

2018 Regular Session

HOUSE BILL NO. 881

BY REPRESENTATIVES DUSTIN MILLER AND STOKES

HEALTH/SMOKING: Provides relative to the Louisiana Smoke Free Air Act

1 AN ACT

2 To amend and reenact R.S. 40:1291.3, 1291.11, 1291.22(B)(1)(a) and (B)(2)(a), and  
3 1291.23(A)(2), relative to smoking; to provide for general smoking prohibitions;  
4 to provide for definitions; to provide for penalties; to provide for smoke-free  
5 policies; to provide for construction; to provide for an effective date; and to provide  
6 for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 40:1291.3, 1291.11, 1291.22(B)(1)(a) and (B)(2)(a), and  
9 1291.23(A)(2) are hereby amended and reenacted to read as follows:

10 §1291.3. Definitions

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

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

18 (2) "Business" means ~~any corporation, sole proprietorship, partnership,~~  
19 ~~limited partnership, professional corporation, enterprise, franchise, association, trust,~~  
20 ~~joint venture, or other entity~~ a sole proprietorship, partnership, joint venture,

1 corporation, or other business entity, either for-profit or not-for-profit, including  
2 retail establishments where good or services are sold; professional corporations and  
3 other entities where legal, medical, dental, engineering, architectural, or other  
4 professional services are delivered; and private clubs.

5 (3) "Casino gaming operations" shall have the same meaning as the term  
6 defined in R.S. 27:205.

7 ~~(3)~~ (4) "Department" means the Louisiana Department of Health.

8 (5) "Electronic smoking device" means any product containing or delivering  
9 nicotine or any other substance intended for human consumption through inhalation  
10 of vapor or aerosol from the product. The term includes any such device, whether  
11 manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe,  
12 e-hookah, or vape pen, or under any other product name or descriptor.

13 (6) "Employee" means a person who is employed by an employer in  
14 consideration for direct or indirect monetary wages for profit, and a person who  
15 volunteers his services for a nonprofit entity.

16 ~~(4)~~ (7) "Employer" means an individual or a business that employs one or  
17 more individuals a person, business, partnership, association, corporation, including  
18 a municipal corporation, trust, or non-profit entity that employs the services of one  
19 or more individual persons.

20 ~~(5)~~ (8) "Enclosed area" means all space between a floor and ceiling that is  
21 enclosed on all sides by solid walls or windows, exclusive of doorways, which  
22 extend from the floor to the ceiling bounded on at least two sides by walls,  
23 doorways, or windows, whether open or closed. For the purposes of this paragraph,  
24 a wall shall include any retractable divider, garage door, or other physical barrier,  
25 whether temporary or permanent and whether or not containing openings of any  
26 kind.

27 (9) "Healthcare facility" means an office or institution providing care or  
28 treatment of diseases, whether physical, mental, or emotional, or other medical,  
29 physiological, or psychological conditions, including but not limited to hospitals,

1 rehabilitation hospitals, or other clinics, including weight control clinics, nursing  
2 homes, long-term care facilities, homes for the aging or chronically ill, laboratories,  
3 and offices of surgeons, chiropractors, physical therapists, physicians, psychiatrists,  
4 dentists, and all specialists within these professions. "Healthcare facility" shall  
5 include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards  
6 within health care facilities.

7 ~~(6)~~ (10) "Local governing authority" means a municipal or parish governing  
8 authority.

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

16 (12) "Playground" means any park or recreational area designed in part to  
17 be used by children that has play or sports equipment installed or that has been  
18 designated or landscaped for play or sports activities, or any similar facility located  
19 on public or private school grounds.

20 (13) "Private club" means an organization, whether incorporated or not,  
21 which is the owner, lessee, or occupant of a building or portion thereof used  
22 exclusively for club purposes at all times, which is operated solely for a recreational,  
23 fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for  
24 pecuniary gain, and which only sells alcoholic beverages incidental to its operation.  
25 The affairs and management of the organization are conducted by a board of  
26 directors, executive committee, or similar body chosen by the members at an annual  
27 meeting. The organization has established bylaws or a constitution to govern its  
28 activities. The organization has been granted an exemption from the payment of  
29 federal income tax as a club under the applicable provisions of 26 U.S.C. 501.

1           ~~(8)~~ (14) "Public building" means any building owned or operated by any of  
2           the following:

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

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

7           (c) Any other separate corporate instrumentality or entity of state or local  
8           government.

9           (15) "Public event" means an event which is open to and may be attended by  
10          the general public, including but not limited to concerts, fairs, farmers' markets,  
11          festivals, parades, performances, and other exhibitions, regardless of any fee or age  
12          requirement.

13          ~~(9)~~ (16) "Public place" means an ~~enclosed~~ area to which the public is invited  
14          or in which the public is permitted ~~which is not a public building~~, including but not  
15          limited to banks, bars, educational facilities, gaming facilities, ~~health care~~ healthcare  
16          facilities, ~~hotel and motel lobbies~~ hotels and motels, laundromats, parking structures,  
17          public vehicles, public transportation facilities; including ticket, boarding, and  
18          waiting areas of bus, train, and airport facilities and terminals, reception areas,  
19          restaurants, retail food production and marketing establishments, retail service  
20          establishments, retail stores, shopping malls, sports arenas, theaters, and waiting  
21          rooms. A private residence is not a "public place" unless it is used as a child care,  
22          adult day care, or health care facility.

23          (17) "Recreational area" means any public or private area open to the public  
24          for recreational purposes, whether or not any fee for admission is charged, including  
25          but not limited to amusement parks, athletic fields, beaches, fairgrounds, gardens,  
26          golf courses, parks, plazas, skate parks, swimming pools, trails, and zoos.

27          ~~(10)~~ (18) "Restaurant" means an eating establishment, including but not  
28          limited to; coffee shops, cafeterias, sandwich stands, and private and public school  
29          cafeterias, which gives or offers for sale food to the public, guests, or employees, as

1 well as kitchens and catering facilities in which food is prepared on the premises for  
2 serving elsewhere. The term "restaurant" shall include a bar located within a  
3 restaurant.

4 (19) "Riverboat" shall have the same meaning as the term defined in R.S.  
5 27:44.

6 (20) "Service line" means an indoor or outdoor line in which one or more  
7 persons are waiting for or receiving service of any kind, whether or not the service  
8 involves the exchange of money, including but not limited to ATM lines, concert  
9 lines, food vendor lines, movie ticket lines, and sporting event lines.

10 (21) "Shopping mall" means an enclosed or unenclosed public walkway or  
11 hall area that serves to connect retail or professional establishments.

12 ~~(11) "Retail tobacco business" means a business utilized primarily for the~~  
13 ~~sale of tobacco products and accessories and in which the sale of other products is~~  
14 ~~incidental.~~

15 ~~(12)~~ (22) "School" means any elementary or secondary school building, the  
16 campus of any school, any buildings on the campus, and all school buses.

17 ~~(13)~~ (23) "Secondhand smoke" means smoke emitted from lighted,  
18 smoldering, or burning tobacco when the smoker is not inhaling, smoke emitted at  
19 the mouthpiece during puff drawing, and smoke exhaled by the smoker.

20 ~~(14)~~ (24) "Smoking" means inhaling, exhaling, burning, or carrying or  
21 possessing any lighted tobacco product, including cigarettes, cigars, pipe tobacco,  
22 and any other lighted combustible plant material. any lighted or heated cigar,  
23 cigarette, or pipe, or any other lighted or heated tobacco or plant product intended  
24 for inhalation, including hookahs and marijuana, whether natural or synthetic, in any  
25 manner or in any form. "Smoking" also includes the use of an electronic smoking  
26 device which creates an aerosol or vapor, in any manner or in any form, or the use  
27 of any oral smoking device for the purpose of circumventing the prohibition of  
28 smoking in this Chapter.

1           (25) "Sports Arena" means a place where people assemble to engage in  
2           physical exercise, participate in athletic competition, or witness sports or other  
3           events, including sports pavilions, stadiums, gymnasiums, health spas, boxing  
4           arenas, swimming pools, roller and ice rinks, and bowling alleys.

5           §1291.11. General smoking prohibitions; exemptions

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

7           (1) ~~Smoke in any public building.~~ enclosed public places within the state of  
8           Louisiana, including but not limited to the following places:

9           (a) Aquariums, galleries, libraries, and museums.

10           (b) Areas available to the general public in businesses and non-profit entities  
11           patronized by the public, including but not limited to, banks, laundromats,  
12           professional offices, and retail service establishments.

13           (c) Bars.

14           (d) Bingo facilities.

15           (e) Child care and adult day care facilities.

16           (f) Convention facilities.

17           (g) Educational facilities, both public and private.

18           (h) Elevators.

19           (i) Any facility operating for the purpose of gaming including:

20           (i) A riverboat at the official gaming establishment.

21           (ii) A facility licensed for the operation of electronic video draw poker  
22           devices.

23           (iii) A facility licensed for the operation of slot machines.

24           (iv) A licensed charitable organization.

25           (v) A pari-mutuel wagering facility or off-track wagering facility which is  
26           licensed for operation and regulated pursuant to the provisions of Chapters 4 and 11  
27           of Title 4 and Chapters 4, 5, 6, and 7 of Title 27 of the Louisiana Revised Statutes  
28           of 1950, or any other gaming operations authorized by law.

29           (j) Healthcare facilities.

1           (k) Hotel or motel.

2           (l) Lobbies, hallways, and other common areas in apartment buildings,  
3           condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-  
4           unit residential facilities.

5           (m) Parking structures.

6           (n) Polling places.

7           (o) Public transportation vehicles, including buses and taxicabs, under the  
8           authority of the state, and ticket, boarding, and waiting areas of public transportation  
9           facilities, including bus, train, and airport facilities.

10          (p) Restaurants.

11          (q) Restrooms, lobbies, reception areas, hallways, and other common-use  
12          areas.

13          (r) Retail stores.

14          (s) Rooms, chambers, places of meeting or public assembly, including school  
15          buildings, under the control of an agency, board, commission, committee or council  
16          of the state or a political subdivision of the state.

17          (t) Service lines.

18          (u) Shopping malls.

19          (v) Sports arenas, including enclosed places in outdoor arenas.

20          (w) Theaters and other facilities primarily used for exhibiting motion  
21          pictures, stage dramas, lectures, musical recitals, or other similar performances.

22          (2) Smoke in any school.

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

25          (4) Smoke in any outdoor area proximate to a state office building where  
26          smoking is prohibited pursuant to the provisions of R.S. 40:1293.3.

27          (5) Smoke in any private and semiprivate rooms or apartments in nursing  
28          homes, assisted living residents, and other long-term care facilities that are occupied  
29          by one or more persons.

1           ~~(6) Smoke in any private club.~~

2           ~~(7) Smoke less than a reasonable distance of fifteen feet outside entrances,~~  
3           ~~operable windows, and ventilation systems of enclosed areas where smoking is~~  
4           ~~prohibited, so as to prevent tobacco smoke from entering those areas.~~

5           ~~(5) (8) As an employer, knowingly permit smoking in any enclosed area~~  
6           ~~within a place of employment.~~

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

8           (1) Private homes, private residences, and private automobiles; except that  
9           this Subsection shall not apply if any such home, residence, or vehicle is ~~being~~ used  
10          for child care or day care or if a private vehicle is ~~being~~ used for the public  
11          transportation of children or as part of health care or day care transportation in which  
12          case smoking is prohibited.

13          ~~(2) Limousines under private hire~~ The outdoor area of places of employment;  
14          except that the owner or manager of such business may post signs prohibiting  
15          smoking in any such outdoor area, which shall have the effect of making that outdoor  
16          area an area in which smoking is prohibited under the provisions of this Part.

17          ~~(3) A hotel or motel room designated as a smoking room and rented to a~~  
18          ~~guest; provided that a maximum of fifty percent of the hotel rooms, at the discretion~~  
19          ~~of the hotel owner or general manager, available for rent to guests in a hotel or motel~~  
20          ~~may be designated as smoking rooms~~ Designated smoking sections of outdoor  
21          seating, service areas, balconies, and courtyards of bars, restaurants, casinos, and  
22          facilities licensed and regulated for the operations of slot machines, pari-mutuel  
23          wagering facilities, and offtrack wagering facilities pursuant to the provisions of  
24          Chapter 4 and 11 of Title 4 and Chapters 4, 5, 6, and 7 of Title 27 of the Louisiana  
25          Revised Statutes of 1950.

26          ~~(4) Any retail tobacco business:~~

27          ~~(5) Any bar:~~

28          ~~(6) The outdoor area of places of employment, except that the owner or~~  
29          ~~manager of such business may post signs prohibiting smoking in any such outdoor~~

1        ~~area, which shall have the effect of making that outdoor area an area in which~~  
2        ~~smoking is prohibited under the provisions of this Part.~~

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

9            ~~(8) Designated smoking areas in which gaming operations are permitted to~~  
10       ~~occur upon a riverboat, at the official gaming establishment, at a facility licensed for~~  
11       ~~the operation of electronic video draw poker devices, at an eligible facility licensed~~  
12       ~~for the operation of slot machines, by a licensed charitable organization, or at a pari-~~  
13       ~~mutuel wagering facility or off-track wagering facility which is licensed for~~  
14       ~~operation and regulated under the provisions of Chapters 4 and 11 of Title 4 and~~  
15       ~~Chapters 4, 5, 6, and 7 of Title 27 of the Louisiana Revised Statutes of 1950, or any~~  
16       ~~other gaming operations authorized by law, except that smoking shall be prohibited~~  
17       ~~in all restaurants, including snack bars and any other type of eating area whether or~~  
18       ~~not such area is separated from the gaming area, that are located within the facilities~~  
19       ~~where gaming operations are conducted regardless of any type of license issued~~  
20       ~~relevant to the operation of the restaurant.~~

21           ~~(9) All workplaces of any manufacturer, importer, wholesaler or distributor~~  
22       ~~of tobacco products, of any tobacco leaf dealer or processor, and all tobacco storage~~  
23       ~~facilities.~~

24           ~~(10) Convention facilities during the time such facilities are being used for~~  
25       ~~professional meetings and trade shows which are not open to the public that are~~  
26       ~~produced or organized by tobacco businesses or convenience store associations~~  
27       ~~where tobacco products are displayed and limited to the location of such meetings~~  
28       ~~or shows and during the time such facilities are used by a carnival organization,~~

1 ~~traditionally known as a krewe or a courir de Mardi Gras for the purpose of the~~  
2 ~~conduct of a Mardi Gras ball and limited to the location of such ball.~~

3 ~~(11) Designated and well-ventilated smoking rooms in nursing homes which~~  
4 ~~permit smoking, provided that the designated smoking room is not the reception area,~~  
5 ~~lobby, waiting room, dining room, or any other room or area defined as a public~~  
6 ~~place under the provisions of this Part.~~

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

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

10 ~~(14) (4)~~ Any state, local, or private correctional facility prior to August 15,  
11 2009. After August 15, 2009, smoking shall be prohibited in any state, local, or  
12 private correctional facility.

13 \* \* \*

14 §1291.22. Enforcement; penalties

15 \* \* \*

16 B.(1)(a) Any person who is guilty of a violation of the prohibition in R.S.  
17 40:1291.11(A)(1), (2), (3), ~~and (4)~~ (4), (5), (6), and (7) shall, upon a first offense, be  
18 fined twenty-five dollars.

19 \* \* \*

20 (2)(a) Any employer who is guilty of a violation of the prohibition in R.S.  
21 40:1291.11(A)~~(5)~~ (8) shall, upon a first offense, be fined one hundred dollars.

22 \* \* \*

23 §1291.23. Development of smoke-free policies

24 A.

25 \* \* \*

26 (2) For the purposes of this Section, "smoke-free" means the prohibition of  
27 smoking as defined in R.S. 40:1291.3~~(14)~~.

28 \* \* \*

1           Section 2. Any provision of this Act held to be invalid or unenforceable by its terms,  
2 or as applied to any person or circumstance, shall be construed so as to give it the maximum  
3 effect permitted by law, unless such holding is one of utter invalidity or unenforceability,  
4 in which event such provision shall be deemed severable in accordance with R.S. 24:175,  
5 and shall not affect the remainder hereof or the application of such provision to other persons  
6 not similarly situated or to other dissimilar circumstances.

7           Section 3. This Act shall become effective January 2, 2019.

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DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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HB 881 Original

2018 Regular Session

Dustin Miller

**Abstract:** Provides for general smoking prohibitions, definitions, and penalties.

Present law provides for definitions relative to the La. Smoke Free Air Act.

Proposed law adds to defining terms relative to the La. Smoke Free Air Act.

Present law provides for areas in which smoking is prohibited. Proposed law adds to areas in which smoking is prohibited.

Present law provides for areas in which smoking is allowed. Proposed law adds to areas in which smoking is allowed.

Present law provides for smoking violation penalties. Proposed law adds to the list of violations.

Proposed law provides that any provision of proposed law held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give it the maximum effect permitted by law, unless such holding is one of utter invalidity or unenforceability, in which event the provision shall be deemed severable and shall not affect the remainder of proposed law or the application of such provision to other persons not similarly situated or to other dissimilar circumstances.

Proposed law is effective Jan. 2, 2019.

(Amends R.S. 40:1291.3, 1291.11, 1291.22(B)(1)(a) and (B)(2)(a), and 1291.23(A)(2))