FIELDS, JONES, ULLO, HOLLIS,
SCHEDLER AND BROOME

AN ACT

To enact Part LXIII of Chapter 5 of Title 40 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 40:1300.251 through 1300.253, 1300.255, 1300.261 through 1300.263, and to repeal Part XLII of Chapter 5 of Title 40 of the Louisiana Revised Statutes of 1950, comprised of R.S. 40:1300.21 through 1300.28, and Part XLIV of Chapter 5 of Title 40 of the Louisiana Revised Statutes of 1950, comprised of R.S. 40:1300.41 through 1300.48, relative to prohibiting and penalizing smoking in certain places; to provide relative to the preservation and improvement of the health, comfort, and environment of the people of the state by limiting exposure to tobacco smoke; to create the Louisiana Smokefree Air Act; to provide relative to purposes, definitions, restrictions, and exceptions; to prohibit certain activity and to provide penalties for violation; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Part LXIII of Chapter 5 of Title 40 of the Louisiana Revised Statutes of 1950, comprised of R.S. 40:1300.251 through 1300.253, 1300.255, 1300.261 through 1300.263, is hereby enacted to read as follows:

1 PART LXIII. LOUISIANA SMOKEFREE AIR ACT

2 SUBPART A. GENERAL PROVISIONS

3 §1300.251. Short title

4 This Part shall be known and may be cited as the "Louisiana Smokefree
5 Air Act."

6 §1300.252. Purpose

7 The legislature finds and determines that it is in the best interest of the
8 people of this state to protect nonsmokers from involuntary exposure to
9 secondhand smoke in most indoor areas open to the public, public meetings,
10 restaurants, and places of employment. The legislature further finds and
11 determines that a balance should be struck between the health concerns of
12 nonconsumers of tobacco products and the need to minimize unwarranted
13 governmental intrusion into and regulation of private spheres of conduct and
14 choice with respect to the use or nonuse of tobacco products in certain
15 designated public areas and in private places. Therefore, the legislature hereby
16 declares that the purpose of this Part is to preserve and improve the health,
17 comfort, and environment of the people of this state by limiting exposure to
18 tobacco smoke.

19 §1300.253. Definitions

20 For the purposes of this Part, the following terms shall have the following
21 meanings unless the context clearly indicates otherwise:

22 (1) "Bar" means a business that holds a Class A-General retail permit
23 and the primary purpose of such business is to serve alcoholic beverages for
24 consumption by guests on the premises and in which the serving of food is only
25 incidental to the consumption of those beverages, including but not limited to,
26 taverns, nightclubs, cocktail lounges, and cabarets.

27 (2) "Business" means any corporation, sole proprietorship, partnership,
28 limited partnership, professional corporation, enterprise, franchise, association,
29 trust, joint venture, or other entity.

30 (3) "Department" means the Department of Health and Hospitals.

1 (4) "Employer" means an individual or a business that employs one or
2 more individuals.

3 (5) "Enclosed area" means all space between a floor and ceiling that is
4 enclosed on all sides by solid walls or windows, exclusive of doorways, which
5 extend from the floor to the ceiling.

6 (6) "Local governing authority" means a municipal or parish governing
7 authority.

8 (7) "Place of employment" means an area under the control of an
9 employer that employees normally frequent during the course of employment,
10 including, but not limited to, work areas, employee lounges, restrooms,
11 conference rooms, meeting rooms, classrooms, employee cafeterias, hallways,
12 and vehicles. A private residence is not a place of employment unless it is used
13 as a licensed child care, adult day care, or health care facility.

14 (8) "Public building" means any building owned or operated by any of
15 the following:

16 (a) The state, including the legislative, executive, and judicial branches
17 of state government.

18 (b) Any parish, city, or town, or instrumentality thereof, or any other
19 political subdivision of the state, special district, authority, commission, or
20 agency.

21 (c) Any other separate corporate instrumentality or entity of state or
22 local government.

23 (9) "Public place" means an enclosed area to which the public is invited
24 or in which the public is permitted which is not a public building, including but
25 not limited to banks, educational facilities, health care facilities, hotel and motel
26 lobbies, laundromats, public transportation facilities, reception areas,
27 restaurants, retail food production and marketing establishments, retail service
28 establishments, retail stores, shopping malls, sports arenas, theaters, and
29 waiting rooms.

30 (10) "Restaurant" means an eating establishment, including but not

1 limited to, coffee shops, cafeterias, sandwich stands, and school cafeterias,
2 which gives or offers for sale food to the public, guests, or employees, as well as
3 kitchens and catering facilities in which food is prepared on the premises for
4 serving elsewhere. The term "restaurant" shall include a bar located within a
5 restaurant.

6 (11) "Retail tobacco business" means a business utilized primarily for
7 the sale of tobacco products and accessories and in which the sale of other
8 products is incidental.

9 (12) "School" means any elementary or secondary school building, the
10 campus of any school, any buildings on the campus, and all school buses.

11 (13) "Secondhand smoke" means smoke emitted from lighted,
12 smoldering, or burning tobacco when the smoker is not inhaling, smoke emitted
13 at the mouthpiece during puff drawing, and smoke exhaled by the smoker.

14 (14) "Smoking" means inhaling, exhaling, burning, carrying, or
15 possessing any lighted tobacco product, including cigarettes, cigars, pipe
16 tobacco, and any other lighted combustible plant material.

17 SUBPART B. PROHIBITIONS AND EXEMPTIONS

18 §1300.255. General smoking prohibitions; exemptions

19 A. Except as permitted by Subsection B of this Section, no person shall:

20 (1) Smoke in any public building.

21 (2) Smoke in any school.

22 (3) Smoke in any public place and in any enclosed area within a place of
23 employment.

24 (4) As an employer, knowingly permit smoking in any enclosed area
25 within a place of employment.

26 B. Nothing in this Part shall prohibit smoking in any of the following
27 places:

28 (1) Private homes, private residences, and private automobiles; except
29 that this Subsection shall not apply if any such home, residence, or vehicle is
30 being used for child care or day care or if a private vehicle is being used for the

1 public transportation of children or as part of health care or day care
2 transportation in which case smoking is prohibited.

3 (2) Limousines under private hire.

4 (3) A hotel or motel room designated as a smoking room and rented to
5 a guest; provided that a maximum of fifty percent of the hotel rooms, at the
6 discretion of the hotel owner or general manager, available for rent to guests in
7 a hotel or motel may be designated as smoking rooms.

8 (4) Any retail tobacco business.

9 (5) Any bar.

10 (6) The outdoor area of places of employment; except that the owner or
11 manager of such business may post signs prohibiting smoking in any such
12 outdoor area, which shall have the effect of making that outdoor area an area
13 in which smoking is prohibited under the provisions of this Part.

14 (7) Private and semiprivate rooms or apartments in assisted living
15 residences, and other long-term care facilities that are occupied by one or more
16 persons, who are all smokers and who have requested in writing to be placed in
17 a room where smoking is permitted; provided that smoke from such rooms or
18 apartments does not infiltrate into areas where smoking is prohibited under the
19 provisions of this Part.

20 (8) Designated smoking areas in which gaming operations are permitted
21 to occur upon a riverboat, at the official gaming establishment, at a facility
22 licensed for the operation of electronic video draw poker devices, at an eligible
23 facility licensed for the operation of slot machines, by a licensed charitable
24 organization, or at a pari-mutuel wagering facility or off-track wagering facility
25 which is licensed for operation and regulated under the provisions of Chapters
26 4 and 11 of Title 4 and Chapters 4, 5, 6, and 7 of Title 27 of the Louisiana
27 Revised Statutes of 1950, or any other gaming operations authorized by law,
28 except that smoking shall be prohibited in all restaurants, including snack bars
29 and any other type of eating area whether or not such area is separated from
30 the gaming area, that are located within the facilities where gaming operations

1 are conducted regardless of any type of license issued relevant to the operation
2 of the restaurant.

3 (9) All workplaces of any manufacturer, importer, wholesaler or
4 distributor of tobacco products, of any tobacco leaf dealer or processor, and all
5 tobacco storage facilities.

6 (10) Convention facilities during the time such facilities are being used
7 for professional meetings and trade shows which are not open to the public that
8 are produced or organized by tobacco businesses or convenience store
9 associations where tobacco products are displayed and limited to the location
10 of such meetings or shows and during the time such facilities are used by a
11 carnival organization, traditionally known as a krewe or a courir de Mardi
12 Gras for the purpose of the conduct of a Mardi Gras ball and limited to the
13 location of such ball.

14 (11) Designated and well ventilated smoking rooms in nursing homes
15 which permit smoking.

16 (12) A hotel or motel room operated by a casino or gaming operation
17 which is rented to a guest.

18 (13) An outdoor patio, whether or not food is served.

19 (14) Any state, local, or private correctional facility prior to August 15,
20 2009. After August 15, 2009, smoking shall be prohibited in any state, local, or
21 private correctional facility.

22 C. An individual, person, entity, or business subject to the smoking
23 prohibitions of this Section shall not discriminate or retaliate in any manner
24 against a person for making a complaint regarding a violation of this Section or
25 for furnishing information concerning a violation to an enforcement authority.

26 D. Nothing in this Part shall be construed to restrict the power of any
27 parish, city, town, or village to adopt and enforce additional local laws,
28 ordinances, or regulations that comply with at least the minimum applicable
29 standards to establish smokefree public places as set forth in this Part.

30 SUBPART C. PENALTIES AND RULES AND REGULATIONS

1 §1300.261. Notice of prohibition of smoking

2 A. "No smoking" signs or the international "No smoking" symbol
3 consisting of a pictorial representation of a burning cigarette enclosed in a red
4 circle with a red bar across it shall be clearly and conspicuously posted by the
5 owner, operator, manager, or other person in control in every public building,
6 public place, and place of employment where smoking is prohibited by this Part.

7 B. The owner, operator, manager, or other person in control shall
8 remove all ashtrays from any area where smoking is prohibited by this Part.

9 C. The Department of Health and Hospitals may treat a violation of this
10 Section as a deficiency to be assessed against any licensee or facility over which
11 it has statutory jurisdiction.

12 §1300.262. Enforcement; penalties

13 A.(1) Any violation of any prohibition in R.S. 40:1300.255(A) may be
14 cited by any law enforcement officer by the issuance of a citation and summons
15 to appear before a court of proper jurisdiction.

16 (2) Such citations shall be in a form such that there shall be retained in
17 each book of citations a receipt and each shall have a copy to be deposited by
18 the law enforcement officer with a court having jurisdiction over the alleged
19 offense.

20 (3) Upon the deposit of the copy, the court shall notify the alleged
21 violation of the time and place of his hearing or of his opportunity to plead guilty
22 by the payment of his specified fine. Failure to appear, unless the fine is paid,
23 may be punished within the discretion of the court as contempt of court.

24 B.(1)(a) Any person who is guilty of a violation of the prohibition in R.S.
25 40:1300.255(A)(1), (2), and (3) shall, upon a first offense, be fined twenty-five
26 dollars.

27 (b) Any person who is guilty of violating such prohibition a second time
28 shall be fined fifty dollars.

29 (c) Any person who is guilty of violating such prohibition a third or
30 subsequent time shall be fined one hundred dollars.

1 (2)(a) Any employer who is guilty of a violation of the prohibition in R.S.
2 40:1300.255(A)(4) shall, upon a first offense, be fined one hundred dollars.

3 (b) Any employer who is guilty of violating such prohibition a second
4 time shall be fined two hundred fifty dollars.

5 (c) Any employer who is guilty of violating such prohibition a third or
6 subsequent time shall be fined five hundred dollars.

7 §1300.263. Tobacco Control Program Fund; establishment

8 A. One-half of all fines imposed and collected pursuant to this Part shall
9 be transmitted to the office of public health in the Department of Health and
10 Hospitals and shall be deposited by such office in a special fund established in
11 the state treasury to be known as the Tobacco Control Program Fund,
12 hereinafter referred to as "the fund" as provided in this Subsection.

13 B. Out of the funds remaining in the Bond Security and Redemption
14 Fund after a sufficient amount is allocated from that fund to pay all obligations
15 secured by the full faith and credit of the state that become due and payable
16 within a fiscal year, the treasurer in each fiscal year shall pay into the fund an
17 amount equal to the total amount of fines imposed, collected, and transmitted
18 to the office of public health in the Department of Health and Hospitals
19 pursuant to this Part.

20 C. The total amount of monies in the fund shall annually be
21 appropriated to the office of public health to be used by such office solely for the
22 purpose of funding the efforts of the office of public health in the Tobacco
23 Control Program.

24 D. All unexpended and unencumbered monies in the fund at the end of
25 a fiscal year shall remain in the fund and be available for appropriation in the
26 next fiscal year in the same manner as allocated herein. Monies in the fund
27 shall be invested as provided by law. After compliance with the provisions of
28 law concerning the Bond Security and Redemption Fund, interest earned on the
29 investment of monies in the fund shall be credited to the fund.

30 Section 2. Part XLII of Chapter 5 of Title 40 of the Louisiana Revised Statutes of

1 1950, comprised of R.S. 40:1300.21 through 1300.28 and Part XLIV of Chapter 5 of Title
2 40 of the Louisiana Revised Statutes of 1950, comprised of R.S. 40:1300.41 through
3 1300.48, are hereby repealed.

4 Section 3. This Act shall become effective on January 1, 2007.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____