

The Smoke-Free Arizona Act

“It’s a Benefit, Not a Ban!”



2010 Annual Report

Arizona Department of Health Services





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Table of Contents
 Annual Report 2010
 “It’s a Benefit, Not a Ban”

Executive Summary.....	1
1.0 Smoke-Free Arizona Program.....	2
1.1. Background	2
1.2. Roles and Responsibilities of ADHS	3
1.3. Roles and Responsibilities of the County Health Departments.....	4
1.4. Amount and Source of Program Funding.....	6
2.0 Education.....	8
2.1. Enhancing the Website: www.smokefreearizona.org.....	8
2.2. Answering the Information Hotline: 1-877-AZ-STOPS (1-877-297-8677).....	9
2.3. Maintaining the Email Addresses:.....	11
2.4. “No Smoking” Signs	11
2.5. Advisory Visits.....	12
3.0 Outreach.....	14
3.1. Reaching Out to Public Places and Places of Employment.....	14
3.2. Reaching Out to the Community: Success Stories	14
3.3. Educational Newsletter.....	16
4.0 Compliance.....	17
4.1. Verifying Compliance through Complaint Response and Routine Inspections	17
4.2. Complaint Investigation	17
4.3. Complaint Numbers Stabilize With Increased Compliance throughout Arizona.....	17
5.0 Enforcement.....	21
5.1. Initiating Legal Procedures.....	21
5.2. Achieving Compliance through Legal Proceedings	21
5.3. Update on the Retail Tobacco Store Exemption	22
6.0 Protecting Arizonans Health	23
6.1. State of Tobacco Control Report Card: Smoke-Free Arizona Scores a Grade A.....	23
6.2. Opinion Poll Survey	23
6.3. Empower Pack.....	25
7.0 Conclusion.....	26



Executive Summary

On November 7, 2006, Arizona voters approved Proposition 201, the Smoke-Free Arizona Act, A.R.S. § 36-601.01 (“the Act” or “the Law”). The Law went into effect on May 1, 2007, prohibiting smoking inside and within 20 feet of entrances, open windows, and ventilation systems of most enclosed public places and places of employment, with a few exemptions.

While the Act prohibits smoking inside most enclosed public places and places of employment in Arizona, smoking is allowed in establishments that meet specific exemption criteria. There are seven exemptions of the Act, including private residences, designated smoking rooms in hotels and motels, retail tobacco stores, Veterans and fraternal clubs, smoking when associated with a religious ceremony practiced pursuant to the American Indian Religious Freedom Act of 1978, outdoor patios, and theatrical performances upon a stage or in the course of a film or television production.

Also included in Proposition 201, was the imposition of a two-cent tax per pack of cigarettes to be deposited into the Smoke-Free Arizona Fund, which must be used to enforce the provisions of the Law. If a proprietor of an establishment does not correct violations as requested, demonstrates willful violations, or exhibits a pattern of noncompliance with the Act, they are subject to enforcement action. They may receive a Notice of Violation (“NOV”) or an assessment of civil penalty fines between \$100 and \$500 for each violation. If injunctive relief is requested, the Superior Court may impose appropriate injunctive relief and civil penalty fines up to \$5,000 per violation.

The Arizona Department of Health Services (“ADHS”) and all but one of Arizona’s fifteen counties work together, through delegation agreements, to ensure that Arizonan’s are protected from secondhand smoke exposure in most enclosed public places and places of employment. This is accomplished through the combined efforts of ADHS and the county health departments.

The county health departments conduct consultations and on-site visits at local businesses, bars, and restaurants to provide education and to ensure continued compliance with the Smoke-Free Arizona Act. Between May 1, 2009 and April 30, 2010, a total of 71,356 educational visits, consultations, and on-site visits were conducted. Many business proprietors have made steps to go above and beyond the requirements of the Smoke-Free Arizona Act. In addition to making the necessary changes to comply with the Act, such as posting the required “No Smoking” signs and moving ashtrays, proprietors have also continued to build outdoor patios, provide designated smoking areas, and establish in-house policies that are more strict than the Act to accommodate their employees and customers.

During the third year after the Law went into effect, between May 1, 2009 and April 30, 2010, a total of 1,389 complaints alleging violations of the Smoke-Free Arizona Act were filed statewide. Most of the complaints were regarding people smoking outside within twenty feet of an entrance and the presence of ashtrays located outside within twenty feet of an entrance.

A total of 36 NOV’s were issued statewide between May 1, 2009 and April 30, 2010, 7 of which were issued by the ADHS Smoke-Free Arizona Program. The majority of the NOV’s were issued to proprietors that permitted employees, customers, or visitors to smoke inside enclosed public places and places of employment. A total of \$3,500.00 in civil penalty fines was collected statewide.

In 2009, Arizona earned an “A” grade on the *American Lung Association State of Tobacco Control Report* for maintaining a strong and comprehensive enforcement program of the Smoke-Free Arizona Act. The report recognizes the continued success of the Smoke-Free Arizona Act.

1.0 Smoke-Free Arizona Program

1.1. Background

Secondhand smoke is defined as the combination of smoke exhaled by a smoker and the smoke generated by the burning end of a cigarette (or other tobacco product). Secondhand smoke is a mixture of 4,000 chemical compounds that are released into the air as gases and particles. Of these 4,000 compounds, 69 have been identified as carcinogens or cancer-causing agents, 11 of which have been specifically identified as human carcinogens.

Exposure to secondhand smoke is a health concern for people of all ages. In 1992, the U.S. Environmental Protection Agency (EPA) officially listed secondhand smoke as a Class A carcinogen. In 2006, the U.S. Surgeon General's report stated that there is no risk-free level of exposure to secondhand smoke. Breathing even a little secondhand smoke can be harmful to your health.

In November of 2006, the citizens of Arizona made their voices heard by passing the Smoke-Free Arizona Act, A.R.S. § 36-601.01 ("the Act" or "the Law"). The Act protects all Arizonans from the harmful effects of secondhand smoke exposure in most enclosed public places and places of employment and within 20 feet of entrances, open windows, and ventilation systems. Also included in the Act, is a two-cent tax per pack of cigarettes to be deposited in the Smoke-Free Arizona Fund, which must be used to enforce the provisions of the Law. The Act went into effect on May 1, 2007.

The Act prohibits smoking inside enclosed public places and places of employment with a few exemptions:

- 1) Private residences, except when used as a licensed child care, adult day care, or health care facility;
- 2) Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided however that not more than fifty percent of rooms rented to guests in a hotel or motel are so designated;
- 3) Retail tobacco stores that are physically separated so that smoke from retail tobacco stores does not infiltrate into areas where smoking is prohibited under the provisions of this section;
- 4) Veterans and fraternal clubs when they are not open to the general public;
- 5) Smoking when associated with a religious ceremony practiced pursuant to the American Indian Religious Freedom Act of 1978;
- 6) Outdoor patios so long as tobacco smoke does not enter areas where smoking is prohibited through entrances, windows, ventilation systems, or other means; and
- 7) A theatrical performance upon a stage or in the course of a film or television production

For each exemption to the Act, there are specific requirements that must be met to qualify. These criteria are defined in the Act and in the Arizona Administrative Code, Title 9, Chapter 2, Article 1.

Under the Act, the proprietor of a public place or a place of employment is responsible for:

- Removing all indoor ashtrays and smoking receptacles and moving all outdoors ashtrays and smoking receptacles at least 20 feet away of entrances
- Posting the required “No Smoking” signs at every entrance into the establishment
- Educating their employees about the Act
- Prohibiting anyone, such as employees, vendors, visitors, and customers from smoking within 20 feet of all entrances, open windows, and ventilation systems, and inside the establishment
- Informing violators by politely requesting that they extinguish their lit tobacco product or that they smoke outside at least 20 feet away from the entrance, open window, or ventilation system

If a proprietor of an establishment does not correct violations as requested, demonstrates willful violations, or a pattern of noncompliance with the Act, they are subject to enforcement action. They may receive a Notice of Violation (“NOV”) or an assessment of civil penalty fines between \$100 and \$500 for each violation. If injunctive relief is requested, the Superior Court may impose appropriate injunctive relief and civil penalty fines up to \$5,000 per violation.

1.2. Roles and Responsibilities of ADHS

The provisions of the Act assign implementation and enforcement of the Law to ADHS. In order to accomplish this, the Office of Environmental Health, due to its extensive experience with education, inspections, investigations, and enforcement, oversees the Smoke-Free Arizona Program.

The Smoke-Free Arizona Program is responsible for:

- Providing free signage to businesses
- Maintaining the Smoke-Free Arizona website: www.smokefreearizona.org
- Answering inquiries coming via the information line: 1-877-AZSTOPS (1-877-297-8677), or from the smokefreearizona@azdhs.gov mailbox
- Taking complaints coming through the complaint line: 1-877-4AZNOSMOKE (1-877-429-6676), or from the nosmokingarizona@azdhs.gov mailbox
- Conducting on-site advisory visits
- Maintaining a statewide database used by the county health departments for complaint investigations and referrals
- Providing training to new and existing health educators and environmental health inspectors
- Providing educational materials to county health departments
- Assisting county health departments during complaint investigations or advisory visits by riding along with the health educators or the environmental health inspectors
- Providing guidance to the county health departments with regards to education, compliance, and enforcement

- Initiating enforcement procedures for cases referred by Maricopa, Gila, Pinal, Yavapai, Cochise, and Santa Cruz counties
- Conducting education and compliance activities in Santa Cruz County

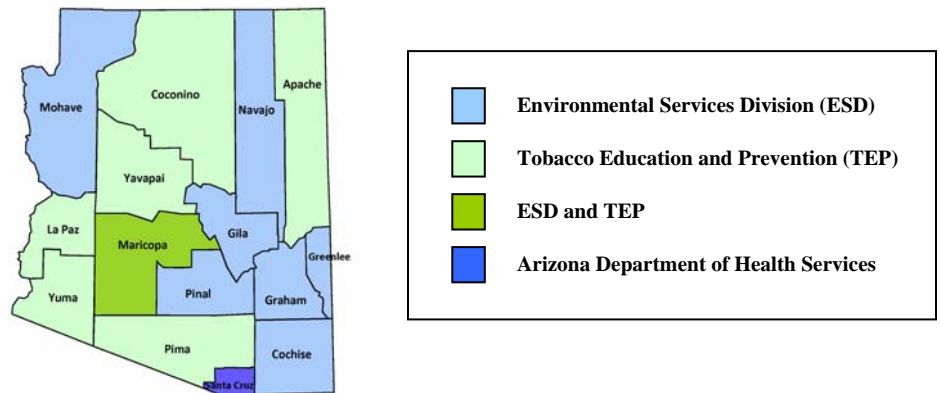
1.3. Roles and Responsibilities of the County Health Departments

1.3.1. Education and Compliance

ADHS and the county health departments work diligently to protect all Arizonans from secondhand smoke exposure and to ensure uniform compliance with the Law throughout the State. Delegation agreements have been signed with all but one of the State’s fifteen counties to assist ADHS with education and compliance assistance. Funding is provided to these counties using money from the Smoke-Free Arizona Fund.

Depending on the infrastructure of the county health department, education and compliance assistance are performed by either health educators from their Tobacco Education and Prevention Program or by environmental health inspectors from their Environmental Services Division. The map below represents the lead program for each county:

Map 1.1 Lead Program Responsible for Education and Compliance for Each County Health Department



Environmental Services Division

The Environmental Services Division is the lead program for education and compliance in Cochise, Gila, Graham, Greenlee, Mohave, Navajo, and Pinal counties. Environmental health inspectors verify compliance and provide education about the Act during routine food safety and environmental health inspections. Smoke-Free Arizona violations have been included on inspection checklists to monitor compliance with the Act. In addition, environmental health inspectors carry “No Smoking” signs and educational brochures for distribution during routine inspections and complaint investigations.

Tobacco Education and Prevention Program

The Tobacco Education and Prevention Program is responsible for compliance and education in Apache, Coconino, La Paz, Pima, Yavapai, and Yuma counties. Health educators have been actively working with businesses in their communities by providing education about the Smoke-Free Arizona Act and explaining the benefits of smoke-free environments.

In these counties, a solid partnership exists between the Tobacco Education and Prevention Program and the Environmental Services Division. For example if an environmental health inspector observes a smoking violation during a routine inspection in a food establishment, he or she will notify the health educator about their observation(s). The health educator will follow-up with the person in charge of the food establishment to ensure compliance with the Law.

Dual Lead Programs – Environmental Services Division & Tobacco Education and Prevention Program



With a population of 4,023,132, Maricopa County is by far Arizona's most populous county, encompassing more than half of the State's residents. Joining efforts of health educators from the Tobacco Education and Prevention Program and environmental health inspectors from the Environmental Health Services Division is the key to ensuring compliance in Maricopa County.

For establishments permitted under the Maricopa County Health Code, such as restaurants, bars, grocery stores, hotels/motels, and public accommodations, education and complaint investigations are conducted by environmental health inspectors. For non-permitted establishments such as retail stores, repair shops, business offices, and shopping centers, education and complaint investigations are conducted by health educators from the Tobacco Education and Prevention Program.

Environmental health inspectors and health educators are using the same approach with regards to education and compliance. The strategy taken in Maricopa County has proven to be a great success.

ADHS – Santa Cruz County



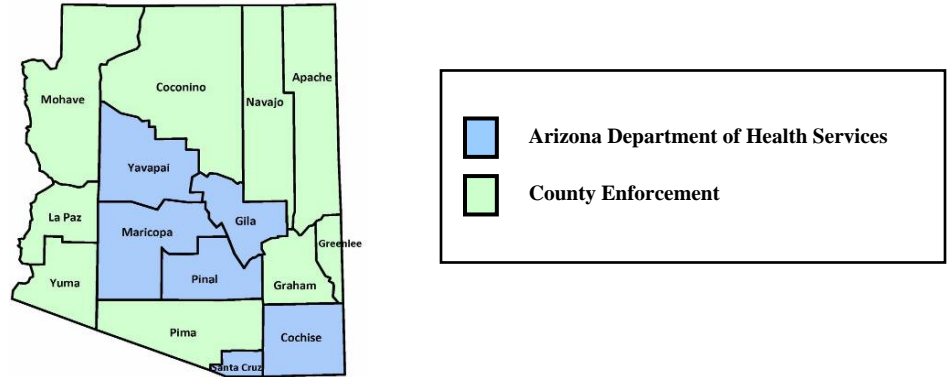
The ADHS Smoke-Free Arizona Program is responsible for education and compliance in Santa Cruz County. This includes investigating complaints, conducting on-site inspections, and educating the community about the Law and its requirements.

1.3.2. Enforcement of the Law

Nine county health departments have the delegated authority for enforcement activities such as issuing NOV's, assessing civil penalty fines, attending administrative hearings, and seeking injunctive relief.

The map below illustrates who is responsible for enforcement in each county.

Map 1.2 Enforcement Responsibilities for each County Health Department



The counties conducting their own enforcement activities are Apache, Coconino, Graham, Greenlee, La Paz, Mohave, Navajo, Pima and Yuma. For these counties, the delegation agreement delineates the enforcement duties and additional funding is provided.

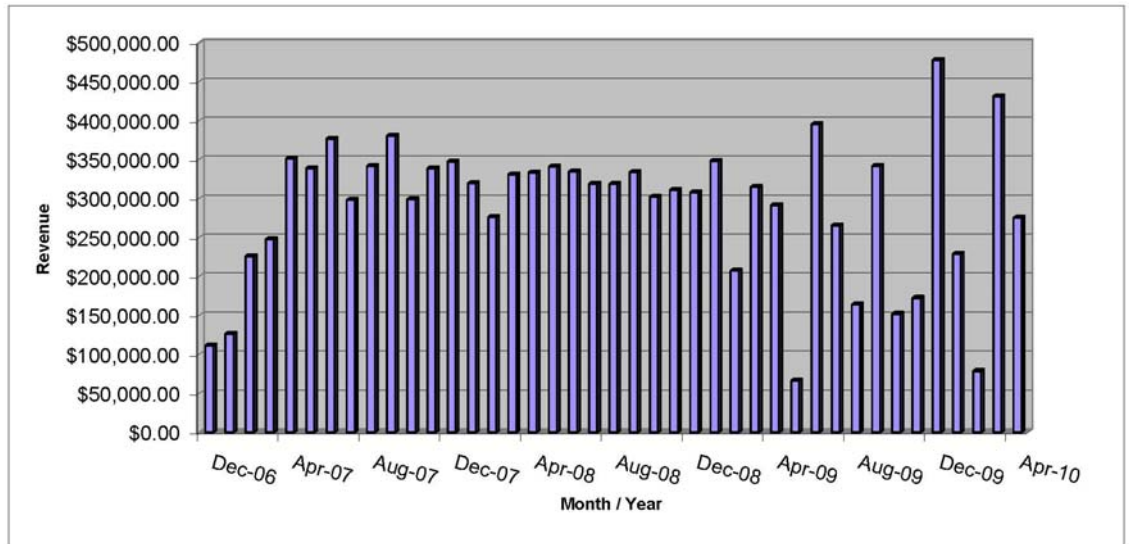
For the remaining six counties, Maricopa, Gila, Cochise, Yavapai, Pinal, and Santa Cruz, ADHS provides assistance for enforcement. This means that once a pattern of noncompliance is documented, or there is evidence of willful violations of the Act, the county health department refers the case to ADHS for enforcement. The enforcement procedures are explained in Section 5.0 of this report.

1.4. Amount and Source of Program Funding

The Smoke-Free Arizona Act includes a two-cent tax that is imposed on each pack of cigarettes. The money collected from this tax is deposited into the Smoke-Free Arizona Fund and used to enforce the Act. Any money remaining in the Smoke-Free Arizona Fund, after ADHS and its delegates have met enforcement obligations for the fiscal year, is deposited into the Tobacco Products Tax Fund and used for education programs to reduce and eliminate tobacco use.

The graph below shows the amount of money received monthly in the Smoke-Free Arizona Fund since November 2006.

Graph 1.1 Smoke-Free Arizona Fund Monthly Tax Revenue



2.0 Education

As we cross the threshold of the third year after implementation of the Smoke-Free Arizona Act, major strides have been made to improve the education disseminated and the communication with the public and businesses of Arizona about the Act.

2.1. Enhancing the Website: www.smokefreearizona.org

As the main channel of communication with the public, business owners, and other partners throughout Arizona, the Smoke-Free Arizona website is an essential part of the education outreach of the Smoke-Free Arizona Program. This website explains the benefits of smoke-free enclosed public places and places of employment, and provides information about the requirements of the Act, resulting in a better understanding of the Act. Useful information on the dangers of secondhand smoke, news, tips, updates, answers to frequently asked questions about the Law, and links to valuable resources are also available.

The public can also access the Smoke-Free Arizona Timeline on the website. This timeline provides an overview of the most important milestones in the Smoke-Free Arizona Program history. The timeline also provides a quick insight into the types of activities and responsibilities of the Smoke-Free Arizona Program.



The website was updated throughout the third year to better address the most frequently asked questions received via the toll-free information line as well as recommendations from statewide partners. For this reason, the following three new sections were added to the website:

- Outdoor Patios
- Residential Areas
- Outdoor Areas

These three sections clarify where smoking is allowed in those settings. These sections address provisions of the Act that may be perceived as challenging. These pages not only provide accurate information straight from the Act, but also include easy to understand examples and scenarios.

To date, the most popular features of the website are still the sign order page and the online reporting system. Since the Law went into effect, business owners have been able to order signage free of charge from the website. In addition, concerned citizens can report violations of the Act by filing a complaint form online in three easy steps.

An approximate combined total of 2,165 calls have been received between May 1, 2009 and April 30, 2010.

ADHS received a total of 1,301 calls during business hours.

The screenshot shows the Smoke-Free Arizona website interface. On the left is a navigation menu with links such as 'Smoke Free Arizona', 'Reporting', 'Bars and Restaurants', 'Outdoor Patios', 'Other Businesses', 'Residential Areas', 'Outdoor Areas', 'Rules and Statutes', 'Exemptions', 'Second Hand Smoke', 'Downloads', 'In The News', 'Frequently Asked Questions', 'Links & Resources', 'Contact Us County & Program Information', 'Español', 'Order Signs Here', and 'Submit Complaint Here'. The main content area features a 'The Basics Smoke Free Arizona' section with a 'Let's Clear the Air' sub-section. This sub-section lists exemptions from the smoking ban, including restaurants, office buildings, health care facilities, company-owned vehicles, and enclosed common areas in hotels and motels. It also includes a 'Smoke-Free Arizona Timeline' and a '2009 Annual Report' section.

2.2. Answering the Information Hotline: 1-877-AZ-STOPS (1-877-297-8677)

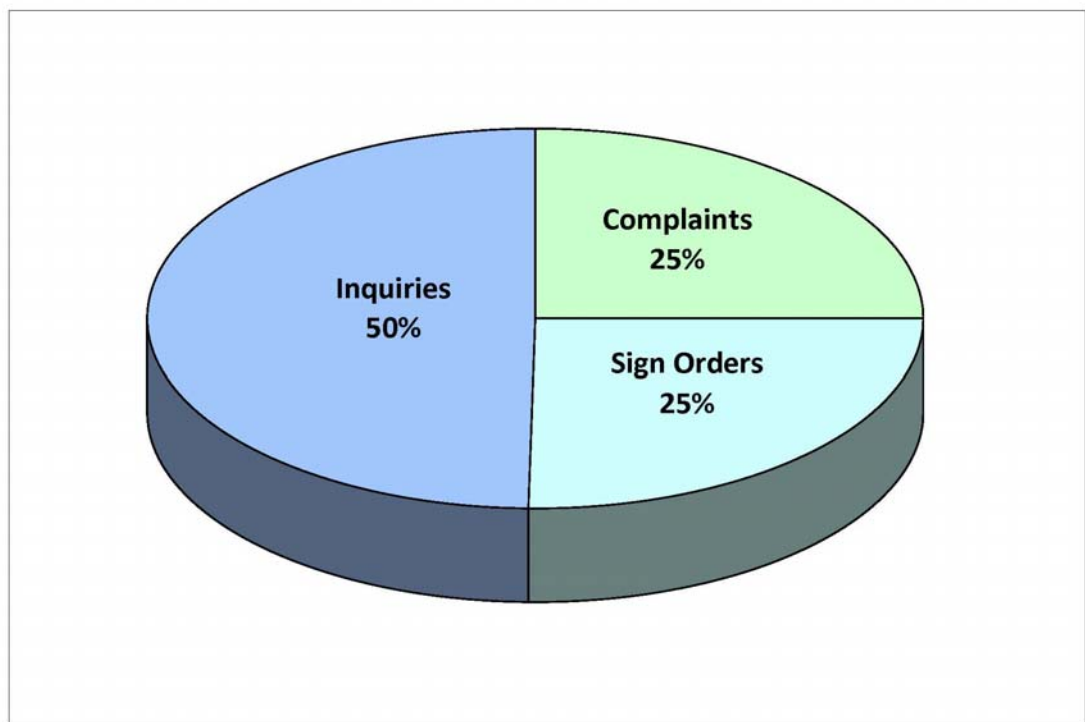
As required by the Smoke-Free Arizona Act, ADHS provides a 24/7 toll-free information line to answer inquiries from the general public and business owners. During business hours, ADHS Smoke-Free Arizona Program staff answer the calls. After business hours, live assistance is provided by an answering service agency. The answering service agency staff is trained to answer general questions about the Act, fulfill requests for free signage, and document reports of violations. ADHS Smoke-Free Arizona Program staff return calls from people

requesting further assistance during the next business day. An approximate combined total of 2,165 calls have been received between May 1, 2009 and April 30, 2010.

ADHS received a total of 1,301 calls during business hours. Half of the calls received were inquiries about the Smoke-Free Arizona Act, while the remaining calls were either requests for free signage or from individuals reporting violations of the Act.

The pie chart below shows the categories of calls (by percentage) received during business hours by ADHS.

Pie Chart 2.1 Percentage of Calls by Category Received by ADHS between May 1, 2009 and April 30, 2010

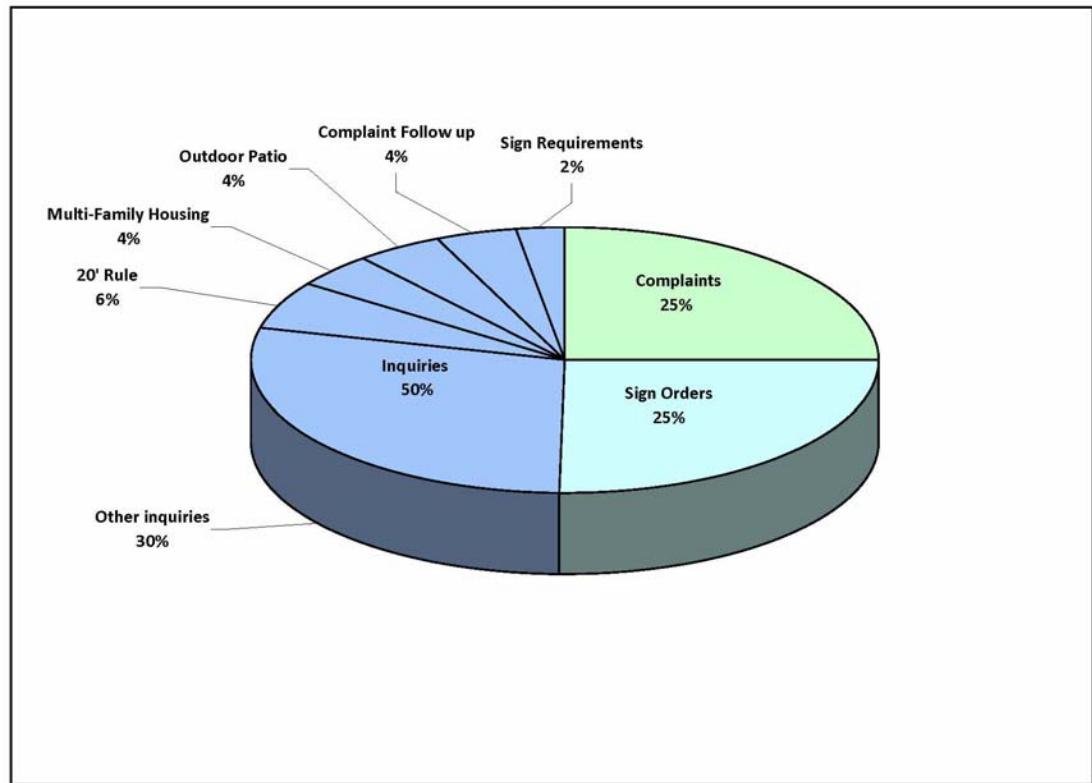


Of these calls, the top five types of inquiries received during business hours were regarding:

1. The reasonable distance from entrances where smoking is prohibited (the “20 Foot Rule”),
2. Smoking in multi-family housing,
3. Outdoor patios,
4. Complaint follow-up, and
5. “No Smoking” signage requirements.

The pie chart below illustrates the types of calls received and the most frequent questions received.

Pie Chart 2.2 Percentage of Calls by Category Received by ADHS between May 1, 2009 and April 30, 2010 including the Top Five Inquiries



2.3. Maintaining the Email Addresses:

smokefreearizona@azdhs.gov and nosmokingarizona@azdhs.gov

The smokefreearizona@azdhs.gov email address is solely dedicated to answering questions and providing information to the general public and business owners about the requirements of the Smoke-Free Arizona Act. The ADHS Smoke-Free Arizona Program Specialists are responsible for replying to all inquiries received in this email mailbox.

The nosmokingarizona@azdhs.gov email address is used to process reports of violations. Occasionally this email mailbox will receive general questions from citizens and business owners, which are answered by an ADHS Smoke-Free Arizona Program Specialist.

2.4. “No Smoking” Signs

The Smoke-Free Arizona Act requires that most enclosed public places and places of employment in Arizona have a “No Smoking” sign posted at every entrance. All entrances should have signs posted except for doors leading to an

outdoor patio and doors used as an emergency exit. Signs should include all the required information and be clearly and conspicuously posted.

Business owners have the option to order “No Smoking” signs free of charge from the Smoke-Free Arizona Program or they may choose to create their own signs as long as the required information is included. The Smoke-Free Arizona Program no longer offers window cling signs for businesses and places of employment. Due to the warm Arizona weather, many businesses have tinted glass on or near their business entrances. Window clings that were attached to tinted glass were not clearly visible from outside, as required by the Act. The Smoke-Free Arizona Program now offers the more convenient “No Smoking” stickers that can attach to any surface.

The Smoke-Free Arizona Program provides the following types of signs:

- 3 x 5 inch vehicle sticker
- 8 ½ x 11 inch cardstock (an optional 20 Foot Rule add-on is available)
- 4 x 6 inch sticker (with or without the 20 Foot Rule disclosure)

The most popular sign is the 4 by 6 inch sticker with an adhesive on the back and a UV coating on the front. Requests for the 8 ½ by 11 inch cardstock signs have declined as people find out about the more convenient 4 by 6 inch stickers.

The demand for free signs has remained steady over the last year. A total of 1,653 sign orders were placed by businesses. In addition, signs are distributed to businesses during complaint inspections, advisory visits, educational visits, and routine inspections conducted by county health educators and health inspectors. A total of 59,095 signs were distributed statewide.



2.5. Advisory Visits

Smoke-Free Arizona staff provide assistance and guidance to business and proprietors by performing advisory visits at their place of business. Upon

request, county environmental health inspectors, county health educators, and ADHS Smoke-Free Arizona Program Specialists visit public places or places of employment to clarify any questions that the proprietor may have about a specific area of concern or setting. Most advisory visits are requested by proprietors that have questions about outdoor patios and/or designated smoking areas. County environmental health inspectors, county health educators, or Smoke-Free Arizona Program Specialists do not perform plan review for outdoor patios; however, they can ensure that the proprietor understands the requirements of the outdoor patio exemption.

3.0 Outreach

3.1 Reaching Out to Public Places and Places of Employment

Arizona county health departments conduct consultations and on-site visits at local businesses, bars, and restaurants and provide education to ensure continued compliance with the Smoke-Free Arizona Act. Between May 1, 2009 and April 30, 2010, a total of 71,356 educational visits and consultations were conducted.

Between May 1 2009 and April 30, 2010, the ADHS Smoke-Free Arizona Program Specialists as well as county health educators and county environmental health specialists conducted 364 educational presentations to large employers and community partners such as educational facilities, multi-family housing complexes, churches, and community centers. Combined an estimated 28,400 people attended these educational presentations.

ADHS Smoke-Free Arizona Program Specialists and county health educators used health fairs as an effective forum to provide education to the public regarding the requirements of the Smoke-Free Arizona Act. Some of the health fairs attended by program specialists and health educators include: large businesses, hospitals, employee orientations, and county fairs.

3.2 Reaching Out to the Community: Success Stories

Coconino County: Encouraging Movement Towards Smoke-Free Multi-Unit Housing

In May 2008, the Coconino County Health Department began a survey of Flagstaff apartment communities to determine whether any had policies in regarding smoking. Of the 51 properties surveyed, only one had an in-house policy regarding smoking but it was not being enforced. Health Educators from the Coconino County Tobacco Use Prevention Program started an educational campaign focusing on the health hazards posed from secondhand and thirdhand smoke exposure. The seed had been planted.

In 2009 and early 2010, all of the 51 properties were revisited and provided with additional materials explaining the benefits of a smoke-free policy that would result in healthy and happy tenants and a cost savings for multi-unit housing communities. Two additional properties adopted smoke-free policies in 2009 for all of their units. One property went all the way and became a smoke-free property, grounds and all. The seed was sprouting.

In early 2010, two more communities adopted smoke-free policy for some of their apartment buildings. Those buildings filled so quickly and received so much interest that additional buildings will be phased into the smoke-free policy in the near future. Additionally, they had the owner of an apartment complex in

the Coconino County part of Sedona inquire about setting a smoke-free policy for his apartments. The seed is growing.

In a little less than two years, the Coconino County Health Department has seen Flagstaff's multi-unit housing progress from one smoke-free property with a policy that was not being enforced to 5 smoke-free properties, totaling 472 units whose tenants are reaping the health benefits and whose owners / managers are seeing less smoking related complaints and more cost savings.

Santa Cruz County: Working Towards Compliance through Partnerships and Inspections

Reaching out to businesses located in Santa Cruz County has been successful despite the distance between the ADHS Smoke-Free Arizona Program located in Phoenix and the Santa Cruz County community. A continuing partnership with the Nogales Chamber of Commerce is an effective channel used to stay in touch with business owners. The Chamber of Commerce provides Smoke-Free Arizona "No Smoking" signs and educational brochures to the community of Nogales and to business proprietors that are members of this organization.

This year's compliance efforts focused on complaint response throughout the County. 58 complaints were received for Santa Cruz County between May 1, 2009 and April 30, 2010 and 65 inspections were conducted. Of the complaints received, three complaints were concerning three separate shopping plazas managed by the same property management company. Smoke-Free Arizona Program Specialists worked with the property manager to correct violations at the three plazas. The property manager was also provided "No Smoking" signs and educational brochures to distribute to the tenants. In this case, the property manager applied the information she received not only to the properties of concern, but also to other properties managed by the company. By working with property management companies, Smoke-Free Arizona Program Specialists were able to reach more businesses in a quick and effective way.

Yuma County: Continued Education and Compliance Efforts are a Success

The Yuma County Health Department has been very proactive in reaching out to the Yuma County community. Each quarter, the Yuma County Tobacco Use Prevention Program sets outreach goals and works diligently to meet those goals, usually focusing on a few target groups. In addition, they have attended several health fairs and conducted numerous trainings and presentations throughout the County.

Over the past year, the Yuma County Health Department has conducted 294 presentations and 1,926 consultations throughout the County. Combined, over 24,000 participants were in attendance at the presentations and benefited from information about the Smoke-Free Arizona Act, the dangers associated with smoking, and secondhand smoke exposure. To name a few, those that attended presentations or were recipients of consultations included Yuma County new hires, elementary school students, customer care business employees, medical staff, strip mall tenants, chamber of commerce members, farming staff, and large food production companies. The education and compliance efforts done by

Yuma County have proven to be a success and are reflected by a sharp decline in complaint numbers over the past 3 years.

3.3. Educational Newsletter

In a continued effort to disseminate information about the Act, the Smoke-Free Arizona Newsletter was created. The first issue of the newsletter was created with the intent of reviewing the basic information that every citizen should know about the Smoke-Free Arizona Act. It also offered fun facts about the Smoke-Free Arizona Act, the latest news regarding smoking rates, and highlighted the activities of our community partners in La Paz County.

The Smoke-Free Arizona Newsletter was distributed electronically to more than 10,000 business proprietors throughout Arizona by email. Since the newsletter was well received by the community, the Smoke-Free Arizona Program considers this educational outreach effort a great success.

ISSUE
01
VOLUME 01
December 2009

NEWSLETTER **Smoke-Free Arizona**

The Smoke-Free Arizona Act: For the People, By the People

November 6, 2006 marks the date when the citizens of Arizona made their voices heard by passing the Smoke-Free Arizona Act, A.R.S. § 36-601.01. The resulting statute is the combined effort of many different organizations and individuals that wanted a cleaner and healthier Arizona. Some of the supporters of the Act were the American Lung Association of Arizona, the American Heart Association, the American Cancer Society, and Arizona's Concerned About Smoking among many others. Ultimately, the Smoke-Free Arizona Act was a citizen initiated law that is truly for the people and by the people.

This issue:
The Basics P.1
Exemptions of the Act P.2
What Proprietors Need to Know P.3
Call Us P.4

Reviewing the Basics of the Smoke-Free Arizona Act

This newsletter was created to inform the public about the requirements of the Smoke-Free Arizona Act, A.R.S. § 36-601.01 ("the Act"), share updates with the community, and help businesses to comply with the Act.

The purpose of the Act is to protect workers, customers, and the general public from the harmful effects of secondhand smoke. The Act became effective on May 1, 2007 and prohibits smoking in most enclosed public places and places of employment, including (but not limited to):

- Restaurants, bars, grocery stores, or any food service establishment
- Office buildings and work areas such as meeting rooms, employee lounges, classrooms, and private offices
- Health care facilities such as hospitals, clinics, and doctors' offices
- Vehicles owned by the employer and operated during working hours if the vehicle is occupied by more than one person
- Enclosed common areas in hotels and motels
- Lobbies, elevators, restrooms, reception areas, halls, stairways, and any other enclosed common-use areas in public and private buildings including condominiums and other multiple-unit residential facilities

Smoke-Free Arizona
Leadership for a Healthy Arizona

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4.0 Compliance

4.1 Verifying Compliance through Complaint Response and Routine Inspections

Compliance with the Smoke-Free Arizona Act is continuing to increase throughout the State. Compliance is monitored through complaint response inspections at enclosed public places and places of employment. Additionally, compliance is verified during routine food safety inspections conducted at foodservice establishments, such as bars and restaurants.

During the third year of the Smoke-Free Arizona Act business proprietors have continued to go above and beyond the requirements of the Smoke-Free Arizona Act. In addition to making the necessary changes to comply with the Act, such as posting the required “No Smoking” signs and moving ashtrays, proprietors continue to build outdoor patios, provide designated smoking areas, and establish in-house smoking policies that are more strict than the Act to accommodate their employees and customers.

During the third year of the Smoke-Free Arizona Act business proprietors have continued to go above and beyond to achieve continued compliance.

4.2 Complaint Investigation

Complaints alleging violations of the Smoke-Free Arizona Act are investigated by all but one of the State’s fifteen counties (*See Map 1.2*). Once a complaint is received and it is determined that the allegations are valid violations of the Act, an unannounced inspection will take place and/or the business proprietor is notified within 15 days of the complaint. When necessary, investigations are performed in pairs, for example, during night inspections and for cases where the evidence may be difficult to find. If a violation of the Act is observed during an inspection, the proprietor is requested to correct the violation at the time of the inspection. If the violation is not corrected at that time, a re-inspection will take place to verify that a corrective action has been made. Re-inspections have shown to be an effective approach in achieving compliance.

Complainants may follow-up on their complaints by calling the ADHS Smoke-Free Arizona Program or their county health department. Complaint investigation findings are entered into a database that can be accessed by Smoke-Free Arizona Program officials only. Complaints can be located with a complaint identification number that is issued when a complaint is filed, the complainants’ last name (if provided), the business name, address, or cross streets.

4.3 Complaint Numbers Stabilize With Increased Compliance throughout Arizona

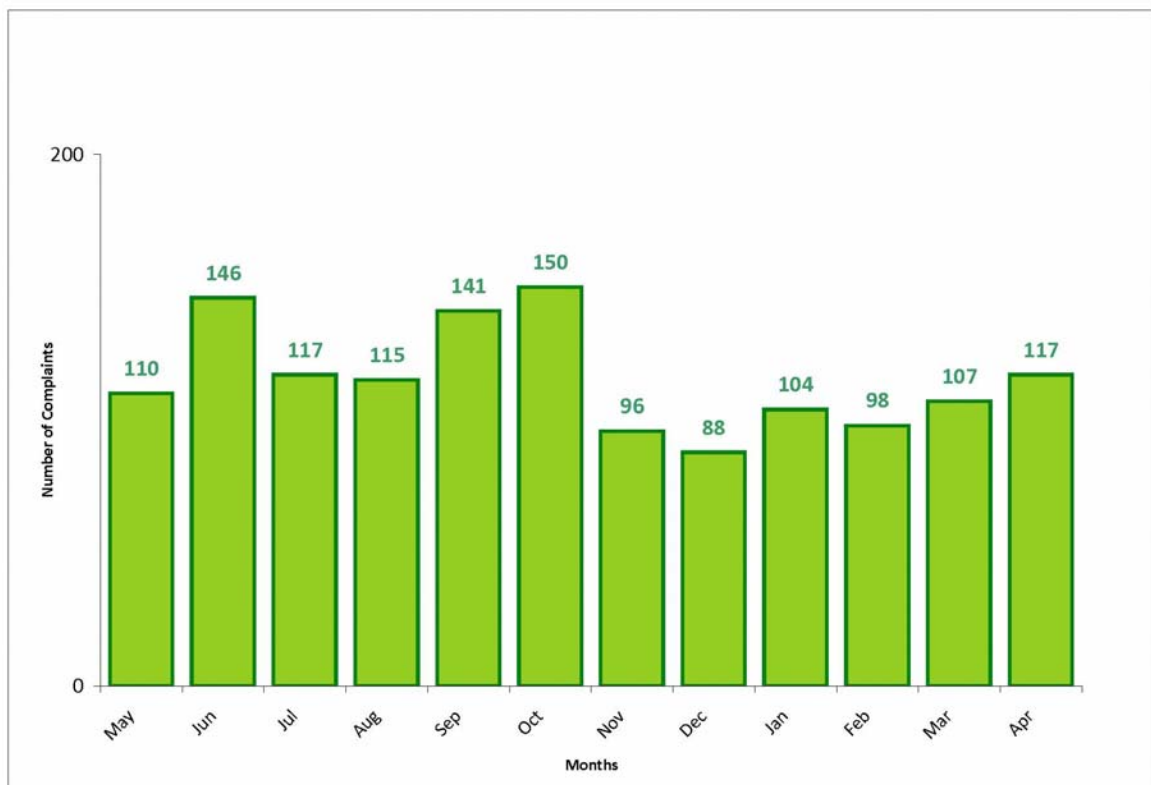
The ADHS Smoke-Free Arizona Program continues to encourage members of the public to report violations of the Smoke-Free Arizona Act. Complaints can be filed by one of the following:

- Filling out an online complaint form at www.smokefreearizona.org,
- Calling the toll-free Smoke-Free Arizona hotline at 877-4-AZ-NOSMOKE (877-429-6676), or
- Sending an e-mail to nosmokingarizona@azdhs.gov.

During the third year after the Law went into effect, between May 1, 2009 and April 30, 2010, a total of 1,389 complaints alleging violations of the Smoke-Free Arizona Act were filed statewide. The numbers of complaints have slightly decreased and leveled off from the previous two years indicating that a higher level of compliance has been achieved throughout the State. Most of the complaints were regarding people smoking outside within twenty feet of an entrance and the presence of ashtrays located outside within twenty feet of an entrance.

The table below illustrates the number of complaints filed monthly statewide between May 1, 2009 and April 30, 2010.

Graph 4.1 Total Complaints Filed Statewide from May 1, 2009 to April 30, 2010



The counties that received the highest number of complaints are: Maricopa (57%), Pima (15%), Mohave (9%), Yavapai (5%), and Santa Cruz (4%). Of the 1,389 complaints received, 687 complaints reporting violations of the Act were for public places and places of employment located in these five counties.

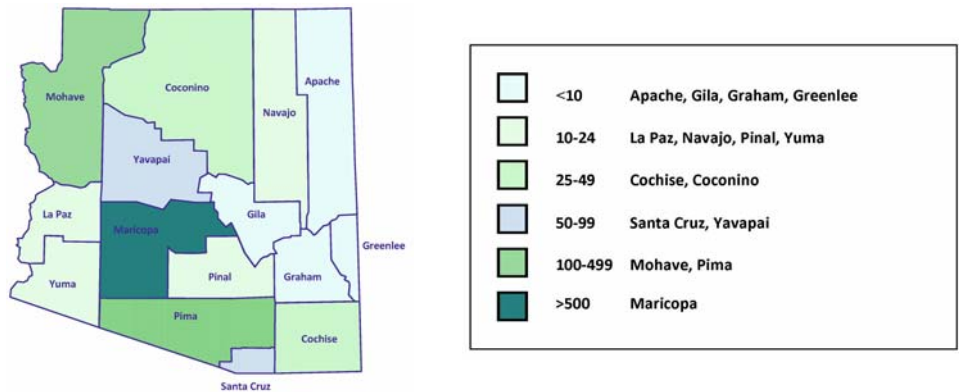
The top five counties that received the highest percentage of complaints between May 1, 2009 and April 30, 2010 are shown in the map below.

Map 4.1 Top Five Counties with the Highest Percentage of Complaints



The number of complaints received for each county between May 1, 2009 and April 30, 2010 is shown in the map below.

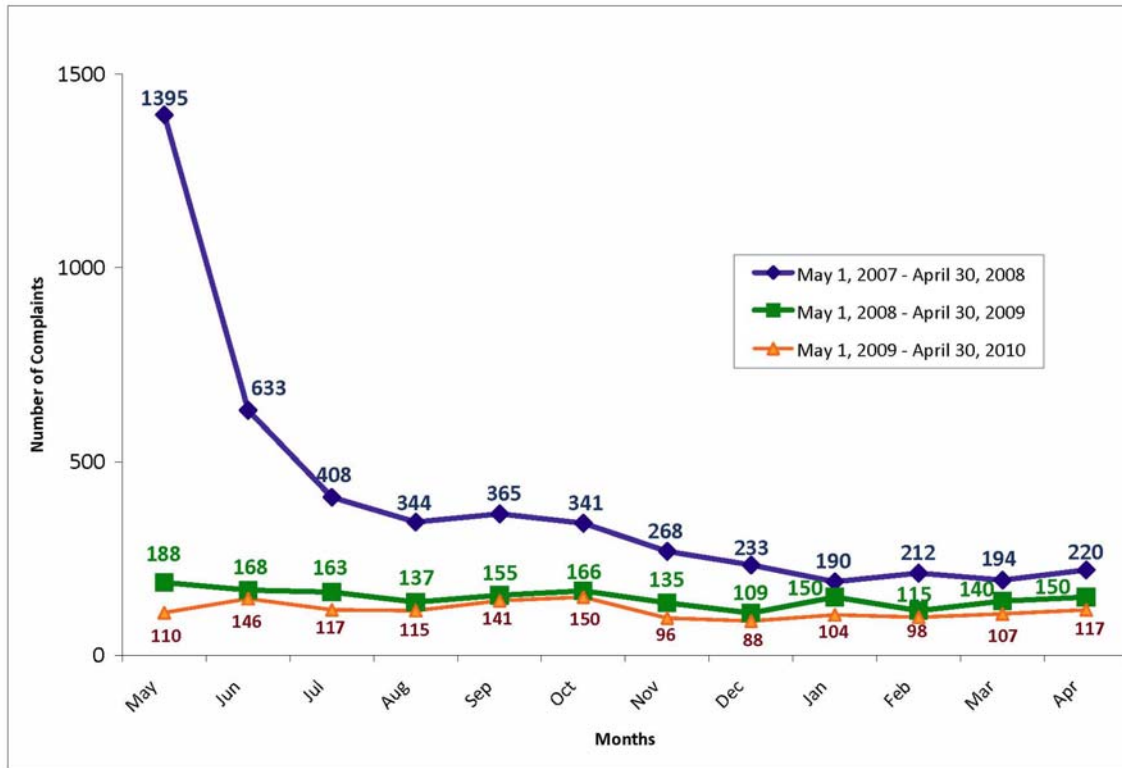
Map 4.2 Number of Complaints for Each County between May 1, 2009 and April 30, 2010



The complaints received during the third year after the Law went into effect transitioned off in comparison to the previous two years. A total of 4,803 complaints were filed during the first year and a total of 1,776 complaints were filed during the second year. During the third year, the number of complaints continued to decline to a total of 1,389 complaints filed statewide. Efforts to educate business owners and incorporating compliance checks during routine food safety inspections continue to result in a decline in the number of complaints and thus achieving a higher level of compliance.

The line graph below illustrates the comparison between the number of complaints received during the first, second, and third year after the Law went into effect.

Graph 4.2 Comparison of Complaints Filed Monthly Statewide between May 1, 2007 and April 30, 2010



5.0 Enforcement

5.1 Initiating Legal Procedures

Nine of the fifteen Arizona county health departments have the delegated authority to enforce the provisions of the Smoke-Free Arizona Act. These include Apache, Coconino, Graham, Greenlee, La Paz, Mohave, Navajo, Pima, and Yuma counties. The ADHS Smoke-Free Arizona Program is responsible for enforcement in the remaining six counties, including Cochise, Gila, Maricopa, Pinal, Santa Cruz, and Yavapai (*See Map 1.2*).

If a proprietor of an establishment does not correct violations as requested, demonstrates willful violations, or a pattern of noncompliance with the Act, he or she is subject to enforcement action and may receive a Notice of Violation (“NOV”) or an assessment of civil penalty fines between \$100 and \$500 for each violation. If injunctive relief is requested, the Superior Court may impose appropriate injunctive relief and civil penalty fines up to \$5,000 per violation.

To attain consistent statewide enforcement of the Act, a 3rd annual training was given by ADHS to each county health department. The annual training provides an opportunity for all existing and new inspectors to receive uniform training to ensure all inspectors are implementing the Smoke-Free Arizona Act consistently throughout the State. The annual training also gives inspectors a chance to ask questions specific to their County.

Enforcement actions take place when educational efforts fail to result in compliance with the Smoke-Free Arizona Act in a timely manner.

5.2 Achieving Compliance through Legal Proceedings

Enforcement actions take place when educational efforts fail to result in compliance with the Smoke-Free Arizona Act in a timely manner. The ADHS Smoke-Free Arizona Program has had tremendous support from the Education & Health Section attorneys from the Office of the Arizona Attorney General and from the Office of Administrative Rules at ADHS. This support, combined with an effective enforcement protocol, allows ADHS to better serve the county health departments when cases are referred to the ADHS Smoke-Free Arizona Program for enforcement.

Notices of Violation are issued in response to a pattern of noncompliance or willful violations of the Law. An NOV details violations that have been observed and documented during complaint investigations. A total of 36 NOV’s were issued statewide between May 1, 2009 and April 30, 2010, 7 of which were issued by the ADHS Smoke-Free Arizona Program. A total of \$3,500.00 in civil penalty fines were collected statewide. The majority of the NOV’s were issued to proprietors that permitted employees, customers, or visitors to smoke inside enclosed public places and places of employment. No new cases were brought before the Superior Court for injunctive relief this year.

The number of NOV’s issued to proprietors of public buildings and places of employment were equal to the number of NOV’s issued to retail food

establishments. 18 NOV's were issued to proprietors of places of employment and public places, such as real estate offices, law offices, insurance services, and trucking companies. 18 NOV's were issued to proprietors of retail food establishments, such as bars, restaurants, and grocery stores.

Of the 7 NOV's issued by the ADHS Smoke-Free Arizona Program, 3 cases were closed out and 4 are currently pending and the outcomes were not available in time to be included in this annual report. A total of \$12,800.00 of possible civil penalty fines were assessed. Settlement agreements with the business proprietors were reached in all 3 cases and a total of \$2,200.00 in fines were collected. For each case, the settlement included a lesser fine; however, the remainder of the original fine was deferred, so long as the business is not found in violation of the Act at any time in the future. Should a business be found in violation after signing a settlement agreement, the deferred amount must be paid and additional fines may be assessed. Three NOV's issued by ADHS between May '08 and April '09 were not resolved during that year and were subsequently resolved during the current year. Of the 3 cases, the proprietors faced a total of \$5,800.00 in civil penalties. A settlement agreement was reached in each case and a total of \$1,100.00 in civil penalties were collected.

The third year after the Smoke-Free Arizona Law went into effect marked the first year that administrative hearings were held to determine the outcome of 3 enforcement cases statewide. One administrative hearing was held in Yuma County and the administrative hearing officer found the establishment to be in violation of A.R.S. § 36-601.01. Two administrative hearings were held in Maricopa County during the month of April 2010. The outcomes for each case are pending and are not available to be included in this annual report.

5.3. Update on the Retail Tobacco Store Exemption

In March 2008, the Maricopa County Superior Court ruled that cigar bars are subject to the Act and thus smoking is prohibited in cigars bars. The owner of a cigar bar appealed the decision, alleging that his establishment met the exemption for retail tobacco stores. On September 30, 2008 the Court of Appeals reverted and remanded the decision of the Maricopa County Superior Court.

ADHS filed a petition with the Arizona Supreme Court to review the Court of Appeals decision with regards to a cigar bar using the exemption for retail tobacco stores in order to allow smoking inside the premises. The Arizona Supreme Court denied the petition.

At this time, the Court of Appeals' decision remains in effect. In summary, the Court of Appeals held that a business/facility which satisfies the definition of a "retail tobacco store" under A.R.S. § 36-601.01(A)(10) qualifies for the statutory retail tobacco store exemption to the smoking ban, even if the business/facility is otherwise prohibited from smoking. The Maricopa County Superior Court agreed with the Courts of Appeals' decision in that cigar bars may meet the exemption requirements of retail tobacco stores, and if so, may allow smoking inside.

6.0 Protecting Arizonans Health

6.1 State of Tobacco Control Report Card: Smoke-Free Arizona Scores a Grade A

The American Lung Association State of Tobacco Control 2009 report tracks progress on key tobacco control policies at the state and federal level and assigns grades to tobacco control laws and regulations enacted.



Arizona is one of 19 states that have passed comprehensive smoke-free workplace, restaurant and bar laws protecting the public and workers from the dangers of secondhand smoke (as of April 1, 2010).

In 2009, for a second consecutive year, Arizona earned a grade A for maintaining a strong and comprehensive enforcement program of the Smoke-Free Arizona Act. The report states that Arizona's statewide smoke-free workplace law, also known as Smoke-Free Arizona, which was passed by the voters in November of 2006, has had continued success. The Arizona Department of Health Services continues to work in partnership with the Arizona American Lung Association to make sure that the Law is appropriately enforced throughout the state.

A total of 1539 persons completed the Smoke-Free Arizona opinion poll survey. 80.1 % of Arizona citizens stated they are in favor of the Law.

6.2 Opinion Poll Survey

In the spring of 2010 the Arizona Department of Health Services, Smoke-Free Arizona Program conducted a public opinion poll survey. The purpose of the survey was to measure public knowledge and support of the Law, assess statewide compliance, and evaluate business owners' needs with regard to the Law. The survey was conducted using an online professional software system that enabled respondents to answer a brief survey in a quick and easy manner. Two sets of survey questions were created for the two target audiences; Arizona citizen / member of the public and business owner / operational manager. A direct link to the opinion poll was posted on the Arizona Department of Health Services website and on the Smoke-Free Arizona website. In addition, a mass email was sent to nearly 10,000 email addresses from businesses and individuals who have contacted the Smoke-Free Arizona program.

A total of 1539 persons completed the opinion poll survey and of those, 901 responses (58.5%) came from Arizona citizens / members of the public. The following results were received:

- 83.7% (661 persons) who completed the survey are non-smokers where as 16.3 % (129 persons) answered that they are smokers.
- A strong majority, 80.1% of Arizona citizens stated they are personally in favor of the enacted Smoke-Free Arizona Law, 14.3% stated they are opposed to it and 5.6% stated they are indifferent to the Law.
- 76% of Arizona citizens answered that they feel establishments they normally frequent have become healthier environments as a result of the Smoke-Free Arizona Act.

- When asked if any smoking has occurred inside their place of employment in the last 30 days, a staggering 96.1% of Arizona citizens answered “no.” That left a small percentage of 3.9% who answered yes.
- 52.1% of respondents answered that they observed smoking within 20 feet of entrances, open windows or ventilations systems within the last 30 days at a restaurant or bar in their community.
- 81.5% of Arizona citizen responded “yes, I know where to go for Smoke-Free Arizona information and compliance assistance.” 18.5% answered “no.”

The remaining 638 (41.5%) of responses came from business owners / operational managers. The following results were received:

- The top two categories of business owners stated they either owned or operated a restaurant and/or bar or a private or corporate business office.
- 74.9% of the respondents answered they did not allow smoking inside their business before the Smoke-Free Arizona Act was passed, while 25.1% answered that smoking was allowed.
- When asked, if they felt that their place of business is a healthier environment as a result of the Smoke-Free Arizona Act, 51.7% answered “yes,” 15.4% answered “no,” and 32.9% answered “I have not noticed a difference.”
- Verbal information and written policy were the most used methods for business owners to educate their employees about the requirements of the Act.
- The majority, (72.5%) of business owners indicated they are personally in favor of the enacted Smoke-Free Arizona Law, 18.6% indicated they are opposed to it and 8.9% indicated they are indifferent to the Law.
- When asked where smoking takes place on their business property (if allowed), 55.8% answered “in outdoor designated areas,” 20.6% answered “outdoor patios”, and 16.6% answered “nowhere, we are a smoke-free campus.”
- 89.9% of business owners stated that they knew where to go for Smoke-Free Arizona information and compliance assistance, while 10.1% stated that they did not know where to go.

Overall, the survey provided mostly positive feedback; however, some negative feedback was received from both Arizona citizens and business owners. The information provided in the survey answers will enable the Smoke-Free Arizona Program to continue providing educational and compliance tools that are helpful to the public and business owners such as the required “No Smoking” signs that are provided free-of-charge and maintaining the user friendly Smoke-Free Arizona website as proclaimed by one respondent, “smokefreearizona.org is a great website!” In turn, the Smoke-Free Arizona Program can use the negative feedback as a way to improve compliance throughout the State. For example, one business owner stated, “I have noticed more cigarette butts in the planters since there can not be any ashtrays within twenty feet of the stores entrances.” As a result of such feedback the Smoke-Free Arizona Program can provide additional education and compliance solutions to business owners and property managers who are responsible to clean up the littered cigarette butts.

6.3. Empower Pack

The Empower Pack Program is a nutrition and tobacco-free program that childcare centers may choose to participate in to receive discounted state licensing fees, with the agreement that centers will adopt more healthy habits by implementing program standards. Empower Centers are required to teach children how to live healthy lives by using the following ten curriculum requirements:

1. Facilities should encourage physical activities as part of their curriculum by scheduling at least 60 minutes of planned activity (which can be broken up in shorter time periods) per day. Encourage “sun safe” physical activities.
2. Limit kids’ screen time to under one hour a day.
3. Avoid more than 60 minutes of sedentary activity at a time, except while the child is sleeping.
4. Offer water at least 4 times during the day.
5. Serve 1% low fat or fat free milk for all children over two years of age.
6. Serve only 100% percent fruit juice (with no added sugars), and limit kids to (4 ounces) per day.
7. Serve meals family style and let the child decide how much to eat. Avoid rewarding good behavior or a clean plate with foods of any kind.
8. If able, participate in the [USDA Child and Adult Care Food Program](#).
9. Facilities and homes should be totally (24-hour) smoke-free campuses.
10. All families should receive education and referrals regarding tobacco prevention cessation and second hand smoke at least 4 times per year.

1,469 childcare centers in Arizona received the Empower Pack kit and thus received Smoke-Free Arizona educational materials.

The Smoke-Free Arizona Program provided the required “No Smoking” signs including one 4x6 inch sticker and one 8 ½ x 11 inch cardstock sign per Empower Pack kit. Also included was The Smoke-Free Arizona Act Clearing the Air for Employers brochure. The Empower Pack kits were sent out to 1,469 childcare centers in Arizona. In addition, a link to the Smoke-Free Arizona website, www.smokefreearizona.org, can be found on the Empower Pack website as a resource for Empower Centers to utilize.

7.0 Conclusion

The continued success of the Smoke-Free Arizona Act remains a result of the combined work of county health educators and county environmental health inspectors providing education and compliance assistance to business owners throughout their counties.

During the third year of the Smoke-Free Arizona Act business proprietors have continued to go above and beyond the requirements of the Smoke-Free Arizona Act. In addition to making the necessary changes to comply with the Act, such as posting the required “No Smoking” signs and moving ashtrays, proprietors continue to build outdoor patios, provide designated smoking areas, and establish in-house smoking policies that are more strict than the Act to accommodate their employees and customers. Several large public places and places of employment have declared their entire campuses as smoke-free, and while some establishments meet the requirements to be exempt under the Law, their proprietors have chosen not to allow smoking where otherwise permitted under the Act, including many hotels and motels.

The ADHS Smoke-Free Arizona Program continues to encourage members of the public to report violations of the Act by filling out a complaint form online, by calling the toll-free complaint line, or by sending an email. A total number of 1,389 complaints were filed between May 1, 2009 and April 30, 2010. Most of the complaints, as in years past, were regarding people smoking outside, but within 20 feet of an entrance, and the presence of an ashtray outside within 20 feet of an entrance. Compared to the number of complaints, only a minimal number of complaints resulted in legal proceedings. Enforcement took place only when educational efforts did not result in timely compliance.

For the second year in a row, the *2009 American Lung Association State of Tobacco Control Report* gave a grade “A” to the state of Arizona for maintaining a strong and comprehensive enforcement program of the Smoke-Free Arizona Act. The report recognizes the continued success of the Smoke-Free Arizona Act.

We are proud to state that in its 3rd year, the Smoke-Free Arizona Act continues to be a success. Compliance continues to soar statewide, resulting in cleaner air for Arizona residents.



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