



Non-Smoker Protection Act

Dear Reader:

The following document was created from the MTAS website ([mtas.tennessee.edu](https://www.mtas.tennessee.edu)). This website is maintained daily by MTAS staff and seeks to represent the most current information regarding issues relative to Tennessee municipal government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

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Non-Smoker Protection Act

Reference Number: MTAS-1232

It is estimated that about a quarter of all Tennesseans smoke. Tennessee, long labeled a "traditional tobacco" state with roots heavily tied to the tobacco industry, moved to the forefront of national regulation with the signing of the Non-Smoking Protection Act, Public Chapter 410. Smoking in public places (notably municipal workplaces) is now recognized by the Tennessee Legislature as a public health issue and is, therefore, banned. If any municipalities in Tennessee still allow smoking in any of their enclosed public buildings, such practices are now in violation of the state statute. The Non-Smoker Protection Act had an effective date of June 11, 2007, for the promulgation of rules and regulations. Municipalities, however, had to comply with the ban no later than Oct. 1, 2007. The law required most every public and private employer in Tennessee to comply.

Public Chapter 410 added a new Part 18 to T.C.A. Title 39, Chapter 17, banning smoking in all enclosed public places in Tennessee, including places of employment. Section 1 of the new law defines "place of employment" as:

An enclosed area under the control of a public or private employer that employees normally frequent during the course of employment, including, but not limited to, work areas, private offices, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles. A private residence is not a "place of employment" unless it is used as a child care, adult day care, or health care facility.

T.C.A. 39-17-1803 defines a public place as an enclosed area to which the public is invited and provides that smoking in the following public places is prohibited:

- Aquariums, galleries, libraries, and museums;
- Areas available to and customarily used by the general public in businesses and nonprofit entities patronized by the public, including, but not limited to, banks, laundromats, factories, professional offices, and retail service establishments;
- Child care and adult day care facilities;
- Convention facilities;
- Educational facilities, both public and private, except as provided by § 49-7-135;
- Elevators;
- Health care facilities;
- Hotels and motels;
- Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities;
- Polling places;
- Public and private transportation facilities, including trains, buses, taxicabs and airports under the authority of state or local governments, and ticket, boarding, and waiting areas of public transit depots;
- Restaurants;
- Restrooms, lobbies, reception areas, hallways, and other common-use areas;
- Retail stores;
- Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of this state or a political subdivision of the state, to the extent the place is subject to the jurisdiction of the state;
- Service lines;
- Shopping malls;
- Sports arenas, including enclosed public places in outdoor arenas; and

- Theaters and other facilities primarily used for exhibiting motion pictures, stage dramas, lectures, musical recitals, or other similar performances.

The law (T.C.A. 39-17-1804) contains numerous exceptions, although only a few are applicable to municipally-owned facilities. These exceptions include:

- Private residences, except when used as a licensed child care, adult day care, or health care facility, taxi or other commercial vehicle for hire;
- Commercial vehicles when occupied solely by the operator;
- Hotel and motel rooms that are designated as smoking rooms;
- Retail tobacco stores that prohibit minors on their premises;
- Non-enclosed areas of public spaces, so long as tobacco smoke is not reasonably expected to enter areas where smoking is prohibited (open air patios, porches or decks; area enclosed by garage type doors on one or more sides; area enclosed by tents or awnings with removable sides or vents);
- 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;
- Venues that restrict access to persons who are 21 years of age or older;
- Cigar bars;
- Private clubs;
- Private businesses with three (3) or fewer employees where smoking is allowed in an area not accessible to the general public;
- 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
- All premises of any manufacturer, importer, or wholesaler of tobacco products, of any tobacco leaf dealer or processor, and all tobacco storage facilities.

Display sign requirements are also included under the law, and municipalities must be aware that signage requirements apply. “**No Smoking**” signs or the international no-smoking symbol must be placed at every entrance to a public place or place of employment where smoking is banned.

The smoking ban is enforced by the Tennessee Department of Health or the Tennessee Department of Labor and Workforce Development. A person smoking in violation of the ban is subject to a civil penalty of \$50. Owners or managers of public places who violate the ban will be subject to a written warning for a first violation, a civil penalty of \$100 for a second violation in a 12-month period and a civil penalty of \$500 for a third or subsequent violation in a 12-month period (T.C.A. 39-17-1807).

Q: Is there a required distance, mandated by the Non-Smokers Protection Act, people should keep from the entrance of smoke-free buildings while smoking?

A: There is no distance requirement mandated by the Non-Smoker Protection Act. Employers, however, may set guidelines. Smoke should not be able to infiltrate the building when the door is opened.

Q: Would the new electronic aids to quit smoking, E6 Cigarettes I think they are called, fall under the prohibition to smoke in a city work place as is the case of regular cigarettes? These look like cigarettes but emit a water vapor instead of regular smoke. The city has a policy that prohibits smoking in city buildings and enclosed vehicles which is also found in state law.

A: The Tennessee Non-Smoker Protection Act prohibits smoking in certain public places including government buildings. Within that act, T. C. A. § 39-17-1802 (16) defines smoking as “inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or other lighted tobacco product in any manner or in any form ...”

Tennessee Department of Health has stated that an electronic cigarette does not meet the definition of smoking under the aforementioned statute, however on December 10th, 2018, the department updated a health advisory on e-cigarettes [1]. "The department continues to urge caution to consumers using or considering the use of electronic nicotine delivery systems including Juuls, electronic cigarettes, e-cigs, e-cigars, e-pipes, e-hookahs, personal vaporizers and similar emissions-producing devices."

Across the country, more and more employers, including some government employers, have adopted regulations prohibiting electronic cigarettes. These employers have cited FDA research as basis for doing so. Supposedly, a city could prohibit these as well. Hence, such a policy could be challenged, and the ban could withstand a legal challenge.

To see a copy of the Non-Smoker Protection Act, visit <http://www.capitol.tn.gov/Bills/105/Amend/HA0739.pdf> [2].

Links:

[1] https://www.tn.gov/content/dam/tn/health/healthprofboards/health-advisory/Health_Advisory_%20Electronic_Cigarettes_12-18.pdf

[2] <http://www.capitol.tn.gov/Bills/105/Amend/HA0739.pdf>

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