

**CHARLENE MIERS FOUNDATION FOR CANCER RESEARCH
PROPOSED LEGISLATION**

STATE OF OKLAHOMA

2nd Session of the 52nd Legislature (2010)

HOUSE BILL _____

By: _____

AS INTRODUCED

An Act relating to smoking; amending 21 O.S. 2001, Section 1247, as last amended by Section 1, Chapter 70, O.S.L. 2007 (21 O.S. Supp. 2008, Section 1247), 63 O. S. 2001, Section 1-1521, 63 O. S. 2001, Section 1-1522, as last amended by Section 2, Chapter 70, O. S. L. 2007 (63 O. S. Supp. 2008, Section 1-1572); 63 O.S. 2001, Section 1-1523, as last amended by Section 2, Chapter 70, O.S.L. 2007 (63 O.S. Supp. 2008, Section 1-1523), repealing 63 O. S. 2001, Section 1-1526.1, and amending 63 O.S. 2001, Section 1-1527, which relate to smoking in public places; prohibiting smoking in public places and places of employment; providing for fines for noncompliance; providing for statement of legislative intent; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 21 O.S. 2001, Section 1247, as last amended by Section 1, Chapter 70, O.S.L. 2007 (21 O.S. Supp. 2008, Section 1247), is amended to read as follows:

Section 1247. A. No person may smoke in a public place or in any place of employment.

~~As used in this section, "indoor workplace" means any indoor place of employment or employment-type service for or at the request of another individual or individuals, or~~

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~~any public or private entity, whether part time or full time and whether for compensation or not. Such services shall include, without limitation, any service performed by an owner, employee, independent contractor, agent, partner, proprietor, manager, officer, director, apprentice, trainee, associate, servant or volunteer. An indoor workplace includes work areas, employee lounges, restrooms, conference rooms, classrooms, employee cafeterias, hallways, any other spaces used or visited by employees, and all space between a floor and ceiling that is predominantly or totally enclosed by walls or windows, regardless of doors, doorways, open or closed windows, stairways, or the like. The provisions of this section shall apply to such indoor workplace at any given time, whether or not work is being performed.~~

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~~B. All buildings, or portions thereof, owned or operated by this state shall be designated as nonsmoking; provided, however, each building may have one designated smoking room. As used in this paragraph, "buildings" shall not include up to twenty five percent (25%) of any hotel or motel rooms rented to guests if the rooms are properly ventilated so that smoke is not circulated to nonsmoking areas.~~

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~~C. All buildings, or portions thereof, owned or operated by a county or municipal government, at the discretion of the county or municipal governing body, may be designated as entirely nonsmoking or may be designated as nonsmoking with one designated smoking room.~~

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~~D. A smoking room as provided for in subsections B and C of this section:~~

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~~1. Shall not be used for the conduct of public business;~~

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~~2. Shall be in a location which is fully enclosed, directly exhausted to the outside,~~

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~~under negative air pressure so smoke cannot escape when a door is opened, and no air is~~

recirculated to nonsmoking areas of the building. No smoking exhaust shall be located within twenty five (25) feet of any entrance, exit or air intake; and

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~~3. Shall be verified for compliance with the provisions of this subsection by the Department of Central Services for state buildings, by a county entity designated by the board of county commissioners for county buildings, or by a municipal entity designated by the municipal governing body for municipal buildings.~~

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~~E. No smoking shall be allowed within twenty five (25) feet of the entrance or exit of any building specified in subsection B or C of this section.~~

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~~F. The restrictions provided in this section shall not apply to stand alone bars, stand alone taverns and cigar bars as defined in Section 1-1522 of Title 63 of the Oklahoma Statutes.~~

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~~G. The restrictions provided in this section shall not apply to the following:~~

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~~1. The room or rooms where licensed charitable bingo games are being operated, but only during the hours of operation of such games;~~

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~~2. Up to twenty five percent (25%) of the guest rooms at a hotel or other lodging establishment;~~

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~~3. Retail tobacco stores predominantly engaged in the sale of tobacco products and accessories and in which the sale of other products is merely incidental and in which no food or beverage is sold or served for consumption on the premises;~~

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~~4. Workplaces where only the owner or operator of the workplace, or the immediate family of the owner or operator, performs any work in the workplace, and the workplace has only incidental public access. "Incidental public access" means that a place of business has only an occasional person, who is not an employee, present at the~~

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business to transact business or make a delivery. It does not include businesses that depend on walk-in customers for any part of their business;

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~~5. Workplaces occupied exclusively by one or more smokers, if the workplace has only incidental public access;~~

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~~6. Private offices occupied exclusively by one or more smokers;~~

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~~7. Workplaces within private residences, except that smoking shall not be allowed inside any private residence that is used as a licensed child care facility during hours of operation;~~

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~~8. Medical research or treatment centers, if smoking is integral to the research or treatment;~~

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~~9. A facility operated by a post or organization of past or present members of the Armed Forces of the United States which is exempt from taxation pursuant to Sections 501 (c)(8), 501 (c)(10) or 501 (c)(19) of the Internal Revenue Code, 26 U.S.C., Sections 501 (c)(8), 501 (c)(10) or 501 (c)(19), when such facility is utilized exclusively by its members and their families and for the conduct of post or organization nonprofit operations except during an event or activity which is open to the public; and~~

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~~10. Any outdoor seating area of a restaurant; provided, smoking shall not be allowed within fifteen (15) feet of any exterior public doorway or any air intake of a restaurant.~~

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~~H. An employer not otherwise restricted from doing so may elect to provide smoking rooms where no work is performed except for cleaning and maintenance during the time the room is not in use for smoking, provided each smoking room is fully enclosed and exhausted directly to the outside in such a manner that no smoke can drift or~~

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circulate into a nonsmoking area. No exhaust from a smoking room shall be located within fifteen (15) feet of any entrance, exit or air intake.

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~~I. If smoking is to be permitted in any space exempted in subsections F or G of this section or in a smoking room pursuant to subsection H of this section, such smoking space must either occupy the entire enclosed indoor space or, if it shares the enclosed space with any nonsmoking areas, the smoking space shall be fully enclosed, exhausted directly to the outside with no air from the smoking space circulated to any nonsmoking area, and under negative air pressure so that no smoke can drift or circulate into a nonsmoking area when a door to an adjacent nonsmoking area is opened. Air from a smoking room shall not be exhausted within fifteen (15) feet of any entrance, exit or air intake. Any employer may choose a more restrictive smoking policy, including being totally smoke free.~~

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~~J. Notwithstanding any other provision of this section, until March 1, 2006, restaurants may have designated smoking and nonsmoking areas or may be designated as being a totally nonsmoking area. Beginning March 1, 2006, restaurants shall be totally nonsmoking or may provide nonsmoking areas and designated smoking rooms. Food and beverage may be served in such designated smoking rooms which shall be in a location which is fully enclosed, directly exhausted to the outside, under negative air pressure so smoke cannot escape when a door is opened, and no air is recirculated to nonsmoking areas of the building. No exhaust from such room shall be located within twenty-five (25) feet of any entrance, exit or air intake. Such room shall be subject to verification for compliance with the provisions of this subsection by the State Department of Health.~~

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~~K. The person who owns or operates a place where smoking or tobacco use is prohibited by law shall be responsible for posting a sign or decal, at least four (4) inches by two (2) inches in size, at each entrance to the building indicating that the place is smoke free or tobacco free.~~

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~~L. Responsibility for posting signs or decals shall be as follows:~~

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~~1. In privately owned facilities, the owner or lessee, if a lessee is in possession of the facilities, shall be responsible;~~

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~~2. In corporately owned facilities, the manager and/or supervisor of the facility involved shall be responsible; and~~

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~~3. In publicly owned facilities, the manager and/or supervisor of the facility shall be responsible.~~

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B. As used in this section, the following terms have the meanings indicated unless the context clearly indicates otherwise.

(1) "Smoke" or "smoking" means the carrying or smoking of any kind of lighted pipe, cigar, cigarette, or any other lighted smoking equipment.

(2) "Public place" means that portion of any building or vehicle used by and open to the public, regardless of whether the building or vehicle is owned in whole or in part by private persons or entities, the state of Washington, or other public entity, and regardless of whether a fee is charged for admission, and includes a presumptively reasonable minimum distance, of twenty-five feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where smoking is prohibited. A

public place does not include a private residence unless the private residence is used to provide licensed child care, foster care, adult care, or other similar social service care on the premises.

Public places include, but are not limited to: Schools, elevators, public conveyances or transportation facilities, museums, concert halls, theaters, auditoriums, exhibition halls, indoor sports arenas, hospitals, nursing homes, health care facilities or clinics, enclosed shopping centers, retail stores, retail service establishments, financial institutions, educational facilities, ticket areas, public hearing facilities, state legislative chambers and immediately adjacent hallways, public restrooms, libraries, restaurants, waiting areas, lobbies, bars, taverns, bowling alleys, skating rinks, casinos, reception areas, and no less than seventy-five percent of the sleeping quarters within a hotel or motel that are rented to guests. A public place does not include a private residence. This chapter is not intended to restrict smoking in private facilities which are occasionally open to the public except upon the occasions when the facility is open to the public.

(3) "Place of employment" means any area under the control of a public or private employer which employees are required to pass through during the course of employment, including, but not limited to: Entrances and exits to the places of employment, and including a presumptively reasonable minimum distance of twenty-five feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where smoking is prohibited; work areas; restrooms; conference and classrooms; break rooms and cafeterias; and other common areas. A private residence or home-based business, unless used to provide licensed child care, foster care, adult care, or other similar social service care on the premises, is not a place of employment.

C. Any person who knowingly violates this act is guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than One Hundred Ten Dollars (\$100.00+10.00) nor more than One Thousand Hundred Dollars (\$1,000.00+100.00).

SECTION 2. AMENDATORY 63 O. S. 2001, Section 1-1521 is amended to read as follows:

Section 1-1521. This act shall be known and may be cited as the "Oklahoma Smoke-Free Public Places and Workplaces Act" ~~Smoking in Public Places and Indoor Workplaces Act~~.

SECTION 3. AMENDATORY 63 O.S. 2001, Section 1-1522, as last amended by Section 2, Chapter 70, O. S. L. 2007 (63 O. S. Supp. 2008, Section 1-1572), amended to read as follows:

Section 1-1522. As used in this act:

(1) "Smoke" or "smoking" means the carrying or smoking of any kind of lighted pipe, cigar, cigarette, or any other lighted smoking equipment

(2) "Public place" means that portion of any building or vehicle used by and open to the public, regardless of whether the building or vehicle is owned in whole or in part by private persons or entities, the state of Washington, or other public entity, and regardless of whether a fee is charged for admission, and includes a presumptively reasonable minimum distance of twenty-five feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where smoking is prohibited. A public place does not include a private residence unless the private residence is used to

provide licensed child care, foster care, adult care, or other similar social service care on the premises.

Public places include, but are not limited to: Schools, elevators, public conveyances or transportation facilities, museums, concert halls, theaters, auditoriums, exhibition halls, indoor sports arenas, hospitals, nursing homes, health care facilities or clinics, enclosed shopping centers, retail stores, retail service establishments, financial institutions, educational facilities, ticket areas, public hearing facilities, state legislative chambers and immediately adjacent hallways, public restrooms, libraries, restaurants, waiting areas, lobbies, bars, taverns, bowling alleys, skating rinks, casinos, reception areas, and no less than seventy-five percent of the sleeping quarters within a hotel or motel that are rented to guests. A public place does not include a private residence. This chapter is not intended to restrict smoking in private facilities which are occasionally open to the public except upon the occasions when the facility is open to the public.(3)

(3) "Place of employment" means any area under the control of a public or private employer which employees are required to pass through during the course of employment, including, but not limited to: Entrances and exits to the places of employment, and including a presumptively reasonable minimum distance of twenty-five feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where smoking is prohibited; work areas; restrooms; conference and classrooms; break rooms and cafeterias; and other common areas. A private residence or home-based business, unless used to provide licensed child care, foster care, adult care, or other similar social service care on the premises, is not a place of employment.

~~1. "Educational facility" means a building owned, leased or under the control of a public or private school system, college or university;~~

~~2. "Health facility" means an entity which provides health services, including but not limited to hospitals, nursing homes, long-term care facilities, kidney disease treatment centers, health maintenance organizations and ambulatory treatment centers;~~

~~3. "Indoor workplace" means any indoor place of employment or employment-type service for or at the request of another individual or individuals, or any public or private entity, whether part-time or full-time and whether for compensation or not. Such services shall include, without limitation, any service performed by an owner, employee, independent contractor, agent, partner, proprietor, manager, officer, director, apprentice, trainee, associate, servant or volunteer. An indoor workplace includes work areas, employee lounges, restrooms, conference rooms, classrooms, employee cafeterias, hallways, any other spaces used or visited by employees, and all space between a floor and ceiling that is predominantly or totally enclosed by walls or windows, regardless of doors, doorways, open or closed windows, stairways, or the like. The provisions of this section shall apply to such indoor workplace at any given time, whether or not work is being performed.~~

~~4. "Meeting" means a meeting as defined in the Oklahoma Open Meeting Act;~~

~~5. "Public body" means a public body as defined in the Oklahoma Open Meeting Act;~~

~~6. "Public place" means any enclosed indoor area where individuals other than employees are invited or permitted;~~

~~7. "Restaurant" means any eating establishment regardless of seating capacity;~~

~~8. "Smoking" means the carrying by a person of a lighted cigar, cigarette, pipe or other lighted smoking device; and~~

~~9. "Stand alone bar", "stand alone tavern", and "cigar bar" mean an establishment that derives more than sixty percent (60%) of its gross receipts, subject to verification by competent authority, from the sale of alcoholic beverages and low point beer and no person under twenty one (21) years of age is admitted, except for members of a musical band employed or hired as provided in paragraph 2 of subsection B of Section 537 of Title 37 of the Oklahoma Statutes and that is not located within, and does not share any common entryway or common indoor area with, any other enclosed indoor workplace, including a restaurant.~~

SECTION 4. AMENDATORY 63 O.S. 2001, Section 1-1523, as last amended by Section 2, Chapter 70, O.S.L. 2007 (63 O.S. Supp. 2008, Section 1-1523), is amended to read as follows:

Section 1-1523. No person may smoke in a public place or in any place of employment. ~~A. Except as specifically provided in the Smoking in Public Places and Indoor Workplaces Act, no person shall smoke in a public place, in any part of a zoo to which the public may be admitted, whether indoors or outdoors, in an indoor workplace, in any vehicle providing public transportation, at a meeting of a public body, in a nursing facility licensed pursuant to the Nursing Home Care Act, or in a child care facility licensed pursuant to the Oklahoma Child Care Facilities Licensing Act. A nursing facility licensed pursuant to the Nursing Home Care Act may designate smoking rooms for residents and their guests. Such rooms shall be fully enclosed, directly exhausted to the outside, and shall be under negative air pressure so that no smoke can escape when a door is opened and no air is recirculated to nonsmoking areas of the building.~~

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~~B. 1. Except as otherwise provided in paragraph 2 of this subsection, an educational facility which offers an early childhood education program or in which children in grades kindergarten through twelve are educated shall prohibit smoking, the use of snuff, chewing tobacco or any other form of tobacco product in the buildings and on the grounds of the facility by all persons including, but not limited to, full time, part time, and contract employees, during the hours of 7:00 a.m. to 4:00 p.m., during the school session, or when class or any program established. Career and technology centers may designate smoking areas outside of buildings, away from general traffic areas and completely out of sight of children under eighteen (18) years of age, for use by adults attending training courses, sessions, meetings or seminars.~~

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~~3. An educational facility may designate smoking areas outside the buildings for the use of adults during certain activities or functions, including, but not limited to, athletic contests.~~

~~C. Nothing in this section shall be construed to prohibit educational facilities from having more restrictive policies regarding smoking and the use of other tobacco products in the buildings or on the grounds of the facility.~~

~~D. A private residence is not a "public place" within the meaning of the Smoking in Public Places and Indoor Workplaces Act except that areas in a private residence that are used as a licensed child care facility during hours of operation are "public places" within the meaning of the Smoking in Public Places and Indoor Workplaces Act.~~

~~E. Smoking is prohibited in all vehicles owned by the State of Oklahoma and all of its agencies and instrumentalities.~~

~~F. An employer not otherwise restricted from doing so may elect to provide smoking rooms where no work is performed except for cleaning and maintenance during the time the room is not in use for smoking, provided each smoking room is fully enclosed and exhausted directly to the outside, in such manner that no smoke can drift or circulate into a nonsmoking area. No exhaust from a smoking room shall be located within fifteen (15) feet of any entrance, exit or air intake. If smoking is to be permitted in any space exempted in subsection G of this section or in a smoking room pursuant to subsection H of this section, such smoking space must either occupy the entire enclosed indoor space or, if it shares the enclosed space with any nonsmoking areas, the smoking space shall be fully enclosed, exhausted directly to the outside with no air from the smoking space circulated to any nonsmoking area, and under negative air pressure so that no smoke can drift or circulate into a nonsmoking area when a door to an adjacent nonsmoking area is opened. Air from a smoking room shall not be exhausted within fifteen (15) feet of any entrance, exit or air intake.~~

~~G. The Smoking in Public Places and Indoor Workplaces Act shall not prohibit smoking in:~~

- ~~1. Stand-alone bars, stand-alone taverns or cigar bars;~~
- ~~2. The room or rooms where licensed charitable bingo games are being operated, but only during the hours of operation of such games;~~
- ~~3. Up to twenty-five percent (25%) of the guest rooms at a hotel or other lodging establishment;~~

~~4. Retail tobacco stores predominantly engaged in the sale of tobacco products and accessories and in which the sale of other products is merely incidental and in which no food or beverage is sold or served for consumption on the premises;~~

~~5. Workplaces where only the owner or operator of the workplace, or the immediate family of the owner or operator, performs any work in the workplace, and the workplace has only incidental public access;~~

~~6. Workplaces occupied exclusively by one or more smokers, if the workplace has only incidental public access. "Incidental public access" means that a place of business has only an occasional person, who is not an employee, present at the business to transact business or make a delivery. It does not include businesses that depend on walk-in customers for any part of their business;~~

~~7. Private offices occupied exclusively by one or more smokers;~~

~~8. Workplaces within private residences, except that smoking shall not be allowed inside any private residence that is used as a licensed child care facility during hours of operation;~~

~~9. A facility operated by a post or organization of past or present members of the Armed Forces of the United States which is exempt from taxation pursuant to Sections 501 (c)(8), 501 (c)(10) or 501 (c)(19) of the Internal Revenue Code, 26 U.S.C., Section 501 (c)(8), 501 (c)(10) or 501 (c)(19), when such facility is utilized exclusively by its members and their families and for the conduct of post or organization nonprofit operations except during an event or activity which is open to the public;~~

~~10. Any outdoor seating area of a restaurant; provided, smoking shall not be allowed within fifteen (15) feet of any exterior public doorway or any air intake of a restaurant; and~~

~~11. Medical research or treatment centers, if smoking is integral to the research or treatment.~~

~~H. Notwithstanding any other provision of the Smoking in Public Places and Indoor Workplaces Act, until March 1, 2006, restaurants may have designated smoking and nonsmoking areas or may be designated as being a totally nonsmoking area. Beginning March 1, 2006, restaurants shall be totally nonsmoking or may provide nonsmoking areas and designated smoking rooms. Food and beverage may be served in such designated smoking rooms which shall be in a location which is fully enclosed, directly exhausted to the outside, under negative air pressure so smoke cannot escape when a door is opened, and no air is recirculated to nonsmoking areas of the building. No exhaust from such room shall be located within twenty-five (25) feet of any entrance, exit or air intake. Such room shall be subject to verification for compliance with the provisions of this subsection by the State Department of Health.~~

SECTION 5. AMENDATORY 63 O.S. 2001, Section 1-1526.1 is repealed.

SECTION 6. AMENDATORY 63 O. S. 2001, Section 1-1527 is amended to read as follows:

Section 1-1527. The State Legislature recognizes that exposure to secondhand smoke is known to cause cancer in humans. Secondhand smoke is a known cause of other diseases including pneumonia, asthma, bronchitis, and heart disease. Citizens are often exposed to secondhand smoke in the workplace, and are likely to develop chronic,

potentially fatal diseases as a result of such exposure. In order to protect the health and welfare of all citizens, including workers in their places of employment, it is necessary to prohibit smoking in public places and workplaces.

The State Legislature by adopting this act intends to preempt any other regulation promulgated to control smoking in public places and to standardize laws that governmental subdivisions may adopt to control smoking. Cities and towns may enact and enforce laws prohibiting and penalizing conduct under provisions of this act, but the provisions of such laws shall be the same as provided in this act and the enforcement provisions under such laws shall not be more stringent than those of this act.

SECTION 7. This act shall become effective January 1, 2011.