

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of 2008 Iowa Acts, House File 2212, the Department of Public Health hereby adopts new Chapter 153, "Smokefree Air," Iowa Administrative Code.

The purpose of these rules is to implement the Smokefree Air Act as enacted by 2008 Iowa Acts, House File 2212.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 30, 2008, as **ARC 6990B**. In addition, these rules were simultaneously Adopted and Filed Emergency as **ARC 6989B**, effective July 1, 2008. A Regulatory Analysis was completed by the Department in response to a request from the Iowa Restaurant Association. The analysis was published in the Iowa Administrative Bulletin on September 10, 2008.

The Department held an extended comment period and conducted five hearings over the Iowa Communications Network that included five different originating sites and a total of 32 sites. A public comment form was available on the Iowa Smokefree Air Act Web site beginning June 2, 2008. Between June 2 and September 30, 2008, 1,085 comments were received by the Department. Although the majority of those comments addressed the law, 120 comments were specifically regarding the administrative rules. A summary of the comments received pertaining to the rules during the public comment period and a log of each comment received pertaining to the rules may be viewed on the Smokefree Air Act Web site, www.iowasmokefreeair.gov/.

As a result of the comments received on the rules and additional internal review, the Department made the following changes to the Noticed rules:

The definition of "entrance" was amended and now reads as follows:

"*Entrance*" means any doorway to an enclosed area used by the public or employees for ingress to any public place or place of employment, but does not include any doorway designated for use as an exit in an emergency only. "Entrance" also includes the commonly understood points of entry to an outdoor area, subject to the prohibitions of this chapter, such as a driveway, sidewalk, pathway, access road, gate, or dedicated point of entry, but not including a street, road, highway, or sidewalk in the public right-of-way."

The definition of "grounds of any public building" was amended and now reads as follows:

"*Grounds of any public building*" means an outdoor area of a public building that is used in connection with the building, including but not limited to a sidewalk or driveway immediately adjacent to the building, but not including a sidewalk in the public right-of-way; a sitting or standing area immediately adjacent to the building; a patio; a deck; a curtilage or courtyard; a swimming or wading pool; a beach; or any other outdoor area as designated by the person having custody or control of the public building. A person having custody or control of a public building may exclude from the designated grounds of any public building the following: a parking lot, the course of play at a golf course, a hiking trail, locations of an individual campsite or campfire, or a lake, river, or other body of water. Nothing in this definition prohibits any owner, operator, manager, or other person having custody or control of an area that is exempt from the prohibitions of 2008 Iowa Acts, House File 2212, section 3, and rule 641—153.3(82GA, HF2212) from declaring the entire area or property a nonsmoking place."

A definition of "public building" was added.

In 153.5(1), paragraph "e," the size of vehicle signs was reduced from 24 square inches to 9 square inches.

In 153.8(5), the requirement that a person making a complaint include the person's name and contact information was eliminated.

In 153.8(8), all references to "written notice of violation" were changed to read "written notice of potential violation."

In 153.8(8), paragraph “c,” the description of actions taken subsequent to “third and subsequent complaints” was changed to be consistent with description of actions taken subsequent to second complaints.

These rules were adopted by the State Board of Health on November 12, 2008.

These rules shall become effective January 7, 2009, at which time the Adopted and Filed Emergency rules are hereby rescinded.

These rules are intended to implement 2008 Iowa Acts, House File 2212.

The following amendment is adopted.

Adopt the following **new** 641—Chapter 153:

CHAPTER 153
SMOKEFREE AIR

641—153.1(82GA, HF2212) Purpose and scope. The purpose of these rules is to implement Iowa’s Smokefree Air Act, enacted to reduce the level of exposure by the general public and employees to environmental tobacco smoke in order to improve the public health of Iowans. These rules apply to public places, places of employment, and certain outdoor areas in the state.

641—153.2(82GA, HF2212) Definitions. For the purposes of this chapter, the following definitions shall apply:

“*Ashtray*” means any receptacle, including a can, bottle, bowl, tray, or other vessel that is used for extinguishing or disposing of any lighted cigar, cigarette, pipe, or other tobacco product in any manner or form including ash, cigarette butts or filters, or cigar stubs. However, “ashtray” shall not include any receptacle located outdoors and on the perimeter of any public place, the perimeter of the grounds of any public building, the perimeter of school grounds, or the perimeter of any other outdoor space subject to the prohibition in 2008 Iowa Acts, House File 2212, section 3, and rule 641—153.3(82GA, HF2212).

“*Bar*” means an establishment where one may purchase alcoholic beverages, as defined in Iowa Code section 123.3, for consumption on the premises and in which the serving of food is only incidental to the consumption of those beverages.

“*Child care facility*” means child care facility as defined by the department of human services pursuant to Iowa Code section 237A.1.

“*Child care home*” means child care home as defined by the department of human services pursuant to Iowa Code section 237A.1.

“*Department*” means the Iowa department of public health.

“*Entrance*” means any doorway to an enclosed area used by the public or employees for ingress to any public place or place of employment, but does not include any doorway designated for use as an exit in an emergency only. “Entrance” also includes the commonly understood points of entry to an outdoor area, subject to the prohibitions of this chapter, such as a driveway, sidewalk, pathway, access road, gate, or dedicated point of entry, but not including a street, road, highway, or sidewalk in the public right-of-way.

“*Gaming floor*” means gaming floor as defined by the state racing and gaming commission pursuant to Iowa Code section 99F.1.

“*Grounds of any public building*” means an outdoor area of a public building that is used in connection with the building, including but not limited to a sidewalk or driveway immediately adjacent to the building, but not including a sidewalk in the public right-of-way; a sitting or standing area immediately adjacent to the building; a patio; a deck; a curtilage or courtyard; a swimming or wading pool; a beach; or any other outdoor area as designated by the person having custody or control of the public building. A person having custody or control of a public building may exclude from the designated grounds of any public building the following: a parking lot, the course of play at a golf course, a hiking trail, locations of an individual campsite or campfire, or a lake, river, or other body of water. Nothing in this definition prohibits any owner, operator, manager, or other person having custody

or control of an area that is exempt from the prohibitions of 2008 Iowa Acts, House File 2212, section 3, and rule 641—153.3(82GA, HF2212) from declaring the entire area or property a nonsmoking place.

“*Hotel and motel*” means any building or structure equipped, used, advertised as, or held out to the public to be an inn, hotel, motel, motor inn, or place where sleeping accommodations are furnished for hire to transient guests.

“*Incidental to the sale of tobacco products*” means that the gross revenue of a retail tobacco store derived from the sale of products other than tobacco products is not more than 20 percent of the retail tobacco store’s total gross revenue.

“*Infiltrate*” means to permeate an area where smoking is prohibited by passing through a wall, ceiling, floor, window, door, or ventilation system to the extent that an individual can smell secondhand smoke.

“*Public and private educational facility*” means a public school and nonpublic school as defined in Iowa Code section 280.2, a community college as defined in Iowa Code section 260C.2, an accredited private institution as defined in Iowa Code section 261.9, and an institution governed by the board of regents pursuant to Iowa Code section 262.7.

“*Public building*” means an enclosed area owned, leased, or operated by or under the control of the state government or its political subdivisions.

“*Restaurant*” means eating establishments, including private and public school cafeterias, which offer food to the public, guests, or employees, including the kitchen and catering facilities in which food is prepared on the premises for serving elsewhere, and including a bar area within a restaurant.

“*Retail tobacco store*” means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is incidental to the sale of tobacco products.

“*Seating areas of outdoor sports arenas, stadiums, amphitheaters, or other entertainment venues*” means areas designated by the owner, operator, manager, or other person having custody or control of the area to be used primarily to witness entertainment events and shall include, but not be limited to, all chairs, seats, and bleachers whether permanent or temporary; standing room only; general admission or festival-style seating; and any other areas where individuals congregate to witness entertainment events.

“*Serving of food incidental to the consumption of alcoholic beverages*” means food preparation that is limited to the service of ice, prepackaged snack foods, popcorn, peanuts, and the reheating of commercially prepared foods that do not require assembly, such as frozen pizza, prepackaged sandwiches, or other prepackaged, ready-to-serve products.

“*Smoking cessation program*” means a course of treatment that is capable of clinical review for evidence-based outcomes that verify that individuals in the program stop smoking and that has been approved for coverage by a private or managed health care plan, Medicaid, Medicare, the Veterans Health Administration, or the United States military.

641—153.3(82GA, HF2212) Prohibition of smoking.

153.3(1) *Public places, places of employment.* Smoking is prohibited and a person shall not smoke in either of the following areas:

- a. Public places, as defined in 2008 Iowa Acts, House File 2212.
- b. All enclosed areas within places of employment including but not limited to work areas, private offices, conference and meeting rooms, classrooms, auditoriums, employee lounges and cafeterias, hallways, medical facilities, restrooms, elevators, stairways and stairwells, and vehicles owned, leased, or provided by the employer unless otherwise provided under these rules and 2008 Iowa Acts, House File 2212.

153.3(2) *Outdoor areas.* Smoking is prohibited and a person shall not smoke in or on any of the following outdoor areas:

- a. The seating areas of outdoor sports arenas, stadiums, amphitheaters and other entertainment venues where members of the general public assemble to witness entertainment events.
- b. Outdoor seating or serving areas of restaurants.

c. Public transit stations, platforms, and shelters under the authority of the state or its political subdivisions.

d. School grounds, including parking lots, athletic fields, playgrounds, tennis courts, and any other outdoor area under the control of a public or private educational facility, including inside any vehicle located on such school grounds.

e. The grounds of any public buildings owned, leased, or operated by or under the control of the state government or its political subdivisions, including the grounds of a private residence of any state employee any portion of which is open to the public with the following exceptions:

(1) This paragraph shall not apply to the Iowa state fairgrounds, or fairgrounds as defined in Iowa Code section 174.1.

(2) This paragraph shall not apply to institutions administered by the department of corrections, except that smoking on the grounds shall be limited to designated smoking areas.

(3) This paragraph shall not apply to facilities of the Iowa National Guard as defined in Iowa Code section 29A.1, except that smoking on the grounds shall be limited to designated smoking areas.

641—153.4(82GA, HF2212) Areas where smoking not regulated. Notwithstanding any provision of these rules and 2008 Iowa Acts, House File 2212, to the contrary, the following areas are exempt from the prohibitions of 2008 Iowa Acts, House File 2212, section 3:

153.4(1) Private residences, unless used as a child care facility, child care home, or a health care provider location.

153.4(2) Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided that not more than 20 percent of the rooms of a hotel or motel rented to guests are designated as smoking rooms, all smoking rooms on the same floor are contiguous, and smoke from smoking rooms does not infiltrate into areas in which smoking is otherwise prohibited under these rules. The status of smoking and nonsmoking rooms shall not be changed, except to provide additional nonsmoking rooms.

153.4(3) Retail tobacco stores, provided that smoke from these locations does not infiltrate into areas in which smoking is otherwise prohibited under these rules.

153.4(4) Private and semiprivate rooms in long-term care facilities, occupied by one or more individuals, all of whom are smokers and have requested in writing to be placed in a room where smoking is permitted, provided that smoke from these locations does not infiltrate into areas in which smoking is otherwise prohibited under these rules and 2008 Iowa Acts, House File 2212.

153.4(5) Private clubs that have no employees, except when being used for a function to which the general public is invited, provided that smoke from these locations does not infiltrate into areas in which smoking is otherwise prohibited under these rules and 2008 Iowa Acts, House File 2212. This exemption shall not apply to any entity that is established for the purpose of avoiding compliance with these rules and 2008 Iowa Acts, House File 2212.

153.4(6) Outdoor areas that are places of employment except those areas where smoking is prohibited pursuant to 2008 Iowa Acts, House File 2212, section 3, subsection 2.

153.4(7) Limousines under private hire; vehicles owned, leased, or provided by a private employer that are for the sole use of the driver and are not used by more than one person in the course of employment either as a driver or passenger; privately owned vehicles not otherwise defined as a place of employment or public place; and cabs of motor trucks or truck tractors if no nonsmoking employees are present.

153.4(8) An enclosed area within a place of employment or public place that provides a smoking cessation program or a medical or scientific research or therapy program, if smoking is an integral part of the program.

153.4(9) Farm tractors, farm trucks, and implements of husbandry when being used for their intended purposes.

153.4(10) Only the gaming floor of premises licensed pursuant to Iowa Code chapter 99F exclusive of any bar or restaurant located within the gaming floor which is an enclosed area and subject to the prohibitions of 2008 Iowa Acts, House File 2212, section 3.

153.4(11) The Iowa veterans home.

641—153.5(82GA, HF2212) Duties of employers, owners, operators, managers, and persons having custody or control of a public place, place of employment, area declared nonsmoking pursuant to 2008 Iowa Acts, House File 2212, section 5, or outdoor areas where smoking is prohibited.

153.5(1) The employer, owner, operator, manager, or person having custody or control of a place where smoking is prohibited under 2008 Iowa Acts, House File 2212, shall:

a. Not permit smoking in a public place, place of employment, outdoor area where smoking is prohibited, or an area declared nonsmoking pursuant to 2008 Iowa Acts, House File 2212, section 5.

b. Inform all current employees and all prospective employees upon application for employment of the prohibitions of 2008 Iowa Acts, House File 2212.

c. Not retaliate against any employee, applicant for employment, or customer that exercises any rights under 2008 Iowa Acts, House File 2212, registers a complaint, or attempts to prosecute a violation of 2008 Iowa Acts, House File 2212.

d. Post signs in and at every entrance to the public place, place of employment, area declared nonsmoking, and outdoor area where smoking is prohibited that clearly and conspicuously inform persons that they are entering a no smoking facility or area.

(1) The signs shall be clear and conspicuous in or at the entrance where posted.

(2) The signs shall be at least 24 square inches in size (for example, 4 inches by 6 inches) and shall be in legible font type.

(3) The signs shall contain the words “No Smoking” or the international “no smoking” symbol; the telephone number for reporting complaints, 1-888-944-2247; and the department of public health Web site, www.IowaSmokefreeAir.gov.

e. Place no smoking signs in every vehicle that constitutes a public place, place of employment, or area declared nonsmoking pursuant to 2008 Iowa Acts, House File 2212, section 5.

(1) Such signs shall be clear and conspicuous from the exterior of the vehicle.

(2) The signs shall be at least 9 square inches (for example, 3 inches by 3 inches) and shall be in legible font type.

(3) The signs shall contain the words “No Smoking” or the international “no smoking” symbol; the telephone number for reporting complaints, 1-888-944-2247; and the department of public health Web site, www.IowaSmokefreeAir.gov.

(4) Nothing in this rule requires the placement of a sign in any vehicle that the director of the department of administrative services or the director of transportation orders to receive a regular registration plate pursuant to Iowa Code section 321.19.

f. Remove all ashtrays from areas where smoking is prohibited.

153.5(2) The owner or operator of a building or facility that contains more than one public place, place of employment, or area declared nonsmoking pursuant to 2008 Iowa Acts, House File 2212, section 5, which is controlled by other employers, owners, or operators shall comply with the provisions of subrule 153.5(1) for the area of the building or facility under the owner’s or operator’s control.

153.5(3) An employer, owner, or operator of a public place, place of employment or area declared nonsmoking pursuant to 2008 Iowa Acts, House File 2212, section 5, that is within a public place that is owned or operated by another person shall comply with the provisions of subrule 153.5(1) for the area under the control of the employer, owner, or operator within that public place.

153.5(4) An employer, owner, operator, manager, or person having custody or control of a place where smoking is prohibited under 2008 Iowa Acts, House File 2212, shall inform any individual smoking in a place where smoking is prohibited that the individual is violating the smokefree air Act and shall request that the individual stop smoking immediately.

a. If the individual refuses to stop smoking, the employer, owner, operator, manager, or person having custody or control of the place where smoking is prohibited may discontinue service to that individual.

b. If the individual refuses to stop smoking, the employer, owner, operator, manager, or person having custody or control of the place where smoking is prohibited may request that the individual leave the area where smoking is prohibited.

c. If the individual refuses to leave the area where smoking is prohibited, the employer, owner, operator, manager, or person having custody or control of the place where smoking is prohibited may notify the state or local law enforcement agency with jurisdiction over the area where smoking is prohibited.

641—153.6(82GA, HF2212) Duties of other state agencies and political subdivisions. A state agency or political subdivision which inspects public places shall assess compliance with the requirements of these rules and 2008 Iowa Acts, House File 2212, during any inspection process and shall report any violations of 2008 Iowa Acts, House File 2212, to the department.

641—153.7(82GA, HF2212) Leases. Any lease entered into by the state or its political subdivisions on or after July 1, 2008, shall require that all areas where smoking is prohibited in 2008 Iowa Acts, House File 2212, section 3, comply with the provisions of 2008 Iowa Acts, House File 2212.

641—153.8(82GA, HF2212) Complaints and enforcement.

153.8(1) Duties of department. The department shall maintain a system for receiving and investigating complaints against persons who own, operate, manage, or otherwise have custody or control of a place where smoking is prohibited and who fail to comply with the provisions of 2008 Iowa Acts, House File 2212.

a. Pursuant to 2008 Iowa Acts, House File 2212, section 9, subsection 7, the department may designate one or more public agencies through a 28E agreement or other written contract to assist with the enforcement of 2008 Iowa Acts, House File 2212.

b. The department may refer complaints regarding a violation of 2008 Iowa Acts, House File 2212, to the law enforcement authorities of the state or of the political subdivision of the state in which the alleged violation occurred.

153.8(2) Enforcement against a person who smokes in an area where smoking is prohibited. Pursuant to 2008 Iowa Acts, House File 2212, section 9, subsection 7, the department designates the law enforcement authorities of the state and of each political subdivision of the state to assist with the enforcement of 2008 Iowa Acts, House File 2212. A peace officer may issue a citation in lieu of arrest pursuant to Iowa Code chapter 805 against a person who smokes in an area where smoking is prohibited pursuant to 2008 Iowa Acts, House File 2212, and such person shall pay a civil penalty pursuant to Iowa Code section 805.8C(3)“a” for each violation.

153.8(3) Enforcement against a person who owns, operates, manages, or otherwise has control of a place where smoking is prohibited. Pursuant to 2008 Iowa Acts, House File 2212, section 9, subsection 7, the department designates the law enforcement authorities of the state and of each political subdivision of the state to assist with the enforcement of 2008 Iowa Acts, House File 2212. The department or its designee may initiate a civil action against an owner, operator, manager, or person who otherwise has custody or control of a place where smoking is prohibited pursuant to 2008 Iowa Acts, House File 2212, and such person shall pay the applicable civil penalty pursuant to 2008 Iowa Acts, House File 2212, section 9.

153.8(4) Manner of filing a complaint. Any person may register a complaint with the department by calling the toll-free number, 1-888-944-2247, or registering a complaint on the department’s Web site, www.IowaSmokefreeAir.gov, or downloading a complaint form from the department’s Web site and mailing the complaint form to the department at Department of Public Health, Division of Tobacco Use Prevention and Control, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319.

153.8(5) Contents of the complaint. A complaint filed with the department shall include:

a. The name or location of the public place, place of employment, area declared a nonsmoking place pursuant to 2008 Iowa Acts, House File 2212, section 5, or outdoor area where smoking is prohibited which is the subject of the complaint;

b. A description of the occurrence that prompted the complaint; and

c. Any other information relevant to the occurrence.

153.8(6) *Review of complaint by department.* Upon receipt of a complaint, the department or its designee may contact the individual making the complaint to confirm the details of the complaint and obtain any additional information.

153.8(7) *Information from inspections.* Information received by the department pursuant to rule 641—153.6(82GA, HF2212) of one or more violations of 2008 Iowa Acts, House File 2212, as a result of an inspection of a public place by the state or political subdivision of the state shall be considered a credible complaint under this rule.

153.8(8) *Notice of potential violation.* If the department determines that a complaint against a public place, place of employment, area declared nonsmoking pursuant to 2008 Iowa Acts, House File 2212, section 5, or outdoor areas where smoking is prohibited is credible, the department shall:

a. For the first complaint.

(1) Issue a written notice of potential violation to the owner, operator or person having custody or control including the details of the complaint.

(2) The notice shall include educational materials about how to comply with 2008 Iowa Acts, House File 2212, and information on whom to contact for further information and assistance for compliance.

b. For the second complaint in one year.

(1) Issue a second notice of potential violation to the owner, operator, or person having custody or control.

(2) In addition, the department may authorize one or more public agencies to conduct a compliance check of the location.

(3) In addition, the department may pursue the civil penalties provided for in 2008 Iowa Acts, House File 2212, section 9, subsection 2; may refer the complaint to the appropriate authority for enforcement of the civil penalties provided for in 2008 Iowa Acts, House File 2212, section 9, subsection 2; or may pursue any other remedy authorized by 2008 Iowa Acts, House File 2212.

c. For the third and subsequent complaints of a potential violation within one year.

(1) Issue a subsequent notice of potential violation to the owner, operator, or person having custody or control.

(2) In addition, the department may authorize one or more public agencies to conduct a compliance check of the location.

(3) In addition, the department may pursue the civil penalties provided for in 2008 Iowa Acts, House File 2212, section 9, subsection 2; may refer the complaint to the appropriate authority for enforcement of the civil penalties provided for in 2008 Iowa Acts, House File 2212, section 9, subsection 2; or may pursue any other remedy authorized by 2008 Iowa Acts, House File 2212.

641—153.9(82GA, HF2212) Limitation of rules. Nothing in these rules is intended to limit any other state administrative rule or federal regulation that prohibits smoking.

These rules are intended to implement 2008 Iowa Acts, House File 2212.

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