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Sequence Number: 10-09-12
 Rule ID(s): 5317
 File Date: 10/5/12
 Effective Date: 11/3/13

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. TCA Section 4-5-205

Agency/Board/Commission:	Department of Health
Division:	Non-Smoker Protection Act Rules
Contact Person:	Mary Kennedy Deputy General Counsel, Department of Health
Address:	3 rd Floor, Cordell Hull Building Nashville, Tennessee
Zip:	37243
Phone:	(615) 532-7669
Email:	Mary.Kennedy@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
1200-32-01	Non-Smoker Protection Act Rules
Rule Number	Rule Title
1200-32-01-.08	Copy Costs

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Department of Health
 Non-Smoker Protection Act Rules
 Chapter 1200-32-01

Rule Amendments

Rule 1200-32-01-.08 Copy Costs shall be deleted in its entirety.

Authority: T.C.A. §§ 4-4-103 and 10-7-506(a).

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

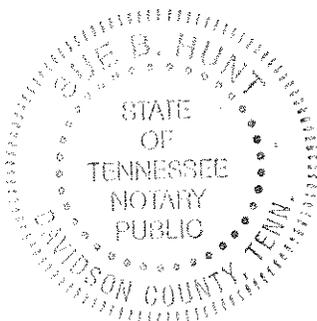
Board Member	Aye	No	Abstain	Absent	Signature (if required)
NA					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Department of Health, Non-Smoker Protection Act Rules, on 10/25/2010, and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 08/31/10

Rulemaking Hearing(s) Conducted on: (add more dates). 10/25/10



Date: 11/18/11

Signature: Mary Kennedy

Name of Officer: Mary Kennedy

Title of Officer: Deputy General Counsel
Department of Health

Subscribed and sworn to before me on: November 17, 2011

Notary Public Signature: Sue B. Hunt

My commission expires on: July 8, 2013

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Robert E. Cooper, Jr.
 Attorney General and Reporter

12-7-11 Date

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Filed with the Department of State on: 10/5/12

Effective on: 1/3/13

Tre Hargett
 Secretary of State

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. §4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

Non-smoker Protection Act Rules

The rulemaking hearing for the Department of Health was held on October 25, 2010 at 11:30 a.m. CDT in the Department of Health Conference Center's Poplar Room on the First Floor of the Heritage Place Building in MetroCenter, Nashville, Tennessee. Mary Kennedy, Deputy General Counsel, presided over the hearing.

No members of the public attended the rulemaking hearing. No oral comments were received at the rulemaking hearing.

Regulatory Flexibility Addendum

Pursuant to T.C.A. § 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

This rule only affects State government and does not affect small businesses.

Impact on Local Governments

Pursuant to T.C.A. 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

This rule amendment will have no projected impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to TCA 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The copy costs section of the rule is being deleted. It will be incorporated into new rule 1200-34-01-.05 – Inspection and Copying of Department Records.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

T.C.A. § 4-4-103 and § 10-7-501, et seq..

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Persons requesting copies of public records and the government agency producing the records will be affected.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

None known

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

There should be no noticeable increase or decrease in state or local government revenues and expenditures.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Mary Kennedy, Deputy General Counsel, Department of Health

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Mary Kennedy, Deputy General Counsel, Department of Health

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Mary Kennedy, Deputy General Counsel, Department of Health, 3rd Floor, Cordell Hull Building, Nashville, TN 37243, (615) 532-7665, Mary.Kennedy@tn.gov

- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

The Department will provide any further information upon request of the committee.

**RULES
OF
TENNESSEE DEPARTMENT OF HEALTH
CHAPTER 1200-32-1
NON-SMOKER PROTECTION ACT RULES**

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1200-32-1-.01 PURPOSE.

- (1) The Non-Smoker Protection Act ("Act") requires that on and after October 1, 2007, smoking be prohibited in all enclosed public places within the State of Tennessee. It is the purpose of these rules to supplement the provisions of that Act and provide the mechanisms by which the Department of Health ("Department") shall implement the enforcement duties placed upon it by T.C.A. § 39-17-1801 et seq.

Authority: T.C.A. § 39-17-1811. **Administrative History:** Public necessity rule filed September 28, 2007; effective through March 11, 2008. Original rule filed December 27, 2007; effective March 11, 2008.

1200-32-1-.02 PUBLIC PLACES REGULATED.

- (1) The Department shall be responsible for the enforcement activities required by the Act in the following enclosed public places:
- (a) All health care facilities licensed, permitted or certified pursuant to Tennessee Code Annotated, Title 68, Chapter 11; and
 - (b) All enclosed public places for which a license, permit or certification must be obtained from any health related board assigned to the Department's Division of Health Related Boards pursuant to Tennessee Code Annotated, 68-1-101 before a health related profession may be practiced therein; and
 - (c) All enclosed public places for which a license, permit or certification must be obtained from the Department's Division of Emergency Medical Services; and
 - (d) All other enclosed public places over which the Department has regulatory authority pursuant to Tennessee Code Annotated, Title 62, Title 68 or otherwise, including, but not limited to, the following:
 - 1. Restaurants
 - 2. Indoor swimming pools
 - 3. Food Service Establishments
 - 4. Hotels
 - 5. Bed and Breakfasts
 - 6. Fast Food Establishments

1200-32-1-.07 ENFORCEMENT PROCESS, APPEALS AND PAYMENT OF PENALTIES.

- (1) Upon receipt of verification of a violation of the Act the Department shall issue a written notice to the offender of the violation and the penalty applicable to the violation. The written notice may be issued by certified mail, delivery service, or personal service.
- (2) Any person receiving a notice of violation and penalty who wishes to contest the determination of the violation and/or the assessment of the penalty must, within ten (10) business days of receipt of the notice, file a written request for an appeal with the Department.
- (3) Any hearing held in response to a request for an appeal timely received by the Department shall be conducted pursuant to the provisions of the Uniform Administrative Procedures Act compiled at Tennessee Code Annotated, Title 4, Chapter 5 and the Administrative Procedures Division of the Secretary of State's rules governing contested case proceedings compiled at Chapter 1360-4-1.
 - (a) In contested cases pursuant to this rule, the Department shall have the burden of proof by a preponderance of the evidence to establish that a person violated the Act.
- (4) Civil Penalty Payments
 - (a) Any person who is assessed a civil penalty pursuant to the Act who does not timely file an appeal of that assessment must pay such civil penalty on or before the thirtieth (30th) day after receipt of the notice of violation and penalty.
 - (b) If the assessed civil penalty is timely appealed, the assessed penalty must be paid no later than thirty (30) days after the date of a final order affirming the assessed penalty.
 - (c) Payment of any civil penalty shall be made by check or money order made payable to "Treasurer, State of Tennessee" and mailed or delivered in person to the Department.

Authority: T.C.A. § 4-5-102(3), 68-1-103, 68-1-104, Tenn. Const. Art. 1 § 8 and 39-17-1811.
Administrative History: Public necessity rule filed September 28, 2007; effective through March 11, 2008. Original rule filed December 27, 2007; effective March 11, 2008.

~~1200-32-1-.08 COPY COSTS.~~

- ~~(1) Information gathered under or generated pursuant to the Act or rules promulgated pursuant thereto shall, pursuant to the Public Records Act, be made available to any citizen of the State of Tennessee upon request and payment of a fee in the amount of twenty-five cents (\$0.25) per page.~~
- ~~(2) Payment of fees set forth in this rule shall be by check or money order made payable to "Treasurer, State of Tennessee." Fees must be prepaid before requested information is sent. Payment of fees in cash shall not be accepted by the Department.~~

~~**Authority:** T.C.A. §§ 68-1-103, 10-7-503, 10-7-506 and 39-17-1811. **Administrative History:** Public necessity rule filed September 28, 2007; effective through March 11, 2008. Original rule filed December 27, 2007; effective March 11, 2008.~~