

ALABAMA STATE BOARD OF HEALTH
ALABAMA DEPARTMENT OF PUBLIC HEALTH
ADMINISTRATIVE CODE

CHAPTER 420-3-28
ENFORCEMENT OF THE ALABAMA CLEAN INDOOR AIR ACT

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420-3-28-.01 Purpose. The purpose of this chapter is to establish procedures to be followed by enforcement personnel in investigating complaints of violations of the Alabama Clean Indoor Air Act and specifying procedures by which appeals may be taken by aggrieved parties.

Author: Greg Locklier

Statutory Authority: Code of Ala. 1975, §§22-2-2(6), 22-15A-8

History: New: Filed September 21, 2005; effective October 26, 2005.

420-3-28-.02 Statutory Authorization. The State Board of Health is authorized to promulgate these rules under and by virtue of Code of Ala. 1975, §22-2-2(6) and §22-15A-8.

Author: Greg Locklier

Statutory Authority: Code of Ala. 1975, §§22-2-2(6), 22-15A-8

History: New: Filed September 21, 2005; effective October 26, 2005.

420-3-28-.03 Definitions. When used in this Chapter and for the purpose thereof, the following terms and words shall be construed and have the meaning assigned to them as follows:

- (a) Common Facility/Common Area- Means hallway, corridor, lobby, aisle, water fountain area, restroom, stairwell, service line, entryway, or conference room.
- (b) The "Act" - Refers to the Alabama Clean Indoor Air Act.
- (c) Representative of the Department - Includes a public health environmentalist or any other employee or agent of the Alabama Department of Public Health or any county health department designated to investigate complaints and enforce the Act and the rules promulgated thereunder.
- (d) Smoker - One who burns a lighted cigarette, cigar, pipe, or any other matter or substance that contains tobacco.
- (e) Appropriate law enforcement agency - Means any Sheriff's Department or municipal police department exercising jurisdiction over the area which encompasses a public place as defined in the Act.
- (f) Department - Means the Alabama Department of Public Health
- (g) Local County Health Department - Means the county health department located in the same county as the public place where an alleged violation occurred.
- (h) Person in charge - Means the owner, operator, manager or person who exercises any control over the public place.

Author: Greg Locklier

Statutory Authority: Code of Ala. 1975, §§22-2-2(6), 22-15A-8.

History: New: Filed September 21, 2005; effective October 26, 2005.

420-3-28-.04 Restaurants Deemed Too Small To Have A Designated Smoking Area.

- (1) Pursuant to Code of Ala. 1975, §22-15A-6(d), an owner, operator or person in charge of a restaurant may not designate a restaurant as a smoking facility unless all of the following criteria are satisfied:

(a) The restaurant seats less than 50 people inside the facility; and

(b) The restaurant does not have existing partitions to minimize exposure to the toxic effect of smoke; and,

(c) The restaurant shall notify the Health Department that the establishment will be declared a smoking facility.

(2) Notwithstanding, a restaurant of any size may not be declared to be a smoking facility where a municipal ordinance prohibits smoking in the facility or where a restaurant has chosen to be a non-smoking facility pursuant to a local ordinance.

Author: Greg Locklier

Statutory Authority: Code of Ala. 1975, §§22-2-2(6), 22-15A-8

History: New: Filed September 21, 2005; effective October 26, 2005.

420-3-28-.05 Signs.

(1) Each "Smoking Area" or "No Smoking" sign or symbol as referenced in Ala. Code §22-15A-7 must have letters of reasonable size which can be easily read.

(2) "No Smoking" signs shall be plainly visible and conspicuously placed in all common facilities or common areas of a public place, including but not limited to each and every entrance or door in a common area or facility which is generally accessed by patrons or employees.

(3) "Smoking Area" signs shall be plainly visible and conspicuously placed in all areas of a public place where smoking is permitted by the Clean Indoor Air Act and these rules, including but not limited to each and every entrance and door in a smoking area which is generally accessed by patrons or employees.

(4) Representatives of the Department may assist public places on the placement of "No Smoking" and "Smoking Area" signs.

Author: Greg Locklier

Statutory Authority: Code of Ala. 1975, §§22-2-2(6), 22-15A-8.

History: New: Filed September 21, 2005; effective October 26, 2005.

420-3-28-.06 Enforcement.

(1) Complaints of a failure of a smoker to comply with the Act should be referred to the person in charge of the public place or appropriate law enforcement agency.

(2) Complaints of a failure of a person in charge of a public place to require smokers to comply with the Act should be referred to the appropriate law enforcement agency and may be investigated by a representative of the Department.

(3) Complaints of failure of a public place to properly designate "non smoking" and "smoking" areas within a public place shall be investigated by a representative of the Department.

(4) Failure of an owner/operator to properly enforce employee smoking policy, if one has been adopted, shall be investigated by a representative of the Department.

(5) A representative of the Department shall respond to a complaint within ten (10) working days of the receipt of such complaint. After responding to the complaint, a representative of the Department shall inspect the public place, if the complaint pertains to failure to properly designate a "smoking" or "non-smoking" area or facility. As part of such investigation, a representative of the Department may interview employees of the public place as well as the owner, operator, manager or person who in any way and at any time controls the public place. The person in charge shall not deny access to any public place to any representative of the Department.

(6) All employee smoking policies and any other records concerning compliance with the Clean Indoor Air Act shall immediately be made available to a representative of the Department upon request.

(7) If a violation is documented, a representative of the Department shall issue a notice of violation indicating the nature and approximate date of the violation, the name and address of the facility and person in charge, if known, the statute violated, the facts constituting a violation, the name

and phone number of the representative of the Department issuing the notice, the procedure and time for compliance and consequences of noncompliance. Notices of violation shall be personally delivered or sent certified mail.

(8) If an alleged violator fails to comply within thirty (30) days after receipt of such notice, the Department shall assess a civil penalty not to exceed fifty dollars (\$50.00) for the first violation, not to exceed one hundred dollars (\$100.00) for the second violation, and not to exceed two hundred dollars (\$200.00) for each subsequent violation. Each day's violation shall be considered a separate offense.

Author: Greg Locklier

Statutory Authority: Code of Ala. 1975, §§22-2-2(6), 22-15A-8

History: New: Filed September 21, 2005; effective October 26, 2005.

420-3-28-.07 Administrative Review. Alleged violators of the Act may seek administrative review of the imposition of a civil penalty or any other adverse action by the Department pursuant to the authority of these rules and the Alabama Clean Indoor Air Act by filing a written appeal notice within fifteen (15) calendar days with the Environmental Director of the local county health department. Administrative appeals and petitions for judicial review shall be governed by the Alabama Administrative Procedures Act, Code of Ala 1975, §41-22-1, et al (1975) and Ala. Admin. Code R. 420-1-3.10 and 420-1-3-.11.

Author: Greg Locklier

Statutory Authority: Code of Ala. 1975, §§22-2-2(6), 22-15A-8

History: New: Filed September 21, 2005; effective October 26, 2005.

420-3-28-.08 Local Laws, Ordinances Or Regulations. Nothing in these regulations prohibits any municipality from adopting and enforcing a law, ordinance or regulation which contains more stringent provisions than those in the Alabama Clean Indoor Air Act, Code of Ala. 1975, §22-15A-1, et seq.

Author: Greg Locklier

Statutory Authority: Code of Ala. 1975, §§22-2-2(6), 22-15A-8

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