

ARKANSAS REGISTER

Transmittal Sheet



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Department Department of Health and Human Services

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Electronic Copy of Rule to be e-mailed from: Robert Brech

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Contact Person

Email Address

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
 In Compliance with Act 434 of 1967 As Amended.

Rick D Hogan
 Signature

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Title

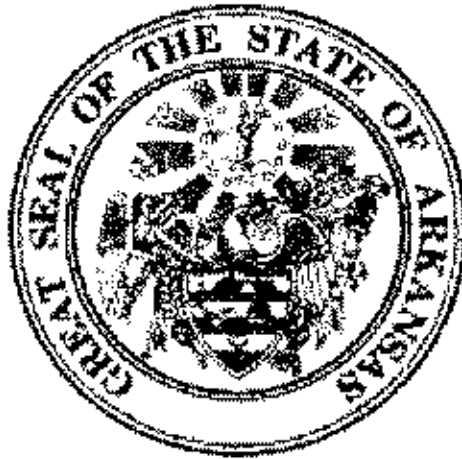
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 CHARLIE DANIELS
 SECRETARY OF STATE
 STATE OF ARKANSAS

ARKANSAS STATE BOARD OF HEALTH

RULES AND REGULATIONS PERTAINING TO THE ARKANSAS CLEAN INDOOR AIR ACT OF 2006



Promulgated Under the Authority of
Act 96 of 1913, As Amended by Act 990 of 1991
(Ark. Code Ann. § 20-7-109(a)(1))
and Act 8 of the First Extraordinary Session of 2006
(Ark. Code Ann. §§ 20-27-1801-1809)

Effective August 10, 2006
By the Arkansas State Board of Health

Arkansas Department of Health and Human Services
Little Rock, Arkansas

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CHARLES W. WOODS
SECRETARY OF STATE
STATE OF ARKANSAS
BY _____

**RULES AND REGULATIONS PERTAINING TO
THE ARKANSAS CLEAN INDOOR AIR ACT OF 2006**

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SECTION I. AUTHORITY

The following rules pertaining to smoking in workplaces and public places in Arkansas are duly adopted and promulgated by the Arkansas State Board of Health pursuant to the authority expressly conferred by the laws of the State of Arkansas including, without limitation, Act 96 of 1913 as amended by Act 990 of 1991 and Act 8 of the First Extraordinary Session of 2006, the same being Ark. Code Ann. § 20-7-109(a)(1) and Ark. Code Ann. § 20-27-1801-1809.

SECTION II. PURPOSE

These rules are necessary to implement the Clean Indoor Air Act of 2006 and protect the health of the citizens of Arkansas by minimizing the harmful effects of secondhand smoke.

SECTION III. DEFINITIONS

For the purposes of these Rules, the following words and phrases when used herein shall be construed as follows:

(1) **“Bar”** means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including, but not limited to:

- (A) Taverns;
- (B) Nightclubs;
- (C) Cocktail lounges; and
- (D) Cabarets;

(2) **Board** means the Arkansas State Board of Health.

(3) **“Business”** means any corporation, sole proprietorship, partnership, limited partnership, professional corporation, enterprise, franchise, association, trust, joint venture, or other entity, whether for profit or nonprofit.

- (4) **“Department”** means the Department of Health and Human Services.
- (5) **“Employee”** means an individual who is employed by a business in consideration for direct or indirect monetary wages or profit.
- (6) **“Employer”** means an individual or a business that employs one (1) or more individuals.
- (7) **“Enclosed area”** means all space between a floor and ceiling that is enclosed on all sides by solid walls or windows, exclusive of doorways, that extend from the floor to the ceiling.
- (8)(A) **“Health care facility”** means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including weight control clinics, homes for the chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these professions.
- (B) **“Health care facility”** includes the building or buildings in which a medical facility operates, together with all property owned or operated by a medical facility that is contiguous to the building or buildings in which medical services are provided.
- (C) **“Health care facility”** does not include:
- (i) Medical facilities under § 20-27-704 et seq.;
 - (ii) Psychiatric hospitals as defined by the Division of Health of the Department of Health and Human Services’ rules for hospitals and related institutions; or
 - (iii) Long-term care facilities;
- (9) **“Infiltrate”** means to permeate an enclosed area by passing through its walls, ceilings, floors, windows, or ventilation systems to the extent that an individual can smell secondhand smoke.
- (10) **“Local governing authority”** means a county or municipal corporation of the state.
- (11)(A) **“Place of employment”** means an enclosed area under the control of a public or private employer that employees utilize during the course of employment, including, but not limited to:
- (i) Work areas;
 - (ii) Employee lounges;
 - (iii) Restrooms;
 - (iv) Conference rooms;
 - (v) Meeting rooms;
 - (vi) Classrooms;
 - (vii) Employee cafeterias; and
 - (viii) Hallways.
- (B) A private residence is not a place of employment unless it is used as a licensed child care, adult day care, or health care facility.

(12) **"Person in Charge"** means any person who has responsibility because of ownership, proprietorship, or management of a place that is open to or frequented by the public. A person in charge of a public place is used to refer to those additional instances where the person in charge is not an employer.

(13)(A) **"Public place"** means an enclosed area to which the public is invited or in which the public is permitted, including, but not limited to:

- (i) Banks;
- (ii) Bars;
- (iii) Educational facilities;
- (iv) Health care facilities;
- (v) Laundromats;
- (vi) Public transportation facilities;
- (vii) Reception areas;
- (viii) Restaurants;
- (ix) Retail food production and marketing establishments;
- (x) Retail service establishments;
- (xi) Retail stores;
- (xii) Shopping malls;
- (xiii) Sports arenas;
- (xiv) Theaters; and
- (xv) Waiting rooms.

(B) A private residence is not a public place unless it is used as a licensed child care, adult day care, or health care facility.

(14)(A) **"Restaurant"** means:

- (i) An eating establishment that gives or offers for sale food to the public, guests, or employees; and
- (ii) A kitchen or a catering facility in which food is prepared on the premises for serving elsewhere.

(B) "Restaurant" includes, but is not limited to:

- (i) Coffee shops;
- (ii) Cafeterias;
- (iii) Sandwich stands; and
- (iv) Private and public school cafeterias.

(C) "Restaurant" does include a bar area within any restaurant.

- (15) **“Retail tobacco store”** means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.
- (16) **“Secondhand smoke”** means smoke:
- (A) Emitted from lighted, smoldering, or burning tobacco when the person smoking is not inhaling;
 - (B) Emitted at the mouthpiece during puff drawing; and
 - (C) Exhaled by the person smoking;
- (17) **“Service line”** means an indoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money.
- (18) **“Shopping mall”** means an enclosed public walkway or hall area that serves to connect retail or professional establishments.
- (19) **“Smoking”** means inhaling, exhaling, burning, or carrying any:
- (A) Lighted tobacco product, including cigarettes, cigars, and pipe tobacco; and
 - (B) Other lighted combustible plant material; and
- (20) **“Sports arena”** means a stadium, sports pavilion, gymnasium, health spa, boxing arena, swimming pool, roller and ice rink, bowling alley, and other similar place where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.

SECTION IV. PROHIBITIONS ON SMOKING

- (a) Upon the effective date of this Rule, smoking is prohibited in all vehicles and enclosed areas owned, leased, or operated by the State of Arkansas, its agencies and authorities, and any political subdivision of the state, municipal corporation, or local board or authority created by general, local, or special act of the General Assembly or by ordinance or resolution of the governing body of a county or municipal corporation individually or jointly with other political subdivisions or municipalities of the state.
- (b)(1) Upon the effective date of this Rule, smoking is prohibited in all public places and enclosed areas within places of employment, including, but not limited to:
- (A) Common work areas;
 - (B) Auditoriums;
 - (C) Classrooms;
 - (D) Conference and meeting rooms;
 - (E) Private offices;
 - (F) Elevators;
 - (G) Hallways;
 - (H) Health care facilities;
 - (I) Cafeterias;

- (J) Employee lounges;
- (K) Stairs;
- (L) Restrooms; and
- (M) All other enclosed areas.

(2) An individual, person, entity, or business subject to the smoking prohibitions of this section shall not discriminate or retaliate in any manner against a person for making a complaint of a violation of this section or furnishing information concerning a violation to a person, entity, or business or to the Department.

(3) The prohibitions on smoking in subsections (a) and (b) of this section and the provisions of subdivision (b)(2) of this section shall be communicated to all current employees by their employer within thirty (30) days of the effective date of this act, and to each prospective employee upon application for employment.

(4) An employer or person in charge violates this Rule if a person is allowed to smoke in an area where smoking is prohibited by this Rule.

SECTION V. EXEMPTIONS

(a) An owner or operator of any of the following areas may exempt itself from this Rule:

(1) Private residences, except when used as a licensed child care, adult daycare, or health care facility;

(2)(A) Hotel and motel rooms that are rented to guests and are designated as smoking rooms.

(B) However, if a hotel or motel has more than twenty-five (25) guest rooms, not more than twenty percent (20%) of rooms rented to guests in a hotel or motel may be designated as exempt from this Rule;

(3)(A) All workplaces of any employer with fewer than three (3) employees.

(B) This exemption does not apply to any public place;

(4) A retail tobacco store, if secondhand smoke from the store does not infiltrate into areas where smoking is prohibited under this Rule;

(5) Areas within long-term care facilities that are designated by the facility as a smoking area or for supervised patient smoking only;

(6) Outdoor areas of places of employment;

(7) All workplaces of any manufacturer, importer, or wholesaler of tobacco products, of any tobacco leaf dealer or processor, and all tobacco storage facilities; and

(8)(A) All restaurants and bars licensed by the State of Arkansas that prohibit at all times all persons less than twenty-one (21) years of age from entering the premises, if secondhand smoke does not infiltrate into areas where smoking is prohibited under this Rule.

(B) All restaurants and bars that are exempt shall prominently display a health warning sign as defined by the Board; and

(9) Designated smoking areas on the gaming floor of any franchisee of the Arkansas Racing Commission.

(b) Any owner or operator of an entity as defined in subsections (a)(2), (a)(3) or (a)(8) must certify to the Department that they are eligible for an exemption utilizing the exemption form found in the Appendix.

(c) Act 134 of 2005, as codified in Ark. Code Ann. §20-27-704 et seq., and not the Clean Indoor Air Act of 2006, shall govern any smoking prohibitions in medical facilities, as defined in Ark. Code Ann. § 20-27-705(2)(A), and in psychiatric hospitals, as defined by the Board's rules for hospitals and related institutions.

SECTION VI. SIGNS AND SMOKING RECEPTACLES.

(a) "No Smoking" signs or the international "No Smoking" symbol consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it may be clearly and conspicuously posted by the owner, operator, manager, or other person in control in every public place and place of employment where smoking is prohibited by this Rule.

(b)(1) In any restaurant or bar where the owner or operator exempts itself from the provisions of this Rule, the employer or person in charge shall post signage at all entrances and wherever else necessary to clearly describe smoking is allowed.

(2) All signs used to describe that smoking is allowed shall be at least 11 inches wide and 8 1/2 tall and be clearly and conspicuously placed at a height and location easily seen by a person entering the establishment and shall not be obscured in any way.

(3) The lettering on the sign shall state:

<p style="text-align:center">HEALTH WARNING</p> <p style="text-align:center">THIS IS A SMOKING AREA.</p> <p style="text-align:center">OCCUPANTS WILL BE EXPOSED TO SECONDHAND SMOKE.</p> <p style="text-align:center">IT IS UNLAWFUL FOR ANYONE UNDER 21 YEARS OF AGE TO ENTER OR WORK IN ANY PART OF THE ESTABLISHMENT AT ALL TIMES.</p> <p style="text-align:center">Arkansas State Board of Health, 2006</p>
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(A) The words "HEALTH WARNING" shall be in capital letters at least 1/2 inch high and 1/2 inch wide.

(B) The words "THIS IS A SMOKING AREA. OCCUPANTS WILL BE EXPOSED TO SECONDHAND SMOKE. IT IS UNLAWFUL FOR ANYONE UNDER 21 YEARS OF AGE TO ENTER OR WORK IN ANY PART OF THE ESTABLISHMENT AT ALL TIMES." shall be in capital letters at least 1/4 inch high and 1/4 inch wide.

(C) The words "ARKANSAS STATE BOARD OF HEALTH, 2006" shall be in capital letters at least 1/8 inch high and 1/8 inch wide.

(D) The lettering shall contrast with the background.

(4) Signs must remain posted and in good condition.

(c) The owner, operator, manager, or other person in control of any area where smoking is prohibited by this Rule shall remove all ashtrays from the area, unless an ashtray is permanently affixed to an existing structure before the effective date of this Rule.

SECTION VII. PUBLIC EDUCATION

The Department shall engage in a continuing program to explain the purpose and requirements of this Rule to businesses and citizens affected by it and to guide persons, owners, operators, and managers in their compliance with it.

SECTION VIII. VIOLATIONS AND PENALTIES

(A) Every firm, person, or corporation who violates the provisions of these Rules may be assessed a civil penalty by the Board. The penalty shall not exceed one thousand dollars (\$1,000) for each violation.

(B) Each day of a continuing violation may be deemed a separate violation for purposes of penalty assessments.

(C) The Board shall report any violation of these Rules to the applicable licensing authority, if any. Any entity licensed by the Board or Department may have its license suspended or revoked for violations of this Rule.

(D) However, no penalty may be assessed until the person charged with the violation has been given the opportunity for a hearing on the violation.

SECTION IX. SEVERABILITY

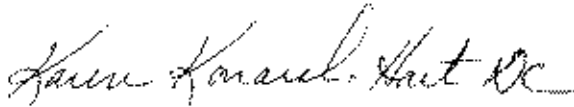
If any provision of these Rules or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of these Rules which can give effect without the invalid provisions or applications, and to this end the provisions hereto are declared severable.

SECTION X. REPEAL

All regulations and parts of regulations in conflict herewith are hereby repealed.

CERTIFICATION

This will certify that the foregoing **Rules and Regulations Pertaining to the Clean Indoor Air Act of 2006** were adopted by the Arkansas Board of Health at a regular session of the Board held in Little Rock, Arkansas on the 21st day of July, 2006.



President
Arkansas State Board of Health



Executive Officer
Arkansas State Board of Health

The foregoing Rules and Regulations, copy having been filed in my office, are hereby approved on this 31st day of July, 2006.



Governor

APPENDIX

Arkansas Clean Indoor Act of 2006 Exemption Certification

Name of Owner or Operator	
Name of Business	
Address (Street & number, P.O. Box or Route number)	Phone (Area code and number)
City, State, ZIP code	

I, the owner or operator named above, claim an exemption from the Arkansas Clean Indoor Act of 2006. I am entitled to an exemption for the following reasons (initial beside each category that applies):

- I own or operate a hotel and motel that rents rooms to guests that are designated as smoking rooms. If the hotel or motel that I own or operate has more than twenty-five (25) guest rooms, I understand that no more than twenty percent (20%) of rooms rented to guests in a hotel or motel may be designated as smoking rooms.
- I am an employer with fewer than three (3) employees. I understand that this exemption does not apply to any public place within the workplace.
- I own or operate a restaurant or bar licensed by the State of Arkansas. I do not permit any person less than twenty-one (21) years of age to enter or work on the premises at any time. I will prominently display a health warning sign as defined by the State Board of Health.

I understand that it is a violation of these rules to claim an exemption from the prohibitions of the Clean Indoor Air Act of 2006 under false pretenses. Further, I understand that I have a continuing obligation to inform the Department if circumstances dictate that I no longer qualify for an exemption.

FILED
 JUN 31 2006
 CLERK OF THE COURT
 STATE OF ARKANSAS
 BY

Owner or Operator	Title	Date
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HEALTH WARNING

THIS IS A SMOKING AREA.

OCCUPANTS WILL BE EXPOSED TO
SECONDHAND SMOKE.

IT IS UNLAWFUL FOR ANYONE UNDER 21
YEARS OF AGE TO ENTER OR WORK IN ANY
PART OF THIS ESTABLISHMENT AT ALL TIMES.