



Department of Administration
Intergovernmental Relations Division

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July 23, 2007

TO: Members of the Judiciary and Legislative Committee
Ald. Michael S. D'Amato, Chair
Ald. Ashanti Hamilton, Vice-Chair
Ald. Michael J. Murphy
Ald. Robert J. Bauman
Ald. James Bohl, Jr.

FROM: Terry Perry – Legislative Coordinator *TP*

RE: Smoking Legislation: Summary of national-wide legislation and exemptions.

Attached for your information is an excellent analysis of smoking legislation throughout the country. The summary was prepared by Leslie Silletti of the City's Legislative Reference Bureau in response to the Committee's request for national smoking ban policies following a discussion of SB 150, the "Breathe Free Wisconsin" Act.

Leslie looked at the 33 states with smoking legislation and the District of Columbia. Although each state law is different, she was able to develop a summary of each state's policy. It's important to thoroughly read her cover memo in order to fully understand the variety of policies and exemptions. Of interest to committee members are exemptions to statewide smoking bans. Below is a summary of exemptions:

- Each state law contained exemptions.
- 79% of policies contained exemptions for hotel/motel rooms; 76% exempted retail tobacco stores.
- 9 states exempted cigar/tobacco bars
- Most policies exempted private clubs, membership associations, and veteran or fraternal clubs.
- 59% of policies contain exemptions for private residences. It is questionable if states inadvertently restricted smoking in home-based care facilities. Wisconsin's pending proposal does exempt certain retirement facilities.

Status of SB 150

The bill was introduced on April 18th. Milwaukee delegation sponsors include Senator Coggs, Senator Darling, Representatives Richards, Wasserman, and Toles. A public hearing was held on May 31st before the Senate's Committee on Public Health, Senior Issues, Long Term Care and Privacy. Persons speaking or registering in favor of the bill outnumbered those against by a margin of 3 to 1. No amendments have been introduced to date, although there is discussion among legislators about possible language changes. Committee Chair, Senator Tim Carpenter has not yet scheduled an executive session.

Attach(s)



LEGISLATIVE REFERENCE BUREAU

M E M O

To: Terry Perry, Department of Administration – Intergovernmental Relations Division
From: Leslie Silletti, Legislative Fiscal Analyst
Date: July 16, 2007
Re: **State Smoking Legislation: Summary of Statewide Legislation and Exemptions**

The following information on statewide smoking legislation may be helpful in analysis of 2007 Wisconsin Senate Bill 150, relating to prohibitions against smoking. Table I (pp. 3-17) is a review of 35 statewide smoking policies (Washington DC is included in this analysis, and treated as if another state), and included is the date each policy was enacted, what the policy covers, exemptions and whether or not the policy is preemptive. This spreadsheet provides an overview of statewide policies, and does not contain information relating to smoking prohibitions in public places- that information can be provided upon request. Table II and Table III (pp. 18-19) summarize exemptions included in statewide smoking policies, by frequency and alphabetized. Table IV (page 20) illustrates which states have preemption.

Most states have prohibitions relating to smoking in public places. In addition to those prohibitions, the states included in this spreadsheet have at least some prohibition on smoking in private indoor areas. For the purpose of clarity, the phrase “indoor areas” is used throughout, and may be generally understood to account for indoor, enclosed spaces, including workplaces, restaurants and bars. Drilling down to this level illustrates a state’s exemptions in a practical way and provides for a comprehensive assessment of statewide policies.

Different summaries of statewide policies implement different criteria for comparing policies. Most on-line documents report there are approximately 22 statewide smoking bans (presumably not considering the many recently-enacted policies). It is important to consider that these reports count only those states which ban smoking in workplaces, restaurants and bars, or any combination of those, according to the reports’ particular definition or criteria. If the goal is to have a comprehensive understanding of statewide policies and respective exemptions, it is important to look not only at policies which include workplace, restaurant and bar prohibitions by those definitions, but also policies which ban smoking in some or most indoor places, or what is here referred to as “indoor areas.”

For example, if one were interested in learning which states provide exemptions for retail tobacco stores, an assessment of legislation implementing criteria used in many reports would not provide an exhaustive list. Arkansas, for example, is not included in most reviews of statewide policies, though it has a relatively comprehensive policy on indoor smoking, but it is included in this summary.

Summary of exemptions:

- There are no policies that contain no exemptions.
- The majority of policies contain exemptions, with varying conditions, for hotel/motel rooms (27/34 or 79%) and retail tobacco stores (26/34 or 76%).
- Of states which ban smoking in bars, 9 exempt cigar/tobacco bars.
- Most policies have an exemption for some sort of private function or group, such as private social functions, private clubs, membership associations, and veteran or fraternal clubs.
- At least 20% of policies provide exemptions for cigar/tobacco bars, outdoor places of employment, theatrical performances and tobacco manufacturing facilities.
- The majority of policies contain exemptions for private residences (20/34 or 59%), with conditions, which effectively creates a scenario where smoking is not allowed in home-based care facilities.
- 24% provide certain exemptions for casinos or other gaming facilities, but it is unclear how many states have casinos or other gaming facilities, or how federal, state and tribal laws interrelate. Further analysis of this topic can be provided upon request.

It is important to consider the following points in reading these data:

- This is a large amount of data that is difficult to organize into a neat package. In this analysis there are 34 policies (33 states and Washington DC; South Dakota is not included) with about 50 different types of exemptions, and some of these exemptions have different definitions. For summary purposes, however, exemptions with the same name were grouped together with the assumption that they are for the most part similar. For example, all “retail tobacco stores” were included under that heading, though there may be slight variation between definitions. Also, certain exemptions with different names were grouped together; e.g. combining together certain types of long-term care facilities.
- Prohibitions are not included in this analysis.
- Because something is not listed as an exemption, does not necessarily mean it is prohibited; e.g., “bar” may not be listed as an exemption because it is not covered by the prohibitions in the first place. Exemptions data should be qualified with the following: “Of those policies where this type of establishment/place would normally be prohibited, these specific establishments/places are exempted.”
- There is pending legislation in Illinois, South Dakota and Pennsylvania. Illinois’ pending law was included, as the Governor has stated he will sign it; Pennsylvania’s current law was included; and South Dakota’s pending legislation was included, but not calculated in analysis.
- Most exemptions include specific conditions, and those qualifications are not included in this analysis; e.g., 20% of hotel/motel rooms are exempted in some states, and 25% in others; or, tobacco bars may be exempted if they can demonstrate a certain minimum percentage of sales is derived from tobacco sales.

Table I - Summary of State Smoking Legislation

State	Effective Date	Type of Ban	Exemptions	Preemption
1 Arizona	5/1/2007	Smoking is prohibited in almost all indoor areas, including most places of employment, restaurants and bars.	Private residences, except when used as a licensed child care, adult day care or health care facility; up to 50% of hotel/motel rooms; retail tobacco stores that are physically separated, so that smoke does not infiltrate into areas where smoking is prohibited; veterans and fraternal clubs, when they are not open to the general public; smoking as part of a Native American religious ceremony; outdoor patios as long as smoke does not enter into places where smoking is prohibited; and smoking as part of a theatrical performance. Private residences, except when used as a licensed child care, adult day care, or health care facility; designated guest smoking rooms in hotels/motels, except in hotels/motels with more than 25 rooms, but no more than 20% of the rooms may be designated smoking; all workplaces with fewer than 3 employees that are not public places; a retail tobacco store, if secondhand smoke from the store does not infiltrate into places where smoking is prohibited; areas within long-term care facilities that are designated by the facility as a smoking area or for supervised patient smoking only; outdoor areas of places of employment; all workplaces of any manufacturer, importer or wholesaler of tobacco products, of any tobacco leaf dealer or processor and all tobacco storage facilities; all restaurants and bars licensed by the state of Arkansas that prohibit at all times persons less than 21 years of age from entering the premises, if secondhand smoke does not infiltrate into areas where smoking is prohibited; and designated smoking areas on the gaming floor of any franchisee of the Arkansas Racing Commission.	No preemption. Arizona law does not preempt the passage of local smokefree laws: "This section does not prevent a political subdivision of the State from adopting ordinances or regulations that are more restrictive than this section nor does this section repeal any existing ordinance or regulation that is more restrictive than this section."
2 Arkansas	7/21/2006	Smoking is prohibited in almost all indoor areas, including most places of employment, including restaurants.	65% of rooms in a hotel, motel or similar transient lodging establishment; a percentage of all lobby areas in a hotel, motel, or similar establishments; meeting and banquet rooms, except while food, beverage or exhibit functions are taking place; retail or wholesale tobacco shops; cabs of motor trucks when only smokers are present; warehouse facilities; theatrical production sites, if smoking is an integral part of the story; medical research or treatment sites, if smoking is integral to those functions; private residences when not in use as family day care centers; and patient areas in long-term health care facilities.	No preemption. This subchapter is cumulative to and does not prohibit the enactment of any other general or local laws, rules, or regulations of state or local governing authorities or local ordinances prohibiting smoking that are more restrictive than or are in direct conflict with this subchapter.
3 California	1994, most workplaces; 1998, bars; amended in 2007	Smoking is prohibited in almost all indoor areas, including most places of employment, restaurants and bars.	Private residences, except when used as a licensed child care, adult day care, or health care facility; designated guest smoking rooms in hotels/motels, except in hotels/motels with more than 25 rooms, but no more than 20% of the rooms may be designated smoking; all workplaces with fewer than 3 employees that are not public places; a retail tobacco store, if secondhand smoke from the store does not infiltrate into places where smoking is prohibited; areas within long-term care facilities that are designated by the facility as a smoking area or for supervised patient smoking only; outdoor areas of places of employment; all workplaces of any manufacturer, importer or wholesaler of tobacco products, of any tobacco leaf dealer or processor and all tobacco storage facilities; all restaurants and bars licensed by the state of Arkansas that prohibit at all times persons less than 21 years of age from entering the premises, if secondhand smoke does not infiltrate into areas where smoking is prohibited; and designated smoking areas on the gaming floor of any franchisee of the Arkansas Racing Commission.	No preemption. Political subdivisions can enact local smoking ordinances that cover anyplace not covered by the definition of "place of employment;" otherwise, local ordinances are preempted. If the law is modified or repealed, local ordinances are once again allowed.

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4 Colorado	7/1/2006	Smoking is prohibited in almost all indoor areas, including most places of employment, restaurants and bars.	This does not apply to private homes, private residences and private automobiles except if any such home, residence or vehicle is being used for child care or day care or if a private vehicle is being used for the public transportation of children or as part of health care or day care transportation; limousines under private hire; a hotel or motel room rented to guests as long as no more than 25% of the rooms in the hotel/motel are designated as smoking; any retail tobacco business; a cigar-tobacco bar; an airport smoking concession; the outdoor area of any business; a place of employment that is not open to the public and is under the control of an employer that employs three or fewer employees, provided that employees who request to work in a smokefree work area shall be provided with one; a private non-residential building on a farm or ranch that has annual gross income of less than \$500,000; or the retail floor plan of a licensed casino. Cigar-tobacco bars are defined as bars that in the calendar year ending 12/31/05, generated at least five percent or more of its total annual gross income from the on-site sale of tobacco products and the on-site rental of humidors, not including any sales from vending machines. If a bar previously designated as a cigar-tobacco bar fails to meet these requirements in any calendar year after 12/31/05, the bar shall lose the cigar-tobacco bar designation permanently. Also a cigar-tobacco bar shall not expand its size or change its location from the size and location in which it existed as of 12/31/05. Smoking is also prohibited within 15 feet or other distance specified by local authority of entryways to bars.	No preemption. A local authority may enact, adopt and enforce smoking regulations that cover the same subject matter as the above state law. No local authority may adopt any local regulation of smoking that is less stringent than the above state law, except a local authority may specify a radius of less than 15 feet for the area included within an entryway.
5 Connecticut	4/1/2004	Smoking is prohibited in almost all indoor areas, including most places of employment, restaurants and bars.	Correctional facilities; designated smoking areas in psychiatric facilities; public housing projects; classrooms where demonstration smoking is taking place as part of a medical or scientific experiment; smoking rooms provided by employers for employees; outdoor portions of premises, with conditions; any tobacco bar.	Preemption. The provisions of this section shall supersede and preempt the provisions of any municipal law or ordinance relative to smoking effective prior to, on, or after 10/1/93.
6 Delaware	11/02/07	Smoking is prohibited in almost all indoor areas, including most places of employment, restaurants, bars and casinos.	Private homes and automobiles, private social functions, privately-hired limousines, up to 25% of hotel rooms rented to guests, and fundraising functions sponsored by volunteer fire, ambulance or rescue companies, or by a fraternal benefit society.	No preemption.

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State	Effective Date	Type of Ban	Exemptions	Preemption
7 Florida	7/1/2003	Smoking is prohibited in almost all indoor areas, including most places of employment and restaurants.	Stand-alone bars; retail tobacco shops; designated hotel rooms; tobacco manufacturing facilities; customs smoking rooms in an international airport in-transit lounge under the authority and control of the Bureau of Customs and Border Protection of the United States Department of Homeland Security; smoking cessation programs approved by the Department of Health or medical or scientific research conducted therein, and "membership associations" as long as no one is engaged in work. 20% of hotel/motel rooms; retail tobacco stores; long-term care facilities; smoking areas in international airports; private and semiprivate rooms in health care facilities; convention facility meeting and assembly rooms in convention facilities not owned, leased or operated by state or local government when these places are used for private functions as long as persons under 18 are prohibited from attending or working at the function; and private clubs, military officer clubs and noncommissioned officer clubs. Smoking is also allowed in bars and restaurants that do not allow persons under 18 to enter and do not employ persons under 18; or smoking is allowed in private rooms in restaurants and bars if the room is enclosed, separately ventilated from the rest of the building and the air is exhausted directly to the outside.	Preemption. This legislation expressly preempting regulation of smoking to the state and supersedes any municipal or county ordinance on the subject.
8 Georgia	7/1/2005	Smoking is prohibited in many enclosed public places and places of employment; banned in restaurants and bars that allow minors to enter, or employ minors	Private residences, except when used as a licensed child care, adult day care, or health care facility; hotel and motel rooms that are rented to guests and are designated as smoking rooms, provided that not more than 20% of rooms may be so designated; retail tobacco stores, provided that smoke from these places shall not infiltrate into areas where smoking is prohibited; private and semiprivate rooms in nursing homes and long-term care facilities that are occupied by one or more persons, all of whom are smokers and have requested in writing to be placed in a room where smoking is permitted; outdoor areas of places of employment; all areas covered by this chapter when smoking is part of a production being filmed; and state correctional facilities.	No preemption. Nothing in this chapter shall be construed to supersede or in any manner affect a county smoking ordinance; provided that the ordinance is at least as protective of the rights of nonsmokers as this chapter, and nothing in this chapter shall prohibit a county from enacting ordinances more stringent than this chapter.
9 Hawaii	2006	Smoking is prohibited in all enclosed and partially enclosed places open to the public, including all restaurants and bars.		

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10 Idaho	2005; 7/1/07 (amended to include bowling alleys)	Smoking is prohibited in almost all indoor areas, including most places of employment and restaurants.	<p>Bars; retail tobacco stores; buildings owned and operated by social, fraternal, or religious organizations when used by the membership of the organization, their guests or families, or any facility that is rented or leased for private functions from which the public is excluded and for which arrangements are under the control of the sponsor of the function; hotel and motel rooms designated as smoking rooms; theatrical production sites, if smoking is an integral part of the story in the theatrical production; areas of owner-operated businesses, with no employees other than the owner-operators, that are not commonly open to the public; any office or business, other than child care facilities, located within the proprietor's private home when all such offices and/or businesses occupy less than 50% of the total area within the private home; Idaho state veterans homes in designated areas, provided that physical barriers and ventilation systems are used to reduce smoke in adjacent nonsmoking areas and a designated employee breakroom established by a small business owner employing five or fewer employees.</p> <p>Private residences or dwelling places, except when used as a child care, adult day care, or healthcare facility or any other home-based business open to the public; private and semi-private rooms in nursing homes and long-term care facilities that are occupied by one or more persons, all of whom are smokers and have requested in writing to be placed or to remain in a room where smoking is permitted and the smoke shall not infiltrate other areas of the nursing home; hotel and motel sleeping rooms that are rented to guests and are designated as smoking rooms, provided that all smoking rooms on the same floor must be contiguous and smoke from these rooms must not infiltrate into nonsmoking rooms or other areas where smoking is prohibited, and not more than 25% of the rooms rented to guests in a hotel or motel may be designated as rooms where smoking is allowed; retail tobacco stores, as defined, and shall annually file by January 31st an affidavit stating the percentage of its gross income during the prior calendar year that was derived from the sale of loose tobacco, plants, or herbs and cigars, cigarettes, pipes, or other smoking devices for smoking tobacco and related smoking accessories. Any retail tobacco store that begins operation after the effective date of this act may only qualify for an exemption if located in a freestanding structure occupied solely by the business and smoke from the business does not migrate into an enclosed area where smoking is prohibited.</p>	<p>Nothing in this chapter shall be interpreted to prevent local, county or municipal governments from adopting ordinances or regulations more restrictive than the provisions contained herein.</p> <p>No preemption. Any home rule unit of local government, any non-home rule municipality, or any non-home rule county within the unincorporated territory of the county may regulate smoking in public places, but that regulation must be no less restrictive than this Act. Also, those entities may regulate smoking in any enclosed indoor area used by the public or serving as a place of work if the area does not fall within the definition of a "public place" under this act.</p>
11 Illinois	1/1/08 (at Governor, who has stated he will sign)	Smoking is prohibited in almost all indoor areas, including most places of employment, restaurants and bars.	<p>Private residences or dwelling places, except when used as a child care, adult day care, or healthcare facility or any other home-based business open to the public; private and semi-private rooms in nursing homes and long-term care facilities that are occupied by one or more persons, all of whom are smokers and have requested in writing to be placed or to remain in a room where smoking is permitted and the smoke shall not infiltrate other areas of the nursing home; hotel and motel sleeping rooms that are rented to guests and are designated as smoking rooms, provided that all smoking rooms on the same floor must be contiguous and smoke from these rooms must not infiltrate into nonsmoking rooms or other areas where smoking is prohibited, and not more than 25% of the rooms rented to guests in a hotel or motel may be designated as rooms where smoking is allowed; retail tobacco stores, as defined, and shall annually file by January 31st an affidavit stating the percentage of its gross income during the prior calendar year that was derived from the sale of loose tobacco, plants, or herbs and cigars, cigarettes, pipes, or other smoking devices for smoking tobacco and related smoking accessories. Any retail tobacco store that begins operation after the effective date of this act may only qualify for an exemption if located in a freestanding structure occupied solely by the business and smoke from the business does not migrate into an enclosed area where smoking is prohibited.</p>	<p>No preemption. Any home rule unit of local government, any non-home rule municipality, or any non-home rule county within the unincorporated territory of the county may regulate smoking in public places, but that regulation must be no less restrictive than this Act. Also, those entities may regulate smoking in any enclosed indoor area used by the public or serving as a place of work if the area does not fall within the definition of a "public place" under this act.</p>

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State	Effective Date	Type of Ban	Exemptions	Preemption
12 Iowa	1990	<p>Smoking is prohibited in any enclosed indoor space used by the general public, or serving as a place of work containing 250 or more square feet of floor space.</p>	<p>Retail stores where 50% or more of the sales result from the sale of tobacco products, and in the portion of a retail store where tobacco products are sold; a room used primarily as the residence of students or other persons at an educational facility; sleeping rooms in motels or hotels; and rooms or halls used for a private social function. Where smoking areas are designated, existing physical barriers and existing ventilation systems shall be used to minimize the toxic effect of smoke in adjacent nonsmoking areas.</p>	<p>Preemption. For the purpose of equitable and uniform implementation, application, and enforcement of state and local laws and regulations, the provisions of this chapter shall supersede any local law or regulation which is inconsistent with or conflicts with the provisions of this chapter. In May 2003, the Iowa Supreme Court overturned a lower court decision and reinstated preemption of local smokefree air ordinances. The court found that previous state legislation occupied the field of smokefree air laws, and that the legislature did not intend for local governments to have the power to pass more stringent laws. The lawsuit involved eight restaurant owners in Ames, Iowa, who sued after the city passed a law prohibiting smoking in restaurants in 2001.</p>

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13 Louisiana	1/1/2007	Smoking is prohibited in almost all indoor areas, including most places of employment.	Private homes, private residences and private automobiles except if being used for child care or day care; limousines under private hire; up to 50% of hotel/motel guest rooms; retail tobacco businesses; bars; outdoor areas of places of employment; private or semiprivate rooms or apartments in assisted living and long-term care facilities; gaming establishments, except smoking is prohibited within restaurants in the gaming establishment; all workplaces of any manufacturer, importer, wholesaler or distributor of tobacco products, of any tobacco leaf dealer or processor, and all tobacco storage facilities; convention facilities under certain conditions; designated and well-ventilated smoking rooms in nursing homes; a hotel or motel room operated by a gaming operation; outdoor patios; and state, local or private correctional facilities until 8/15/09.	No preemption. Nothing in the law above shall be construed to restrict the power of any parish, city, town, or village to adopt and enforce additional local laws, ordinances, or regulations that comply with at least the minimum applicable standards to establish smokefree public places as set forth above.

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14. Maine	1999, restaurants; 2004, bars; amended in 2006	Smoking is prohibited in almost all indoor areas, including most places of employment, restaurants and bars.	Public places when they are not open to the public; theaters when smoking is part of the performance; smoking during a religious ceremony or cultural activity, hotel and motel rooms; tobacco specialty stores; beano or bingo games run by a federally recognized Indian tribe; designated smoking areas in an off-track betting facility or simulcast racing facility at a commercial track, subject to certain conditions; a business facility that is a veterans' service organization that is not open to the public or to any other club that was not open to the public and that was in operation prior to 1/1/04, subject to certain conditions.	No preemption. Does not preempt the passage of local smokefree laws.
15. Maryland	passed 5/17/07, effective 2/1/08	Smoking is prohibited in almost all indoor areas, including most places of employment, restaurants and bars. It will extend Maryland's existing smoking ban covering just workplaces to restaurants, bars, and private clubs as of 2/1/08, which were not covered in the original 1995 Maryland smoking ban.	A tobacconist establishment that engages primarily in the sale of tobacco and tobacco-related accessories; a vehicle, when used in the course of employment and occupied by only one individual, except when used for licensed childcare, daycare or healthcare activities; 25% of hotel/motel rooms; and smoking that is necessary to the conduct of scientific research into the health effects of tobacco smoke conducted at an analytical or educational laboratory.	No preemption.

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State	Effective Date	Type of Ban	Exemptions	Preemption
16 Massachusetts	07/01/04	Smoking is prohibited in almost all indoor areas, including most places of employment, restaurants and bars.	<p>Private residences, except during such time when the residence is utilized as part of a business as a group childcare center, school age day care center, school age day or overnight camp, or a facility licensed by the office of child care services or as a health care related office or facility; membership associations if the premises is owned, or under a written lease for a term of not less than 90 consecutive days, is not located in a public building, and the space is restricted by the association to admittance only of its members, the invited guest of a member, and the employees of the membership association; hotel and motel rooms designated as smoking rooms; retail tobacco stores; smoking bars; in the course of professional film production, if smoking is part of the theatrical production; by a person, organization or other entity that conducts medical or scientific research on tobacco products; religious ceremonies where smoking is part of the ritual; and a tobacco farmer, leaf dealer, manufacturer, importer, exporter, or wholesale distributor of tobacco products, may permit smoking in the workplace for the sole purpose of testing said tobacco for quality assurance purposes; smoking bars, which are defined as establishments that occupy exclusively an enclosed indoor space and that primarily are engaged in the retail sale of tobacco products for consumption by customers on the premises, derives revenue from the sale of food, alcohol or other beverages that is incidental to the sale of the tobacco products, prohibits entry to a person under the age of 18 years of age during the time when the establishment is open for business, prohibits any food or beverage not sold directly by the business to be consumed on the premises, maintains a valid permit for the retail sale of tobacco products as required to be issued by the appropriate authority in the city or town where the establishment is located, and maintains a valid permit to operate a smoking bar issued by the Department of Revenue.</p>	No Preemption.

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State	Effective Date	Type of Ban	Exemptions	Preemption
17 Minnesota	5/16/2007	Smoking is prohibited in almost all indoor areas; smoking in bars, restaurants and other establishments starting 10/1/07. The Clean Indoor Air Act was enacted in 1975 and bans smoking in all workplaces not frequented by the general public. On 5/16/07, Governor Tim Pawlenty signed the Freedom to Breathe Act, which bans smoking in all restaurants and bars from 10/1/07, and also in other workplaces.	Private homes and vehicles; hotel and motel rooms; truck cabs; farm vehicles and buildings; locked psychiatric wards; tobacco shops; Indian ceremonies and on stage for actors performing in plays.	No preemption.
18 Montana	10/1/2005	10/1/05, banned in all public buildings, including workplaces and restaurants. Bars, casinos, nightclubs, and cocktail lounges that get 60% or more of their income from alcohol or gambling are exempt from the ban until 10/1/09.	Restaurants and bars that make 40% or less of their gross revenue from the sale of food until 9/30/09, provided that smoke from the bar does not infiltrate into areas where smoking is prohibited and persons under 18 are not allowed to enter said establishment; a private residence unless it is licensed and used as a family day-care home, group day-care home, adult foster care home or a health care facility; a private motor vehicle; not more than 35% of hotel/motel rooms rented to guests; and a site that is being used in connection with the practice of cultural activities by American Indians.	Preemption until 10/1/09, when the law becomes effective for bars and casinos. The provisions of this part preempt adoption of an ordinance or regulation by a political subdivision that is stricter than the provisions of this part as to a place in which the ordinance or regulation applies or as to the penalty or remedy imposed for violation of the ordinance or regulation until 10/1/09.

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State	Effective Date	Type of Ban	Exemptions	Preemption
19 Nevada	12/8/2006	Smoking is prohibited in almost all indoor areas, including most places of employment and restaurants.	Smoking is allowed in areas within casinos where loitering by minors is prohibited by state law; retail tobacco stores; private residences, including those which may serve as an office workplace, except if used as a child care, adult day care or health care facility; stand-alone bars, taverns and saloons, and strip clubs and brothels. A stand-alone bar is defined as an establishment devoted primarily to the sale of alcoholic beverages to be consumed on the premises, in which food service is incidental to its operation, and provided that smoke from such establishments does not infiltrate into areas where smoking is prohibited.	No preemption. Nothing in state law shall be construed to restrict local control or otherwise prohibit a county, city or town from adopting and enforcing local tobacco control measures that meet or exceed the minimum applicable standards in the above law.
20 New Hampshire	6/19/2007	Smoking is prohibited in almost all indoor areas, including most places of employment, restaurants and bars.	Smoking may be permitted in enclosed places of public access and publicly-owned buildings and offices, including workplaces, other than those prohibited, in effectively segregated smoking-permitted areas designated by the person in charge. Smoking shall be totally prohibited in any such enclosed place, if smoking cannot be effectively segregated. The person in charge may declare any facility non-smoking in its entirety.	Preemption. In 2003, the New Hampshire Supreme Court determined that the state indoor smoking law constitutes a comprehensive and detailed statutory scheme that has no statutory provision permitting additional municipal regulation of smoking in restaurants.
21 New Jersey	1/15/2006	Smoking is prohibited in almost all indoor areas, including most places of employment, restaurants, bars and casinos (floors are exempt).	Cigar bars and cigar lounges; tobacco retail establishments that make 51% or more of their sales from tobacco products; tobacco businesses, when the testing of a cigar or pipe tobacco by heating, burning or smoking is a necessary and integral part of the process of making, manufacturing, importing or distributing cigars or pipe tobacco; private homes, private residences, and private automobiles; the floors of casinos and casino simulcasting facilities; and up to 20% of rooms in hotels/motels.	No preemption. The provisions of this act shall supersede any other statute, municipal ordinance and rule or regulation adopted pursuant to law concerning smoking in an indoor public place or workplace, except where smoking is prohibited by municipal ordinance or by any other statute or regulation adopted pursuant to law for purposes of protecting life and property from fire or protecting public health, and except for those provisions of a municipal ordinance which provide restrictions on or prohibitions against smoking equivalent to, or greater than, those provided under this act.

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State	Effective Date	Type of Ban	Exemptions	Preemption
22 New Mexico	03/13/07	Smoking is prohibited in almost all indoor areas, including most places of employment, restaurants and bars. Effective 6/15/07.	Casinos; bingo halls; private clubs; cigar bars; private residences not used for child care or adult health care; tobacco stores and manufacturers; limousines for private hire; enclosed areas in bars and restaurants used for private functions; and sole-proprietor businesses with fewer than 2 employees. Private homes, private residences and private automobiles; hotel and motel rooms; retail tobacco businesses; separate, enclosed rooms of residential health and mental health care facilities; membership organizations that have no compensated work staff; cigar bars under certain conditions; outdoor dining areas under certain conditions; and specified enclosed places where the public is invited for the primary purpose of promoting and sampling tobacco products, and the service of food and drink is incidental to such purpose; a cigar bar that makes 10% of its gross income from the on-site sale of tobacco products and the rental of on-site humidors, not including vending machines sales are exempt. The cigar bar must also be registered with the appropriate enforcement officer, which will remain in effect for one year. The registration will only be renewable if in the preceding calendar year the cigar bar continued to make 10% of its gross income from the on-site sale of tobacco products and the rental of on-site humidors and has not expanded its size or changed its location from its size or location since 12/31/02.	No preemption. "Nothing in the Dee Johnson Clean Indoor Act shall be construed to preempt or in any manner preclude specific provisions of a county or municipal ordinance; provided that the smokefree provisions of such a county or municipal ordinance are inclusive of all minimum standards and provisions for smokefree areas within the Dee Johnson Clean Indoor Air Act."
23 New York	July, 2003	Smoking is prohibited in almost all indoor areas, including most places of employment, restaurants and bars.	Private residences, except when being used as home-based child care facilities; designated smoking rooms in hotels and motels; retail tobacco stores, provided that smoke does not infiltrate into places where smoking is prohibited; outdoor areas of places of employment, except a sports arena; areas in owner-operated businesses that have no employees and are not generally accessible to the public; bars, including separately enclosed bar areas in restaurants, hotels and bowling centers; places of public access rented or leased for private functions from which the general public and children are excluded and arrangements for the function are under the control of the sponsor; separately enclosed areas in truck-stops accessible only to adults; and smoking as part of a traditional Native American ceremony is allowed.	No preemption. Smoking may not be permitted where prohibited by any other law rule, or regulation of any state agency or any political subdivision of the state. Nothing herein shall be construed to restrict the power of any county, city, town, or village to adopt and enforce additional local law, ordinances, or regulations which comply with at least the minimum applicable standards set forth in this article.
24 North Dakota	2005	Smoking is prohibited in almost all indoor areas, including most places of employment and restaurants.		No preemption. A city or county ordinance, a city or county home rule charter, or an ordinance adopted under a home rule charter may not provide for less stringent provisions on smoking than those provided by state law. Nothing in this act shall preempt or otherwise affect any other state or local tobacco control law that provides more stringent protection from the hazards of environmental tobacco smoke.

Table I - Summary of State Smoking Legislation

State	Effective Date	Type of Ban	Exemptions	Preemption
25 Ohio	11/07/06	Smoking is prohibited in almost all indoor areas, including most places of employment, restaurants and bars.	Private residences, except during the hours of operation as a child care or adult care facility for compensation, during the hours of operation as a business by a person other than a person residing in the private residence, or during the hours of operation as a business, when employees of the business, who are not residents of the private residence or are not related to the owner, are present; up to 20% of sleeping rooms in hotels, motels and other lodging facilities; family-owned and operated places of employment in which all employees are related to the owner; nursing homes subject to certain conditions; retail tobacco stores that makes more than 80% of its gross revenue from the sales of tobacco products; outdoor patios as defined; and private clubs with no employees.	No preemption. "The provisions of this chapter shall be liberally construed so as to further its purposes of protecting public health and the health of employees and shall prevail over any less restrictive state or local laws or regulations. Nothing in this chapter shall be construed to permit smoking where it is otherwise restricted by other laws or regulations."
26 Oklahoma	2003	Any indoor place used by or open to the public.	Licensed charitable bingo games during their hours of operation, up to 25% of hotel rooms, retail tobacco stores, and veterans' organizations. If smoking is to be permitted in any space exempted, 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 be 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. The gaming areas and the areas where simulcast wagering is conducted by an Oklahoma Horse Racing Commission licensee shall not be subject to the state restrictions on smoking in public places.	Preemption. 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.
27 Oregon	Passed 6/26/2007, effective 1/1/09.	Smoking is prohibited in almost all indoor areas, including most places of employment, restaurants and bars.	Retail tobacco stores; cigar bars; and up to 25% of hotel rooms.	Preemption until 1/1/09, when the law goes into effect. "A local county, district, municipality, port or political subdivision of this state may not prohibit smoking in any areas listed in this section unless the local government prohibition was passed before 7/1/01.
28 Pennsylvania	1988; New bill in Legislature	Smoking is prohibited in almost all indoor areas, including most places of employment.	Private social functions where the space utilized is under the control of the sponsor and not the proprietor; factories, warehouses and similar places of work not frequented by the general public; bar areas in liquor licensee establishments; restaurants seating fewer than 75 persons; areas in public places commonly referred to as lobbies and hallways; hotel and motel rooms; and tobacco retail stores.	Preemption. This act shall preempt and supersede any local ordinance or rule concerning this subject matter, except that this preemption shall not apply to local rules or regulations that were adopted by cities of the second class and were in effect prior to 9/1/88.

Table I - Summary of State Smoking Legislation

State	Effective Date	Type of Ban	Exemptions	Preemption
29 Rhode Island	3/1/2005	Smoking is prohibited in almost all indoor areas, including most places of employment, restaurants and bars.	Private residences, except when used as a licensed child care, adult day care or health care facility; up to 50% of designated hotel and motel rooms; retail tobacco stores, as long as smoke doesn't drift into other areas designated as non-smoking, private and semiprivate rooms or designated areas in assisted living residences and nursing facilities; outdoor places of employment; smoking bars; a stage performance, provided that smoking is part of the theatrical production; pari-mutual facilities (casinos) shall provide designated smoking and nonsmoking gaming areas in their facilities. The designated nonsmoking gaming area shall be physically separated from any smoking area and shall be required to have separate and distinct ventilation systems so as to prohibit the migration of smoke into the nonsmoking area. Any bar or restaurant located in a pari-mutual facility shall be nonsmoking and be physically separate from any smoking area and shall have a separate ventilation system so as to prohibit the migration of smoke into the restaurant except for bars which are presently in existence, located in, and not physically separated from a designated smoking area.	No preemption (was repealed 10/2006).
30 South Dakota	2002 workplace ban; pending legislation.	Smoking is prohibited in almost all indoor places of employment and restaurants without liquor licenses.	Pending legislation would prohibit smoking in all public places except gambling and casino facilities, bars, any restaurant that has a liquor license are exempt from the ban, smoke shops and hotel/motel rooms.	Preemption. State law preempts all matters relating to the use of tobacco products, except that a person or public entity may voluntarily regulate its use on their own property.
31 Tennessee	6/11/2007, effective 10/1/07.	Smoking is prohibited in almost all indoor areas, including most places of employment and restaurants. The bill was signed on 6/11/07, goes into effect on 7/1/07, and will be enforced beginning on 10/1/07.	Age-restricted venues; up to 25% of hotel and motel rooms; all premises of any manufacturer, importer or wholesaler of tobacco products, all premises of any tobacco leaf dealer or processor, and all tobacco storage facilities; non-enclosed areas of public places; nursing homes and long-term care facilities, with conditions; private businesses with 3 or fewer employees, with conditions; private clubs; private residences and vehicles, unless the private vehicle is being used for the public transportation of children or as part of health care or day care transportation; retail tobacco stores that prohibit minors on their premise; commercial vehicles when such vehicle is occupied solely by the operator.	Preemption. Any law or regulation of tobacco products enacted or promulgated after 3/15/94, by any agency or political subdivision of the state or any agency thereof is void; provided, that cities, counties and counties having a metropolitan form of government may regulate the use of tobacco products in buildings owned or leased by political subdivisions.

Table I - Summary of State Smoking Legislation

State	Effective Date	Type of Ban	Exemptions	Preemption
32 Utah	3/1/2006	Smoking is prohibited in almost all indoor areas, including most places of employment, restaurants and bars. Will be fully banned in bars, taverns and private clubs 1/1/09	Areas not commonly open to the public of owner-operated businesses having no employees other than the owner-operator; until 1/1/09, taverns, Class B private clubs and Class D private clubs that are licensed on or before 5/15/06 or were licensed by this date but underwent a change in ownership after, provided that to allow smoking a Class B private club may not allow persons under 21 except active military to enter; separately ventilated smoking areas in Salt Lake City International Airport; and guest rooms in hotels, motels, and other similar lodging facilities, except for the common areas where smoking is prohibited, including lobbies and dining areas. In addition, smoking tobacco as part of a traditional religious ceremony of an American Indian Tribe is exempt from the prohibition.	Preemption. This law supersedes any ordinance enacted by a governing body of a political subdivision that restricts smoking in a place of public access and that is not essentially identical to the provisions of this chapter. Outdoor places of public access owned and operated by a political subdivision, a state institution of higher education, or a state institution of public education are exempt from preemption.
33 Vermont	9/1/2005	Smoking is prohibited in almost all indoor areas, including most places of employment, restaurants and bars.	Employers may designate up to 30% of an employee cafeteria or lounge as a smoking area and may permit smoking in designated unenclosed areas only if the layout of the workplace is such that smoking will not be a physical irritant to any non-smoking employee, and 75% of the employees in the designated areas agree to allow smoking.	No preemption. Local ordinances are allowed as long as they are at least as protective of the rights of nonsmokers as state law.
34 Washington	12/8/2005	Smoking is prohibited in almost all indoor areas, including most places of employment, restaurants and bars.	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.	No preemption.

Table I - Summary of State Smoking Legislation

State	Effective Date	Type of Ban	Exemptions	Preemption
35 Washington DC	4/4/2006	Smoking is prohibited in almost all indoor areas, including most places of employment, restaurants and bars. Effective 1/07 for bars, nightclubs and the bar areas of restaurants.	A retail store that is used primarily for the sale of tobacco in which total annual revenue generated by the sale of non-tobacco products or accessories is no greater than 25% of the total revenue of the establishment, provided that it does not share space with any other establishment; tobacco bar – a restaurant, tavern, brew pub, club, or nightclub that generates 10% or more of its total annual revenue from the on-site sale of tobacco products, excluding sales from vending machines; an outdoor area of a restaurant, tavern, club, brew pub, or nightclub; a hotel room or motel room rented to one or more guests; a medical treatment, research, or non-profit institution where the activity of smoking is conducted for the purpose of medical research or is an integral part of a smoking cessation program; and theatrical productions. An establishment that is a retail store, tobacco bar, or medical treatment, research, or non-profit institution is not automatically exempt from the smoking ban. An establishment that is not automatically exempt must first satisfy certain minimum revenue thresholds or demonstrate a legitimate purpose for an exemption. An establishment that may qualify for an exemption may apply for a conditional certificate of exemption that will exempt the establishment for a period of not longer than 90 days. During the period of conditional exemption, the Department of Health will conduct an audit of the establishment's records to determine whether it actually qualifies for an exemption.	NA

TABLE II
SUMMARY STATE SMOKING BAN EXEMPTIONS:
EXEMPTIONS BY FREQUENCY

	EXEMPTION TYPE	STATE	COUNT	%
1	Hotel/motel rooms	AZ, AR, CA, CO, DE, FL, GA, HI, ID, IL, IA, LA, ME, MD, MA, MT, NJ, NY, ND, OH, OK, OR, PA, RI, TN, VT, DC	27	79%
2	Retail tobacco store	AZ, AR, CA, CO, FL, GA, HI, IL, IA, LA, ME, MD, MA, MN, NV, NJ, NM, NY, ND, OH, OK, OR, PA, RI, TN, DC	26	76%
3	Private residence	AZ, AR, CA, CO, DE, HI, ID, IL, LA, MA, MN, MT, NV, NJ, NM, NY, ND, OH, RI, TN	20	59%
4	Long-term care facilities, including nursing homes and/or psychiatric facilities and/or state veterans homes	AR, CA, CT, GA, HI, ID, IL, LA, MN, NY, OH, RI, TN	13	38%
5	Cigar/tobacco bar	CO, CT, MA, NJ, NM, NY, OR, RI, DC	9	26%
6	Private vehicles	CO, DE, LA, MD, MN, MT, NJ, NY, TN	9	26%
7	Casinos and other gaming facilities, designated areas	AR, CO, LA, NV, NJ, NM, OK, RI	8	24%
8	Native American or other religious ceremonies	AZ, ME, MA, MN, MT, ND, VT	7	21%
9	Outdoor places of employment	AR, CO, CT, HI, LA, ND, RI	7	21%
10	Theatrical performances	AZ, CA, ID, ME, MN, RI, DC	7	21%
11	Workplaces used for manufacturing, storing, etc., tobacco products	AR, FL, LA, MA, NJ, NM, TN	7	21%
12	Bars	FL, ID, LA, ND, NV, PA	6	18%
13	Private social functions	DE, ID, IA, NM, ND, PA	6	18%
14	Medical research or treatment sites	CA, FL, MD, MA, DC	5	15%
15	Outdoor patios	AZ, LA, NY, OH, DC	5	15%
16	Private clubs	GA, ME, NM, OH, TN	5	15%
17	Limos privately hired	CO, DE, LA, NM	4	12%
18	Membership associations	FL, ID, MA, NY	4	12%
19	Owner-operated businesses with no other employees	ID, ND, OH, VT	4	12%
20	Workplaces with 2 or 3 or fewer employees	AR, CO, NM, TN	4	12%
21	Airport smoking areas	CO, FL, GA, UT	4	12%
22	Convention facility meeting/assembly/banquet rooms	CA, GA, LA	3	9%
23	Correctional facilities	CT, HI, LA	3	9%
24	Segregated smoking-permitted areas of workplaces	CT, NH, VT	3	9%
25	Veteran/fraternal clubs	AZ, ME, OK	3	9%
26	Bars and restaurants age 21+	AR, TN	2	6%
27	Off-track or simulcast racing facilities	ME, OK	2	6%
28	Part of a production being filmed	HI, MA	2	6%
29	Warehouse facilities and/or manufacturing facilities	CA, PA	2	6%
30	Fundraising functions sponsored by volunteer fire, ambulance or rescue companies, or by a fraternal benefit society	DE	1	3%
31	Bars and restaurants age 18+	GA	1	3%
32	Demonstration smoking in a classroom or for a medical experiment	CT	1	3%
33	Enclosed areas of truck stops	MD	1	3%
34	Indian tribe-operated beano or bingo games	ME	1	3%
35	Private facilities	WA	1	3%
36	Public housing projects	CT	1	3%
37	Restaurants seating less than 75 persons	PA	1	3%
38	Strip clubs and brothels	NV	1	3%
39	Student residences at educational facilities	IA	1	3%

TABLE III
SUMMARY STATE SMOKING BAN EXEMPTIONS:
EXEMPTIONS IN ALPHABTICAL ORDER

EXEMPTION TYPE	STATE	COUNT	%
1 Airport smoking areas	CO, FL, GA, UT	4	12%
2 Bars	FL, ID, LA, ND, NV, PA	6	18%
3 Bars and restaurants age 18+	GA	1	3%
4 Bars and restaurants age 21+	AR, TN	2	6%
5 Casinos and other gaming facilities, designated areas	AR, CO, LA, NV, NJ, NM, OK, RI	8	24%
6 Cigar/tobacco bar	CO, CT, MA, NJ, NM, NY, OR, RI, DC	9	26%
7 Convention facility meeting/assembly/banquet rooms	CA, GA, LA	3	9%
8 Correctional facilities	CT, HI, LA	3	9%
9 Demonstration smoking in a classroom or for a medical experiment	CT	1	3%
10 Enclosed areas of truck stops	MD	1	3%
11 Fundraising functions sponsored by volunteer fire, ambulance or rescue companies, or by a fraternal benefit society	DE	1	3%
12 Hotel/motel rooms	AZ, AR, CA, CO, DE, FL, GA, HI, ID, IL, IA, LA, ME, MD, MA, MT, NJ, NY, ND, OH, OK, OR, PA, RI, TN, VT, DC	27	79%
13 Indian tribe-operated beano or bingo games	ME	1	3%
14 Limos privately hired	CO, DE, LA, NM	4	12%
15 Long-term care facilities, including nursing homes and/or psychiatric facilities and/or state veterans homes	AR, CA, CT, GA, HI, ID, IL, LA, MN, NY, OH, RI, TN	13	38%
16 Medical research or treatment sites	CA, FL, MD, MA, DC	5	15%
17 Membership associations	FL, ID, MA, NY	4	12%
18 Native American or other religious ceremonies	AZ, ME, MA, MN, MT, ND, VT	7	21%
19 Off-track or simulcast racing facilities	ME, OK	2	6%
20 Outdoor patios	AZ, LA, NY, OH, DC	5	15%
21 Outdoor places of employment	AR, CO, CT, HI, LA, ND, RI	7	21%
22 Owner-operated businesses with no other employees	ID, ND, OH, VT	4	12%
23 Part of a production being filmed	HI, MA	2	6%
24 Private clubs	GA, ME, NM, OH, TN	5	15%
25 Private facilities	WA	1	3%
26 Private residence	AZ, AR, CA, CO, DE, HI, ID, IL, LA, MA, MN, MT, NV, NJ, NM, NY, ND, OH, RI, TN	20	59%
27 Private social functions	DE, ID, IA, NM, ND, PA	6	18%
28 Private vehicles	CO, DE, LA, MD, MN, MT, NJ, NY, TN	9	26%
29 Public housing projects	CT	1	3%
30 Restaurants seating less than 75 persons	PA	1	3%
31 Retail tobacco store	AZ, AR, CA, CO, FL, GA, HI, IL, IA, LA, ME, MD, MA, MN, NV, NJ, NM, NY, ND, OH, OK, OR, PA, RI, TN, DC	26	76%
32 Segregated smoking-permitted areas of workplaces	CT, NH, VT	3	9%
33 Strip clubs and brothels	NV	1	3%
34 Student residences at educational facilities	IA	1	3%
35 Theatrical performances	AZ, CA, ID, ME, MN, RI, DC	7	21%
36 Veteran/fraternal clubs	AZ, ME, OK	3	9%
37 Warehouse facilities and/or manufacturing facilities	CA, PA	2	6%
38 Workplaces used for manufacturing, storing, etc., tobacco products	AR, FL, LA, MA, NJ, NM, TN	7	21%
39 Workplaces with 2 or 3 or fewer employees	AR, CO, NM, TN	4	12%

TABLE IV State Smoking Ban, Preemption

Preemption	CT, IA, MT, NH, OK, OR, PA, TN, UT,	9	27%
No Preemption	AZ, AR, CA, CO, DE, FL, GA, HI, ID, IL, LA, ME, MD, MA, MN, NV, NJ, NM, NY, ND, OH, RI, VT, WA,	24	73%

South Dakota and Washington DC not included