

Chapter 13

RESTRICTION OF SMOKING IN PUBLIC AND PRIVATE PLACES

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13.1301 This Act.

This Act shall be known as the “American Samoa Smoke Free Environment Act.”

History: 2010, PL 31-24

13.1302 Definitions.

For purposes of this Act and chapter, the following terms shall have the meanings stated below:

(1) “Smoking” means the activity of inhaling and exhaling smoke from tobacco and other substances that are lit in cigars, cigarettes, and pipes, and to possess or transport cigars, cigarettes, pipes and smoking articles while lit.

(2) “Public place” means that portion of any building or government or commercial vehicle used by and open to the public, regardless of whether the building or vehicle is owned in whole or in part by private persons or entities, the American Samoa Government, or other public entity, and regardless of whether a fee is charged for admission or use.

Public places include, but are not limited to: Elevators, public conveyances such as buses, taxis, trains, airplanes, or other transportation facilities or means of transportation, museums, concert halls, theaters, auditoriums, exhibition halls, sports arenas, hospitals, nursing homes, health care facilities or clinics, enclosed shopping centers, retail stores, retail service establishments, financial institutions, educational facilities, ticket areas, public hearing facilities, legislative chambers, courthouses and the immediately adjacent hallways and offices, public restrooms, libraries, restaurants, waiting areas, lobbies, reception areas. A public place does not include a private residence, unless such residence is used as a licensed day care center.

(3) “Restaurant” means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, 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.

(4) “Places of Employment” means an area under the control of a public employer, including, but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and government or commercial vehicles. For private employers, places of employment means those portions of the business premises which are used by or open to the public or employees of the business without specific invitation. A private residence is not a “place of employment” unless it is used as a child care, adult day care, or health care facility.

(5) “Enclosed Area” means all space between a floor and ceiling that is enclosed on all sides by permanent or temporary walls or windows (exclusive of doorways), which extend from the floor to the ceiling.

(6) “Bar” means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.

(7) “Business” means a sole proprietorship, partnership, joint venture, corporation, or other business entity, either for-profit or not-for-profit, including retail establishments where goods or services are sold; professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered.

(8) “Employee” means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers his or her services for a non-profit entity.

(9) “Employer” means a person, business, partnership, association, corporation, trust, non-profit entity or government that employs the services of one or more individual persons.

(10) “Health Care Facility” means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, long-term care facilities, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, psychiatrists, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.

History: 2010, PL 31-24

13.1303 Smoking prohibited in public places.

Smoking shall be prohibited in all enclosed areas of public places within the territory of American Samoa.

History: 2010, PL 31-24

13.1304 Prohibition of smoking in places of employment.

(a) Smoking shall be prohibited in all enclosed areas within places of employment as defined in 13.1302(4).

(b) This prohibition on smoking shall be communicated to all existing government employees by the effective date of this Act and to all its prospective employees upon their application for employment.

History: 2010, PL 31-24

13.1305 Owners, lessees to post signs prohibiting or permitting smoking.

Owners, or in the case of a leased or rented space the lessee or other person or manager in charge of the premises regulated under this chapter shall make every reasonable effort to prohibit smoking in public places by posting signs prohibiting or permitting smoking as appropriate under this chapter. Signs shall be posted conspicuously at each building entrance and prominent locations throughout the premises.

History: 2010, PL 31-24

13.1306 Violation of chapter—Fine—Authority for enforcement by police and public health—Nuisance.

(a) A person who smokes in an area where smoking is prohibited by the provisions of the Act shall be guilty of an infraction, punishable by a fine not exceeding fifty dollars (\$50).

(b) A person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of this act shall be guilty of an infraction, punishable by:

(1) A fine not exceeding one hundred dollars (\$100) for a first violation.

(2) A fine not exceeding two hundred dollars (\$200) for each additional violation within one (1) year.

(c) In addition to the fines established by this Section, violation of this Act by a person who owns, manages, operates, or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.

(d) Department of Public Safety law enforcement officers, and Department of Health employees, designated by the Director of the department, shall enforce this section by issuing a citation, which shall be substantially in the same form as the “Uniform Traffic Ticket and Complaint—Summons” set forth in 22.0807 and following the procedure set forth in A.S.C.A. Title 22, Chapter 08, as applicable, when such officer, official or employee, based upon his personal investigation, and/or observance, has reasonable and probable grounds to believe that the person has committed an offense under a provision of this chapter. The Director of Public Health may authorize employees within the Department of Health to issue citations under this title as necessary, provided that any person so authorized has the training and experience necessary to perform the job as determined in consultation with the Attorney General.

(e) Violation of the Act is hereby declared to be a public nuisance, which may be abated by the Department of Health by restraining order, preliminary and permanent injunction, or other means provided for by law, and the territory may take action to recover the costs of the nuisance abatement.

(f) Each day on which a violation of this Act occurs shall be considered a separate and distinct violation.

History: 2010, PL 31-24

13.1307 Administrative management.

The Department of Health shall function as the lead agency for implementation, management, and enforcement of the Act, to include the following:

(1) The Director of the Department of Health shall adopt regulations in accordance with 4.1001, et seq., the Administrative Procedures Act, as necessary to implement this chapter and to provide for its effective and efficient administration.

(2) Department of Health shall develop and conduct a public education program to explain and clarify the purposes and requirements of this chapter to the public, and to guide owners, operators and managers in their compliance therewith. The program may include, but is not limited to, publication of a brochure for affected businesses and individuals explaining this chapter.

(3) Department of Health shall conduct familiarization training for its employees and those of other departments and agencies having enforcement responsibilities, to include refresher training at necessary periodic intervals.

(4) Department of Health shall collaborate and coordinate with other government departments and agencies, as well as community organizations, both local, national and international, which share common interests in achieving the intent of this Act, for the purpose of effectively and efficiently implementing this Act and providing mutual support for and continuity in programs with similar goals, but not for the purpose of supplanting such programs.

(5) Department of Health shall monitor enforcement efforts and notify relevant departments, agencies, boards and commissions of violators that persistently fail to comply with this Act or exhibit a pattern of non-compliance for the purpose of administrative action set forth in 13.1308.

History: 2010, PL 31-24

13.1308 Pattern of non-compliance—Action on permit or license.

(a) A person or business which operates or controls a public place facility that does not comply with this Act or that exhibits a pattern of non-compliance with this Act is subject to administrative action. For purposes of this section and chapter, a “pattern of non-compliance” is evidenced by being found guilty of three or more violations of this Act within a calendar year or being found guilty of five or more such violations within two consecutive years.

(b) Non-compliance with this Act or exhibiting a pattern of non-compliance shall provide a basis for suspension, revocation, non-renewal or other sanction of any license or permit issued by the government. After providing notice and opportunity for hearing pursuant to the Administrative Procedure Act, 4.1001, et seq., the department, agency, board or commission having regulatory authority over such business or activity may, based upon the record of evidence presented at any hearing, suspend, revoke, deny renewal of or otherwise restrict the license or permit issued or regulated by said

department, agency, board or commission or impose such other sanction as appropriate. Such licenses include, but are not limited to, certificates of incorporation, permits to transact business as foreign corporations, business licenses, beer and/or alcoholic beverage permits, and/or health permits.

History: 2010, PL 31-24

13.1309 Delimitation of Act.

No provision of this Act shall restrict, impair, limit or affect the enforcement of other applicable statutory provisions, nor shall it be interpreted to permit smoking in an area in which smoking is prohibited by other applicable law or regulation.

History: 2010, PL 31-24