

Regular Session, 2012

HOUSE BILL NO. 378

BY REPRESENTATIVES HOFFMANN, ANDERS, COX, FRANKLIN, HARRIS, HAVARD, HILL, KATRINA JACKSON, LEBAS, JAY MORRIS, POPE, SIMON, WHITNEY, PATRICK WILLIAMS, AND WILLMOTT

HEALTH/SMOKING: Prohibits outdoor smoking within 25 feet of certain exterior locations of buildings and other enclosed areas in which smoking is prohibited currently

1 AN ACT

2 To amend and reenact R.S. 40:1300.252 and 1300.256, relative to prohibition of smoking;
3 to provide for legislative findings; to prohibit outdoor smoking within a certain
4 distance of buildings or other enclosed areas in which smoking is prohibited; to
5 provide for an exception to a prohibition on outdoor smoking; to provide for actions
6 of an owner or manager of a business which cause an outdoor area to become an area
7 where smoking is prohibited by law; to provide for an effective date; and to provide
8 for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 40:1300.252 and 1300.256 are hereby amended and reenacted to read
11 as follows:

12 §1300.252. Purpose

13 The legislature finds and determines that due to abundant and mounting
14 scientific evidence indicating that there is no risk-free level of exposure to
15 secondhand smoke, it is in the best interest of the people of this state to protect
16 nonsmokers from involuntary exposure to secondhand smoke ~~in most indoor areas~~
17 ~~open to the public, public meetings, restaurants, and places of employment~~. The
18 legislature further finds and determines that a balance should be struck between the
19 health concerns of nonconsumers of tobacco products and the need to minimize
20 unwarranted governmental intrusion into and regulation of private spheres of conduct

1 and choice with respect to the use or nonuse of tobacco products in certain
2 designated public areas and in private places. Therefore, the legislature hereby
3 declares that the purpose of this Part is to preserve and improve the health, comfort,
4 and environment of the people of this state by limiting exposure to tobacco smoke.

5 * * *

6 §1300.256. General smoking prohibitions; exemptions

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

8 (1) Smoke in any public building.

9 (2) Smoke in any school.

10 (3) Smoke in any public place and in any enclosed area within a place of
11 employment.

12 (4)(a) Smoke in any outdoor area which is within twenty-five feet of an
13 entrance or wheelchair ramp or other structure which facilitates access by a disabled
14 person of a building or other enclosed area in which smoking is prohibited pursuant
15 to Paragraphs (1) through (3) of this Subsection.

16 (b) The provisions of this Paragraph shall not apply to any location which
17 is exempted from a prohibition on smoking pursuant to the provisions of Subsection
18 C of this Section.

19 (5) As an employer, knowingly permit smoking in any enclosed area within
20 a place of employment or outdoor area of a place of employment where smoking is
21 prohibited pursuant to Paragraph (4) of this Subsection.

22 B. The owner or manager of a business may post signs prohibiting smoking
23 in an outdoor area of a place of employment at a distance greater than that provided
24 in Paragraph (4) of Subsection A of this Section, which shall have the effect of
25 making that outdoor area an area in which smoking is prohibited under the
26 provisions of this Part.

27 C. Nothing in this Part shall prohibit smoking in any of the following places:

28 (1) Private homes, private residences, and private automobiles; except that
29 this Subsection shall not apply if any such home, residence, or vehicle is being used

1 for child care or day care or if a private vehicle is being used for the public
2 transportation of children or as part of health care or day care transportation in which
3 case smoking is prohibited.

4 (2) Limousines under private hire.

5 (3) A hotel or motel room designated as a smoking room and rented to a
6 guest; provided that a maximum of fifty percent of the hotel rooms, at the discretion
7 of the hotel owner or general manager, available for rent to guests in a hotel or motel
8 may be designated as smoking rooms.

9 (4) Any retail tobacco business.

10 (5) Any bar.

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

15 ~~(7)~~ (6) Private and semiprivate rooms or apartments in assisted living
16 residences, and other long-term care facilities that are occupied by one or more
17 persons, who are all smokers and who have requested in writing to be placed in a
18 room where smoking is permitted; provided that smoke from such rooms or
19 apartments does not infiltrate into areas where smoking is prohibited under the
20 provisions of this Part.

21 ~~(8)~~ (7) Designated smoking areas in which gaming operations are permitted
22 to occur upon a riverboat, at the official gaming establishment, at a facility licensed
23 for the operation of electronic video draw poker devices, at an eligible facility
24 licensed for the operation of slot machines, by a licensed charitable organization, or
25 at a pari-mutuel wagering facility or off-track wagering facility which is licensed for
26 operation and regulated under the provisions of Chapters 4 and 11 of Title 4 and
27 Chapters 4, 5, 6, and 7 of Title 27 of the Louisiana Revised Statutes of 1950, or any
28 other gaming operations authorized by law, except that smoking shall be prohibited
29 in all restaurants, including snack bars and any other type of eating area whether or

1 not such area is separated from the gaming area, that are located within the facilities
2 where gaming operations are conducted regardless of any type of license issued
3 relevant to the operation of the restaurant.

4 ~~(9)~~ (8) All workplaces of any manufacturer, importer, wholesaler, or
5 distributor of tobacco products, of any tobacco leaf dealer or processor, and all
6 tobacco storage facilities.

7 ~~(10)~~ (9) Convention facilities during the time such facilities are being used
8 for professional meetings and trade shows which are not open to the public that are
9 produced or organized by tobacco businesses or convenience store associations
10 where tobacco products are displayed and limited to the location of such meetings
11 or shows and during the time such facilities are used by a carnival organization,
12 traditionally known as a krewe or a courir de Mardi Gras for the purpose of the
13 conduct of a Mardi Gras ball and limited to the location of such ball.

14 ~~(11)~~ (10) Designated and well-ventilated smoking rooms in nursing homes
15 which permit smoking, provided that the designated smoking room is not the
16 reception area, lobby, waiting room, dining room, or any other room or area defined
17 as a public place under the provisions of this Part.

18 ~~(12)~~ (11) A hotel or motel room operated by a casino or gaming operation
19 which is rented to a guest.

20 ~~(13)~~ (12) An outdoor patio, whether or not food is served.

21 ~~(14)~~ (13) Any state, local, or private correctional facility prior to August 15,
22 2009. After August 15, 2009, smoking shall be prohibited in any state, local, or
23 private correctional facility.

24 ~~C.~~ D. An individual, person, entity, or business subject to the smoking
25 prohibitions of this Section shall not discriminate or retaliate in any manner against
26 a person for making a complaint regarding a violation of this Section or for
27 furnishing information concerning a violation to an enforcement authority.

28 ~~D.~~ E. Nothing in this Part shall be construed to restrict the power of any
29 parish, city, town, or village to adopt and enforce additional local laws, ordinances,

- 1 or regulations that comply with at least the minimum applicable standards to
 2 establish smokefree public places as set forth in this Part.
 3 Section 2. This Act shall become effective on January 1, 2013.

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)]

Hoffmann

HB No. 378

Abstract: Prohibits outdoor smoking within 25 feet of certain exterior locations of buildings and other enclosed areas in which smoking is prohibited currently.

Proposed law revises legislative findings in present law relative to protection of nonsmokers from involuntary exposure to secondhand smoke.

Present law, with certain exceptions as provided in present law (R.S. 40:1300.256(B)), prohibits smoking in the following locations:

- (1) Any public building as defined in present law (R.S. 40:1300.253(8)).
- (2) Any school as defined in present law (R.S. 40:1300.253(12)).
- (3) Any public place and in any enclosed area within a place of employment as defined in present law (R.S. 40:1300.253(7) and (9)).

Proposed law retains present law and adds as a location where smoking is prohibited any outdoor area which is within 25 feet of an entrance, or wheelchair ramp or other structure which facilitates access by a disabled person of a building or other enclosed area in which smoking is prohibited by present law.

Proposed law provides that the outdoor smoking prohibition created by proposed law does not apply to any location which is exempted from a prohibition on indoor smoking pursuant to present law.

Proposed law deletes the outdoor area of a place of employment from the listing of locations provided in present law which are exempted from the smoking prohibition.

Present law provides that the owner or manager of a business may post signs prohibiting smoking in an outdoor area, which shall have the effect of making that outdoor area an area in which smoking is prohibited under the provisions of present law. Proposed law revises present law to provide that the owner or manager of a business may post signs prohibiting smoking in an outdoor area of a place of employment at a distance greater than that provided in proposed law, which shall have the effect of making that outdoor area an area in which smoking is prohibited under the provisions of present law and proposed law.

Proposed law retains provision of present law specifying that nothing in present law or proposed law 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 in present law and proposed law.

Proposed law provides that the areas where smoking is prohibited by proposed law are subject to the requirement of present law (R.S. 40:1300.261) that "no smoking" signs or the international "no smoking" symbol be clearly and conspicuously posted in every place where smoking is prohibited.

Proposed law provides that enforcement of proposed law shall occur in the following manner prescribed in present law (R.S. 40:1300.262(A)):

- (1) Any violation of any prohibition in proposed law or present law may be cited by any law enforcement officer by the issuance of a citation and summons to appear before a court of proper jurisdiction.
- (2) Such citations shall be in a form such that there shall be retained in each book of citations a receipt and each shall have a copy to be deposited by the law enforcement officer with a court having jurisdiction over the alleged offense.
- (3) Upon the deposit of the copy, the court shall notify the alleged violator of the time and place of his hearing or of his opportunity to plead guilty by the payment of his specified fine. Failure to appear, unless the fine is paid, may be punished within the discretion of the court as contempt of court.

Proposed law subjects any violation of proposed law to the following penalties provided in present law (R.S. 40:1300.262(B)):

- (1) Any person who is guilty of a violation of the prohibition in present law or proposed law shall, upon a first offense, be fined \$25.
- (2) Any person who is guilty of violating such prohibition a second time shall be fined \$50.
- (3) Any person who is guilty of violating such prohibition a third or subsequent time shall be fined \$100.
- (4) Any employer who is guilty of a violation of the prohibition in present law or proposed law shall, upon a first offense, be fined \$100.
- (5) Any employer who is guilty of violating such prohibition a second time shall be fined \$250.
- (6) Any employer who is guilty of violating such prohibition a third or subsequent time shall be fined \$500.

Effective Jan. 1, 2013.

(Amends R.S. 40:1300.252 and 1300.256)

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Health and Welfare to the original bill.

1. Deleted an operable window and a ventilation system as features of buildings where outdoor smoking would be prohibited within 25 feet thereof.

2. Specified that the outdoor smoking prohibition created by proposed law does not apply to any location which is exempted from a prohibition on indoor smoking pursuant to present law.
3. Made technical changes.