

The Smoke-Free Arizona Act

“It’s a Benefit, Not a Ban!”



Annual Report 2011

Arizona Department of Health Services





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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, 2010 and April 30, 2011, a total of 63,882 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 fourth year after the Law went into effect, between May 1, 2010 and April 30, 2011, a total of 1,450 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 18 NOV’s were issued statewide between May 1, 2010 and April 30, 2011, 2 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 \$9,150.00 in civil penalty fines was collected statewide.

In 2010, 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. For the third year in a row, the report has awarded a grade “A” recognizing 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 Inspection and Compliance, 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

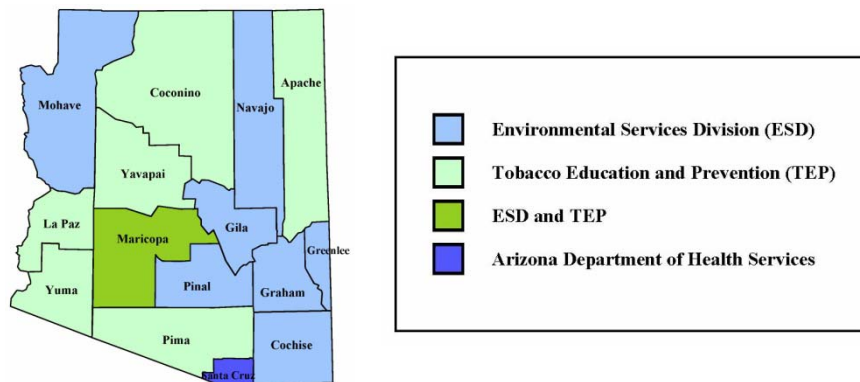
1.3 Roles and Responsibilities of the County Health Departments

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

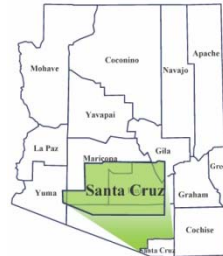


With a population of 3,817,117, Maricopa County is by far Arizona's most populous county, encompassing more than half of the State's residents. Joining efforts of health educators from the Tobacco Education and Prevention Program and environmental health inspectors from the Environmental Health Services 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



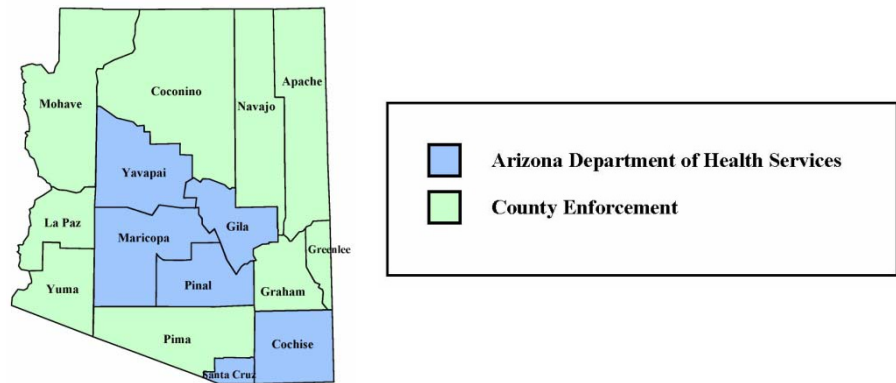
The ADHS Smoke-Free Arizona Program is responsible for education and compliance in Santa Cruz County. This includes investigating complaints, conducting on-site inspections, and educating the community about the Law and its requirements.

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

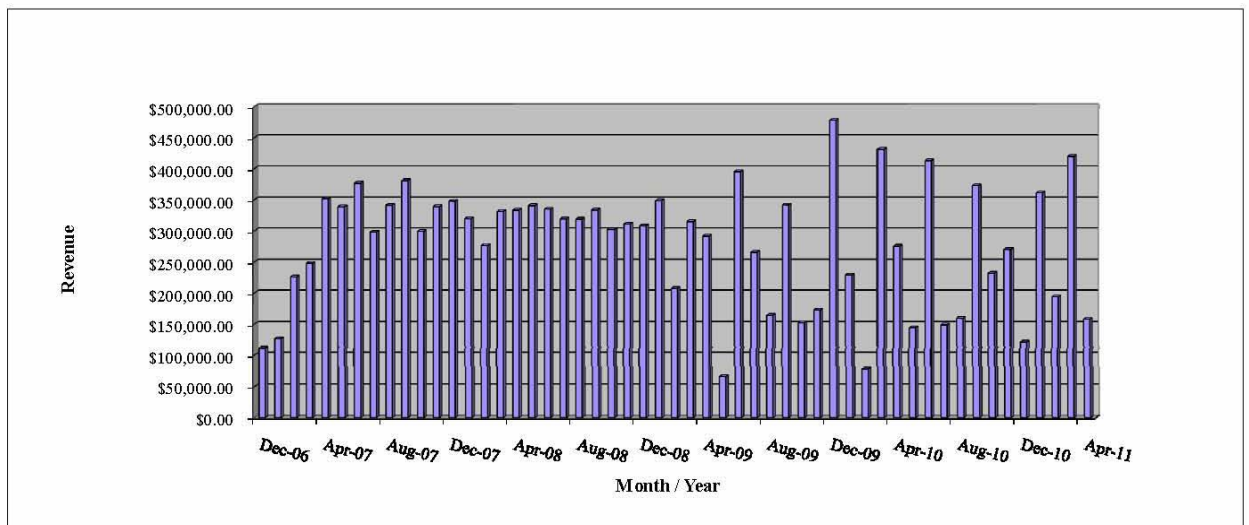
case to ADHS for enforcement. The enforcement procedures are explained in Section 5.0 of this report.

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 fourth 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.

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. This year, the sign order page was updated to add our brand new 4 by 6 inch bilingual stickers. This new sign is not only a benefit to our Spanish speaking communities, but the new and improved design makes the signs more clearly visible especially the signs with the 20 foot rule. A new element, a captcha, was also added to the sign order page this year. A captcha is a verification feature that prevents automatic or computer generated submission of sign orders.

In addition, concerned citizens can report violations of the Act by filing a complaint form online in three easy steps. Allowing concerned citizens to file complaints alleging violations of the Law is not only mandated by the Act, but it is also a good tool to aid in education and compliance assistance.

The image below is a print screen of the Smoke-Free Arizona Program website.



An approximate combined total of 1,770 calls were received between May 1, 2010 and April 30, 2011.

ADHS received a total of 1,018 calls during business hours.

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

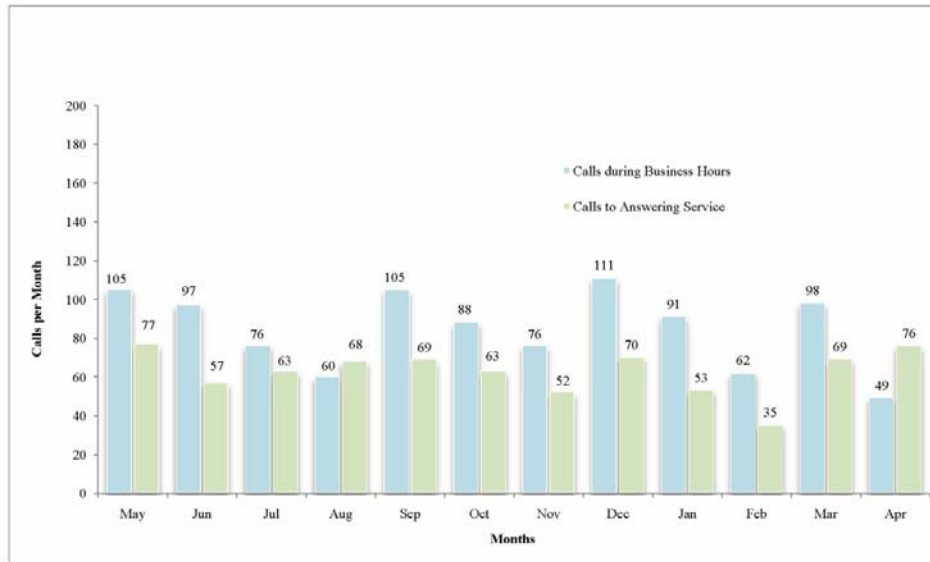
As required by the Smoke-Free Arizona Act, ADHS provides a 24/7 toll-free information line to answer inquiries from the general public and business owners. During business hours, ADHS Smoke-Free Arizona Program staff answer the calls. After business hours, live assistance is provided by an answering 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 1,770 calls were received between May 1, 2010 and April 30, 2011.

ADHS received a total of 1,018 calls during business hours. More than 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.

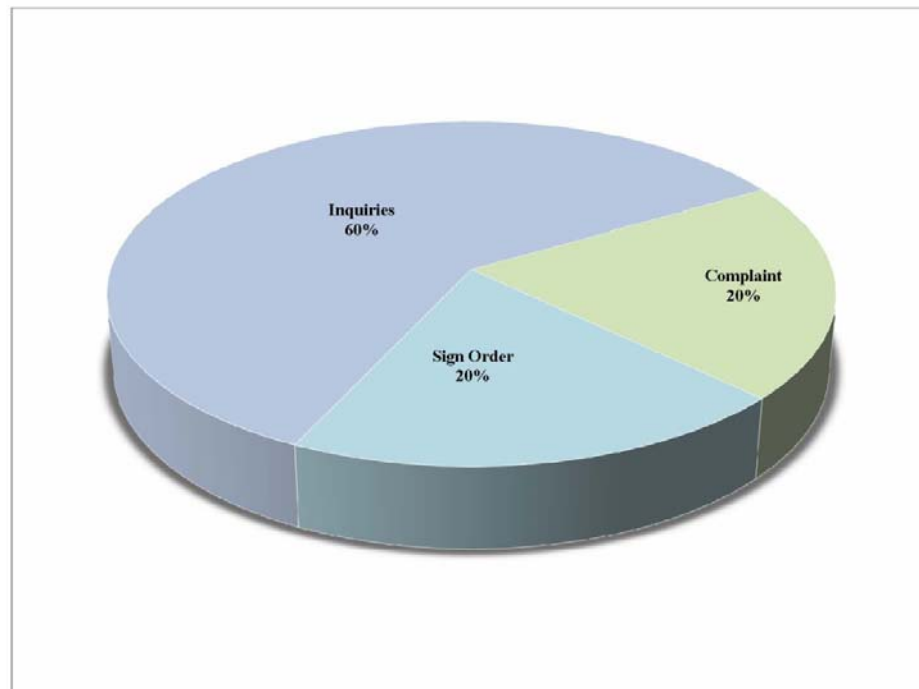
The graph below shows the number of calls received during and after business hours.

Graph 2.1 Number of Calls Received by ADHS and by the After Hours Answering Service between May 1, 2010 and April 30, 2011



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, 2010 and April 30, 2011

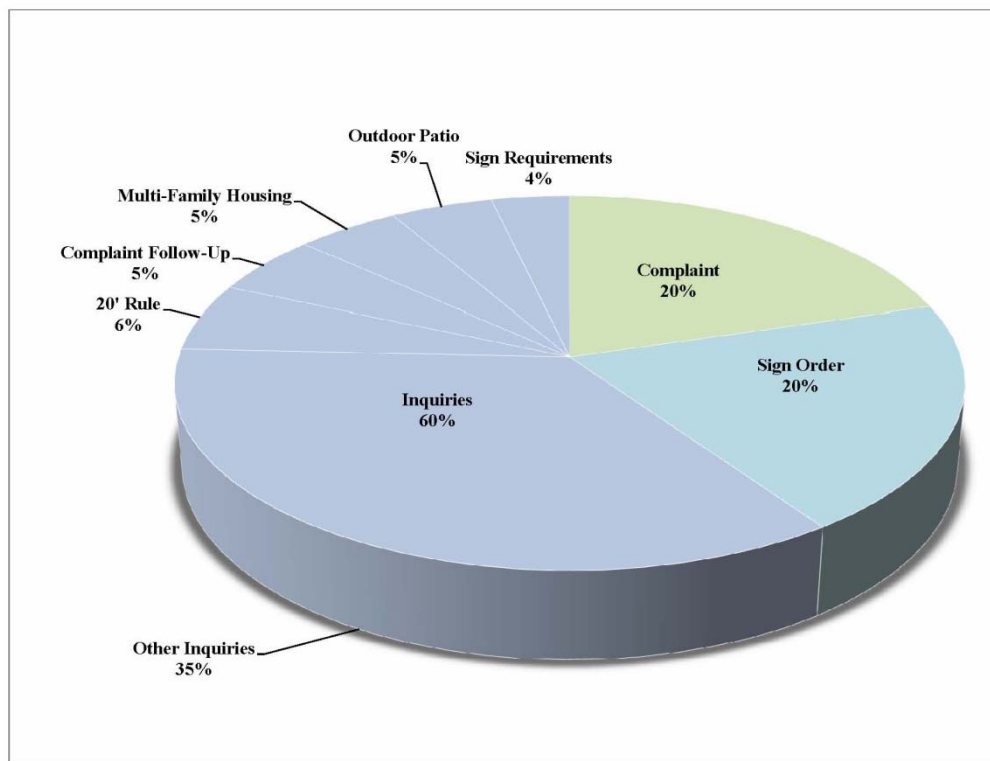


Of these calls, the top five types of inquiries received during business hours were regarding:

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, 2010 and April 30, 2011 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 8 ½ x 11 inch cardstock signs for businesses and places of employment. Due to the warm Arizona weather, many signs were fading as time passed by. Businesses had to replace their “No Smoking” signs more frequently to keep the signs clearly visible for the public visiting their establishment as per the requirements of the Act. The Smoke-Free Arizona Program now offers the more convenient “No Smoking” stickers that can attach to any surface in four different designs. The 4 by 6 sticker is the most popular sign with an adhesive on the back and a UV coating on the front to protect the sign from fading in the Arizona sun.

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

- 3 x 5 inch vehicle sticker
- 4 x 6 inch English sticker (with or without the 20 Foot Rule disclosure)
- 4 x 6 inch Bilingual sticker (with or without the 20 Foot Rule disclosure)

The demand for free signs has remained steady over the last year. A total of 1,381 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 46,575 signs were distributed statewide.

The images below are the bilingual 4 by 6 “No-Smoking” sticker



2.5 Advisory Visits

Smoke-Free Arizona staff provide compliance assistance to 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 and places of employment to clarify any questions that the proprietor may have about a specific area of concern. Most advisory visits are requested by proprietors that have questions about outdoor patios and/or designated smoking areas. For this reason, the Smoke-Free Arizona Program created an Outdoor Patio Advisory Form. The purpose of this advisory form is to provide guidance about the requirements of outdoor patios as defined by Arizona Administrative Code R9-2-108. This advisory form also defines the 20 Foot Rule and further clarifies how it applies to outdoor patios.

County environmental health inspectors, county health educators, and Smoke-Free Arizona Program Specialists do not perform plan review for outdoor patios; however, they can ensure that proprietors understand the requirements of the outdoor patio exemption. The Outdoor Patio Advisory Form informs proprietors that the advisory visit does not indicate compliance with any other code, law, or regulation that may be required - federal, state, or local - and that it does not constitute endorsement or acceptance of the current or proposed patio.

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, 2010 and April 30, 2011, a total of 63,882 educational visits and consultations were conducted.

Between May 1 2010 and April 30, 2011, the ADHS Smoke-Free Arizona Program Specialists as well as county health educators and county environmental health specialists conducted 238 educational presentations to large employers and community partners such as hospitals, educational facilities, multi-family housing complexes, car auction establishments, and merchant associations. Combined, an estimated 13,230 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 included: large businesses, hospitals, educational facilities, sporting goods manufacturer(s), and the American Indian Nations and Tribes Legislative Day.

Car Dealership Outreach Project

Due to an increased volume of inquires and complaints about smoking at car dealerships, the Smoke-Free Arizona Program Specialists worked to provide assistance to car dealerships throughout the State. In December 2010, letters were mailed to 1,256 car dealerships explaining the requirements of the Act and how it applies to the dealerships. Most car dealerships have bay areas where cars are stored or receive maintenance. Bay areas were the cause of many questions and concerns, specifically whether employees are allowed to smoke in these areas or if bay doors are considered “entrances” under the Act. This letter was the perfect opportunity to clarify that bay areas *are* enclosed places of employment where smoking is prohibited. Additionally, bay doors are entrances into places of employment and therefore require “No Smoking” signs. In addition to the letters, proprietors received one of the required “No Smoking” signs and were encouraged to order or make additional signs as needed.

3.2 Reaching Out to the Community: Success Stories

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

In 2008-2009 while performing inspections for the Smoke-Free Arizona Act, the Coconino County Health Department, Tobacco Use Prevention Program, first sought to educate Flagstaff apartment communities on the benefits of smoke-free policies and to see whether any had such a policy. They found none.

In 2009-2010 with the help of other professionals in several different states, the Coconino County Health Department worked with some proactive apartment communities in Flagstaff to develop plans for voluntary smoke-free policies. Some apartment communities designated select units as smoke-free, while others designated entire building. Other communities designated all units as smoke-free, one of which went even further to make all units and the entire grounds smoke-free.

Come 2010-2011 with a brand new name, the Coconino County Public Health Services District, Tobacco and Chronic Disease Prevention Program, went back into the field to re-educate property managers and hoping to renew interest in voluntary smoke-free policies in multi-unit housing. The time must have been just right as they found several property managers dealing with issues relating to smoking.

The Coconino County Public Health Services District found that some of the communities that had taken smaller steps in years prior were now moving forward. Two properties that had designated a single building as smoke-free were already working on making the change for a second building in response to finding that people were still seeking smoke-free housing.. The Coconino County Public Health Services District is still working with communities that are interested in making or enhancing smoke-free policies. New and renewed interest stems mostly from tenant complaints about secondhand smoke infiltrating into their apartments. For those that have made voluntary policies, the Coconino County Health Department has encouraged them to advertise that smoke-free units are available at their properties. Through a lot of education and pavement pounding, the Coconino County Health Department has seen this idea sprout from a seedling of an idea into a pretty nice blossom of reality that will hopefully continue to grow.

The Tobacco and Chronic Disease Prevention Program has also been working very hard to educate the Flagstaff Housing Authority about the health and monetary benefits that smoke-free policies bring. Nationally, at least 230 Housing Authorities have adopted some form of smoke-free policy. Arizona does not have any, but the Coconino County Health Department has high hopes that the Flagstaff Housing Authority will be the first. They have presented to the mayor and to the housing authority and have attended many meetings in regards to this issue. The Tobacco

*Coconino County leading
the way for Smoke-Free
policies in Multi-Unit
Housing*



and Chronic Disease Prevention Program hope to be involved in the implementation of such a policy if they do decide to proceed.

Graham County: Keeping in Touch with the Community Through Health Fairs

The Graham County Environmental Health Program operated a booth at the 2011 Mt. Graham Regional Medical Center community health fair. The health fair was held at the activities' center at Eastern Arizona College in Thatcher Arizona on February 25th and 26th. The main objective for the health fair was to raise awareness about the Smoke-Free Arizona Act and to provide information about it. The Graham County Environmental Health Department distributed brochures and spoke with citizens about the Law and how individuals can submit a complaint if they feel that the Law is being violated. The Graham County Environmental Health Program even distributed a few signs to business owners who needed a sign or additional signs for their buildings. The Graham County Environmental Health Department feels that the community health fair was a good avenue for providing education and outreach to the community to aid in compliance with the Law and the reporting of violations.

***Smoke-Free Arizona
Program Specialists work
towards compliance
through advisory visits in
Santa Cruz County.***

Santa Cruz County: Working Towards Compliance Through Partnerships and Educational Advisory Visits

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 communities. 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 advisory visits in the Tubac Area in Santa Cruz County. As previously mentioned, Smoke-Free Arizona staff provide compliance assistance and education to businesses and proprietors throughout the State. During the month of March, 56 advisory visits were conducted in Tubac. Proprietors received the required “No Smoking” signs to post at all business entrances and also a general brochure that explains the basic information about the requirements of the Smoke-Free Arizona Act. In addition, as a tool to both document compliance efforts and provide information to business proprietors, a new Advisory Form was created and used for these educational visits. The form provides for the documentation about an establishment and the visit, but it also includes a list of requirements from the Act that proprietors must comply with. The Smoke-Free Arizona Program hopes to see increased compliance as a result of conducting proactive advisory visits.

Yuma County: A Successful Enforcement Case

Although a high level of compliance is still being achieved in Yuma County, for the first time since the inception of the Smoke-Free Arizona Act, the Yuma County Tobacco Use Prevention Program was compelled to use enforcement during this fiscal year. The business had received a number of complaints against it, the first in August of 2007, with four subsequent complaints. Through complaint investigations, along with a number of routine inspections, every effort was made to work with the manager and staff to bring the establishment into compliance, but it teetered between compliance and violations. Two written warnings were issued before finally moving to penalties. The last inspection conducted in response to a complaint revealed violations, and in view of the history, penalties were then assessed. The manager was informed of his right to request a hearing. A hearing was held on March 1, 2010 in the presence of the hearing officer, who after examining all evidence and listening to both sides, made a determination to place the business under a probationary period of six months, during which time inspections would be conducted. Any violations found during this time period would require the payment of the original fines along with any new fines assessed.

The manager vowed to maintain smoke-free standards henceforth, and a routine inspection conducted shortly after the hearing found the business to be in compliance. However, in August 2010, near the end of the probation period, another routine inspection was conducted and violations were found requiring The Yuma County Tobacco Use Prevention Program to move forward with the enforcement process; therefore, assessing civil penalties for the total amount of \$2000.00. On November 9th, 2010 the program received a check from the owner for the full amount bringing this case to close with the stipulation of future inspections to be conducted. This case provided the Yuma County Tobacco Use Prevention Program with the opportunity to experience the Smoke-Free Arizona Program in its entirety to include the enforcement, hearing process, and assessing of fines resulting in their most important success and accomplishment this fiscal year.

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 second volume of the newsletter was designed with the intent of reviewing what every citizen should know about the 20 Foot Rule and how it applies to outdoor patios. This issue also informed proprietors that the Act allows them to declare an area under their control, such as an outdoor patio, as nonsmoking. More importantly, this newsletter advised proprietors to contact their local county health department, Department

of Liquor Licenses and Control, their local building department, and any other applicable authority before building or modifying an outdoor patio.

The most recent newsletter was distributed electronically to more than 12,500 business proprietors throughout Arizona by email. The distribution of the Smoke-Free Arizona Newsletter was a successful and cost efficient educational outreach effort.

The image below is a copy of the Smoke-Free Arizona Newsletter, Volume 2 Issue 1.



The Smoke-Free Arizona Act Newsletter

February 2011
Volume 2 Issue 1

**The 20 Foot Rule:
What everyone should know**

Per the Smoke-Free Arizona Act, A.R.S. 36-601.01 ("the Act"), a proprietor should not permit smoking within 20 feet of a public place or place of employment's entrances, open windows, or ventilation systems unless defined differently by a local ordinance.



The purpose of the 20 foot rule is to prevent smoke from entering into areas where smoking is prohibited.

Outdoor Patios and the 20 Foot Rule

Outdoor patios are one of the seven exemptions of the Act and therefore smoking is allowed on outdoor patios. If an outdoor patio is less than 20 feet from any entrance, open window, or ventilation system of an establishment, smoking is still allowed, but only if the proprietor uses a method that:

- Provides a smoke-free entrance into the establishment
- Does not permit tobacco smoke to drift into the establishment through entrances, open windows, ventilation systems, or other means

If an outdoor patio of a public place or place of employment is located within 20 feet of any entrance, open window, or ventilation system, smoking is allowed anywhere on this outdoor patio as long as tobacco smoke does not enter into the enclosed area.

In order to prevent smoke from drifting into the establishment, some proprietors have chosen to use methods or a combination of methods such as, but not limited to, air curtains, physical barriers, fans, or blowers. Please keep in mind that these methods are only examples and not a requirement of the Act.

Many proprietors of public places and places of employment in Arizona are choosing to provide smoke-free areas for their visitors, employees, and other patrons. The Act allows proprietors to declare an entire outdoor patio as non-smoking.

Modifying or Building an Outdoor Patio

Business owners with food and / or liquor licenses should consider contacting the county health department, the Department of Liquor Licenses and Control, the local building department, and any other applicable authorities before modifying or building a new outdoor smoking patio. Other business owners should also consider contacting any applicable authorities.

For More Information or to Report a Violation
Visit: smokefreearizona.org
Call: 1-877-4-AZINOSMOKE (1-877-429-6676)
Email: nosmokingarizona@azdhs.gov



Arizona
Department of
Health Services

Arizona Department of Health Services
Office of Inspection and Compliance
Smoke-Free Arizona Program
150 North 18th Avenue, Suite 130
Phoenix, AZ 85007-3247



3.4 Working with Smoke-Free Arizona Partners

One of the most important and constant partnerships the Smoke-Free Arizona Program has is with the county health departments. Through delegation agreements, county health departments play a major role in providing education, compliance, and in some instances enforcement of the Smoke-Free Arizona Act. Each year, an annual training session is arranged to provide standard and consistent information to county health educators and county health inspectors. In previous years, the Smoke-Free Arizona Program Specialists have traveled to each individual county to provide these training presentations. In other instances, two or three counties have come together to be part of the annual training and thus minimizing travel.

As technology advances, the Smoke-Free Arizona Program is always looking for new ways to provide continuing education to county health educators and county health inspectors. Last year, for the first time, the training was presented using *i-linc*. This system enabled users from their computer to log in to *i-linc* and follow the PowerPoint training presentation. This system also allows the user to join a conference call to listen first hand to the presentation in a true webinar style. Users were able to post questions directly into *i-linc* at any time without any reservation or fear of interruption.

Annual trainings for new and existing Smoke-Free Arizona employees help to achieve consistent statewide implementation of the Smoke-Free Arizona Act.

For those counties in which county health inspectors play a major role in the Smoke-Free Arizona Program, there is also one more chance at continuing education about the Smoke-Free Arizona Program during the year. Each county health inspector who is a Registered Sanitarian is required to have at least 12 hours of continuing education units (CEUs). Towards the end of the year, in November, the ADHS and the Arizona Sanitarians' Council put together a conference to help those inspectors who have not yet fulfilled this requirement. For the past four years, the Smoke-Free Arizona Program has been requested to present relevant information about the Act.

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 fourth 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.

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

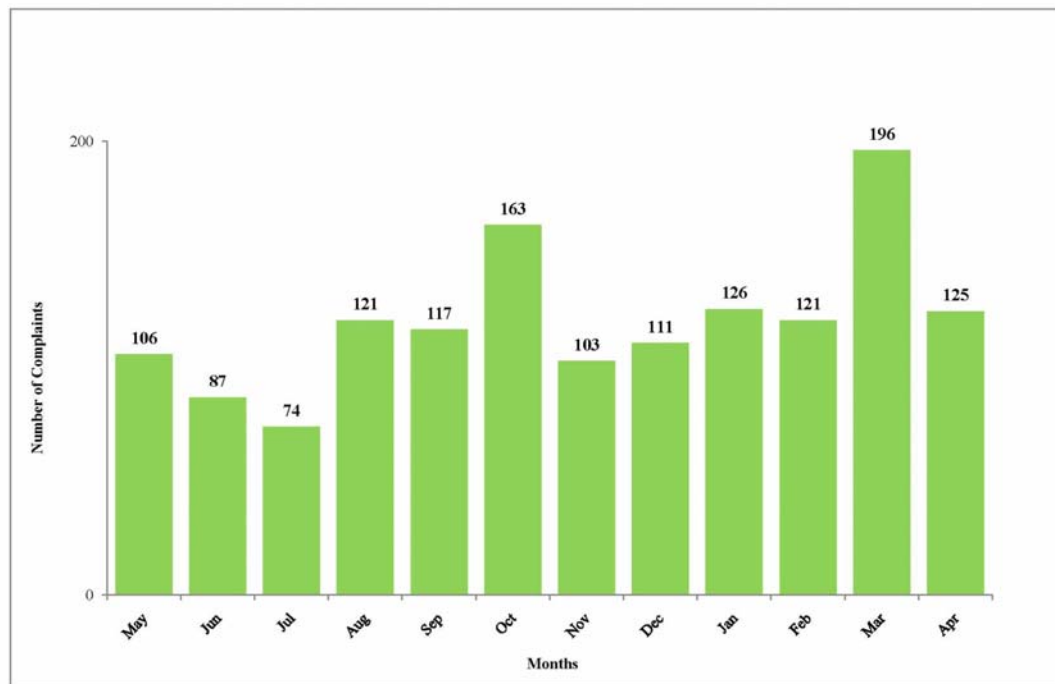
The ADHS Smoke-Free Arizona Program continues to encourage members of the public to report violations of the Smoke-Free Arizona Act. Complaints can be filed by one of the following:

- 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 fourth year after the Law went into effect, between May 1, 2010 and April 30, 2011, a total of 1,450 complaints alleging violations of the Smoke-Free Arizona Act were filed statewide. The numbers of complaints have continued to level off this year when compared to last year’s total of 1,389 complaints filed statewide. This is best illustrated on Graph 4.2. 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 graph below illustrates the number of complaints filed monthly statewide between May 1, 2010 and April 30, 2011.

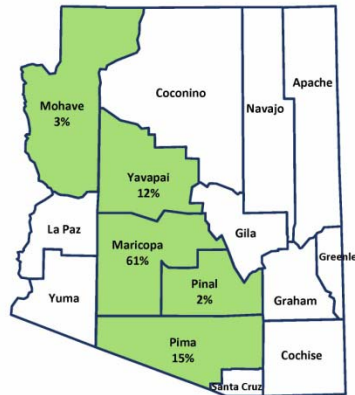
Graph 4.1 Total Complaints Filed Statewide from May 1, 2010 to April 30, 2011



The counties that received the highest number of complaints are: Maricopa (61%), Pima (15%), Yavapai (12%), Mohave (3%), and Pinal (2%). Of the 1,450 complaints received, 1,352 complaints reporting violations of the Act were located in these five counties. UPDATE

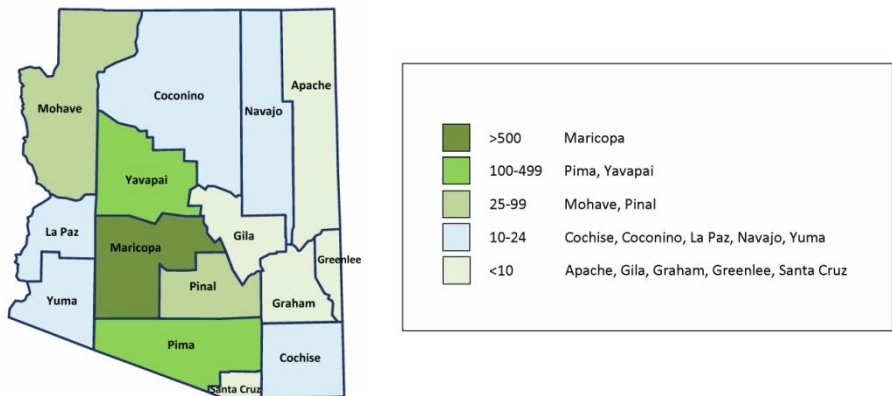
The top five counties that received the highest percentage of complaints between May 1, 2010 and April 30, 2011 are shown in the map below.

Map 4.1 Top Five Counties with the Highest Percentage of Complaints



The number of complaints received for each county between May 1, 2010 and April 30, 2011 is shown in the map below.

Map 4.2 Number of Complaints for Each County between May 1, 2010 and April 30, 2011

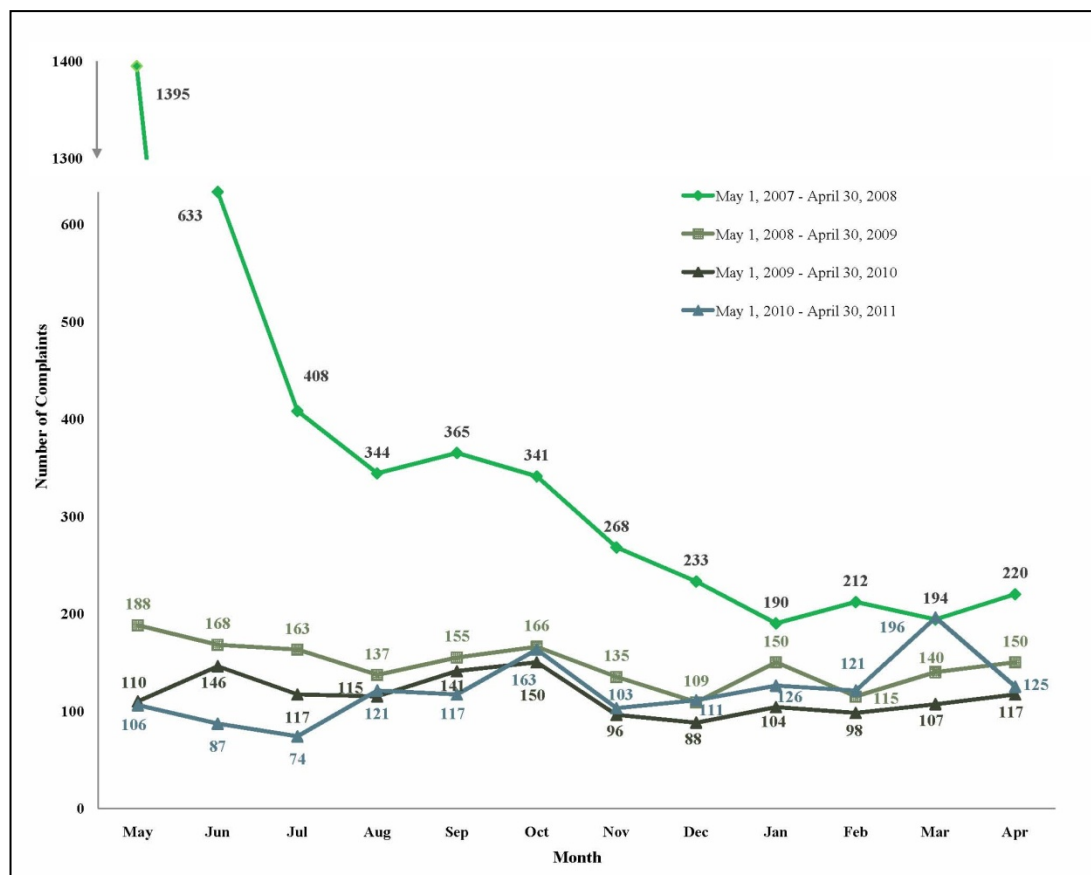


The complaints received during the fourth year after the Law went into effect remained consistent in comparison to the previous year May 1, 2009 to April 30, 2010. A total of 4,803 complaints were filed during the first year and a total of 1,776 complaints were filed during the second

year. During the third year, the number of complaints continued to decline to a total of 1,389 complaints filed statewide. The current year, saw the number of complaints remained consistent with the previous year. Efforts to educate business owners and incorporating compliance checks during routine food safety inspections continue to result in maintaining a steady number of complaints and thus continuing to achieve compliance statewide.

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

Graph 4.2 Comparison of Complaints Filed Monthly Statewide between May 1, 2007 and April 30, 2011



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.

A total of 18 NOV’s were issued statewide between May 1, 2010 and April 30, 2011, 2 of which were issued by the ADHS Smoke-Free Arizona Program.

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 enforcement questions specific to their County.

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 18 NOV’s were issued statewide between May 1, 2010 and April 30, 2011, 2 of which were issued by the ADHS Smoke-Free Arizona Program. A total of \$9,150.00 in civil penalty fines was 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 greater than the number of NOV's issued to retail food establishments. 14 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. 4 NOV's were issued to proprietors of retail food establishments, such as bars, restaurants, and grocery stores.

Of the 2 NOV's issued by the ADHS Smoke-Free Arizona Program, 1 case was closed out and 1 has been settled and is currently pending monthly civil penalty payments. A total of \$2,900.00 in possible civil penalty fines was assessed. Settlement agreements were not reached with either business proprietor. A total of \$1,950.00 in fines were collected in time to be included in this annual report, as noted above one case is pending monthly payments.

In previous annual reports, ADHS indicated that settlement agreements have been met which included a lesser fine; however, the remainder of the original fine was deferred, as 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. Between May 1, 2010 and April 30, 2011 ADHS had 2 cases in which the establishment violated the consent agreement and thus were subject to the previously deferred amount, totaling \$2,100.00. ADHS notified both establishment proprietors at least 3 times and were requested to make payment of the deferred amount. Both proprietors chose not to respond to ADHS as a result both were referred to Arizona Attorney General's Collection Department. Additionally, when combining all enforcement cases issued since May 1, 2007 that have been referred to collections for non-payment of civil penalties this totals \$21,000.00. One request for injunction and two NOV's issued by ADHS between May '09 and April '10 were not resolved during that year and were subsequently resolved during the current year. The proprietors faced a total of \$8,000.00 in civil penalties. The total civil penalty amount collected by ADHS was \$4,800.00. The remaining \$3,200.00 has been referred to collections for non-payment and is included in the above reported collections referral total.

During the fourth year 4 administrative hearings were held to determine the outcome of 4 enforcement cases statewide. 2 administrative hearings were held between May '09 and April '10. The outcome for all 6 hearing decisions were issued in favor of ADHS and found the proprietors to be in violation of the Smoke-Free Arizona Act.

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 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 35 states that have passed comprehensive smoke-free air laws that protect the public and workers from the dangers of secondhand smoke in workplaces and/or restaurants and/or bars (as of April 1, 2011).

This year once again and for the third consecutive year, Arizona earned a grade A in *The American Lung Association State of Tobacco Control 2010* report, 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, has had continued success. The American Lung Association works diligently with organizations, state departments, and legislators to address tobacco control issues. 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.

The Herman and Walsh Research Study found a decrease of hospital admissions in the 13 months after the implementation of the Smoke-Free Arizona Act in nonban counties.

6.2 American Journal of Public Health Herman and Walsh Second Hand Smoke Research Study

In May 2010, the *Hospital Admissions for Acute Myocardial Infarction, Angina, Stroke, and Asthma After Implementation of Arizona's Comprehensive Statewide Smoking Ban* study was published. The study was conducted by Patricia M. Herman and Michele E. Walsh from the Evaluation, Research, and Development Unit from the Department of Psychology at the University of Arizona in Tucson. This study examined the impact of the implementation of the Smoke-Free Arizona Act, a statewide comprehensive smoking ban that became effective on May 1, 2007, on hospital admissions. This study focused on hospital admissions due to acute myocardial infarction (AMI), angina, stroke, and asthma, which are diagnoses closely related to exposure to secondhand smoke (SHS), and used four diagnoses not associated with SHS as a control (appendicitis, kidney stones, acute cholecystitis, and ulcers).



The data used in the study was collected between January 2004 and May 2008 by 87 hospitals that routinely report to the Arizona Department of Health Services. Because local smoking bans were already in effect in some cities and counties throughout Arizona, this research study compared these counties (“ban counties”) to counties with no official city or county smoking ban (“non-ban counties”). The Herman and Walsh research team found a decrease of 13% in AMI, 33% in angina, 14% in stroke, and 22% in asthma cases in a 13 month period after the implementation of the Smoke-Free Arizona Act. They estimated an approximate reduction in hospital costs of \$16.8 million.

7.0 Conclusion

The fourth year of the Smoke-Free Arizona Act saw a continuous number of inquiries from Arizona citizens and a stabilization of complaints filed by concerned citizens. Partnerships with county health educators and county environmental health inspectors provided education and timely complaint assistance to citizens and business owners throughout their communities.

Providing awareness of the Act results in higher levels of compliance. This was achieved in multiple ways including but not limited to; educational outreach, compliance assistance during complaint inspections, advisory visits, health fairs, conferences and the media. Secondhand smoke research studies such as the one published in the American Journal of Public Health, conducted by Herman and Walsh; demonstrate to the public the importance and benefit of smoke-free laws such as the Smoke-Free Arizona Act. The study presented how successful implementation with the continued cooperation from citizens and business owners lead to a healthier community.

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 1,450 complaints were filed between May 1, 2010 and April 30, 2011. 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.

We are pleased to report that the fourth year of implementation of the Smoke-Free Arizona Act has continued to provide cleaner air for the citizens of Arizona demonstrating “It’s a Benefit, Not a Ban.”



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