

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH  
CHAPTER 355. SMOKING IN PUBLIC PLACES AND INDOOR WORKPLACES**

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking.

**PROPOSED RULES:**

Chapter 355. Smoking in Public Places and Indoor Workplaces [AMENDED]

**SUMMARY:**

HB3315 amended Title 10A O.S. § 2-8-224 to provide that a person under the age of twenty-one who violates Title 10A O.S. § 2-8-224(A), relating to purchase, usage and possession of a tobacco product, will be required to complete an education or tobacco use cessation program approved by the State Department of Health. OAC 310:355-1-1 has been amended to include the statutory amendment in the Purpose and scope section of the rules.

**AUTHORITY:**

Commissioner of Health, Title 63 O.S. § 1-104; Title 10A O.S. § 2-8-224; HB 3315.

**COMMENT PERIOD:**

November 15, 2022 through the close of the Department's normal business hours, 5 PM, on December 15, 2022. Interested persons may informally discuss the proposed rules with the contact person identified below; or may, through the close of the Department's normal business hours, 5 PM, on December 15, 2022 submit written comment to the contact person identified below, or may, at the hearing, ask to present written or oral views.

**PUBLIC HEARING:**

Pursuant to 75 O.S. § 303(A), the public hearing for the proposed rulemaking in this chapter shall be on December 15, 2022 at the Oklahoma State Department of Health Auditorium, 123 Robert S. Kerr Avenue, Oklahoma City, Oklahoma 73102 from 9:30 AM to 12:30 PM. The meeting may adjourn earlier if all attendees who signed up to comment have completed giving their comments. The alternate date and time in the event of an office closure due to inclement weather is December 19, 2022 in the Auditorium, from 9:30 AM to 12:30 PM. Those wishing to present oral comments should be present at that time to register to speak. The hearing will close at the conclusion of those registering to speak. Interested persons may attend for the purpose of submitting data, views or concerns, orally or in writing, about the rule proposal described and summarized in this Notice. Validated parking will be provided for the parking lot located at the east corner of Broadway and Robert S. Kerr Avenue, subject to availability.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, on the increase in the level of direct costs such as fees, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rule. Business entities may submit this information in writing through December 15, 2022, to the contact person identified below.

**COPIES OF PROPOSED RULES:**

The proposed rules may be obtained for review from the contact person identified below or via the agency website at [www.ok.gov/health](http://www.ok.gov/health).

**RULE IMPACT STATEMENT:**

Pursuant to 75 O.S., § 303(D), a rule impact statement is available through the contact person identified below or via the agency website at [www.ok.gov/health](http://www.ok.gov/health).

**CONTACT PERSON:**

Audrey C. Talley, Agency Rule Liaison, Oklahoma State Department of Health, 123 Robert S. Kerr Avenue, Oklahoma City, OK 73102, phone (405) 426-8563, e-mail [AudreyT@health.ok.gov](mailto:AudreyT@health.ok.gov).

## INITIAL RULE IMPACT STATEMENT

(This document may be revised based on comment received during the public comment period.)

### TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 355. SMOKING IN PUBLIC PLACES AND INDOOR WORKPLACES

1. **DESCRIPTION:**

HB3315 amended Title 10A O.S. § 2-8-224 to provide that persons under twenty-one years of age who violate Title 10A O.S. § 2-8-224(A), relating to purchase, usage or possession of a tobacco product, will be required to complete an education or tobacco use cessation program approved by the State Department of Health. OAC 310:355-1-1 has been amended to include the statutory amendment in the Purpose and scope section of the rules.

2. **DESCRIPTION OF PERSONS AFFECTED AND COST IMPACT RESPONSE:**

- Underage tobacco buyers will no longer be penalized for purchase, usage, and possession of a tobacco product
- Municipalities will no longer be able to cite underage tobacco buyers for purchase, use, and possession of a tobacco product
- Municipalities will not be able to pass an ordinance that is more restrictive than what is currently in the revised statute
- The ABLE Commission will provide a tobacco education or cessation program approved by the Oklahoma State Health Department

3. **DESCRIPTION OF PERSONS BENEFITING, VALUE OF BENEFIT AND EXPECTED HEALTH OUTCOMES:**

- An underage person will no longer be penalized for purchase, usage, and possession of a tobacco product
- The removal of penalization for the purchase, use, and possession of tobacco products will benefit youth of color, LGBTQ youth, youth with disabilities, and boys by alleviating the unequal enforcement of this law
- Law enforcement and policy resources will not be diverted to an ineffective enforcement practice
- Over 90% of smokers started smoking before the age of 18 years old, and this policy provides an opportunity for cessation intervention to curb youth tobacco use
- In Oklahoma, 1300 kids (under 18) become daily smokers, which will result in approximately, 88,000 kids who are currently alive in Oklahoma dying prematurely from smoking; if we do not curtail the approved evidence-based cessation program and training would help curb the addiction to tobacco products
- Morbidity associated with tobacco use should be decreased

4. **ECONOMIC IMPACT, COST OF COMPLIANCE AND FEE CHANGES:**

None to OSDH

5. **COST AND BENEFITS OF IMPLEMENTATION AND ENFORCEMENT TO THE AGENCY.**

There are no costs associated with implementation.

6. **IMPACT ON POLITICAL SUBDIVISIONS:**

There will be no impact on political subdivisions, and it will not require their cooperation in implementing or enforcing the proposed amendment.

7. **ADVERSE EFFECT ON SMALL BUSINESS:**

There is no known adverse economic effect on small businesses as provided by the Oklahoma Small Business Regulatory Flexibility Act.

8. **EFFORTS TO MINIMIZE COSTS OF RULE:**

There are no less costly means currently identified.

9. **EFFECT ON PUBLIC HEALTH AND SAFETY:**

Approximately 90% percent of adults who smoke daily started before age 18, and almost 100% started smoking before age 26. In Oklahoma, 1300 kids (under 18) become daily smokers annually. If this rate continues, about 88,000 kids under 18 today will die from smoking-related causes. Moreover, e-cigarettes have been the most used tobacco product since 2014. This rise in e-cigarette use can be attributed to the tobacco industry's marketing tactics, including the appeal of the product (I.e., the flavor). Nicotine from these products affects the developing brain negatively by affecting attention, learning, mood, and impulse control. In conclusion, no amount of e-cigarette use is safe for youth or useful for cessation purposes. This rule can potentially reduce risk to the public by educating youth and increasing evidence-based cessation efforts.

10. **DETRIMENTAL EFFECTS ON PUBLIC HEALTH AND SAFETY WITHOUT ADOPTION:**

It will affect the approval of evidence-based tobacco prevention education and cessation programs. These programs are meant to help curbed tobacco use in youth. A youth free of tobacco use is likelier to be an adult free of tobacco use.

11. **PREPARATION AND MODIFICATION DATES:**

This rule impact statement was prepared on September 14, 2022.

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**SUBCHAPTER 1. GENERAL PROVISIONS**

**310:355-1-1. Purpose and scope**

This Chapter implements:

- (1) the Smoking in Public Places and Indoor Workplaces Act Title 63 O.S. §§ 1-1521, et seq.;
- (2) Smoking in Certain Public Places Prohibited - Punishment, Title 21 O.S. § 1247; ~~and~~
- (3) Statutory provisions of the Oklahoma Medical Marijuana and Patient Protection Act: *All smokable, vaporized, vapable and e-cigarette medical marijuana product inhaled through vaporization or smoked by a medical marijuana licensee are subject to the same restrictions for tobacco under Section 1-1521 of Title 63 of the Oklahoma Statutes, commonly referred to as the "Smoking in Public Places and Indoor Workplaces Act".* [Title 63 O.S. § 427.8(L)]; and
- (4) Title 10A O.S. § 2-8-224 (A), the Oklahoma Juvenile Code, which requires the Department to approve the education or tobacco cessation programs chosen by the ABLE Commission and required to be taken by a person under 21 years of age who violates the purchase, usage, and possession of a tobacco product provisions of Title 10A.