2003

Synopsis of State Case and Statutory Law

Editorial Board

Follow this and additional works at: https://digitalcommons.law.yale.edu/yjhple

Part of the Health Law and Policy Commons, and the Legal Ethics and Professional Responsibility Commons

Recommended Citation

Available at: https://digitalcommons.law.yale.edu/yjhple/vol3/iss1/12

This Article is brought to you for free and open access by Yale Law School Legal Scholarship Repository. It has been accepted for inclusion in Yale Journal of Health Policy, Law, and Ethics by an authorized editor of Yale Law School Legal Scholarship Repository. For more information, please contact julian.aiken@yale.edu.
Synopsis of State Case and Statutory Law

The Journal’s Editorial Staff

Case Law

No cases dealing with the regulation of smoking in public places were found.

Statutes

No statutes dealing with the regulation of smoking in public places were found.

Case Law

Univ. of Alaska v. Univ. of Alaska Classified Employees Ass’n, 952 P.2d 1182 (Alaska 1998): The Supreme Court of Alaska held that university employees had contractually waived their right to bargain collectively for a smoking policy by accepting a collective bargaining agreement.

Statutes

Public Places

Alaska Stat. § 18.35.300 (Michie 2002): Smoking is prohibited in the following places except as allowed under Alaska Stat. § 18.35.310: a public transportation vehicle or a waiting, baggage, or boarding area for such vehicle; a place of employment, building, or other structure owned, leased, or operated by the state or a political subdivision of the state; any public or private postsecondary educational institution or adult day care facility; a courtroom or jury room; any room under the control of a state house of legislature when a public or private meeting or assembly is not in progress; a nursing home, rest home, residential health care institution, or any public or private office that mainly offers mental health services; a food service establishment with a seating capacity of at least fifty persons; a grocery store or a store primarily for the retail sale of food products; any place of employment where the owner or other person who controls the premises has posted a sign stating that smoking is prohibited by law; a correctional
facility; and a Pioneers' Home.

**ALASKA STAT. § 18.35.305 (Michie 2002):** Smoking is prohibited in public or private elementary and secondary schools, preschools, and child day care facilities. For private homes serving as schools or day care facilities, the prohibition applies during the hours of and in the rooms used for schooling or day care. The prohibition does not apply to a properly ventilated smoking area that complies with a collective bargaining agreement and is not accessible to minors. Smoking is also prohibited in rooms or other areas under control of the state or a political subdivision thereof while a public meeting or assembly is in progress; in offices where dental care, health care, or the healing arts are practiced; in public or private laboratories associated with and located in such offices; in public and private hospitals; in other non-residential health care facilities except for a public or private office that mainly offers mental health services; and in elevators.

**ALASKA STAT. § 18.35.320 (Michie 2002):** A person in charge of a place in ALASKA STAT. § 18.35.300, with the exception of a taxi or limousine for hire and an elevator, may designate portions of the place for smoking. Such person shall make reasonable accommodations to protect the health of non-smokers. A smoking section may not be designated for students in or on the grounds of an elementary or secondary school. The person who chairs the Rules Committee in a house of legislature is responsible for designating smoking sections in areas under the control of the house.

**ALASKA STAT. § 18.35.310 (Michie 2002):** The prohibitions in ALASKA STAT. § 18.35.300 do not apply to a part of a place or vehicle designated for smoking under ALASKA STAT. § 18.35.320, or to a limousine for hire or taxi if the driver and all passengers consent to smoking. The prohibitions on smoking in ALASKA STAT. §§ 18.35.300-18.35.305 do not apply to smoking on stage as part of a theatrical performance.

**ARIZONA**

**Case Law**

No cases dealing with the regulation of smoking in public places were found.

**Statutes**

**Public Places**

**ARIZ. REV. STAT. § 36-601.01 (2002):** Smoking is prohibited in the following public spaces: elevators, health care facilities, indoor theaters, libraries, art museums, lecture halls, concert halls, and buses used by the public. Smoking is permitted in these places if it is confined to areas designated and posted as smoking areas.
Schools

ARIZ. REV. STAT. § 36-798.03 (2002): Tobacco products are prohibited on school grounds, inside school buildings, on school parking lots or playing fields, in school buses or vehicles, and at off-campus, school-sponsored events. The prohibition does not apply to an adult who uses tobacco products as a necessary component of a school-sanctioned tobacco prevention program.

State Buildings

ARIZ. REV. STAT. § 36-601.02 (2002): Smoking is prohibited in any building owned or directly leased by the state. The following persons are exempt from the prohibition: patients receiving treatment at state hospitals; inmates in correctional facilities; persons residing in residential facilities owned or leased by the state; and persons using tobacco products for religious or ceremonial purposes.

Case Law

No cases dealing with the regulation of smoking in public places were found.

Statutes

Public Places

ARK. CODE ANN. § 20-27-703 (Michie 2002): Smoking is prohibited in a doctor’s or dentist’s waiting room, in hospital corridors, in nurses’ stations in hospitals and clinics, in all hospital rooms except private patient rooms, and in school buses. However, smoking is not prohibited in these areas if the smoking is limited to areas designated as smoking areas. Hotels, motels, and restaurants are excluded from prohibitions on public smoking.

Child Care Facilities

ARK. CODE ANN. § 20-78-217 (Michie 2002): Smoking is banned within the physical confines of licensed day care centers.

Schools

ARK. CODE ANN. § 6-21-609 (Michie 2002): Smoking is prohibited in or on any property owned or leased by a public school district, including school buses.

State Buildings

ARK. CODE ANN. § 22-3-220 (Michie 2002): Smoking is prohibited in the state capitol building.

ARK. CODE ANN. § 25-1-102 (Michie 2002): The chief administrative officer of each state agency, commission, board, office, department, or other authority of the state shall promulgate a smoking policy for the general office space of the state agency. The policy shall take into consideration the rights of both non-smokers and smokers.
Case Law

City of San Jose v. Dep't of Health Servs., 66 Cal. App. 4th 35 (Cal. Ct. App. 1998): San Jose argued that no provision of state law preempted enforcement of its smoking ordinance at long-term health care facilities licensed by the California Department of Health Services. The court ruled that smoking ordinances are not preempted by the Department's rules and regulations allowing smoking in enclosed areas since Cal. Health & Safety Code § 118910 does not proclaim an intent to preempt local governments from regulating smoking and even expressly authorizes local governments to ban smoking completely in any manner not inconsistent with law.

Statutes

Public Places

Cal. Lab. Code § 6404.5 (Deering 2002): Smoking is prohibited in an enclosed space at a place of employment. Exceptions include the following: sixty-five percent of the guest rooms in a transient lodging establishment (hotel or motel); areas of a transient lodging establishment lobby designated for smoking by the establishment; meeting and banquet rooms in a transient lodging establishment while no food or beverage service is being provided and where no exhibition is occurring; tobacco shops; motor trucks cabs, where only smoking employees are present; warehouse facilities; theatrical production sites where smoking is an integral part of the show; medical facilities where smoking is integral to the research or treatment being conducted; private residences, except when in use as licensed family day care centers; patient smoking areas in long-term care facilities; and ventilated break rooms designated by employers for smoking. Employers with a total of five or fewer employees, either full-time or part-time, may permit smoking where all of the following conditions are met: the smoking area is not accessible to minors; all employees who enter the smoking area consent to permitting smoking; and air from the smoking area is exhausted directly to the outside.

Child Care Facilities

Cal. Health & Safety Code § 1596.795 (Deering 2002): Smoking is prohibited in private residences licensed as family day care homes during the hours of operation as family day care homes and in those areas of the home where children are present. Smoking is prohibited on the premises of a licensed day care center.

Child Recreation Areas

Health Care Facilities

CAL. HEALTH & SAFETY CODE § 1286 (Deering 2002): Smoking is prohibited in patient care areas, waiting rooms, and visiting rooms. A patient room may be designated as smoking if all persons assigned to such room have requested a room where smoking is permitted. The prohibition does not apply to skilled nursing facilities and intermediate care facilities.

Public Transportation

CAL. HEALTH & SAFETY CODE § 118925 (Deering 2002): Smoking is prohibited in any vehicle of a passenger stage corporation or entity receiving any transit assistance from the state, and in any Amtrak vehicle or aircraft except to the extent permitted by federal law.

CAL. HEALTH & SAFETY CODE § 118935 (Deering 2002): At least seventy-five percent of any waiting area for public transportation must be designated as non-smoking.

Schools

CAL. EDUC. CODE § 48901 (Deering 2002): No school may permit student use of any product containing tobacco or nicotine while the students are on campus, attending school-sponsored activities, or under the supervision and control of school district employees.

State Buildings

CAL. GOV’T CODE § 19994.31 (Deering 2002): Smoking is prohibited inside state buildings and passenger vehicles and within five feet of main entrances and exits to state buildings.

Local Power to Restrict Smoking

CAL HEALTH & SAFETY CODE § 118910 (Deering 2002): State law does not preempt local laws imposing tighter restrictions on smoking.

Case Law

Elliott v. Bd. of Weld County Comm’rs, 796 P.2d 71 (Colo. Ct. App. 1990): The Board of Weld County Commissioners passed a resolution prohibiting smoking in all county buildings. Plaintiffs, prisoners in the county jail, argued that they had a liberty and property right to smoke under a state statute requiring public facilities to provide a smoking area. The court found that COLO. REV. STAT. § 25-14-105 authorizes counties to regulate smoking in public places and that other state statutes do not require the provision of smoking areas in public places.
Statutes

Public Places

COLO. REV. STAT. § 25-14-103(1) (2002): Smoking is prohibited in the following public places: elevators, museums, galleries, and libraries; waiting rooms and meeting rooms owned or operated by the executive and judicial branches of the state; any building used for the public exhibition of motion pictures, stage dramas, lectures, musical recitals, or other such performances; any sporting arena, except in a lobby reasonably separated from the spectator area; certain designated seating areas of motion picture theaters with adequate ventilation; public transportation vehicles when open to the public except in designated smoking areas; and hospital elevators, corridors, and areas where combustible supplies or flammable substances are stored or are in use. Additionally, hospitals must allow patients to choose a non-smoking room and accommodate such choice when possible; prohibit employees from smoking in patient rooms; and require that visitors obtain express approval from all patients before smoking in a patient room. Hospitals may also prohibit smoking on all or part of their premises.

COLO. REV. STAT. § 25-14-104 (2002): The owner or manager of a public place not specified in COLO. REV. STAT. § 25-14-103(1) may post signs that either prohibit smoking or provide smoking and non-smoking areas.

Restaurants

COLO. REV. STAT. § 25-14-103(2) (2002): Restaurants and taverns are encouraged to seat non-smokers in areas separate from smokers. Any public place where food is sold or served that does not designate smoking and non-smoking areas is required to post a conspicuous sign at its entrance indicating whether or not provisions have been made for non-smokers.

Schools

COLO. REV. STAT. § 25-14-103.5 (2002): Smoking and the use of tobacco products are prohibited in and around school property, which includes school buildings, school grounds, and all vehicles used for the purpose of transporting students, workers, visitors, or any other persons. The prohibition applies to public nursery schools, day care centers, child care facilities, head start programs, kindergarten, elementary, and secondary schools through grade twelve, and all students, staff, faculty, and visitors.

State Buildings

COLO. REV. STAT. § 25-14-103.7 (2002): Smoking is prohibited in all state legislative buildings. A legislative building is any building owned or operated by the legislative branch, except that a legislative council or its designee may designate smoking areas in legislative buildings and shall establish a smoking policy for office space within legislative buildings.

COLO. REV. STAT. § 2-2-404(1.5) (2002): The Senate and the House of
Representatives each has the exclusive authority to adopt rules governing smoking in their respective chambers, antechambers, committee rooms, and legislators' office space.

**Workplace**

**COLO. REV. STAT. § 25-14-103(4) (2002):** Persons in charge of offices and commercial establishments that employ the general public are encouraged to designate physically separate non-smoking areas in working environments, including employee lounges and cafeterias.

**Local Power To Restrict Smoking**

**COLO. REV. STAT. § 25-14-105 (2002):** Local governments can adopt ordinances that regulate smoking. Such regulations shall control in case of any inconsistency with state statutes.

---

**CONNECTICUT**

**Case Law**

*Local 1186 v. Bd. of Labor Relations*, 620 A.2d 766 (Conn. 1993): The Connecticut Board of Labor Relations dismissed an union's complaint regarding a school board's unilateral imposition of a smoke-free policy. The court held that the school board must negotiate with school employees if its smoke-free policy has a substantial secondary impact on employee working conditions. Whether a smoking ban has a substantial secondary impact is a factual matter that must be decided on a case-by-case basis. The school board's policy exceeded the bounds of **CONN. GEN. STAT. ANN. § 19a-342(b)**, which prohibits smoking in a public school only while school is in session or student activities are being conducted.

**Statutes**

**Public Places**

**CONN. GEN. STAT. ANN. § 19a-342(b) (West 2002):** Smoking is prohibited in any building owned or leased and operated by the state except in smoking areas; in any area of a health care institution other than a smoking area, provided that the smoking area is not the institution's only waiting area; in any area of a retail food store open to the general public; in any public area of a restaurant having a seating capacity of seventy-five or more persons unless a sign is posted indicating smoking is permitted in such area (provided that no such restaurant shall be designated, in its entirety, as a smoking area, that smoking may be prohibited in rooms used for private social functions, and that a sign is posted at the entrance of the restaurant indicating the availability of non-smoking areas); notwithstanding **CONN. GEN. STAT. ANN. § 31-40q**, within a public school building while school is in session or student activities are being conducted; and in any passenger elevator.
The prohibition does not apply to correctional facilities, dormitory rooms in any public institution of higher education, psychiatric facilities, public housing projects, or classrooms where demonstration smoking is taking place as part of a medical or scientific experiment or lesson.

**Child Care Facilities**

CONN. AGENCIES REGS. § 19a-79-7a(d)(9) (2002): Smoking is prohibited in all child care centers or group day care homes and outdoor areas. The prohibition does not apply to designated smoking areas, provided these areas are separate, properly ventilated, and secluded from any children present at the facility.

**Public Transportation**

CONN. GEN. STAT. ANN. § 53-198 (West 2002): Smoking is prohibited while traveling upon or operating a public bus, railroad car, or school bus. The prohibition does not apply to any special bus or to any part of a regular bus or passenger railroad car designated for smoking.

**Workplace**

CONN. GEN. STAT. ANN. § 31-40q(b) (West 2002): An employer may designate an entire business facility as a non-smoking area. In each business facility where smoking is permitted, an employer shall establish non-smoking work areas sufficient to accommodate non-smokers. In areas within a business facility where smoking is permitted, existing physical barriers and ventilation systems shall be used to the extent practicable to minimize the effect of smoking in adjacent non-smoking areas.

**Delaware**

**Case Law**

No cases dealing with the regulation of smoking in public places were found.

**Statutes**

**Public Places**

DEL. CODE ANN. tit. 16, § 2903 (2002): Smoking is prohibited in any indoor enclosed area to which the general public is invited or in which the general public is permitted, including but not limited to public meetings; elevators; government-owned or government-operated buses, vans, trains, taxicabs, and limousines; grocery stores; gymnasiums; jury waiting and deliberation rooms; courtrooms; child day care facilities; health care facilities including hospitals, health care clinics, doctor's offices, or other care-related facilities; any workplace not exempted; restrooms, lobbies, reception areas, hallways, and other common-use areas; restaurants; public gaming facilities; indoor sports arenas; lobbies, hallways, and other common areas in apartment buildings, condominiums, and other
multiple-unit residential facilities; lobbies, hallways, and other common areas in hotels and motels, and in no less than seventy-five percent of the sleeping quarters within a hotel or motel that are rented to guests; bowling alleys and billiard or pool halls; retirement facilities and nursing homes, not including any private residence; public buildings; auditoria, theaters, museums, and libraries; public schools, non-public schools, and other educational and vocational institutions; and motorsports speedways, taverns, or taprooms.

**Del. Code Ann. tit. 16, § 2904 (2002):** The prohibitions in **Del. Code Ann. tit. 16, § 2903** do not apply to private homes, residences, or automobiles (unless such homes or residences are being used for child care or day care, or unless such automobiles are being used for the public transportation of children or as part of health care or day care transportation); any indoor area where private social functions are being held when seating arrangements are under the control of the function’s sponsor and not the owner or manager of the area; limousines under private hire; a hotel or motel room rented to one or more guests provided that the total percentage of such rooms is less than twenty-five percent of the hotel or motel; or any fundraising activity or function sponsored by a volunteer fire, ambulance, or rescue company or fraternal benefit society, so long as the activity or function takes place upon property owned or leased by the sponsoring organization.

**Public Transportation**

**Del. Code Ann. tit. 11, § 1330 (2002):** Smoking in any trackless trolley coach or public bus is prohibited.

**State Buildings**

**Del. Code Ann. tit. 16, § 2902 (2002):** A public building is any building owned or operated by the state, including the legislative, executive, and judicial branches of state government; any county, city, town, village, or any other political subdivision of the state, public improvement or special district, public authority, commission, agency, or public benefit corporation; or any other separate corporate instrumentality or unit of state or local government. A public meeting is any meeting open to the public pursuant to the laws of Delaware and its political subdivisions.

**District of Columbia**

**Case Law**

No cases dealing with the regulation of smoking in public places were found.
Public Places

D.C. CODE ANN. § 7-1703 (2002): Smoking is prohibited in any elevator, except in a single-family dwelling; any public selling area of a retail store, except a tobacco shop; any public assembly or hearing room which is owned or leased by the District of Columbia government, except the District of Columbia National Guard Armory and the Robert F. Kennedy Memorial Stadium; any educational facility; when transporting passengers within the corporate limits of the District of Columbia, any passenger vehicle owned or operated by the District of Columbia or any passenger vehicle for hire except in a limousine where all occupants have consented; and any area of a health care facility frequented by the general public, although the operator of a health care facility may designate separate smoking areas. Additionally, when a health care facility allows patients to smoke in bed space areas, it shall make a reasonable effort to determine each patient's smoking preference and assign patients to a bed space area with other patients who have similar smoking preferences. Smoking is also prohibited in any restaurant except as permitted by D.C. CODE ANN. § 7-1703.01, and in any public or private workplace, except as provided in D.C. CODE ANN. § 7-1703.02.

D.C. CODE ANN. § 7-1708 (2002): Smoking is allowed in a tobacco shop, a theatrical performance where smoking is part of the performance, a tavern or nightclub, and a room or hall used for private social functions.

Public Transportation

D.C. CODE ANN. § 35-251(b)(1) (2002): It is unlawful for a person to smoke aboard a public passenger vehicle seating at least twelve passengers, including vehicles owned or operated by the Washington Metropolitan Transit Authority, that is transporting passengers within the District of Columbia; aboard a rail transit car owned or operated by the Washington Metropolitan Transit Authority that is transporting passengers within the District of Columbia; or while within a rail transit station owned or operated by the Washington Metropolitan Transit Authority and located within the District of Columbia.

Restaurants

D.C. CODE ANN. § 7-1703.01 (2002): The owner, manager, or person in charge of any restaurant having a seating capacity of fifty or more must designate at least twenty-five percent of the total seating capacity as non-smoking. Bar and lounge areas are excluded from the total seating capacity calculation. Any new construction for the purpose of establishing a restaurant or major renovation to an existing restaurant with a seating capacity of fifty or more must have a non-smoking area that is at least fifty percent of the total seating capacity.

Workplace

D.C. CODE ANN. § 7-1703.02 (2002): Private and public employers in the
District of Columbia must adopt, implement, and maintain a written smoking policy that includes an area where smoking is permitted. Physical barriers or a separate room shall be used to minimize smoke dissemination to non-smoking areas. The designation of a smoking area is a subject of collective bargaining.

**FLORIDA**

**Case Law**

No cases dealing with the regulation of smoking in public places were found.

**Statutes**

**Public Places**

**FLA. STAT. chs. 386.203, 386.204 (2002):** Smoking is prohibited at public meetings and in public places except in designated smoking areas. Public places include government buildings; public means of mass transportation and their associated terminals when these places are subject only to state smoking regulations; elevators; educational facilities; public school buses; libraries; courtrooms; jury waiting and deliberation rooms; museums; theaters; auditoriums; arenas; recreational facilities; restaurants; retail stores, except where the primary business is the sale of tobacco or tobacco-related products; grocery stores; places of employment; health care facilities, except as provided in FLA. STAT. ch. 386.205; day care centers; and common areas of retirement homes and condominiums. Smoking is permitted when an entire room or hall is used for a private function, and seating arrangements are under the control of the function sponsor.

**FLA. STAT. ch. 386.205 (2002):** The person in charge of a public space may designate smoking areas. However, smoking areas may not be designated in elevators, school buses, public means of mass transportation subject only to state smoking regulations, restrooms, hospitals, doctors' or dentists' waiting rooms, jury deliberation rooms, county health departments, day care centers, schools or other educational facilities, or common areas (defined as any hallway, corridor, lobby, aisle, water fountain area, restroom, stairwell, entryway, or conference room in any public place). A patient's room in a hospital, nursing home, or other health care facility may be designated as a smoking area if approved by the attending physician and agreed to by all patients assigned to that room. No more than one-half of the rooms in any health care facility may be designated as smoking areas. In workplaces where there are smokers and non-smokers, employers must develop, implement, and post a policy regarding designation of smoking and non-smoking areas. An entire area may be designated as a smoking area if all workers routinely assigned to work in that area agree. No more than one-half of the total square footage of any public place may be designated a smoking area. No more than thirty-five percent of the seats in a restaurant's dining room may be located in a
designated smoking area. A smoking area may not contain common areas expected to be used by the public.

**Schools**

FLA. STAT. ch. 386.212 (2002): It is unlawful for any person under eighteen years of age to smoke tobacco in, on, or within one thousand feet of the real property comprising a public or private elementary, middle, or secondary school between the hours of 6 a.m. and midnight. The prohibition shall not apply to any person occupying a moving vehicle or within a private residence.

**Preemption of Local Law**

FLA. STAT. ch. 386.209 (2002): State smoking laws and regulations supersede any municipal or county ordinance on the subject.

---

**GEORGIA**

**Case Law**

No cases dealing with the regulation of smoking in public places were found.

**Statutes**

**Public Places**

GA. CODE ANN. § 16-12-2 (2002): Smoking is prohibited in enclosed public elevators clearly demarked by “no smoking” signs; in any place on a public transportation vehicle clearly demarked by a “no smoking” sign; in any public area clearly demarked by a “no smoking” sign; and on any property operated by a day care center, group day care center, or family day care center during hours of operation. State and local authorities may enact more restrictive laws, rules, regulations, or ordinances to prohibit smoking.

---

**HAWAII**

**Case Law**

No cases dealing with the regulation of smoking in public places were found.

**Statutes**

**Public Places**

HAW. REV. STAT. ANN. § 328K-2 (Michie 2002): Smoking is prohibited in elevators in buildings open to and used by the public; in semi-private rooms, wards, waiting rooms, lobbies, and public hallways of public and private health facilities (but smoking is permitted in a private or semi-private room when there is no objection by any patient occupying such room); in any room that is primarily used for performances open to the public; in museums, libraries, and galleries; in
facilities in government-owned buildings, including meeting or conference rooms, auditoriums or enclosed sports areas, enclosed community centers, waiting areas, and baggage claim and check-in counters in airports; in business establishments, including banks, credit unions, financial services loan companies, retail stores, and savings and loan associations; in public restrooms; in taxis when carrying passengers; and on cruise ships. All restaurants shall provide non-smoking areas that are reasonably proportionate to customer preference and can ban smoking entirely.

HAW. REV. STAT. ANN. § 328K-3 (Michie 2002): Smoking is prohibited in small businesses or in retail stores with less than five thousand square feet of floor space.

**Child Care Facilities**

HAW. REV. STAT. ANN. § 346-158 (Michie 2002): Smoking is prohibited in all group child care homes, group child care centers, and family child care homes during hours of operation.

**Schools**

HAW. ADMIN. RULES § 8-31-3 (2002): Smoking and other use of tobacco products is prohibited at all times on public school campuses, school vehicles, and off-campus sites under the operational control of the principal or designee, except as part of bona fide classroom instruction or a theatrical production approved by the principal.

**Workplace**

HAW. REV. STAT. ANN. § 328K-13 (Michie 2002): Each employer shall adopt a written smoking policy containing the following provisions: First, if any non-smoking employee objects to the employer about smoke in the workplace, the employer, using already available means of ventilation or separation of office space, shall try to reach a reasonable accommodation between the preferences of smoking and non-smoking employees. Second, if an accommodation satisfactory to all affected employees cannot be reached, the preference of a simple majority of employees in the affected area shall prevail. If the employer’s decision is unsatisfactory to non-smoking employees, a simple majority of all non-smoking employees can appeal to the Director of Health for the determination of a reasonable accommodation.

HAW. REV. STAT. ANN. § 328K-14 (Michie 2002): HAW. REV. STAT. ANN. § 328K-13 does not govern smoking on any property owned or leased by the federal government or in private enclosed office workplaces occupied exclusively by smokers.
**IDAHO**

**Case Law**

No cases dealing with the regulation of smoking in public places were found.

**Statutes**

**Public Places**

IDAHO CODE § 39-5503 (Michie 2002): Smoking is prohibited in public places and at public meetings except in designated smoking areas. Public places are enclosed indoor areas used by the general public, including but not limited to restaurants with a seating capacity of thirty or more customers, retail stores, grocery stores and stores that sell food primarily for off-site consumption, public conveyances, educational facilities, hospitals, nursing homes, auditoriums, arenas, and meeting rooms. The prohibition does not apply to bars, bowling alleys, and rooms or halls used for a private social function where seating is controlled by the sponsor of the function. These venues may be designated as smoking areas in their entirety.

IDAHO CODE § 39-5504 (Michie 2002): Except where smoking is prohibited by the fire marshal or by law, proprietors may designate smoking areas in public places. A good faith effort shall be made to minimize smoke in non-smoking areas. In the case of public places consisting of a single room, reserving and labeling one side of the room as a non-smoking area is satisfactory.

IDAHO CODE § 39-5505 (Michie 2002): Smoking is prohibited in elevators accessible to the public.

IDAHO CODE § 18-5904 (Michie 2002): Smoking is prohibited at state and local government hearings and at meetings to which the public is invited.

**Public Transportation**

IDAHO CODE § 39-5510 (Michie 2002): Smoking is prohibited on non-chartered buses.

**State Buildings**

Exec. Order No. 96-02, 96-4 I.A.B. 24 (1996): Smoking is prohibited in all state-owned and state-leased buildings and facilities and other areas occupied by state employees, except for custodial care and full-time residential facilities, for which the smoking policy may be determined by the directors of such facilities.

**ILLINOIS**

**Case Law**

No cases dealing with the regulation of smoking in public places were found.
Statutes

Public Places

410 ILL. COMP. STAT. 80 / 3, 4 (2002): Smoking is prohibited in public places except in portions established and posted under 410 ILL. COMP. STAT. 80 / 5 as smoking areas. Public places are enclosed indoor areas used by the public or serving as places of work, including but not limited to hospitals, restaurants, retail stores, offices, commercial establishments, elevators, indoor theaters, libraries, art museums, concert halls, public conveyances, educational facilities, nursing homes, auditoriums, arenas, and meeting rooms. Bowling alleys, bars, hotel rooms, rooms or halls used in their entirety for private social functions, factories, warehouses, other places of work not usually frequented by the general public, and private enclosed offices occupied exclusively by smokers are exempt from the smoking prohibition.

410 ILL. COMP. STAT. 80 / 5 (2002): The proprietor of a public place (or, in the case of property control by the state or any unit of local government, the official appointed or elected to control it) may establish an area on the premises where smoking shall be permitted, unless otherwise prohibited by law or ordinance.

Child Care Facilities

225 ILL. COMP. STAT. 10 / 5.5 (2002): Smoking is prohibited, on any day when the center is in operation, in any area of a day care center in which children are allowed, regardless of whether or not any children are present at that moment.

Health Care Facilities

210 ILL. COMP. STAT. 50 / 3.155 (2002): Patients, individuals who accompany a patient, and emergency medical services personnel may not smoke while inside an ambulance.

Schools

105 ILL. COMP. STAT. 5 / 10-20.5b (2002): School boards must prohibit smoking on school property when such property is being used for any school purpose.

Preemption of Local Law


Case Law

No cases dealing with the regulation of smoking in public places were found.
Statutes

Public Places

IND. CODE ANN. § 16-41-37-4 (Michie 2002): Smoking is prohibited in any public building except in designated smoking areas; the retail area of any grocery store or drug store designated as non-smoking by the store's proprietor; and the dining area of a restaurant designated as non-smoking by the restaurant's proprietor.

IND. CODE ANN. § 16-41-37-2 (Michie 2002): A public building is an enclosed structure or part thereof that is occupied by a state or local agency, or used as a classroom building or dining area at a state educational institution; a public school; a licensed health facility; a station for paid firefighters or police officers; a licensed child care center or home or registered child care ministry; a licensed hospital or county hospital; or a provider's office.

IND. CODE ANN. § 16-41-37-5 (Michie 2002): The official in charge of a public building shall designate a non-smoking area and may designate a smoking area in the building.

Case Law

No cases dealing with the regulation of smoking in public places were found.

Statutes

Public Places

IOWA CODE ANN. § 142B.2 (West 2002): Smoking is prohibited in a public place or public meeting except in a designated smoking area. The prohibition does not apply in cases where an entire room or hall is used for a private social function and seating arrangements are under the control of the sponsor of the function. The prohibition also does not apply to factories, warehouses, and similar places of work not usually frequented by the general public, except that an employee cafeteria in such workplace shall have a designated smoking area.

IOWA CODE ANN. § 142B.1 (West 2002): A public meeting is a gathering in person of the members of a governmental body. Public places include but are not limited to workplaces of at least two hundred and fifty square feet; restaurants with a seating capacity greater than fifty; retail stores and malls; offices and meeting rooms; public conveyances, lobbies, and elevators; educational facilities; hospitals and other health care and medical facilities; and auditoriums, theaters, libraries, art museums, concert halls, and indoor arenas. Public places do not include retail stores where the majority of sales result from the sale of tobacco; the portions of a store where tobacco is sold; private offices occupied only by smokers; motel rooms;
rooms used for student residence at an educational facility; or rooms used by
residents of a health care facility.

Schools

IOWA CODE ANN. § 279.9 (West 2002): School rules shall prohibit the use of
tobacco by any student.

Case Law

No cases dealing with the regulation of smoking in public places were found.

Statutes

Public Places

KAN. STAT. ANN. §§ 21-4009, 21-4010 (2002): Smoking is prohibited in public
places and at public meetings except in designated smoking areas. Public places
are indoor areas open to the public or used by the general public, including but
not limited to restaurants; retail stores; public means of mass transportation;
passenger elevators; health care institutions or any other place where health care
services are provided to the public; educational facilities; libraries; courtrooms;
state, county, or municipal buildings; restrooms; grocery stores; school buses;
museums; theaters; auditoriums; arenas; and recreational facilities. Smoking areas
may be designated by proprietors of public places except in the case of elevators,
school buses, public transportation, and other places where smoking is prohibited
by the fire marshal or by law. Where smoking areas are designated, existing
physical barriers and ventilation must be used to minimize the toxic effects of
smoke in non-smoking areas.

KAN. STAT. ANN. § 21-4011 (2002): The person in charge of a public place has
the authority to determine the percentage of the area that is to be designated for
smoking.

Child Care Facilities

KAN. STAT. ANN. § 65-530 (2002): Smoking is prohibited in the enclosed space
day care homes, group day care homes, and family day care homes when
children are being cared for and the children are unrelated to the person who
maintains the home.

Health Care Facilities

KAN. STAT. ANN. § 21-4017 (2002): Smoking is prohibited in health care
facilities, but smoking areas may be established within licensed long-term care
units if such smoking areas are well ventilated.

Schools

KAN. STAT. ANN. § 72-53,107 (2002): The use of tobacco products is
prohibited in school buildings.

State Buildings

KAN. STAT. ANN. § 21-4016 (2002): Smoking is prohibited in any room, hallway, or other place in the state capitol.

Kentucky

Case Law

No cases dealing with the regulation of smoking in public places were found.

Statutes

Schools

KY. REV. STAT. ANN. § 438.050 (Michie 2002): Smoking is prohibited on school property while children are present, except by adult employees and by students in rooms designated for that purpose.

State Buildings

KY. REV. STAT. ANN. § 61.165 (Michie 2002): State, county, and municipal governments may adopt policies regarding smoking in government buildings. Such policies must provide accessible indoor smoking areas in buildings where smoking is otherwise restricted and allow smoking in open public areas where ventilation and air exchange are adequate and smoking is not otherwise legally restricted.

Louisiana

Case Law

No cases dealing with the regulation of smoking in public places were found.

Statutes

Public Places

LA. REV. STAT. ANN. § 40:1300.42 (West 2002): Smoking tobacco in any form is prohibited in the following public places: passenger elevators used by or open to the public and clearly marked with a "no smoking" sign; public transportation vehicles used or open to the public and clearly marked with a "no smoking" sign; child care facilities; and any areas designated and posted by the state fire marshal as hazardous. The prohibition does not apply to riverboat gambling facilities and off-track betting parlors, although separate areas or rooms may be designated as non-smoking in these facilities.

LA. REV. STAT. ANN. § 40:1300.43 (West 2002): The owner or manager in control of a public place may designate a separate room on each floor for smoking. Owners and operators of taxis or limousines may designate their vehicles
as smoking or non-smoking. A business that derives over half of its gross revenues from the sale of alcoholic beverages may be designated as a smoking area in its entirety. The owner or manager of a restaurant may maintain flexible smoking and non-smoking areas according to customer demand.

LA. REV. STAT. ANN § 40:1261 (West 2002): Smoking is allowed in all areas of the Louisiana Superdome except the arena.

Health Care Facilities

LA. REV. STAT. ANN. § 40:2115 (West 2002): Smoking is prohibited in enclosed areas of all hospitals that are air conditioned or heated. A hospital governing board may designate a well-ventilated area for smoking. Smoking may be permitted in patient rooms at the discretion of a hospital governing board only upon the order of the patient’s primary treating physician, with the consent of all patients in the patient room, and in accordance with all standards established by the Joint Commission on Accreditation of Health Care Organizations and all applicable state and federal regulations.

Schools

LA. REV. STAT. ANN. § 17:240 (West 2002): Smoking or otherwise using tobacco is prohibited in any elementary or secondary school building. Smoking is also prohibited on any bus transporting school children attending any public elementary or secondary school; and on the grounds of any public or private elementary, secondary, or special-education school, except in specifically designated smoking areas.

Workplace

LA. REV. STAT. ANN § 40:1300.24 (West 2002): Each employer who operates an office in the state must maintain a written record of a smoking policy that provides, at a minimum, that any employee may object to the employer about smoke in the workplace. The employer must attempt to reach a reasonable accommodation between non-smoking and smoking employees. An official in charge of a state, parish, or municipal building where smoking in the office is restricted must, if allowed, designate a smoking area in a separate room in existing facilities. Educational and health care facilities are not required to designate smoking areas. The requirements herein do not apply to courtrooms or other areas used by the state judicial branch.

LA. REV. STAT. ANN § 40:1300.25 (West 2002): LA. REV. STAT. ANN § 40:1300.24 does not apply to a private home used as an office or to an office used exclusively by smokers, even if such office is visited by non-smokers.

Preemption of Local Law

Case Law

Schlear v. Fiber Materials, Inc., 574 A.2d 876 (Me. 1990): A former employee filed a wrongful discharge action claiming that she was fired after she reported alleged violations of the Workplace Smoking Act, ME. REV. STAT. ANN. tit. 22, § 1580-A. The court held that the plaintiff met her burden of demonstrating that there was no mutually agreed-upon smoking policy between the employees and the employer and that the employer's unilateral imposition did not prevent application of the Workplace Smoking Act. (The case has been overruled on other grounds.)

Statutes

Public Places

ME. REV. STAT. ANN. tit. 22, § 1542 (West 2002): Smoking is prohibited in all enclosed areas of public places and all restrooms made available to the public. Smoking is not prohibited in an enclosed area of a public place at times when it is not open to the public; theaters or other enclosed structures when a performer is smoking as part of a performance; areas where smoking is part of a religious ceremony or a cultural activity by a defined group; taverns or lounges; motel or hotel rooms rented to members of the public; portions of public places consisting of private offices where no member of the public is present; private residences unless used as a day care or babysitting service, in which case smoking is prohibited in those areas used to care for children during the time care is provided; public places where bingo or beano games are conducted; retail stores that sell primarily tobacco products; and privately chartered buses.

ME. REV. STAT. ANN. tit. 22, § 1580 (West 2002): No person may smoke in any room used for jury meetings or deliberation unless all members present consent.

Health Care Facilities

ME. REV. STAT. ANN. tit. 22, § 1580-B (West 2002): Smoking is prohibited in all enclosed areas of a hospital, except that a hospital may establish an enclosed and adequately ventilated smoking area for patient use. A hospital may designate its entire facility as non-smoking.

ME. REV. STAT. ANN. tit. 22, § 1825 (West 2002): Smoking is prohibited in nursing homes except in specifically designated areas.

Schools

ME. REV. STAT. ANN. tit. 22, § 1578-B (West 2002): All students and school employees are prohibited from using tobacco in the buildings or on the grounds of any elementary or secondary school while school is in session. Tobacco use may be permitted in classrooms only as part of a bona fide demonstration during a class lesson, and when prior notice has been given to the school's administrator. A local school board or school employees may establish designated smoking areas
through collective bargaining.

Workplace

ME. REV. STAT. ANN. tit. 22, § 1580-A (West 2002): All employers shall establish or negotiate through the collective bargaining process a written policy that prohibits smoking except in designated smoking areas. The policy may prohibit smoking throughout the business facility.

MARYLAND

Case Law

No cases dealing with the regulation of smoking in public places were found.

Statutes

Public Places

MD. CODE ANN., LAB. & EMP., §§ 2-105, 2-106, 5-312 (2002): The Commissioner of Labor and Industry has the authority to promulgate regulations protecting occupational safety, including prohibitions on smoking. However, the regulations may not restrict smoking in any portion of a private residence that is not open to the public for business purposes; in any bar, tavern, or nightclub; or in the designated smoking area (not to exceed forty percent of total space) of any restaurant, hotel, or gathering open to the public.

MD. CODE ANN., HEALTH—GEN § 24-502 (2002): Smoking is prohibited in the public area of a retail store. A retail store is any store employing twenty or more full-time employees with the primary purpose of selling goods, wares, food for consumption elsewhere, or merchandise. The prohibition does not apply to restaurants, restaurant areas of retail stores, tobacconists, restrooms in retail stores, or work areas of the store that are closed to the public or that can be physically isolated by a room with doors closed.

MD. ANN. CODE art. 89, § 64 (2002): Smoking is prohibited in public elevators.

Health Care Facilities

MD. CODE ANN., HEALTH—GEN § 24-205 (2002): Smoking is prohibited in hospitals. Exceptions include mental disorder facilities, facilities where average patient stay is more than thirty days, and acute care hospitals where an attending physician authorizes smoking as part of patient care. Directors of nursing homes, health clinics, or physician offices shall regulate smoking on the respective premises. Smoking areas must be considered safe and must protect non-smokers from smoke. Smoking is prohibited where non-smoking patients sleep.

Public Transportation


MD. CODE ANN., TRANSP. § 7-705 (2002): Smoking is prohibited in transit
vehicles and transit facilities owned or controlled by the state, and on trains owned or controlled by the state or operated by a railroad company under contract to the state to provide passenger railroad service.

**Workplace**

**MD. REGS. CODE tit. 9.12.23, § .01 (2002):** Smoking is prohibited in enclosed workplaces within the limits of MD. CODE ANN., LAB. & EML., §§ 2-105, 2-106, 5-312. Employers can offer designated smoking areas with special ventilation.

### Case Law

**Tri-Nel Mgmt., Inc. v. Bd. of Health,** 741 N.E.2d 37 (Mass. 2001): Plaintiffs, operators of a bar, challenged the Barnstable County Board of Health’s ban on smoking in all food service establishments, lounges, and bars. MASS. GEN. LAWS ch. 111, § 31 allows boards of health to make reasonable health regulations. Plaintiffs argued that the defendant’s ban was not reasonable, that the amount of smoke exposure in restaurants and bars was not sufficient to cause adverse health effects. The court found substantial evidence to the contrary and noted that under MASS. GEN. LAWS ch. 270, § 22, nothing restricts a municipality’s authority to regulate smoking more strictly than state law.

### Statutes

#### Public Places

**MASS. ANN. LAWS ch. 270, § 22 (Law. Co-op. 2002):** Smoking is prohibited in public elevators; in retail food stores; in or upon public mass transit conveyances, indoor platforms, and enclosed outdoor platforms; and at open meetings of governmental bodies. Smoking is also prohibited in other public buildings and enclosures, including courthouses, schools, colleges, universities, museums, libraries, trains, airplanes, waiting areas of airports, waiting areas of health care facilities, group child care centers, school-aged day care centers, and family day care centers, except in areas specifically designated for smoking. An area shall be designated as a smoking area only if non-smoking areas of sufficient size and capacity are available to accommodate non-smokers. Smoking is prohibited in any restaurant with a seating capacity of seventy-five or more persons, except in an area that has been specifically designated as a smoking area. Smoking is prohibited in the state house, in other state-owned buildings, and in any space occupied by a state agency or department that is located in another building, including any private office in any such building or space. This last restriction does not apply to residents or patients of state hospitals, the Soldiers’ Home in Massachusetts, the Soldiers’ Home in Holyoke, or substance abuse treatment centers under state jurisdiction.

**MASS. ANN. LAWS ch. 54, § 73 (Law. Co-op. 2002):** Smoking is prohibited at a polling place during an election or at a town meeting.
Health Care Facilities

MASS. ANN. LAWS ch. 111, § 72X (Law. Co-op. 2002): All public and private nursing homes must designate no-smoking sections in common areas, including lobbies, cafeterias, conference rooms, and employee lounges. Smoking by employees of such nursing homes is prohibited in all patient care areas.

Schools

MASS. ANN. LAWS ch. 71, § 2A (Law. Co-op. 2002): Students enrolled in either primary or secondary public schools are prohibited from using tobacco products of any type on school grounds during normal school hours.

Local Power To Restrict Smoking

MASS. ANN. LAWS ch. 111, § 31 (Law. Co-op. 2002): Local boards of health are empowered to make reasonable health regulations.

Michigan Restaurant Ass’n v. City of Marquette, 626 N.W.2d 418 (Mich. Ct. App. 2001): The court held that a city ordinance completely prohibiting smoking in restaurants conflicted with a food establishment’s statutory right to designate a certain percentage of its seating capacity for smokers under MICH. COMP. LAWS ANN. § 333.12905.

Keller v. City of Grand Rapids, No. 223083, 2001 Mich. App. LEXIS 1242 (Mich. Ct. App. Aug. 7, 2001): The plaintiff alleged he was harassed out of his job in part because he filed a police report complaining about his employer’s failure to comply with and enforce smoking rules under MICH. COMP. LAWS § 333.12605. The court held that the evidence was sufficient to support his claim.

Statutes

Public Places

MICH. COMP. LAWS § 333.12603 (2002): Except as otherwise provided, smoking is only allowed in designated smoking areas in a public place or at a meeting of a public body. As defined in MICH. COMP. LAWS § 333.12601, a public place is an indoor area owned or operated by the state and used by the general public, as a workplace for public employees or a meeting place of a public body, including such places as offices, educational facilities, nursing homes, county medical care facilities, auditoriums, arenas, meeting rooms, and public conveyances; or an indoor area not owned by the state or local government and used by the public, including educational facilities, nursing homes, county medical care facilities, auditoriums, arenas, theaters, museums, and concert halls. The smoking prohibition does not apply to a place used for a private function if the seating is controlled by the sponsor of the function and not by the owner or operator of the place. The prohibition also does not apply to food service establishments, licensed premises, or private educational facilities after regularly
scheduled school hours.

MICH. COMP. LAWS § 333.12605 (2002): The owner or operator of a public place may designate a smoking area unless smoking is prohibited by law. If a smoking area is designated, physical barriers and ventilation systems must be used to minimize the toxic effects of smoke in both smoking and adjacent non-smoking areas. If smoking is permitted in a public place, a written policy to separate smokers from non-smokers must be developed that, at a minimum, provides that non-smokers be located closest to a fresh-air source, gives individuals hypersensitive to tobacco smoke special consideration, and establishes a procedure to receive, investigate, and take action on complaints.

MICH. COMP. LAWS § 408.820 (2002): It is unlawful to smoke or carry lighted tobacco in passenger elevators in all buildings in the state.

Child Care Facilities

MICH. COMP. LAWS § 333.12604 (2002): Smoking is prohibited in all child care institutions and child care centers, and on real property that is under the control of a child care institution or center.

Health Care Facilities

MICH. COMP. LAWS § 333.12604a (2002): Smoking is prohibited in the common area or treatment area of a private practice office or in a health care facility.

Restaurants

MICH. COMP. LAWS § 333.12905 (2002): All public areas of a food service establishment must be non-smoking. A public area includes but is not limited to a bathroom, a coatroom, an entrance, or other area used by patrons. Food service establishments with seating capacities of less than fifty may designate smoking areas of up to seventy-five percent of seating capacity. Food service establishments with a seating capacity of fifty or more that are not owned by private clubs may designate smoking areas of up to half of their seating capacity.

Schools

MICH. COMP. LAWS § 750.473 (2002): Use of a tobacco product is prohibited on school property, which is defined as a building or other real estate controlled by a school district. The prohibition does not apply to outdoor areas, such as open-air stadiums, during weekends or other days without regularly scheduled school hours, or after 6 p.m. on days with regularly scheduled school hours.

Case Law

No cases dealing with the regulation of smoking in public places were found.

Statutes

Public Places
MINN. STAT. ANN. § 144.414(1) (West 2002): Smoking in public places or at public meetings is prohibited except in designated smoking areas. The prohibition does not apply where an entire hall is used for a private social function and seating arrangements are under the control of the function’s sponsor; or to workplaces not usually frequented by the general public, except that the Commissioner of Health shall establish rules to prohibit smoking in factories, warehouses, and those places where close proximity or inadequate ventilation causes smoke pollution detrimental to the health and comfort of non-smoking employees.

MINN. STAT. ANN. § 144.413(2) (West 2002): Public places include but are not limited to restaurants, retail stores, offices and other commercial establishments, public conveyances, public schools, hospitals, nursing homes, arenas, meeting rooms, and common areas of rental apartment buildings. Public places do not include private enclosed offices occupied exclusively by smokers even though such offices may be visited by non-smokers.

MINN. STAT. ANN. § 327.742 (West 2002): Smoking is prohibited in hotel rooms designated as non-smoking.

Child Care Facilities

MINN. STAT. ANN. § 144.414(2) (West 2002): Smoking is prohibited in day care centers, family homes, and other such homes during their hours of operation.

Health Care Facilities

MINN. STAT. ANN. § 144.414(3) (West 2002): Smoking is prohibited in any area of a hospital, health care clinic, doctor’s office, or other care-related facility other than a nursing home, boarding care facility, or licensed residential facility. The prohibition does not apply to patients in certain chemical dependency or mental health treatment programs, or to participants in peer-reviewed scientific studies related to the health effects of smoking.

Schools

MINN. STAT. ANN. § 144.4165 (West 2002): Tobacco use is prohibited in public schools and in all facilities and vehicles that a school district owns, leases, rents, contracts for, or controls. The restriction does not prohibit the lighting of tobacco by an adult as part of a traditional Indian cultural or spiritual ceremony.

State Buildings

MINN. STAT. ANN. § 16B.24(9) (West 2002): Smoking is prohibited in all buildings managed or leased by the state except in veterans homes with designated smoking areas.

Case Law

No cases dealing with the regulation of smoking in public places were found.
Statutes

State Buildings

MISS. CODE ANN. § 29-5-161 (2002): Smoking is prohibited outside of designated smoking areas in state office buildings. Designated smoking areas are limited to enclosed private offices, employee break areas, and outdoor areas. This section preempts and supersedes any municipal or county ordinance.

Public Transportation

MISS. CODE ANN. § 97-35-1 (2002): Smoking of cigars and pipes (but not cigarettes) is prohibited on any passenger bus or coach while transporting passengers on any state highway.

Schools

MISS. CODE ANN. § 97-32-29 (2002): Smoking is prohibited on educational property, which includes public school buildings, buses, campuses, grounds, recreational areas, and other property owned, used, or operated by any local school board or school. Educational property does not include property of state institutions of higher learning, public community or junior colleges, or vocational-technical complexes where only adult students are in attendance.

Case Law

No cases dealing with the regulation of smoking in public places were found.

Statutes

Public Places

MO. REV. STAT. §§ 191.765, 191.767 (2002): Smoking is prohibited in public places and at public meetings of government bodies except in designated smoking areas. Public places are enclosed indoor areas used by the general public or serving as workplaces, including but not limited to the following: retail or commercial establishments; health care facilities, including hospitals, nursing homes, physicians' offices, and ambulatory clinics; vehicles used for public transportation, including buses, taxicabs, and limousines for hire; restrooms; elevators; libraries; educational facilities; day care facilities; museums; auditoriums; art galleries; public areas and waiting rooms of public transportation facilities; gymnasiums; theater lobbies; concert halls; arenas; swimming pools; corridors; and shopping malls. No public place shall have more than thirty percent of its entire space designated as a smoking area. State executive departments and institutions of higher education are required to designate smoking areas where state employees may smoke during the work day, provided such areas can be adequately ventilated at minimal cost. Restaurant proprietors are required to designate areas of sufficient size to accommodate the usual and customary demand for non-
smoking areas by customers or patrons.

**Mo. Rev. Stat. § 191.769 (2002):** Exemptions from the smoking prohibition include the following: entire rooms or halls used for private social functions; limousines for hire and taxicabs, where the driver and all passengers agree to smoking; performers onstage, where smoking is part of the production; smoke shops and parlors; bars, taverns, restaurants that seat less than fifty people, bowling alleys, and billiard parlors; private residences; and enclosed indoor arenas, stadiums, and other facilities with seating capacities of over fifteen thousand that may be used for sporting events.

*Child Care Facilities*

**Mo. Rev. Stat. § 191.776 (2002):** Smoking is prohibited in child care facilities when the children cared for are present.

*Schools*

**Mo. Rev. Stat. § 191.775 (2002):** Smoking is prohibited in indoor areas of public elementary and secondary schools, and on buses used solely to transport students.

---

**Montana**

**Case Law**

No cases dealing with the regulation of smoking in public places were found.

**Statutes**

*Public Places*

**Mont. Code Ann. § 50-40-104 (2002):** The proprietor or manager of an enclosed public place shall either designate non-smoking areas with easily readable signs, designate part of the public place for non-smokers and post easily readable signs designating smoking areas, designate the entire area as a smoking area by posting a visible sign, or designate and reserve the entire area as a non-smoking area. The proprietor or manager of an intrastate bus that is not chartered must prohibit smoking in all parts of the bus. As defined in Mont. Code Ann. § 50-40-103, an enclosed public place is an indoor area, room, or vehicle used by the general public or serving as a workplace.

**Mont. Code Ann. § 50-40-105 (2002):** “No smoking” signs must be conspicuously posted in intrastate buses that are not chartered, and in the elevators, museums, galleries, kitchens, and libraries of any establishment doing business with the general public.

**Mont. Code Ann. § 50-40-107 (2002):** The following are exempt from Part 1 of the Montana Clean Indoor Air Act, Mont. Code Ann. §§ 50-40-101 to 50-40-109: restrooms; taverns or bars where meals are not served; vehicles or rooms
seating six or fewer members of the public; school district buildings and facilities designated as tobacco-free by the school district board of trustees; community college buildings or facilities designated as tobacco-free by the community college district board of trustees; and state government buildings declared as smoke-free.

**Health Care Facilities**

**MONT. CODE ANN. § 50-40-106 (2002):** Prior to admission, health care facilities must ask all inpatients their preference for a smoking or non-smoking patient room and accommodate such preference when possible. Smoking is prohibited in all kitchen areas, laboratories, corridors, storage areas for supplies and materials, and areas where flammable substances are stored or in use. Health care facilities must designate a non-smoking area for all waiting rooms, prohibit employees from smoking in patient rooms, and require visitors to obtain express approval from all patients in a patient room, or from the patients' physicians, prior to smoking. Health care facilities may ban smoking on all or part of their premises. All areas not specified herein may be smoking areas unless designated otherwise.

**Schools**

**MONT. CODE ANN. § 20-1-220 (2002):** The use of any tobacco product is prohibited in a public school building or on school property during school hours. The prohibition does not apply to non-student adults in a smoking area designated by the school administrator or board of trustees of the school district.

**State Buildings**

**MONT. CODE ANN. § 50-40-201 (2002):** In offices and work areas maintained by a political subdivision, with the exception of a school or community college facility designated as tobacco-free by its board of trustees, the governing body of the political subdivision shall arrange convenient non-smoking and smoking areas. The governing body has the authority to designate any building it maintains as smoke-free.

**MONT. CODE ANN. § 50-40-207 (2002):** Buildings owned, leased, or occupied by the state must be smoke-free. With buildings leased and occupied by the state and another entity, agency heads shall make the state-occupied portions of the building smoke-free and are encouraged to work with building owners and other tenants to make the entire building smoke-free.

**Case Law**

No cases dealing with the regulation of smoking in public places were found.

**Statutes**
Public Places

NEB. REV. STAT. § 71-5707 (2002): Smoking is prohibited in a public place or at a public meeting except in designated smoking areas. The prohibition does not apply when an entire room is used for a private social function and the seating arrangements are controlled by the sponsor of the function.

NEB. REV. STAT. § 71-5704 (2002): Public places include any enclosed indoor areas used by the general public or serving as workplaces, including but not limited to the following: restaurants, retail stores, other commercial establishments, offices, public conveyances, educational facilities, hospitals, nursing homes, auditoriums, arenas, and meeting rooms. The smoking prohibition does not apply to private enclosed offices occupied exclusively by smokers even though these offices may be visited by non-smokers.

Child Care Facilities

NEB. REV. STAT. § 71-5707(3) (2002): No person shall smoke at licensed child care programs. The prohibition does not apply if the child care program is located in the home of the provider.

State Buildings

NEB. REV. STAT. § 71-5707(4)-(7) (2002): Smoking is prohibited in all vehicles and buildings owned or leased by the state, and within ten feet of any entrance to such buildings. The following buildings in which people reside may be exempt: veterans homes; private residences; facilities and institutions controlled by the Department of Health and Human Services Regulation and Licensure; and overnight lodging facilities and buildings managed by the Game and Parks Commission, but no more than twenty-five percent of the overnight lodging facilities at each park location shall permit smoking. Designated smoking areas may not exceed fifty percent of the space used by the public in state-owned buildings at the Nebraska State Fairgrounds. Smoking may be permitted in no more than forty percent of the residential housing units owned or leased on each campus under the control of state institutions of higher learning.

Workplace

NEB. REV. STAT. § 71-5707(2) (2002): The Department of Health and Human Services Regulation and Licensure shall establish rules to restrict or prohibit smoking in factories, warehouses, and similar places of work not usually frequented by the general public, where the close proximity of workers or the inadequacy of ventilation causes smoke pollution detrimental to the health and comfort of non-smoking employees.

Case Law
No cases dealing with the regulation of smoking in public places were found.

**Statutes**

**Public Places**

**NEV. REV. STAT. § 202.2491 (2002):** Smoking tobacco of any form is prohibited in any public elevator, public area of a food store, or school bus. Smoking is also prohibited in any public waiting room, lobby, or hallway of any health care facility or office; hotel or motel when so designated by the operator; child care facility; or bus used by the general public except that the person in control of such a place may designate a smoking area in a separate room or area if smoking in such area is not otherwise prohibited. Operators of child care facilities may not allow children in any area designated as smoking and must prevent smoke from adversely affecting those in other areas. For buildings or office space owned or occupied by the state or any subdivision thereof, those in charge must designate a separate area that may be used for smoking. The two exceptions are schools, which needn't designate smoking areas for students if they prohibit student smoking, and corrections facilities, which needn't prohibit smoking in any area. Furthermore, restaurants seating fifty or more are required to include non-smoking areas, except that businesses deriving more than fifty percent of gross receipts from either alcohol or gambling may designate their entire area for smoking.

**Food Stores**

**NEV. REV. STAT. § 202.24915 (2002):** Under certain conditions, a food store may allow smoking in an area of the store designated for gambling.

**Preemption of Local Law**

**NEV. REV. STAT. § 202.249 (2002):** No governing body within the state may impose more stringent restrictions on smoking than those prescribed by statute.

**NEW HAMPSHIRE**

**Case Law**

No cases dealing with the regulation of smoking in public places were found.

**Statutes**

**Public Places**

**N.H. REV. STAT. ANN. § 155:66 (2002):** Smoking is prohibited in all public educational facilities; child care agencies during hours of operation, except foster family homes and foster family group homes; hospitals and other acute-care facilities; grocery stores; and elevators, tramways, gondolas, and other such public conveyances. Besides the exceptions in N.H. REV. STAT. ANN. § 155:67, smoking is also prohibited in all enclosed places of public access and publicly owned
buildings and offices, including workplaces, and in enclosed places owned and operated by social, fraternal, or religious organizations when made available to the general public, except in effectively segregated, smoking-permitted areas designated by the person in charge. If smoking cannot be effectively segregated, then smoking must be totally prohibited. The person in charge may declare any facility non-smoking in its entirety.

N.H. REV. STAT. ANN. § 155:67 (2002): Smoking is permitted in the following venues or situations: public conveyances rented for private purposes; buildings owned and operated by social, fraternal, or religious organizations when used by the membership of the organization, their guests, or their families, or when they are rented or leased for private functions from which the public is excluded and arrangements are under the control of the sponsor of the function and not the organization; guest rooms of hotels, motels, and resorts; halls, ballrooms, dining rooms, and conference rooms of hotels, motels, restaurants, resorts, and publicly accessible buildings or portions thereof, excluding those that are publicly owned, when rented or leased for private functions from which the public is excluded and arrangements are under the control of the sponsor of the function and not of the proprietor or person in charge of the facility; resident rooms in dormitories operated by postsecondary educational institutions; resident rooms in public housing facilities; resident rooms in facilities such as nursing homes, sheltered care facilities, residential treatment and rehabilitation facilities, and prisons and detention facilities; restaurants with seating for fewer than fifty people; cocktail lounges; patients with extraordinary medical conditions or psychiatric disorders, or in an alcohol and drug withdrawal program, provided that the patient’s physician has written an order allowing the patient to smoke.

Schools

N.H. REV. STAT. ANN. § 126-K:7 (2002): Smoking is prohibited in any public educational facility or on the grounds of any public educational facility.

New Jersey

Case Law

LDM, Inc. v. Reg’l Health Comm’n, 764 A.2d 507 (N.J. Super. Ct. Law Div. 2000): Plaintiffs, which included commercial eating and drinking establishments, sought a preliminary injunction enjoining the enforcement of a local ordinance that prohibited smoking in all indoor public places in Princeton Township and Princeton Borough. The court found that state law preempted municipal regulation of smoking except for fire safety purposes, that the ordinance was not passed for fire safety purposes, and that, in any event, the defendant health commission lacked the authority to pass fire safety ordinances.
Statutes

Public Places

N.J. STAT. ANN. § 26:3D-40 (West 2002): The manager, owner, proprietor, or other person in control of an indoor public space must provide areas for non-smokers to conduct business or participate in activities free from the annoyance and health hazard of smoke. Smoking is prohibited in pharmacies, drug stores, and any area where hearing aids are sold at retail. Smoking areas for employees may be permitted in any indoor public place as long as they are separate areas not generally accessible to the public, except where prohibited by municipal ordinance for fire prevention purposes.

N.J. STAT. ANN. § 26:3D-39 (West 2002): An indoor public place under N.J. STAT. ANN. § 26:3D-40 is a structurally enclosed area generally accessible to the public in theaters, gymnasiums, libraries, museums, concert halls, auditoriums, or other such facilities that are neither owned or leased by a governmental entity nor qualify as a health care facility or waiting room of a person licensed to practice the healing arts. The definition excludes certain facilities such as racetracks; licensed casinos; football, baseball, and other sporting event facilities; bowling alleys; and dance halls.

N.J. STAT. ANN. § 26:3D-3 (West 2002): Smoking is prohibited in every passenger elevator in every building except for a single-family dwelling.

Child Care Facilities

N.J. STAT. ANN. § 30:5B-5.3 (West 2002): Smoking is prohibited in an indoor area when children are present and, unless the area is separately ventilated to the outside, also when children are not present. Smoking is prohibited in all vehicles when used for center-sponsored transportation.

Food Stores

N.J. STAT. ANN. § 26:3D-34 (West 2002): Smoking is prohibited in all enclosed retail food and marketing stores.

Health Care Facilities

N.J. STAT. ANN. § 26:3D-9 (West 2002): Smoking is prohibited in all health care facilities. However, unless otherwise prohibited by law for fire prevention purposes, smoking may be permitted in private rooms or rooms where all patients consent upon admission to allow smoking; in at least one lobby or waiting room if there is more than one lobby or waiting room, or if there is only one lobby or waiting room as long as there is an adequate section of the area provided for non-smokers; in cafeterias or other dining areas with an occupancy of fifty or more persons if an adequate section is provided for non-smokers; and in a totally enclosed office space used by employees unless otherwise prohibited by the health care facility. Smoking is also prohibited in the waiting rooms of the offices of all persons licensed to practice the healing arts, but if there is more than one waiting
room in an office, at least one may be designated as a smoking area unless otherwise prohibited by municipal ordinance.

Public Transportation

N.J. STAT. ANN. § 32:1-146.4 (West 2002): A person may not smoke in any area or building of an air terminal owned or operated by the Port Authority of New York, or where the Port Authority has posted signs prohibiting smoking in any area, bulkhead, dock, pier, wharf, warehouse, or other structure of a marine terminal owned or operated by the Port Authority. Smoking is also prohibited on the open deck of a ship or other floating craft when berthed or moored to such dock, wharf, or pier, or to a vessel made fast thereto.

N.J. STAT. ANN. § 32:1-146.8 (West 2002): No person may smoke or carry a lighted cigarette or other instrument in or about any area, building, car, or other rolling stock of the Hudson Tubes or Hudson Tubes extensions where smoking has been prohibited by the Port Authority Trans-Hudson Corporation and signs have been posted.

Restaurants

N.J. STAT. ANN. § 26:3E-7 (West 2002): For public health reasons, restaurants are encouraged to establish non-smoking areas.

Schools

N.J. STAT. ANN. § 26:3D-17 (West 2002): Except for the board of education of a school district, the governing body or individual with control of the administration of any public or private school, college, university, or professional training school shall make and enforce suitable regulations to control smoking on the premises except in those areas where smoking is prohibited by law for fire prevention purposes. The governing body may designate certain areas where smoking is permitted, but smoking in classrooms, lecture halls, and auditoriums must be prohibited except as part of classroom instruction or a theatrical production. The board of education of each school district must make and enforce regulations to prohibit smoking of tobacco anywhere in its buildings or on its grounds, except as part of classroom instruction or a theatrical production.

State Buildings

N.J. STAT. ANN. § 26:3D-48 (West 2002): With the exception of areas occupied by the New Jersey Legislature, the supervisor of each unit of government in a government building is required to establish written rules governing smoking, except where smoking is prohibited by law for fire prevention purposes. The Senate and General Assembly shall separately adopt rules governing smoking in their respective chambers and other areas occupied by them and their personnel and shall adopt joint rules in those areas occupied by the committees and personnel of both houses. Smoking is prohibited in the following government places: places of meeting or public assembly, during a public meeting to which the public is invited or legally entitled to attend; offices open to the general public;
and libraries, indoor theaters, museums, lecture or concert halls, gymnasiums, and other such facilities open to the public, except that smoking may be permitted at such places on special occasions by persons seated at tables where food and beverages are consumed, in areas adjacent to these facilities that are designated as smoking areas, or when used for private functions or under a specified private lease. Restaurants with occupancy of fifty or more persons located in government buildings must have designated non-smoking areas.

**Workplace**

**N.J. STAT. ANN. § 26:3D-25 (West 2002):** Each employer shall establish written rules that govern smoking in the portion of a building for which the employer is responsible. The rules shall include designated non-smoking areas and may include designated smoking areas unless otherwise prohibited by law for fire prevention purposes. Rules regarding smoking that are not contrary to law may be established by the employer or negotiated as a term or condition of any agreement or contract of employment.

**NEW MEXICO**

**Case Law**

No cases dealing with the regulation of smoking in public places were found.

**Statutes**

**Schools**

**N.M. ADMIN. CODE tit. 6, § 12.4.8 (2002):** Each local school board shall implement a policy that will prohibit tobacco use by students, school staff, parents, and school visitors in school buildings, on school property, and by students at school functions away from school property.

**State Buildings**

**N.M. STAT. ANN. § 24-16-4 (Michie 2002):** Smoking is prohibited in public places or at a public meeting except in smoking-permitted areas. No part of the state capitol or capitol north shall be designated as a smoking-permitted area.

**N.M. STAT. ANN. § 24-16-3 (Michie 2002):** A public meeting is any meeting required by law to be an open meeting. A public place is any enclosed indoor area in a building owned or leased by the state or any of its political subdivisions.

**N.M. STAT. ANN. § 24-16-5 (Michie 2002):** Smoking-permitted areas in public places include: fully enclosed offices or rooms occupied exclusively by smokers; rooms or halls used by a person or group for a non-governmental function where the seating arrangements are under the control of the sponsor of the function; smoking-permitted areas designated by the proprietor or person in charge of a public place or public meeting; and smoking-permitted areas in a place of employment.
N.M. STAT. ANN. § 24-16-6 (Michie 2002): The person in charge of a public place or public meeting shall designate as a smoking-permitted area, by appropriate signs, a contiguous area or contiguous areas that shall not exceed fifty percent of the public place.

**Workplace**

N.M. STAT. ANN. § 24-16-7 (Michie 2002): For places of employment, each employer shall adopt, implement, and maintain a written smoking policy that shall contain, at a minimum, provisions relating to the following: the prohibition of smoking in elevators and nurse’s aid stations or similar facilities for the treatment of employees; the provision and maintenance of a contiguous non-smoking area of not less than one-half of the seating capacity and floor space in cafeterias, lunchrooms, and employee lounges; and the provision of smoke-free work areas upon request in places where smokers and non-smokers work in the same room.

**NEW YORK**

**Case Law**

*Newark Valley Cent. Sch. Dist. v. Pub. Employment Relations Bd.*, N.E.2d 443 (N.Y. 1994): The New York Court of Appeals considered whether a ban on smoking in school buses when no students were on board could be collectively bargained or was preempted by statute and thus properly adopted by the school district unilaterally. The court found that the school district’s unilateral action was improper because smoking restrictions above the statutory minimum are subject to collective bargaining.

*Boreali v. Axelrod*, 517 N.E.2d 1350 (N.Y. 1987): Pursuant to a broad legislative mandate granting it authority to regulate public health matters, the New York Public Health Council promulgated a comprehensive code to govern smoking in public places. Affected businesses and individuals challenged the code. The New York Court of Appeals held that the Council had exceeded the scope of its mandate and that balancing health concerns, cost, and privacy interests was a function of the legislature.

*Jarrett v. Westchester County Dep’t of Health*, 646 N.Y.S.2d 223 (N.Y. Sup. Ct. 1996): Petitioners challenged a smoking ban in the county jail in which they were housed. The court upheld the ban, ruling that while an inmate may be considered a member of the “public,” an inmate does not have the same rights as the public at large. The Commissioner of Correction was required to implement a smoking ban in the jail, and the manner of implementation clearly fell within the discretionary authority of jail administrators. The court held that the total ban on tobacco-related products rationally furthered the safe and efficient operation of the jail, and that the total smoking ban did not violate petitioners’ rights to equal protection.
Bompane v. Enzolabs, Inc., 608 N.Y.S.2d 989 (N.Y. Sup. Ct. 1994): Plaintiff employee prevailed on a motion for summary judgment where she sued her employer claiming she had been fired in retaliation for complaining to the county health department about her employer's non-compliance with smoke-free work area rules under N.Y. PUB. HEALTH § 1399-o.

Fagan v. Axelrod, 550 N.Y.S.2d 552 (N.Y. Sup. Ct. 1990): Tobacco users challenged the constitutionality of New York's Clean Indoor Air Act. The court found that the regulation was a valid use of the state's police power, restricting not access to public places, but only the right to smoke.

Bd. of Educ. v. Cohalan, 515 N.Y.S.2d 691 (N.Y. Sup. Ct. 1987): The court held that a county ordinance prohibiting smoking in meeting places was not an unconstitutional usurpation of the state's role in education simply because smoking would be prohibited in public school buildings used as meeting places.

Alamin v. Dep't of Corr. Servs., 660 N.Y.S.2d 746 (N.Y. App. Div. 1997): Plaintiff sought an order compelling respondents to comply with smoking ban guidelines at the Green Haven Correctional Facility. The court upheld the lower court's dismissal of the petition because plaintiff failed to exhaust administrative remedies. Moreover, the court found that respondents' noncompliance with the smoking ban did not subject them to legal proceedings or liability.

Statutes

Public Places

N.Y. PUB. HEALTH § 1399-o (McKinney 2002): Smoking is prohibited in the following venues: auditoriums; elevators; gymnasiums; enclosed indoor public swimming pool areas; indoor areas in food stores; classrooms; public mass transportation, including subways and underground subway stations, and buses, vans, taxicabs, and limousines when carrying passengers; ticketing and boarding areas in public transportation terminals; youth centers and facilities for detention; child care service facilities except those provided in a private home; child day care centers; group homes for children; public institutions for children; and residential treatment facilities for youth. Smoking is also prohibited on school grounds, except by adult faculty and staff in designated smoking areas during non-school hours. Additionally, smoking is prohibited in public indoor areas including but not limited to the following: all public and private colleges, universities, and other educational and vocational institutions; general hospitals and residential health care facilities; public buildings; theaters; museums; libraries; retail stores; commercial establishments used to carry on any trade, profession, vocation, or charitable activity; indoor arenas; waiting rooms; banks and other financial institutions; restrooms; waiting areas in public transportation terminals; service areas in cafeterias and businesses selling food; and zoos. However, owners, operators, or managers of public indoor areas may designate smoking areas that
do not include any prohibited venues. Smoking may be permitted in the concourse area of a bowling alley, but at least twenty-five percent of the area must be designated as non-smoking. Bingo operators are required to provide a non-smoking area sufficient to meet demand. Food service establishments must designate a non-smoking area sufficient to meet demand and may designate a separate, enclosed room as a smoking area.

N.Y. PUB. HEALTH § 1399-q (McKinney 2002): Smoking restrictions do not apply to private homes, residences, and automobiles; indoor areas where private social functions are being held when seating arrangements are controlled by the sponsor of the function and not the owner of the place; any indoor area open to the public for conventions or trade shows if advertisements announce that smoking will not be restricted; hotel or motel rooms; tobacco businesses; limousines under private hire; private boxes in indoor arenas; and bars.

N.Y. PUB. HEALTH § 1399-r (McKinney 2002): The owner, operator, or manager of a place has the right to designate the entire place, or any part, as a non-smoking area. Smoking provisions apply to the legislative, executive, and judicial branches of state government and any political subdivision of the state. 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. Any county, city, town, or village can adopt and enforce additional local laws, ordinances, or regulations that comply with at least the minimum applicable standards set forth in the state’s smoking laws.

N.Y. ELEC. § 5-204(7) (McKinney 2002): Smoking is prohibited in any place of voter registration located in a church or school.

Public Transportation

N.Y. UNCONSOL. ch. 170, § 1 (McKinney 2002): No person shall smoke in any area or building of an air terminal owned or operated by the Port Authority. Smoking is also prohibited where the Port Authority has posted signs to that effect in any area, bulkhead, dock, pier, wharf, warehouse, or other structure of a marine terminal owned or operated by the Port Authority. Smoking is prohibited on the open deck of a ship or other floating craft when berthed or moored to such dock, wharf, or pier, or to a vessel made fast thereto.

Schools

N.Y. EDUC. § 409(2) (McKinney 2002): Smoking is prohibited on school grounds. Smoking by adult faculty and staff may be permitted in designated areas during non-school hours. School grounds include any building, structure, and surrounding outdoor grounds in a public or private preschool, nursery school, elementary school, or secondary school's property boundaries.

Workplace

N.Y. PUB. HEALTH § 1399-o(6) (McKinney 2002): Employers are required to adopt a written policy that provides non-smoking employees with a smoke-free
work area, that allows for a smoking work area if all employees agree to such a
designation, and that provides non-smoking areas in cafeterias, lunch rooms, and
lounges sufficient to meet demand. The policy must also prohibit smoking in
auditoriums, gymnasiums, restrooms, elevators, classrooms, hallways, employee
medical facilities, rooms or areas containing communal office equipment, and
company vehicles unless all passengers agree to allow smoking. The policy must
prohibit smoking in conference rooms and meeting rooms unless everyone agrees
to allow smoking. The employer may designate a separate, enclosed room not
open to the public for use as a smoking area. Any provisions in a smoking policy
more restrictive than the minimum requirements of N.Y. PUB. HEALTH § 1399-o
are subject to applicable laws governing collective bargaining if a collective
bargaining unit exists.

N.Y. LAB. § 283 (McKinney 2002): Smoking is prohibited in factories.
Smoking may be permitted in protected areas of the factory where the safety of
employees will not be endangered.

NORTH CAROLINA

Case Law

No cases dealing with the regulation of smoking in public places were found.

Statutes

State Buildings

N.C. GEN. STAT. §§ 143-597, 143-599 (2002): Smoking may be prohibited in
no more than eighty percent of the interior space of state-controlled buildings.
Where feasible, the twenty percent designated for smoking must be of equal
quality to the non-smoking space. The following spaces may be designated as non-
smoking in their entirety: libraries open to the public; museums open to the
public; auditoriums, arenas, or coliseums, or appurtenant buildings thereof, so
long as smoking areas are designated in lobby areas; educational buildings
primarily involved in health care instruction; primary or secondary schools or
child care centers, except for teachers’ lounges; enclosed elevators; public school
buses; hospitals, nursing homes, and rest homes; local health departments; non-
profit organizations or corporations whose primary purpose is to discourage the
use of tobacco products by the general public; and tobacco manufacturing,
processing, and administrative facilities.

Preemption of Local Law

N.C. GEN. STAT. § 143-601 (2002): Local laws, rules, and ordinances shall not
be amended or enacted to restrict smoking more strictly than state law.
NORTH DAKOTA

Case Law

No cases dealing with the regulation of smoking in public places were found.

Statutes

Public Places

N.D. CENT. CODE § 23-12-10 (2002): Smoking is not permitted outside of designated smoking areas in a place of public assembly. Unless otherwise provided, such smoking areas may not occupy more than fifty percent of the total area available to the public and must be situated to minimize smoke drift. The proprietor of a food establishment with a seating capacity of fifty or more persons may temporarily expand the designated smoking area beyond fifty percent of the total available area if the smoking area becomes fully occupied and the additional space for expansion is vacant.

N.D. CENT. CODE § 23-12-9 (2002): A place of public assembly includes enclosed theaters; auditoriums; gymnasiums; elevators; libraries; public transportation vehicles; rooms in which a person is confined for health care reasons, including the waiting room, restroom, lobby, or hallway of a hospital, nursing home, rest home, or other health care facility; waiting areas in all public transportation terminals; any building or other enclosed structure owned or leased by the state, its agencies, or its political subdivisions; all public education buildings; and all other portions of buildings or enclosed structures if such areas have seating capacities of fifty or more persons and are available to the public, such as restaurants and other food service establishments. A place of public assembly does not include private enclosed rooms of residence, establishments licensed primarily for on-premises consumption of alcoholic beverages, or areas used to serve alcoholic beverages that are physically separate rooms within food service establishments.

Child Care Facilities

N.D. CENT. CODE § 50-11.1-02.2 (2002): Smoking is prohibited in an early childhood facility at any time during which a child is receiving services from that facility.

OHIO

Case Law

D.A.B.E., Inc. v. Toledo-Lucas County Bd. of Health, 773 N.E.2d 536 (Ohio 2002): The Supreme Court of Ohio held that OHIO REV. CODE ANN. § 3791.031 does not authorize a local board of health to prohibit smoking in all public places. The court found that no state law vests local boards of health with unlimited authority...
to adopt regulations addressing public health concerns.

**Statutes**

**Public Places**

*Ohio Rev. Code Ann. § 3791.031 (West 2002):* Each place of public assembly must designate a non-smoking area. Places of public assembly include enclosed theaters, opera houses, auditoriums, classrooms, elevators, and rooms in which persons are confined for health care. Places of public assembly also include all enclosed structures owned by the state, including hospitals, state institutions for the mentally ill and retarded, university and college buildings, office buildings, libraries, museums, and vehicles used for public transportation. All other buildings or enclosed structures with a seating capacity of fifty or more persons that are available to the public must designate a non-smoking area. Places of public assembly do not include restaurants, food service establishments, dining rooms, cafes, cafeterias, or places licensed to sell liquor.

**Child Care Facilities**

*Ohio Rev. Code Ann. § 5104.015 (West 2002):* Smoking is prohibited in all indoor and outdoor spaces of a child care or family care facility. Smoking may be allowed during hours of operation in areas where children being cared for cannot see the smokers, and where the children are not exposed to smoke.

**Schools**

*Ohio Rev. Code Ann. § 3313.751(B) (West 2002):* No student shall smoke or possess tobacco in any area under the control of a school district or educational service center, or at any activity supervised by any school operated by a school district or educational service center.

**Case Law**

*Swanson v. City of Tulsa,* 633 P.2d 1256 (Okla. Crim. App. 1981): Defendant was convicted under a city ordinance prohibiting smoking in a "no smoking" elevator. The Court of Criminal Appeals upheld the conviction, finding that the city had the power to punish defendant's act as a criminal offense and that the relevant ordinance was not impermissibly vague.

**Statutes**

**Public Places**

*Okla. Stat. tit. 21, § 1247 (2002):* Possession of lighted tobacco in any form is a public nuisance and dangerous to public health when it occurs in the following public places: elevators, indoor theaters, libraries, art galleries, museums, permanent indoor roller skating rinks, concert halls, and buses. For each of these
places, except elevators, areas separated from the principal room or rooms may allow smoking. All buildings owned or operated by the state must be designated as non-smoking, but each may have one designated smoking room. Buildings owned or operated by a county or municipal government may be designated as entirely non-smoking or as non-smoking with one designated smoking room, or may remain under the smoking policy in effect prior to the effective date of state indoor tobacco laws.

**OKLA. STAT. tit. 63, § 1-1523 (2002):** Smoking is prohibited at a meeting of a public body and in designated non-smoking areas in a public place. OKLA. STAT. tit. 63, § 1-1522 defines a public place to include an indoor area owned or operated by the state or a local governmental agency used by the general public or serving as a workplace for public employees or as a meeting place for a public body, or a place used by the general public that is a public or private educational facility, health facility, auditorium, arena, theater, museum, restaurant seating at least fifty persons, place with a license for on-premises alcohol consumption, concert hall, or other facility used for the performance or exhibition of the arts. Smoking is also prohibited in a nursing facility, but smoking areas may be designated for residents and their guests, and separate smoking areas may be designated for employees. Smoking is prohibited in child care facilities during hours of operation. Health facilities may prohibit all smoking or designate smoking and non-smoking areas. Early childhood educational facilities and educational facilities from kindergarten through the twelfth grade must prohibit all smoking while school is in session. Career and technology centers may designate certain smoking areas outside of buildings. Educational facilities may designate areas of smoking for adults outside buildings during such activities as athletic contests. Educational facilities are not preempted from having more restrictive policies regarding smoking. Restrictions on smoking do not apply to places used for private functions if the seating arrangement is under the control of the sponsor of the event and not the owner of the place, or to licensed premises in bowling alleys, licensed racetracks, prisoner housing areas in municipal or county jails, or separate or enclosed areas in licensed bars.

**OKLA. STAT. tit. 63, § 1-1524 (2002):** A restaurant seating at least fifty persons may have designated smoking and non-smoking areas or may be exclusively one or the other. Smoking and non-smoking areas may be designated by the state or local governmental agency or person who owns or operates a public place except when smoking is prohibited by law.

**Preemption of Local Law**

**OKLA. STAT. tit. 63, § 1-1527 (2002):** State smoking restrictions preempt any other regulations promulgated to control smoking in public places and are intended to standardize laws that governmental subdivisions may adopt to control smoking. Any laws adopted by cities and towns shall include the same state
provisions and enforcement provisions shall not be more stringent.

Case Law

Oregon Restaurant Ass'n v. City of Corvallis, 166 Or. App. 506 (Or. 2000): Plaintiff challenged the validity of defendant city's ordinance prohibiting smoking in enclosed public spaces. The court held that the Oregon Indoor Clean Air Act contained no hint that the legislature intended to create a positive right to smoke in public places where it did not expressly forbid smoking.

Statutes

Public Places

OR. REV. STAT. § 433.845 (2002): Smoking is prohibited in enclosed indoor areas open to the public, except in areas designated as smoking areas pursuant to OR. REV. STAT. § 433.850. Smoking is prohibited in rooms during times that jurors are required to use them.

OR. REV. STAT. § 433.850 (2002): A proprietor or person in charge of a public place may designate areas in which smoking is permitted. No public place may be designated in its entirety as a smoking area except cocktail lounges and taverns; enclosed offices or rooms occupied exclusively by smokers; rooms or halls being used for private social functions where the seating arrangements are under the control of the sponsor of the function; retail businesses primarily engaged in the sale of tobacco or tobacco products; and restaurants with seating capacity for thirty or fewer patrons or with air filtration systems.


OR. REV. STAT. § 192.710 (2002): Smoking is prohibited at public meetings. A public meeting is any meeting or hearing of a government body open to the public, in buildings or rooms rented, leased, or owned by a subdivision of the state.

Health Care Facilities

OR. REV. STAT. § 441.815 (2002): Smoking is prohibited in hospital rooms in which more than one patient is accommodated, unless the room is specifically designated for smoking, and in other areas where patient care is provided. The person in charge of a hospital must designate reasonable areas in lobbies and waiting rooms—and a reasonable number of rooms in the hospital—where smoking is not permitted.

State Workplaces

OR. REV. STAT. § 243.350 (2002): The Personnel Division shall adopt rules restricting smoking in places of employment operated by state departments or agencies. The rules of the division shall set standards for the designation of
smoking areas, require departments and agencies to designate areas where smoking is permitted (or to ban smoking completely), require departments and agencies that provide employee lounges to provide smoke-free lounges for non-smoking employees, and prohibit smoking in places not designated as smoking areas. The rules adopted do not apply to enclosed offices occupied exclusively by smokers, even though the offices may be visited by non-smokers.

**PENNSYLVANIA**

**Case Law**

*Quinn, Gent, Buseck & Leemhuis v. Unemployment Comp. Bd. of Review*, 606 A.2d 1300 (Pa. Commw. Ct. 1992): Upon learning of her employer's complete ban of smoking in the workplace, an employee promptly resigned. The court held that the employee did not qualify for unemployment compensation benefits because there was insufficient evidence to show that the smoking ban produced real and substantial pressure to quit her job. The court noted that the state Clear Air Act requires employers to develop a smoking policy, but did not require any particular type of policy.

**Statutes**

**Public Places**

*PA. STAT. ANN. tit. 35, § 1230.1 (West 2002):* No person may smoke in areas designated as non-smoking by the proprietor or person in charge of a public place or at a public meeting. A public place is an enclosed indoor area owned or operated by a state or local governmental agency, used by the general public or serving as a workplace for public employees or as a meeting place for a public body, including an office, educational facility, health facility, auditorium, arena, meeting room, or public conveyance; or an enclosed indoor area not owned or operated by a governmental agency that is used by the general public and is a workplace, an educational facility, a health facility, an auditorium, an arena, a theater, a museum, a restaurant, a concert hall, or any other facility used for a performance or exhibit of the arts. The following places are exempt from the smoking ban: private social functions where the area used is controlled by the sponsor and not the proprietor; factories, warehouses, and similar workplaces not frequented by the general public; restaurants seating fewer than seventy-five persons; bar areas in a liquor licensee establishment; lobbies and hallways in public places; hotel and motel rooms; and tobacco retail stores. Restaurants with seventy-five or more seats shall provide patrons with non-smoking and smoking areas reasonably addressing clientele needs and shall make reasonable efforts to prevent smoking in designated non-smoking areas. Regulation of smoking in restaurants with fewer than seventy-five seats is left to the discretion of the
proprietor.

PA. STAT. ANN. tit. 35, § 1225 (West 2002): Smoking is prohibited in any auditorium, balcony, or gallery of any theater or motion picture theater.

Health Care Facilities

PA. STAT. ANN. tit. 35, § 361 (West 2002): No person may smoke tobacco or any other substance in a hospital patient care area or a patient room designated as non-smoking. Only patients may smoke in patient rooms designated as smoking rooms. No person may smoke in a public area of a hospital designated as a non-smoking area. Upon admission, a patient may choose a smoking or non-smoking room; after making reasonable efforts to comply with the patient’s choice, the hospital administrator may place the patient in any room.

Schools

PA. STAT. ANN. tit. 35, § 1223.5 (West 2002): Tobacco use or possession by students is prohibited in school buildings and on vehicles and property owned by, leased by, or under the control of a school district. Tobacco use by a person other than a student is prohibited in school buildings and on vehicles and property owned by, leased by, or under the control of a school district. However, the Board of School Directors may designate certain areas on school property where tobacco use by persons other than students is permitted, provided that such areas are at least fifty feet from school buildings, stadiums, or bleachers.

Workplace

PA. STAT. ANN. tit. 35, § 1230.1(g) (West 2002): Employers are required to develop, post, and implement a policy to regulate smoking in the workplace. No law or regulation shall be construed to impair or affect any contractual agreement or any collective bargaining agreement, right, or procedure.

Local Power To Restrict Smoking

PA. STAT. ANN. tit. 53, § 3702 (West 2002): City councils in cities of the first and second class can enact ordinances prohibiting smoking in retail stores arranged to accommodate three hundred or more persons or that employ twenty-five or more employees. However, no such ordinance may prohibit smoking in any restaurant, restroom, beauty parlor, executive office, or any room designed for smoking in such store.

Case Law

Amico’s, Inc. v. Mattos, 789 A.2d 899 (R.I. 2002): The Supreme Court of Rhode Island upheld a local ordinance restricting smoking in licensed restaurants and bars. The court ruled that a county’s power to regulate, pursuant to state licensing statutes, is not preempted by state clean air laws.
Sch. Comm. v. Pawtucket Teachers' Alliance Local 930, No. 87-0713, 1987 R.I. Super. LEXIS 3 (R.I. Super. May 21, 1987): The Rhode Island Superior Court held that a school committee could not unilaterally institute a school-wide prohibition on smoking pursuant to the Rhode Island Workplace Smoking Pollution Act without the arbitration contracted for in a union's collective bargaining agreement. The court denied the school committee's request for a preliminary injunction staying arbitration proceedings, finding that the implementation of the smoking ban brought about a change in working conditions that, according to the contract that the parties voluntarily entered into, was amenable to arbitration.

Statutes

Public Places

R.I. GEN. LAWS §§ 23-20.6-2(a), 23-20.6-2(c)-(e) (2002): Smoking is prohibited in any of the following places used by or open to the public: the state house, elevators, indoor movie theaters, libraries, art galleries, museums, concert halls, auditoriums, buses, schools, colleges, universities, public hallways in court buildings, hallways of elderly housing complexes, supermarkets, medical offices, public laundries, hospitals, health care facilities other than hospitals, and assisted living facilities. Smoking may be permitted in these spaces if it is confined to identified areas and areas separated from those used by the general public. Eating facilities with a seating capacity of fifty or more persons shall have separate seating for non-smokers and smokers. Bars, nightclubs, lounges, dance clubs, and privately sponsored social affairs are exempt from this requirement.

Child Care Facilities

R.I. GEN. LAWS § 23-28.15-23 (2002): No person shall smoke in the buildings or outdoor play areas of a licensed child day care center, or in any vehicle used by the center for transporting children. Smoking is not permitted in outside areas of the premises within twenty-five feet of buildings or outdoor play areas. Smoking in permitted areas shall not occur within view of children. No person shall smoke within the household or outdoor play area of a family or group family day care home, or in outside areas on the premises within twenty-five feet of the home or outdoor play areas. Smoking shall not occur on the premises within view of children when individuals receiving day care services are present. Smoking is permitted when recipients of day care services are not present, so long as the provider notifies all parents that smoking occurs during those times.

Health Care Facilities

R.I. GEN. LAWS § 23-17.5-26 (2002): All persons other than nursing home residents are prohibited from smoking in nursing homes. Residents may smoke only in smoking rooms, private rooms, and semi-private rooms where all occupants smoke.

Schools
R.I. GEN. LAWS §§ 23-20.9-5 to 23-20.9-9 (2002): The governing body of each school in Rhode Island is responsible for developing and enforcing prohibitions against the use of tobacco products by any person utilizing school facilities. The prohibitions against smoking in school facilities shall not apply to the use of a tobacco product if used as part of a limited classroom demonstration to show the health hazards of tobacco.

Workplace

R.I. GEN. LAWS §§ 23-20.7-5 to 23-20.7-6 (2002): An employer may prohibit smoking in the workplace. If smoking is permitted, the employer must make reasonable accommodations to protect the health and atmospheric environment of non-smoking employees and to ensure a comfortable environment for all employees. These provisions do not apply to smoking in private homes that serve as workplaces, office spaces leased or rented by independent contractors for their own use, or private enclosed workspaces occupied exclusively by smokers.

South Carolina

Case Law

No cases dealing with the regulation of smoking in public places were found.

Statutes

Public Places

S.C. CODE ANN. § 44-95-20 (Law. Co-op. 2002): Smoking is prohibited in public schools and preschools, except in private offices and lounges that are not adjacent to classrooms or libraries. However, more stringent local regulation of smoking in such private offices and lounges is not preempted. Smoking is also prohibited in all indoor facilities providing children’s services, to the extent proscribed by federal law, and in all other child day care facilities; in health care facilities, except where smoking areas are designated in employee break areas (a health care facility may be declared smoke-free); in government buildings, except in private offices and designated employee break areas; in elevators; and in public transportation vehicles, except taxicabs. Smoking is prohibited in arenas and auditoriums of public theaters or performing art centers, but smoking areas may be designated in foyers, lobbies, or other common areas. Smoking is permitted in arenas and auditoriums as part of a legitimate theatrical performance.

Schools


South Dakota

202
Case Law

No cases dealing with the regulation of smoking in public places were found.

Statutes

Public Places

S.D. CODIFIED LAWS § 22-36-2 (Michie 2002): No person may smoke tobacco or carry any lighted tobacco product in any public place or place of employment. The prohibition does not apply to any sleeping room in a lodging establishment, on-sale licensee, licensed video lottery establishment, licensed gaming establishment, or tobacco or packaged liquor store if the store is primarily used for the sale of tobacco or alcoholic beverages or both.

S.D. CODIFIED LAWS § 22-36-3 (Michie 2002): A public place is any enclosed indoor area to which the public is invited or permitted, including hospitals and medical and dental facilities; nursing facilities; public libraries, museums, theaters, and concert halls; elementary and secondary school buildings; public conveyances; jury rooms; elevators; reception areas; restaurants; retail service establishments; retail stores; and registered and unregistered day care programs, day care centers, day care cooperatives, and family day care homes when children who are not family members of the provider are receiving care. A private residence is a public place only when used for day care.

Workplace

S.D. CODIFIED LAWS § 22-36-4 (Michie 2002): As used in S.D. CODIFIED LAWS § 22-36-2, a place of employment is an enclosed indoor area controlled by a public or private employer and includes work areas, employee lounges and restrooms, conference rooms and classrooms, employee cafeterias, and hallways.

TENNESSEE

Case Law

No cases dealing with the regulation of smoking in public places were found.

Statutes

Public Places

TENN. CODE ANN. § 39-17-1604 (2002): Smoking is prohibited in the following places: child care centers, except in designated child-inaccessible areas for adult staff and in private homes that provide child care; any room or area in a community center while being used for children's activities; group care facilities except by adult staff in adult staff residential quarters outside the presence of child clients of the home; health care facilities, except in nursing home facilities and in designated smoking areas for adult staff or outside the facility; museums, except at
private functions not attended by children after normal operating hours and in designated child-inaccessible areas for adult staff; all public and private kindergartens, and elementary and secondary schools except in fully enclosed adult staff residential quarters outside of the presence of students and not within fifty feet of any entrance to any building; residential treatment facilities for children and youth; youth development centers and facilities; and zoos, except in designated child-inaccessible areas where adult staff may smoke. On school grounds, adults may smoke after regular school hours in public restrooms or on property surrounding the school not blocking any entrance and not in public seating areas, such as bleachers used for sporting events.

State Buildings

TENN. CODE ANN. § 4-4-121 (2002): The administrative head of each state department, agency, board, commission, or other entity of the state and the administrative head of each public institution may establish a policy on smoking in buildings under such administrative head’s control or supervision. Such a policy shall protect the rights of smokers and non-smokers and shall provide at least one area indoors where smokers are permitted to smoke. If a policy allows smoking in the workplace, then such policy must also provide a non-smoking area in the workplace.

Case Law

No cases dealing with the regulation of smoking in public places were found.

Statutes

Public Places

TEX. PENAL CODE ANN. § 48.01 (Vernon 2002): Smoking is prohibited in public schools, elevators, enclosed theaters, libraries, museums, hospitals, public buses, trains, and airplanes. People may smoke in these areas if done as part of an authorized theatrical performance or exclusively within designated smoking areas.

TEX. GOV’T CODE ANN. § 494.010 (Vernon 2002): Employees of the Texas Department of Corrections may smoke during work at designated times and locations, provided that the smoking does not negatively affect the comfort or safety of any employee or inmate.

Schools

TEX. EDUC. CODE ANN. § 38.006 (Vernon 2002): The use of tobacco products is prohibited at school-related or school-sanctioned activities taking place either on or off school property.
Case Law

No cases dealing with the regulation of smoking in public places were found.

Statutes

Public Places

Utah Code Ann. §§ 26-38-2 to 26-38-3 (2002): Smoking is prohibited in all enclosed indoor public places and publicly owned buildings, including buildings, offices, shops, elevators, and restrooms; means of transportation or common carrier waiting rooms; restaurants, cafes, or cafeterias; taverns or cabarets; shopping malls, retail stores, grocery stores, or arcades; libraries, theaters, concert halls, museums, art galleries, planetariums, historical sites, auditoriums, or arenas; barber shops, hair salons, or laundromats; sports or fitness facilities; common areas of nursing homes, hotels, resorts, hotels, motels, bed and breakfast facilities, and other similar lodging facilities, including the lobbies, hallways, elevators, restrooms, restaurants, cafeterias, and other designated dining areas of these facilities; any child care facility; public or private school buildings and their property, but adults may smoke in designated smoking areas in private schools or on the grounds of private schools during non-school hours; and any posted non-smoking area. Smoking prohibitions do not apply to any building owned or used by a social, fraternal, or religious organization, or any facility used for private functions where the arrangements are under the control of the function sponsor; workplace smoking areas; areas not open to the public of owner-operated businesses having no employees other than the owner-operator; guests rooms in hotels, motels, and bed and breakfast facilities (but smoking is prohibited in common areas of these facilities); taverns; private clubs; and separate, enclosed smoking areas satisfying ventilation requirements in passenger terminals of an international airport.

Utah Code Ann. § 26-38-3.5 (2002): The smoking prohibition does not apply to American Indians smoking tobacco from a traditional pipe as part of a ceremony.

Utah Code Ann. § 26-38-4 (2002): Smoking is prohibited in public places that are adjoined to and share air space with private clubs that allow smoking, if the adjoining public place was in operation or under construction as of January 1, 1995. If a place of public access was not in operation or under construction as of January 1, 1995, it may not adjoin a private club that allows smoking unless it is separated from the adjoining private club by a continuous physical barrier, does not share air space with the private club, and has ventilation completely separate from that of the private club.

Housing
UTAH CODE ANN. § 57-8-16 (2002): Residential unit rental and purchase agreements for condominiums may prohibit smoking.

Public Transportation

UTAH CODE ANN. § 76-10-1506 (2002): Smoking on any bus except a chartered bus is a class C misdemeanor.

Vermont

Case Law

No cases dealing with the regulation of smoking in public places were found.

Statutes

Public Places

VT. STAT. ANN. tit. 18, § 1742 (2002): Smoking is prohibited in the common areas of all enclosed indoor places of public access and publicly owned buildings and offices.

VT. STAT. ANN. tit. 18, §§ 1743-1744 (2002): The restrictions in VT. STAT. ANN. tit. 18, § 1742 do not apply to buildings owned and operated by social, fraternal, or religious organizations when used by the membership of the organization, their guests, or their families; areas of owner-operated businesses with no employees that are not commonly open to the public; businesses operating with cabaret licenses; or designated workplace smoking areas.

Schools

VT. STAT. ANN. tit. 16, § 140 (2002): Smoking is prohibited on public school grounds, and no students can use tobacco at school-sponsored functions. Each public school board must adopt policies prohibiting possession and use of tobacco products by students at all times while under staff supervision.

Workplace

VT. STAT. ANN. tit. 18, §§ 1421-1422 (2002): Each employer shall establish, or shall negotiate through the collective bargaining process, a written smoking policy. The policy must prohibit smoking throughout the workplace or restrict smoking to designated enclosed smoking areas. Designated smoking areas may not occupy more than thirty percent of an employee cafeteria or lounge.

Virginia

Case Law

No cases dealing with the regulation of smoking in public places were found.

Statutes
**Public Places**

**VA. CODE ANN. § 15.2-2801 (Michie 2002):** The state and every locality shall provide reasonable non-smoking areas. The requirement does not apply to areas of the Department of Corrections not accessible to the general public in the normal course of business. Smoking is prohibited in the following places: elevators, except in any open, material hoist elevator not intended for use by the public; public school buses; the interior of any public elementary, intermediate, or secondary school; hospital emergency rooms; local or district health departments; polling rooms; indoor service lines and cashier lines; public restrooms in any building owned or leased by the state or its agencies; the interior of any child care center that is not also used for residential purposes; and public restrooms of health care facilities. The proprietor or other person in charge of an educational facility, except any public elementary, intermediate, or secondary school; health facility; or retail establishment of at least 15,000 square feet serving the general public shall designate reasonable non-smoking areas. Tobacco retail stores, warehouses, and manufacturing facilities are governed by separate laws. Any restaurant having a seating capacity for fifty or more persons shall have a designated non-smoking area sufficient to meet customer demand. Seating capacity does not include seats in any bar or lounge area, or seats in a separate room or section that is used exclusively for private functions.

**VA. CODE ANN. § 15.2-2802 (Michie 2002):** The proprietor or person who manages or otherwise controls any building or structure governed by state smoking regulations must provide reasonable non-smoking areas. Designated smoking areas must be separate to the extent reasonably practicable from those areas normally accessed by the public, while ventilation systems and existing physical barriers must be used in designated smoking areas when reasonably practicable to minimize the permeation of smoke into non-smoking areas.

**Local Power To Restrict Smoking**

**VA. CODE ANN. § 15.2-2803 (Michie 2002):** Local ordinances enacted prior to January 1, 1990 are not invalid or unenforceable because of lack of consistency with existing provisions. Unless specifically authorized, ordinances adopted after January 1, 1990 cannot contain provisions or standards that exceed those established by state law.

**VA. CODE ANN. § 15.2-2804 (Michie 2002):** Any ordinance shall provide that it is unlawful for a person to smoke in the following places: elevators; the interior of any public elementary, intermediate, or secondary school; common areas in an educational facility; any part of a restaurant designated as non-smoking pursuant to the Virginia Clean Indoor Air Act; indoor service lines and cashier areas; school buses; and public conveyances.

**VA. CODE ANN. § 15.2-2805 (Michie 2002):** Any ordinance may provide that management must designate reasonable non-smoking areas in the following
places: retail and service establishments of at least 15,000 square feet serving the general public; rooms in which a public hearing is being held; places of entertainment and cultural facilities, including but not limited to theaters, concert halls, gymnasiums, auditoriums, other enclosed arenas, art galleries, libraries, and museums; indoor facilities used for recreational purposes; and other public places. Any restaurant having a seating capacity of fifty or more must designate a non-smoking area sufficient to meet customer demand.

VA. CODE ANN. § 15.2-2806 (Michie 2002): Ordinances cannot regulate smoking in bars and lounge areas; retail tobacco stores; restaurants, conference or meeting rooms, and public and private assembly rooms while these places are used for private functions; office or work areas that are not accessed by the general public in the normal course of business or use of the premises; areas of enclosed shopping centers or malls that are external to the retail stores therein, that are used by customers to travel from one store to another, and that consist primarily of walkways and seating arrangements; and lobby areas of hotels, motels, and other public overnight establishments.

VA. CODE ANN. § 15.2-2807 (Michie 2002): Ordinances may allow employers to regulate smoking in private workplaces if the designation of smoking and non-smoking areas is subject to a written agreement between the employer and his or her employees. Also, a total ban on smoking in any workplace shall only be enforced by the employer upon an affirmative vote of the majority of the affected employees, unless such ban is the subject of an employment contract between the employer and employees as a prior condition of employment. No ordinance shall affect non-smoking policies established by employers prior to the adoption of such ordinance.

**Case Law**

No cases dealing with the regulation of smoking in public places were found.

**Statutes**

**Public Places**

WASH. REV. CODE ANN. § 70.160.030 (West 2002): No person may smoke in a public place except in designated smoking areas.

WASH. REV. CODE ANN. § 70.160.020 (West 2002): Public places include, but are not limited to elevators, public conveyances or transportation facilities, museums, concert halls, theaters, auditoriums, exhibition halls, indoor sports arenas, hospitals, nursing homes, health care facilities, enclosed shopping centers, retail stores, retail service establishments, financial institutions, educational facilities, ticket areas, public hearing facilities, state legislative chambers and
immediately adjacent hallways, public restrooms, libraries, restaurants, waiting areas, lobbies, and reception areas.

**WASH. REV. CODE ANN. § 70.160.040 (West 2002):** A smoking area may be designated in a public place except in elevators; buses; streetcars; taxis; public areas of retail stores and lobbies of financial institutions; office reception areas and waiting rooms of any building owned or leased by the government; museums; public meetings or hearings; classrooms; seating areas and lobbies of concert halls, theaters, and indoor sports arenas; and hallways of health care facilities except for nursing homes. No public places other than bars, taverns, bowling alleys, tobacco shops, or restaurants may be designated as smoking areas in their entirety.

**Child Care Facilities**

**WASH. ADMIN. CODE § 388-155-430 (2002):** Smoking must be prohibited in all child care facilities in areas used by children during the hours of operation and in all vehicles in which a child is being transported.

**Schools**

**WASH. REV. CODE ANN. § 28A.210.310 (West 2002):** Each school district board of directors shall issue a written policy prohibiting the use of all tobacco products on school property.

**Workplace**

**WASH. REV. CODE ANN. § 70.160.060 (West 2002):** Smoking prohibitions do not apply to private enclosed workplaces.

**WASH. ADMIN. CODE § 296-307-59005 (2002):** Smoking must be prohibited entirely in the work environment, or must be restricted to marked and designated enclosed smoking rooms that are not in common areas. Smoking rooms must meet ventilation requirements.

**West Virginia**

**Case Law**

_Bd. of Educ. v. Johnson_, 497 S.E.2d 778 (W. Va. 1997): A school bus operator was fired by the Wood County Board of Education for allegedly smoking while transporting children. The Education and State Employees Grievance Board found that the charge had not been proven. The circuit court substituted its own findings for those of the grievance board, prompting the Supreme Court of Appeals to reverse.

**Statutes**

**Public Places**

_W. VA. CODE ANN. § 16-38-4 (Michie 2002):** Smoking is prohibited in tattoo studio workrooms.
W. VA. CODE ANN. § 47-20-28a (Michie 2002): Bingo operators distributing more than one hundred bingo cards shall provide a non-smoking and a smoking section, if smoking is permitted.

W. VA. CODE ANN. § 31-20-5b (Michie 2002): Prisoners cannot smoke in any facility operated solely by the West Virginia Regional Jail Authority.

Public Transportation

W. VA. CODE ANN. § 8-27-10a (Michie 2002): Smoking is prohibited on public vehicles designed for transporting more than seven passengers. The prohibition does not apply to any vehicle operated in interstate commerce or chartered vehicles, except that smoking is prohibited in posted non-smoking areas.

Schools

W. VA. CODE § 16-9A-4 (2002): Smoking is prohibited in school buildings or on school grounds while school is in session. The prohibition does not apply to faculty lounges or offices, or other areas that are not used for instructional purposes and to which students do not have access.

Wisconsin

Case Law

Rossie v. State / Dept. of Revenue, 133 Wis. 2d 341 (Wis. Ct. App. 1986): Appellant, the Department of Revenue (DOR) challenged the circuit court’s judgment that permanently enjoined the DOR from using its internal disciplinary system to enforce two administrative directives that banned smoking in all DOR facilities. Respondent, a DOR employee, cross-appealed the portion of the judgment that declared the directives valid. The court reversed the enjoinder and affirmed the validity of the DOR directives, holding that the directives did not affect a private right or interest, and that state laws do not limit the DOR’s authority to issue internal work rules that regulated smoking. The court also rejected the employee’s constitutional claims that state tobacco laws violated the employee’s right to equal protection and interfered with his right to contract.

Statutes

Public Places

WIS. STAT. § 101.123 (2002): Smoking is completely prohibited in the following places: buses; hospitals, except for adult patients of mental health units with a physician’s permission; physicians’ offices; the state capitol building and its immediate vicinity; the premises, indoors and outdoors, of day care centers when children who are receiving services are present; and certain correctional facilities. With limited exceptions, smoking is prohibited in the following places: public conveyances, educational facilities, inpatient health care facilities, indoor movie
theaters, offices, passenger elevators, restaurants, retail establishments, public waiting rooms, and indoor areas of state, county, city, village, or town buildings. Exceptions from these prohibitions include rooms in which the main occupants are smokers, even if non-smokers are periodically present in the office or room; entire rooms or halls used for private functions, if the arrangements for the function are under the control of the sponsor of the function; restaurants holding certain liquor licenses if alcoholic beverages account for more than fifty percent of the restaurants' receipts; areas of facilities used principally to manufacture or assemble goods, products, or merchandise for sale; and areas specifically designated for smoking.

**Schools**

**Wis. Stat. § 120.12 (2002):** School boards must prohibit the use of any tobacco products on premises owned, rented, or controlled by a school board, except that the school board may allow the use of tobacco products on premises owned by the school district and rented to another party for non-educational purposes.

**Wyoming**

**Case Law**

No court cases dealing with the regulation of smoking in public places were found.

**Statutes**

No statutes dealing with the regulation of smoking in public places were found.