

TOBACCO FREE

WORKPLACES AND LAWS



Tobacco Free Workplaces and Virginia Law

IT IS ILLEGAL TO SELL ANY TOBACCO PRODUCT TO A MINOR

(Code of Virginia § 18.2-371.2)

- No person shall sell to, distribute to, purchase for or knowingly permit the purchase by any person less than 18 years of age, knowing or having reason to believe that such person is less than 18 years of age, any tobacco product, including but not limited to cigarettes, cigars, bidis, and wrappings. As of July 1, 2014, stores may not sell nicotine vapor products and alternative nicotine products to minors, including e-cigarettes.

SMOKING IN VEHICLE WITH A MINOR IS ILLEGAL

(Code of Virginia §46.2-112.1)

- It is unlawful for a person to smoke in a motor vehicle, whether in motion or at rest, when a minor under the age of eight is present in the motor vehicle. A violation of this section is a secondary violation and punishable by a civil penalty of \$100. It is effective July 1, 2016.

STATE LAW - WHO CAN BE SMOKEFREE?

- ANY workplace, agency, etc. may be smokefree. There is no legal requirement to provide a smoking area.

SMOKING IS TOTALLY PROHIBITED IN:

(Code of Virginia §15.2-2824-2825)

- Indoor Service and Indoor Cashier Lines: This includes persons on BOTH sides of the counter or desk, employee and customer as well as the bakery, deli, salad bar, information, customer service desk, etc.
- Indoor Elevators, regardless of capacity
- Polling Rooms
- Local or District Health Departments
- Public restrooms of buildings the state government owns, operates, and/or leases
- Public restrooms of healthcare facilities (e.g. hospitals, nursing homes, boarding homes, adult homes, supervised living facilities, ambulatory medical and surgical centers)
- Licensed Day Care Centers that are not in private homes
- Public School Buses
- Public School Buildings
- Restaurants and Bars unless a separate room with separate ventilation to the outside, preferably with an outside entrance, is constructed for smoking. No staff is to be required to work in that room and NO SMOKING signs must be posted and visible.

E-CIGARETTES ARE BANNED ON SCHOOL PROPERTY

(Code of Virginia §22.1-79.5)

- Law requires school boards by July 2015 to implement policies that prohibit the use of electronic cigarettes and reads as follows: "Each school board shall develop and implement a policy to prohibit the use of electronic cigarettes on a school bus, on school property, or at a school-sponsored activity."

NO-SMOKING AREAS ARE REQUIRED IN:

- State buildings: public and workplace areas, except Department of Corrections workplace areas
- Local government buildings: public and workplace areas
- Retail stores and recreational facilities 15,000 sq. ft. or more (e.g. indoor stadium, arena, skating rink, video game facility, senior citizen recreation facility)
- Educational facilities (e.g. child care, nursery schools, public and private schools, colleges, universities, medical, law, or vocational schools)
- Healthcare facilities (e.g. hospitals, nursing homes, boarding homes, adult homes, supervised living facilities, ambulatory medical and surgical centers)

Tobacco Free Workplaces and Virginia Law

IT IS AGAINST THE LAW TO SMOKE IN A NO-SMOKING AREA.

(Code of Virginia §15.2-2824 (B))

- The law prohibits smoking in a No-Smoking area. If the smoker persists in smoking after being asked to stop, this is a civil violation, and a \$25 penalty may be levied.

HOW DOES THE LAW DEFINE SMOKING?

(Code of Virginia §15.2-2820)

- The law defines smoking as “the carrying or holding of any lighted pipe, cigar, or cigarette of any kind, or any other lighted smoking equipment, or the lighting, inhaling, or exhaling of smoke from a pipe, cigar, or cigarette of any kind.”

POSTING OF SIGNS

(Code of Virginia § 15.2-2832)

- Signs must be posted in ordinary public view. The signs and the writing or international No Smoking symbol must be large enough to be visible at all times, not hidden by stock, etc.
- A business or building that is smokefree should post signs so indicating at the entrance. Signs posted inside serve as reminders.
- If smoking is permitted in the building, signs stating “No Smoking” must be posted at all appropriate places such as elevators, checkout lines, etc. “Smoking Permitted” signs should be posted in the appropriate place.
- Restaurants with no-smoking and smoking areas must display a “No-Smoking Section Available” sign at the public entrance.
- There is a civil penalty of \$25 for not posting the “No Smoking” signs as required by law.

EXEMPTIONS TO THE STATE LAW:

- Material hoist elevators are not required to be no-smoking. (Amendment, 1991).
- Tobacco warehouses, retail tobacco stores, and tobacco manufacturing plants are not required to have no-smoking areas. (Amendment, 1992)

WHAT IF SMOKING IS PERMITTED?

(Code of Virginia §15.2-2827)

If smoking is permitted, that area “shall not encompass so much of the building, structure, space, place, or area open to the general public that reasonable no-smoking areas, considering the nature of the use and the size of the building, are not provided;” and these smoking areas “shall be separate to the extent reasonably practicable from those rooms or areas entered by the public in the normal use of the particular business or institution;” and that “ventilation systems and existing physical barriers shall be used when reasonably practicable to minimize the permeation of smoke into no-smoking areas.”

Tobacco Free Workplaces and Virginia Law

YOU SHOULD NOT HAVE TO WALK THROUGH SMOKE TO REACH THE NO-SMOKING AREA

- The law does not require smoking areas, but the law DOES require NO SMOKING areas. See above.

WHAT ABOUT ENFORCEMENT?

Any law enforcement officer may issue a summons for any violation of this law. A few localities have local ordinances, and these specify the enforcement process, which simplifies the procedure. Otherwise, any individual or business may call or write the local police, the state police, sheriff, county or city attorney, or the Commonwealth's attorney to report violations.

For example, someone may call the local sheriff or police to report that a particular business or government agency refuses to post the appropriate NO SMOKING signs, or permits people to smoke in the NO SMOKING area. The law enforcement officials may decide to issue a summons, or may issue a verbal warning. If you see someone smoking in the NO SMOKING areas, you may wish to ask the manager or supervisor to deal with the situation. If they refuse, you may report them to any law enforcement officer. Citizens are permitted to file a warrant through the General District Court against any business or agency which has violated the law.

HOW CAN A BUSINESS AVOID VIOLATIONS?

Businesses and government agencies are required to have the NO SMOKING signs conspicuously posted.

If an employee or customer is smoking in a no-smoking area, that is against the law, and managers could ask them to refrain from unlawful behavior. If that behavior persists, they may call a law enforcement officer to assist. Businesses have reported reduction in litter by placing ashtrays either outside the building for smokefree places, or only at the smoking area.

Business owners and managers should make themselves aware of the health dangers to employees and patrons from secondhand and thirdhand smoke.

WHAT ABOUT THE WORKPLACE?

Any workplace may be smokefree.

No one is required to provide smoking areas.

The state and local government workplaces must provide no-smoking areas in addition to elevators, service and cashier lines. Only the Department of Corrections in its workplace area is exempted from the state and local government workplace requirement. They may also be smoke free.

The Virginia State Code in Section 40.1-51.1 states that every employee has the right to a workplace free from recognized hazards.

Federal Tobacco Legislation

Selected Actions of the U.S. Government Regarding the Regulation of Tobacco Sales, Marketing, and Use (excluding laws pertaining to agriculture or excise tax)

FOOD AND DRUGS ACT OF 1906

- First federal food and drug law
- No express reference to tobacco products
- Definition of a drug includes medicines and preparations listed in U.S. Pharmacopeia or National Formulary.
- 1914 interpretation advised that tobacco be included only when used to cure, mitigate, or prevent disease.

FEDERAL FOOD, DRUG, AND COSMETIC ACT (FFDCA) OF 1938

- Superseded 1906 Act.
- Definition of a “drug” includes “articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals” and “articles (other than food) intended to affect the structure or any function of the body of man or other animals.”
- The Food and Drug Administration (FDA) has asserted jurisdiction in cases where the manufacturer or vendor has made medical claims.
 - 1953—Fairfax cigarettes (manufacturer claimed these prevented respiratory and other diseases)
 - 1959—Trim Reducing-Aid Cigarettes (contained the additive tartaric acid, which was claimed to aid in weight reduction)
- FDA has asserted jurisdiction over alternative nicotine-delivery products.
 - 1984—Nicotine Polacrilex gum
 - 1985—Favor Smokeless Cigarette (nicotine-delivery device; ruled a “new drug,” intended to treat nicotine dependence and to affect the structure and function of the body; removed from market)
 - 1989—Masterpiece Tobacs tobacco chewing gum; (ruled an adulterated food and removed from the market)
 - 1991—Nicotine patches

FEDERAL TRADE COMMISSION (FTC) ACT OF 1914 (AMENDED IN 1938)

- Empowers the FTC to “prevent persons, partnerships, or corporations ... from using unfair or deceptive acts or practices in commerce.”
- Between 1945 and 1960, FTC completed seven formal cease-and-desist order proceedings for medical or health claims (e.g., a 1942 complaint countering claims that Kool cigarettes provide extra protection against or cure colds).
- In January 1964, FTC proposed a rule to strictly regulate the imagery and copy of cigarette ads to prohibit explicit or implicit health claims.
- 1983—FTC determines that its testing procedures may have “significantly underestimated the level of tar, nicotine, and carbon monoxide that smokers received from smoking” certain low-tar cigarettes. Prohibits Brown and Williamson Tobacco Company from using the tar rating for Barclay cigarettes in advertising, packaging or promotions because of problems with the testing methodology and consumers’ possible reliance on that information. FTC authorized revised labeling in 1986.
- 1985—FTC acts to remove the RJ Reynolds advertisements, “Of Cigarettes and Science,” in which the multiple risk factor intervention trial (MRFIT) results were misinterpreted.
- 1999—FTC requires RJ Reynolds to add a label to packages and ads explaining that “no additives” does not make Winston cigarettes safer.

Federal Tobacco Legislation

FEDERAL HAZARDOUS SUBSTANCES LABELING ACT (FHSA) OF 1960

- Authorized FDA to regulate substances that are hazardous (either toxic, corrosive, irritant, strong sensitizers, flammable, or pressure-generating). Such substances may cause substantial personal injury or illness during or as a result of customary use.
- 1963—FDA expressed its interpretation that tobacco did not fit the “hazardous” criteria stated previously and withheld recommendations pending the release of the report of the Surgeon General’s Advisory Committee on Smoking and Health.

FEDERAL CIGARETTE LABELING AND ADVERTISING ACT OF 1965

- Required package warning label— “Caution: Cigarette Smoking May Be Hazardous to Your Health” (other health warnings prohibited).
- Required no labels on cigarette advertisements (in fact, implemented a three-year prohibition of any such labels).
- Required FTC to report to Congress annually on the effectiveness of cigarette labeling, current cigarette advertising and promotion practices, and to make recommendations for legislation.
- Required Department of Health, Education, and Welfare (DHEW) to report annually to Congress on the health consequences of smoking.

PUBLIC HEALTH CIGARETTE SMOKING ACT OF 1969

- Required package warning label— Warning: The Surgeon General Has Determined that Cigarette Smoking Is Dangerous to Your Health” (other health warnings prohibited).
- Temporarily preempted FTC requirement of health labels on advertisements.
- Prohibited cigarette advertising on television and radio (authority to Department of Justice [DOJ]).
- Prevents states or localities from regulating or prohibiting cigarette advertising or promotion for health-related reasons.

CONTROLLED SUBSTANCES ACT OF 1970

- This Act prevents the abuse of drugs, narcotics, and other addictive substances.
- Specifically excludes tobacco from the definition of a “controlled substance.”

CONSUMER PRODUCT SAFETY ACT OF 1972

- Transferred authority from the FDA to regulate hazardous substances as designated by the Federal Hazardous Substances Labeling Act (FHSA) to the Consumer Product Safety Commission (CPSC).
- The term “consumer product” does not include tobacco and tobacco products.

LITTLE CIGAR ACT OF 1973

- Bans little cigar advertisements from television and radio (authority to DOJ).

Federal Tobacco Legislation

1976 AMENDMENT TO THE FEDERAL HAZARDOUS SUBSTANCES LABELING ACT OF 1960

- The term “hazardous substance” shall not apply to tobacco and tobacco products (passed when the American Public Health Association petitioned Consumer Product Safety Commission (CPSC) to set a maximum level of 21 mg. of tar in cigarettes).

TOXIC SUBSTANCES CONTROL ACT OF 1976

- Act was passed to regulate chemical substances and mixtures which present an unreasonable risk of injury to health or the environment.
- The term “chemical substance” does not include tobacco or any tobacco products.

COMPREHENSIVE SMOKING EDUCATION ACT OF 1984

- Requires four rotating health warning labels (all listed as Surgeon General’s Warnings) on cigarette packages and advertisements (smoking causes lung cancer, heart disease and may complicate pregnancy; quitting smoking now greatly reduces serious risks to your health; smoking by pregnant women may result in fetal injury, premature birth, and low birth weight; cigarette smoke contains carbon monoxide) (preempted other package warnings).
- Requires Department of Health and Human Services (DHHS) to publish a biennial status report to Congress on smoking and health.
- Creates a Federal Interagency Committee on Smoking and Health.
- Requires cigarette industry to provide a confidential list of ingredients added to cigarettes manufactured in or imported into the United States (brand-specific ingredients and quantities not required).

CIGARETTE SAFETY ACT OF 1984

- Act was passed to determine the technical and commercial feasibility of developing cigarettes and little cigars that would be less likely to ignite upholstered furniture and mattresses

COMPREHENSIVE SMOKELESS TOBACCO HEALTH EDUCATION ACT OF 1986

- Institutes three rotating health warning labels on smokeless tobacco packages and advertisements (this product may cause mouth cancer; this product may cause gum disease and tooth loss; this product is not a safe alternative to cigarettes) (preempts other health warnings on packages or advertisements [except billboards]).
- Prohibits smokeless tobacco advertising on television and radio.
- Requires DHHS to publish a biennial status report to Congress on smokeless tobacco.
- Requires FTC to report to Congress on smokeless tobacco sales, advertising, and marketing.
- Requires smokeless tobacco companies to provide a confidential list of additives and a specification of nicotine content in smokeless tobacco products.
- Requires DHHS to conduct public information campaign on the health hazards of smokeless tobacco.

Tobacco Free Workplaces and Virginia Law

PUBLIC LAW 100-202 (1987)

- Banned smoking on domestic airline flights scheduled for two hours or less.

PUBLIC LAW 101-164 (1989)

- Bans smoking on domestic airline flights scheduled for six hours or less, which covered nearly every flight route in the country. The law became permanent on Feb. 25, 1990 when it was signed by President George H.W. Bush.

SYNAR AMENDMENT TO THE ALCOHOL, DRUG ABUSE, AND MENTAL HEALTH ADMINISTRATION (ADAMHA) REORGANIZATION ACT OF 1992

- Requires all states to adopt and enforce restrictions on tobacco sales and distribution to minors.

PRO-CHILDREN ACT OF 1994

- Requires all federally funded children's services to become smokefree. Expands upon 1993 law that banned smoking in Women, Infants, and Children (WIC) clinics.

FAMILY SMOKING PREVENTION AND TOBACCO CONTROL ACT OF 2009

- Grants the Food and Drug Administration (FDA) the authority to regulate tobacco products.
- In 2016, the FDA finalized a rule – Deeming Tobacco Products To Be Subject to the Federal Food, Drug, and Cosmetic Act – which extends the FDA's authority to include the regulation of electronic nicotine delivery systems (such as e-cigarettes and vape pens), all cigars, hookah (waterpipe) tobacco, pipe tobacco and nicotine gels, among others. This final rule goes into effect on August 8, 2016.