CHAPTER 95

Clean Indoor Air Act

**SECTION 44‑95‑10.** Short title.

 This chapter may be cited as the Clean Indoor Air Act of 1990.

HISTORY: 1990 Act No. 503, Section 1.

LAW REVIEW AND JOURNAL COMMENTARIES

Banning the flames: Constitutionality, preemption, and local smoking ordinances. 59 S.C. Law Rev. 475 (Spring 2008).

Attorney General’s Opinions

State law preempts municipalities from banning smoking in bars and restaurants, and from associated noncriminal or civil penalties. S.C. Op.Atty.Gen. (May 1, 2007) 2007 WL 1651346.

This Act preempts municipal ordinances that would require smoke free restaurants within corporate limits. S.C. Op.Atty.Gen. (January 26, 2006) 2006 WL 269614.

The Medical University of South Carolina can completely ban smoking anywhere on its grounds, including hospital owned and leased buildings, thoroughfares, parking lots, and vehicles parked on the property. S.C. Op.Atty.Gen. (September 27, 2005) 2005 WL 2652377.

NOTES OF DECISIONS

City ordinances 1

1. City ordinances

Clean Indoor Air Act did not preempt entire field of indoor smoking, and thus city could pass ordinance more restrictive than the statute by banning smoking in restaurants and bars, since there was no expressly stated intent in the statute that the state chose to exclusively regulate the subject of indoor smoking. Foothills Brewing Concern, Inc. v. City of Greenville (S.C. 2008) 377 S.C. 355, 660 S.E.2d 264, rehearing denied. Environmental Law 252; Municipal Corporations 592(1)

City ordinance making it an infraction or public nuisance to smoke in restaurants and bars did not criminalize conduct that was not illegal under state law, and thus did not violate section of constitution requiring statewide uniformity of the criminal law of the state; although ordinance made smoking in certain areas “unlawful” where the Clean Indoor Air Act did not, ordinance was non‑criminal in nature. Foothills Brewing Concern, Inc. v. City of Greenville (S.C. 2008) 377 S.C. 355, 660 S.E.2d 264, rehearing denied. Environmental Law 246

**SECTION 44‑95‑20.** Places where smoking is prohibited.

 It is unlawful for a person to smoke or possess lighted smoking material in any form in the following public indoor areas except where a smoking area is designated as provided for in this chapter:

 (1) public schools and preschools where routine or regular kindergarten, elementary, or secondary educational classes are held including libraries. Private offices and teacher lounges which are not adjacent to classrooms or libraries are excluded. However, this exclusion does not apply if the offices and lounges are included specifically in a directive by the local school board. This section does not prohibit school district boards of trustees from providing for a smoke‑free campus;

 (2) all other indoor facilities providing children’s services to the extent that smoking is prohibited in the facility by federal law and all other childcare facilities, as defined in Section 63‑13‑20, which are licensed pursuant to Chapter 13, Title 63;

 (3) health care facilities as defined in Section 44‑7‑130, except where smoking areas are designated in employee break areas. However, nothing in this chapter prohibits or precludes a health care facility from being smoke free;

 (4) government buildings, except health care facilities as provided for in this section, except that smoking may be allowed in enclosed private offices and designated areas of employee break areas. However, smoking policies in the State Capitol and Legislative Office Buildings must be determined by the office of government having control over its respective area of the buildings. “Government buildings” means buildings or portions of buildings which are leased or operated under the control of the State or any of its political subdivisions, except those buildings or portions of buildings which are leased to other organizations or corporations;

 (5) elevators;

 (6) public transportation vehicles, except for taxicabs;

 (7) arenas and auditoriums of public theaters or public performing art centers. However, smoking areas may be designated in foyers, lobbies, or other common areas, and smoking is permitted as part of a legitimate theatrical performance; and

 (8) buildings, or portions of buildings, and the outside areas immediately contiguous to these buildings owned, leased, operated, or maintained by a public institution of higher learning, as defined in Section 59‑103‑5, that the governing board of the institution has designated as nonsmoking.

HISTORY: 1990 Act No. 503, Section 2; 1994 Act No. 289, Section 1; 1996 Act No. 445, Section 1; 2012 Act No. 188, Section 1, eff June 7, 2012.

Library References

Environmental Law 285.

Westlaw Topic No. 149E.

RESEARCH REFERENCES

Treatises and Practice Aids

Employment Coordinator Workplace Safety Section 5:228, South Carolina.

Attorney General’s Opinions

Discussion of “enclosed private offices” and whether a state agency can ban smoking within a building. S.C. Op.Atty.Gen. (February 15, 1991) 1991 WL 474743.

General Assembly intended Clean Indoor Air Act of 1990 to be of statewide applicability and, except for health care facilities, to preempt local political subdivisions from further regulation of smoking in public indoor areas. S.C. Op.Atty.Gen. (December 5, 1990) 1990 WL 482456.

**SECTION 44‑95‑30.** Designation of smoking and nonsmoking areas in places where smoking permitted.

 In areas where smoking is permitted in Section 44‑95‑20, the owner, manager, or agent in charge of the premises or vehicle referenced in Section 44‑95‑20 shall conspicuously display signs designating smoking and nonsmoking areas alike, except that signs are not required in private offices.

HISTORY: 1990 Act No. 503, Section 3.

Library References

Environmental Law 285.

Westlaw Topic No. 149E.

RESEARCH REFERENCES

Treatises and Practice Aids

Employment Coordinator Workplace Safety Section 5:228, South Carolina.

**SECTION 44‑95‑40.** Separation of smoking and nonsmoking areas; barriers; ventilation.

 In complying with Section 44‑95‑30, the owner, manager, or agent in charge of the premises shall make every reasonable effort to prevent designated smoking areas from impinging upon designated smoke‑free areas by the use of existing physical barriers and ventilation systems.

HISTORY: 1990 Act No. 503, Section 4.

Library References

Environmental Law 285.

Westlaw Topic No. 149E.

RESEARCH REFERENCES

Treatises and Practice Aids

Employment Coordinator Workplace Safety Section 5:228, South Carolina.

**SECTION 44‑95‑50.** Penalty for violation of smoking restrictions.

 A person who violates Section 44‑95‑20, 44‑95‑30 or 44‑95‑40 of this chapter is guilty of a misdemeanor and, upon conviction, must be fined not less than ten dollars nor more than twenty‑five dollars.

HISTORY: 1990 Act No. 503, Section 5.

Library References

Environmental Law 285.

Westlaw Topic No. 149E.

RESEARCH REFERENCES

Treatises and Practice Aids

Employment Coordinator Workplace Safety Section 5:228, South Carolina.

NOTES OF DECISIONS

Constitutional issues 1

1. Constitutional issues

The $500 fine imposed by town ordinance, banning smoking in the workplace, was substantially greater than the $25 to $100 criminal fines imposed under the Clean Indoor Air Act for tobacco smoking offenses and, thus, could not be construed as simply a civil, as opposed to criminal, fine, and therefore, the penalty provision of the ordinance was unconstitutional because it conflicted with state criminal law by imposing a criminal penalty for conduct that was not illegal under state law. Beachfront Entertainment, Inc. v. Town of Sullivan’s Island (S.C. 2008) 379 S.C. 602, 666 S.E.2d 912. Environmental Law 246

**SECTION 44‑95‑60.** Mandatory nicotine or tobacco testing prohibited.

 No person in this State is authorized to require any other person to submit to any form of testing to determine whether or not the person has nicotine or other tobacco residue in his body.

HISTORY: 1990 Act No. 503, Section 6.

Library References

Environmental Law 285.

Westlaw Topic No. 149E.