

Idaho

TITLE 39 HEALTH AND SAFETY CHAPTER 55 CLEAN INDOOR AIR

39-5501. LEGISLATIVE FINDINGS AND INTENT.

- (1) Public health officials have concluded that secondhand tobacco smoke causes disease, including lung cancer and heart disease, in nonsmoking adults, as well as causes serious conditions in children such as asthma, respiratory infections, middle ear infections, and sudden infant death syndrome. In addition, public health officials have concluded that secondhand smoke can exacerbate adult asthma and allergies and cause eye, throat and nasal irritation. The conclusions of public health officials concerning secondhand tobacco smoke are sufficient to warrant measures that regulate smoking in public places in order to protect the public health and the health of employees who work at public places.
- (2) The intent of this chapter is to protect the public health, comfort and environment, the health of employees who work at public places and the rights of nonsmokers to breathe clean air by prohibiting smoking in public places and at public meetings.

39-5502. DEFINITIONS. As used in this chapter:

- (1) "Auditorium" means a public building where an audience sits and any corridors, hallways or lobbies adjacent thereto.
- (2) "Bar" means any indoor area open to the public operated primarily for the sale and service of alcoholic beverages for on-premises consumption and where:
 - (a) the service of food is incidental to the consumption of such beverages, or
 - (b) no person under the age of twenty-one (21) years is permitted except as provided in section 23-943, Idaho Code, as it pertains to employees, musicians and singers, and all public entrances are clearly posted with signs warning patrons that it is a smoking facility and that persons under twenty-one (21) years of age are not permitted. "Bar" does not include any area within a restaurant.
- (3) "Employer" means any person, partnership, limited liability company, association, corporation or nonprofit entity that employs one (1) or more persons, including the legislative, executive and judicial branches of state government; any county, city, or any other political subdivision of the state; or any other separate unit of state or local government.
- (4) "Indoor shopping mall" means an indoor facility located at least fifty (50) feet from any public street or highway and housing no less than ten (10) retail establishments.
- (5) "Public meeting" means all meetings open to the public.
- (6) "Public place" means any enclosed indoor place of business, commerce, banking, financial service or other service-related activity, whether publicly or privately owned and whether operated for profit or not, to which persons not employed at the public place have general and regular access or which the public uses including:
 - (a) Buildings, offices, shops or restrooms;
 - (b) Waiting rooms for means of transportation or common carriers;

- (c) Restaurants;
 - (d) Theaters, auditoriums, museums or art galleries;
 - (e) Hospitals, libraries, indoor shopping malls, indoor sports arenas, concert halls, or airport passenger terminals, and within twenty (20) feet of public entrances and exits to such facilities;
 - (f) Public or private elementary or secondary school buildings and educational facilities and within twenty (20) feet of entrances and exits of such buildings or facilities;
 - (g) Retail stores, grocery stores or arcades;
 - (h) Barbershops, hair salons or laundromats;
 - (i) Sports or fitness facilities;
 - (j) Common areas of nursing homes, resorts, hotels, motels, bed and breakfast lodging facilities and other similar lodging facilities, including lobbies, hallways, restaurants and other designated dining areas and restrooms of any of these;
 - (k) Any child care facility subject to licensure under the laws of Idaho, including those operated in private homes, when any child cared for under that license is present;
 - (l) Public means of mass transportation including vans, trains, taxicabs and limousines when passengers are present; and
 - (m) Any public place not exempted by section 39-5503, Idaho Code.
- (7) "Publicly-owned building or office" means any enclosed indoor place or portion of a place owned, leased or rented by any state, county or municipal government, or by any agency supported by appropriation of, or by contracts or grants from, funds derived from the collection of federal, state, municipal or county taxes.
- (8) "Restaurant" means an eating establishment including, but not limited to, coffee shops, cafes, cafeterias, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term "restaurant" shall include a bar area within a restaurant.
- (9) "Smoking" includes the possession of any lighted tobacco product in any form.
- (10) "Smoking area" means a designated area in which smoking is permitted.

39-5503. PROHIBITIONS -- EXCEPTIONS.

- (1) No person shall smoke in a public place, publicly-owned building or office, or at a public meeting, except in the following which may contain smoking areas or be designated as smoking areas in their entirety:
- (a) Bars;
 - (b) Retail businesses primarily engaged in the sale of tobacco or tobacco products;
 - (c) Bowling alleys;
 - (d) Buildings owned and operated by social, fraternal, or religious organizations when used by the membership of the organization, their guests or families, or any facility that is rented or leased for private functions from which the public is excluded and for which arrangements are under the control of the sponsor of the function;

- (e) Guest rooms in hotels, motels, bed and breakfast lodging facilities, and other similar lodging facilities, designated by the person or persons having management authority over such public lodging establishment as rooms in which smoking may be permitted;
 - (f) Theatrical production sites, if smoking is an integral part of the story in the theatrical production;
 - (g) Areas of owner-operated businesses, with no employees other than the owner-operators, that are not commonly open to the public;
 - (h) Any office or business, other than child care facilities, located within the proprietor's private home when all such offices and/or businesses occupy less than fifty percent (50%) of the total area within the private home; and
 - (i) A designated employee breakroom established by a small business owner employing five (5) or fewer employees, provided that all of the following conditions are met:
 - (i) The breakroom is not accessible to minors;
 - (ii) The breakroom is separated from other parts of the building by a floor to ceiling partition;
 - (iii) The breakroom is not the sole means of entrance or exit to the establishment or its restrooms and is located in an area where no employee is required to enter as part of the employee's work responsibilities. For purposes of this paragraph, the term "work responsibilities" does not include custodial or maintenance work performed in a breakroom when it is unoccupied; and
 - (iv) "Warning: Smoking Permitted" signs are prominently posted in the smoking breakroom and properly maintained by the employer. The letters on such signs shall be at least one (1) inch in height.
- (2) This section shall not be construed to require employers to provide reasonable accommodation to smokers, or to provide breakrooms for smokers or nonsmokers.
- (3) Nothing in this section shall prohibit an employer from prohibiting smoking in an enclosed place of employment.

39-5505. SMOKING IN ELEVATORS PROHIBITED.

Notwithstanding any other provision of this chapter or any other statute, or county or city ordinance, no person shall smoke in any elevator generally accessible to the public. Signs indicating that smoking is prohibited shall be conspicuously posted in each elevator and at each entrance to an elevator car or bank of elevators.

39-5506. RESPONSIBILITIES OF EMPLOYERS.

- (1) No employer or other person in charge of a public place or publicly-owned building or office shall knowingly or intentionally permit the smoking of tobacco products in violation of this chapter.
- (2) Any employer or other person in charge of a public place or publicly-owned building or office who knowingly violates the provisions of this section is guilty of an infraction and is subject to a fine not to exceed one hundred dollars (\$100).
- (3) Any employer who discharges or in any manner discriminates against an employee because that employee has made a complaint or has given information to the department of health and welfare or the department of labor pursuant to this section

shall be subject to a civil penalty of not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000) for each violation.

39-5507. VIOLATIONS.

An employer, or other person in charge of a public place or publicly-owned building, or the agent or employee of such person, who observes a person smoking in apparent violation of this chapter shall ask the person to extinguish all lighted tobacco products. If the person persists in violating this chapter, the employer, person in charge, agent or employee shall ask the person to leave the premises. Any person who refuses to either extinguish all lighted tobacco products or leave the premises is guilty of an infraction and is subject to a fine not to exceed fifty dollars (\$50.00). Any violation may be reported to a law enforcement officer.

39-5508. RULES AND REGULATIONS.

The director of the Idaho department of health and welfare shall adopt rules and regulations necessary, reasonable and consistent with the intent of this chapter to implement the provisions of this chapter. The director may, upon request, waive the provisions of said rules and regulations if it is determined that there are compelling reasons to do so and a waiver will not significantly affect the health and comfort of nonsmokers.

39-5509. OTHER STATUTES NOT AFFECTED.

The provisions of this chapter shall not be deemed to amend, modify or repeal sections 18-5904, 18-5905 and 18-5906, Idaho Code, relating to no smoking during public meetings.

39-5510. SMOKING ON BUSES.

- (1) Smoking of tobacco or other products in or upon any bus, except a charter bus, is a violation of the provisions of this chapter, and any person smoking tobacco or other products on a bus, except a charter bus shall be guilty of an infraction and shall be punished as provided in section 39-5507, Idaho Code.
- (2) As used in this section:
 - (a) "Bus" means any passenger bus or coach or other motor vehicle having a seating capacity of fifteen (15) or more passengers operated by a bus company for the purpose of carrying passengers or cargo for hire.
 - (b) "Bus company" means any person, group of persons, association, partnership, corporation or other recognized legal entity providing for-hire transportation to passengers or cargo by bus upon the highways in the state, including passengers and cargo in interstate or intrastate travel. These terms also include cities, counties, districts, public corporations, boards and commissions established under the laws of this state providing transportation to passengers or cargo by bus upon the highways in the state, whether or not for hire.
 - (c) "Charter" means a group of persons, pursuant to a common purpose and under a single contract, and at a fixed charge in accordance with a bus company's tariff, which has acquired the exclusive use of a bus to travel together to a specified destination or destinations, or special excursions to one (1) specific destination.

39-5511. LOCAL PROVISIONS.

Nothing in this chapter shall be interpreted to prevent local, county or municipal governments from adopting ordinances or regulations more restrictive than the provisions contained herein.