

INDOOR SMOKING ACT (ISA) RSA 155:64-77

PUBLIC HEALTH ISSUE:

Cigarette smoking is the single most important preventable cause of death and disease in the United States. In New Hampshire, approximately 16% of the adult population surveyed for the Behavioral Risk Factor Surveillance System (BRFSS) smoked cigarettes in 2010 and 21% of high school youth reported smoking on the Youth Risk Behavior Survey (YRBS). Secondhand smoke is a mixture of the smoke exhaled by those who smoke and the smoke that comes from the burning end of a cigarette, cigar, or pipe. One in every eight people that die of a tobacco related disease is a non-smoker. Childhood illnesses and even deaths are attributed to exposure to secondhand smoke. The Environmental Protection Agency has classified secondhand smoke as a Group A Carcinogen – a substance known to cause cancer in humans for which there is no safe level of exposure. The NH Indoor Smoking Act (ISA) (RSA 155:64-77) seeks to reduce the exposure to secondhand smoke for the people of New Hampshire.

The NH ISA became effective on January 1, 1991 for the public sector, and July 1, 1993 for the private sector. The purpose of this Act is to protect the health of the public by regulating smoking in: enclosed workplaces; enclosed places accessible to the public (both publicly and privately owned); enclosed publicly owned buildings. The law was amended and became effective September 17, 2007 for banning smoking in restaurants and cocktail lounges as well as what qualifies as effective segregation of smoking and non-smoking areas. The entire ISA may be viewed at:

<http://www.gencourt.state.nh.us/rsa/html/NHTOC/NHTOC-XII-155.htm>.

Any person who suspects an enclosed place is not in compliance with the ISA may submit a complaint to the New Hampshire Department of Health and Human Services, Division of Public Health, Tobacco Prevention and Control Program (TPCP). A signed form must be completed and submitted before any investigation. This form can be downloaded at <http://www.dhhs.nh.gov/dphs/tobacco/indoor.htm>. Prior to any investigation by the TPCP, the complainant must have registered a complaint with the person in charge of the establishment.

ROLE OF THE HEALTH OFFICER:

- A Health Officer may register a complaint directly with the New Hampshire Division of Public Health Services, TPCP by emailing a signed complaint form to tmbrown@dhhs.state.nh.us or by fax at 271-5318 after first having registered the complaint with the person-in-charge of the establishment. The TPCP may request assistance from a Health Officer with the investigation of a possible violation of the ISA.
 - All Health Officers are encouraged to call the TPCP with any questions regarding the ISA. The TPCP supports all Health Officers in their role regarding secondhand smoke.
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NH INDOOR SMOKING ACT. RSA 155:64-77:

<http://www.gencourt.state.nh.us/rsa/html/XII/155/155-mrg.htm>, beginning with Section 64

According to the NH Indoor Smoking Act:

Smoking is prohibited in the following enclosed places:

- Public schools K-12.
- Licensed childcare facilities during hours of operation.
- Elevators.
- Government-owned vehicles (i.e. police cars, fire engines, city cars and trucks).
- Grocery stores by customers (staff may be allowed to smoke in designated effectively segregated staff smoking areas).
- Hospitals and other acute care facilities.
- Restaurants.
- Cocktail lounges.
- Enclosed places owned and operated by social, fraternal, or religious organizations when open to the general public. Purposes for which such places may be open to the general public may include, but not be limited to, public meetings, voting, suppers, bingo games, theatrical events, fairs, and bazaars.

Smoking may be permitted in enclosed places of public access and publicly-owned buildings and offices, including workplaces, in effectively segregated smoking-permitted areas designated by the person in charge. Smoking shall be totally prohibited in any such enclosed place, if smoking cannot be effectively segregated. The person in charge may declare any facility non-smoking in its entirety.

In New Hampshire, workplaces or places of public access are *not required* to provide indoor smoking areas.

SIGNS:

All facilities are required to have signs.

1. **External signs** of a permanent nature for notification relative to smoking restrictions or prohibitions have to be placed on the exterior of all buildings proximate to all major entrances.
2. If smoking is allowed in smoking permitted areas, then **interior signs** are required in sites such as waiting rooms, entrance areas, cafeterias, and other common use areas.

If smoking is totally prohibited in a building, and the external sign is in place to that effect, then interior signs are not required.

VENTILATION SYSTEMS:

Although ventilation systems for buildings in which smoking is permitted are not required by the Act, **the definition of effective segregation must be met (155:65 V, a-c).**

ENCLOSED PLACES DEFINITION:

This law regulates smoking in enclosed places. “Enclosed place” means a structurally enclosed location, or portion of such location, enclosed by a floor, ceiling, and 3 or 4 solid walls, partitions, or windows, exclusive of doors or passageways.

EXEMPTIONS TO THE INDOOR SMOKING ACT:

- Link to Exemptions: <http://www.gencourt.state.nh.us/rsa/html/XII/155/155-67.htm>
- Foster family homes and group homes.
- Guest rooms of hotels, motels, and resorts. The rest of the hotel, which is open to the public, is subject to this law.
- Rental units in public housing. (The common use areas of such buildings are also subject to this law.)
- Enclosed places owned and operated by social, fraternal, or religious organizations when *hosting private functions [not explicit]*. Purposes for which such places may be open to the general public may include, but not be limited to, public meetings, voting, suppers, bingo games, theatrical events, fairs, and bazaars.

THE COMPLAINT PROCEDURE:

There is a formal complaint investigation process stipulated in the Administrative Rules He-P 1900, which can be viewed at: http://www.gencourt.state.nh.us/rules/state_agencies/he-p1900.html If an employee or user of a facility believes the smoking law is not being complied with, he/she must first register a complaint with the person in charge of that facility. If the complaint is not resolved within one month, the complainant may contact submit a written Secondhand Smoke Complaint form with the TPCP. No complainant's name shall be revealed in the process of the investigation, unless they provide written approval.

If a citizen contacts a Health Officer with an inquiry or a complaint, the Health Officer should refer that person directly to the TPCP.

A Health Officer should proceed with an investigation or site visit only after a formal complaint is registered and he/she has secured a consultation with the NH TPCP.

A Health Officer may initiate a complaint directly to the TPCP.

WAIVERS:

Waivers may be requested to come into compliance for a designated time period. Contact TPCP for further details. Full-time, city Health Officers may be involved with the waiver eligibility determination in the following ways:

1. To determine whether the waiver request violates fire, safety, sanitation requirements, or other state or federal laws.
2. To advise on the impact on the health and well-being of users of the facility, should a waiver be granted.
3. To advise if a good-faith effort has been made to comply with the smoking law.

4. To seek more information needed for the investigation.

ENFORCEMENT AND PENALTIES:

LOCAL ENFORCEMENT:

The person in charge may call local police if someone in their establishment refuses to stop smoking where smoking is prohibited. State law includes a provision that anyone smoking in a place where smoking is prohibited shall be guilty of a violation, and subject to a fine of not less than \$100. This is processed in local court.

The Health Officer might also be called in situations where complainants feel that other local authorities have not been responsive. The Health Officer, at his/her discretion, might assist by reviewing the ISA with the appropriate authorities.

STATE ENFORCEMENT:

If an establishment (person in charge) repeatedly fails to comply with this law, then the person in charge will be guilty of a violation and subject to a fine of not less than \$100. The Attorney General's office processes this matter through the New Hampshire Division of Public Health Services.

For more information contact:

New Hampshire Division of Public Health Services
Tobacco Prevention and Control Program
29 Hazen Drive
Concord, NH 03301
1-800-852-3445, ext. 6891 or 603-271-6891
<http://www.dhhs.nh.gov/dphs/tobacco/index.htm>