

The Smoke-Free Arizona Act

“It’s a Benefit, Not a Ban!”



Annual Report 2012

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, including private residences, designated smoking rooms in hotels and motels, retail tobacco stores, Veterans and fraternal clubs, smoking when associated with a religious ceremony 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 Arizonans are protected from secondhand smoke exposure in most enclosed public places and places of employment. The county health departments conduct consultations and on-site visits at public places and places of employment, including but not limited to, 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 49,203 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 fifth year after the Law went into effect, between May 1, 2011 and April 30, 2012, a total of 1,594 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 17 NOVs were issued statewide between May 1, 2011 and April 30, 2012, 1 of which was issued by the ADHS Smoke-Free Arizona Program. The majority of the NOVs were issued to proprietors that permitted employees, customers, or visitors to smoke inside enclosed public places and places of employment. A total of \$4,500 in civil penalty fines was collected statewide.

In 2011, 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 fourth 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, Arizona voters 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

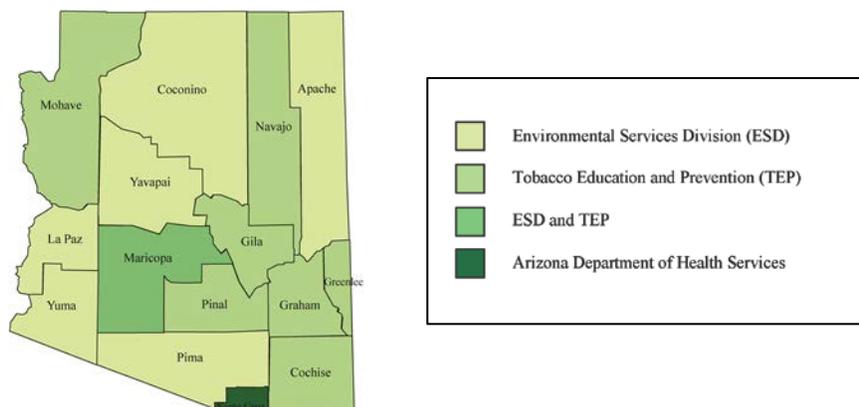
1.3 Roles and Responsibilities of the County Health Departments

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 use the same approach with regards to education and compliance.

ADHS – Santa Cruz County



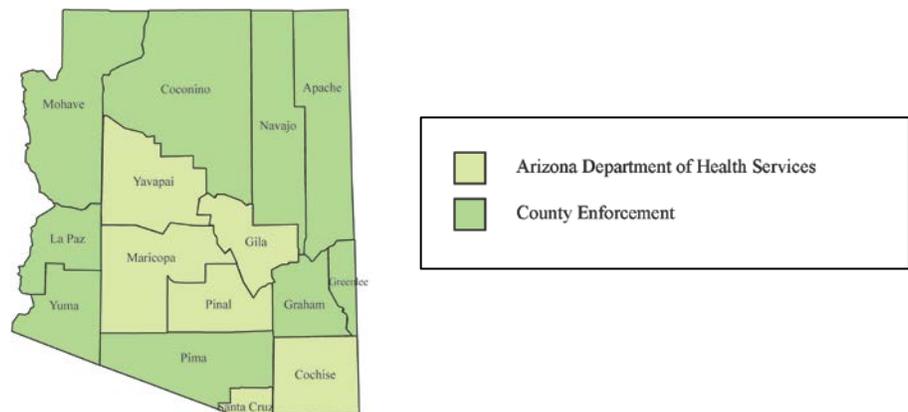
The ADHS Smoke-Free Arizona Program is responsible for education and compliance in Santa Cruz County. This includes investigating complaints, conducting on-site inspections, and educating the community about the Law and its requirements.

1.3.2 Enforcement of the Law

Nine county health departments have the delegated authority for enforcement activities such as issuing NOVs, 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

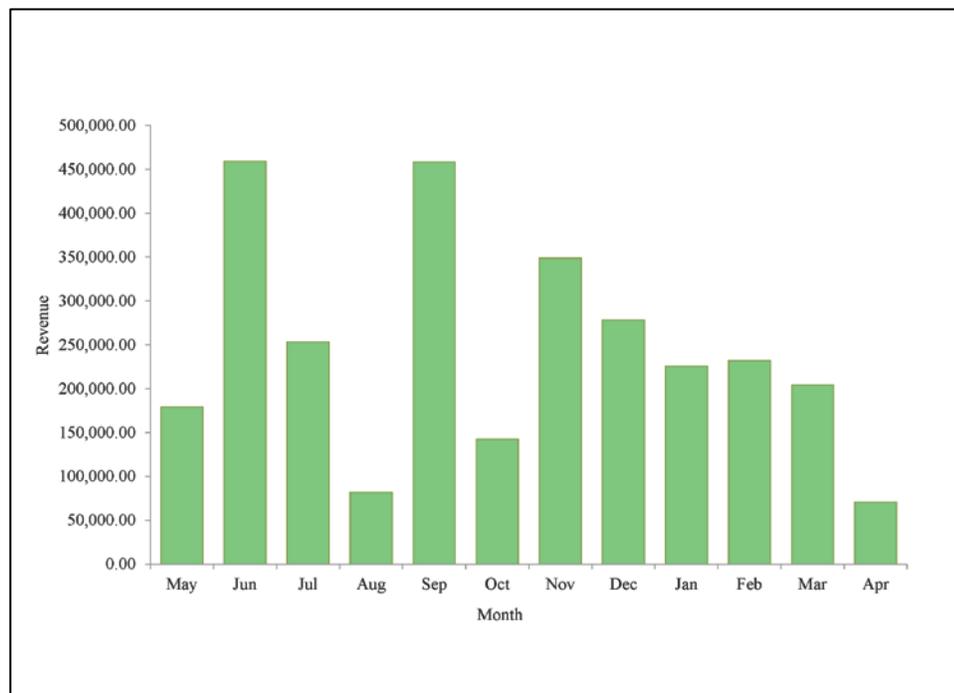
case to ADHS for enforcement. The enforcement procedures are explained in Section 5.0 of this report.

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.

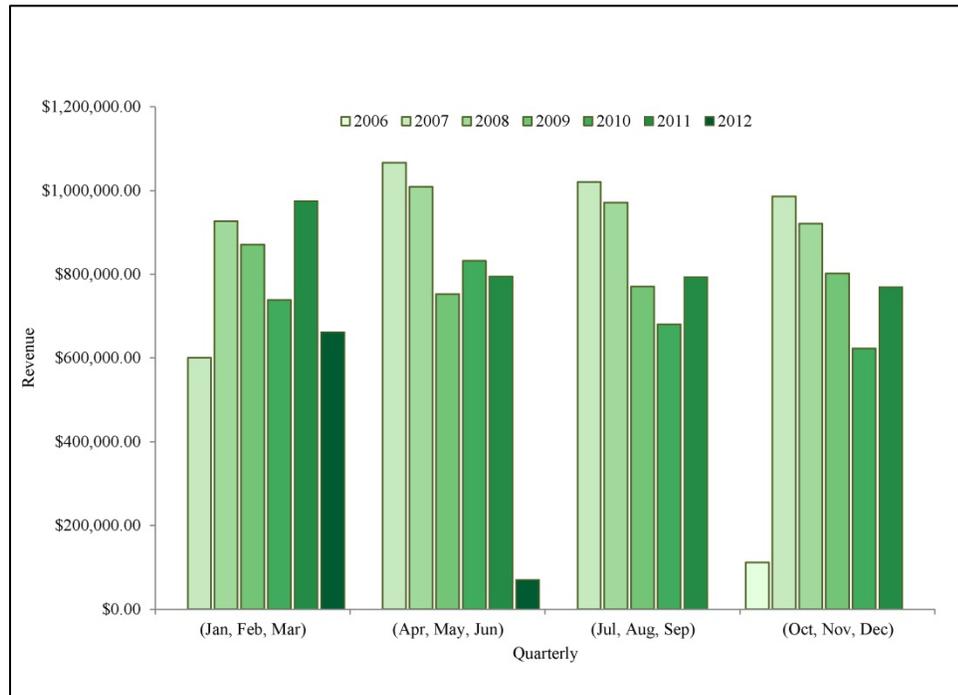
The graph below shows the amount of money received monthly in the Smoke-Free Arizona Fund from May 1, 2011 to April 30, 2012.

Graph 1.1 Smoke-Free Arizona Fund Monthly Tax Revenue from May 1, 2011 to April 30, 2012



The graph below shows the amount of money received quarterly in the Smoke-Free Arizona Fund from May 1, 2007 to April 30, 2011.

Graph 1.2 Smoke-Free Arizona Fund Quarterly Tax Revenue from May 1, 2007 to April 30, 2011



2.0 Education

As we cross the threshold of the fifth year after implementation of the Smoke-Free Arizona Act, we continue to make major strides to improve the communication and educational information about the Act that is disseminated to the public and businesses of Arizona.

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 educational outreach of the Smoke-Free Arizona Program. The website explains the benefits of smoke-free enclosed public places and places of employment, and provides information about the requirements of the Act both of which result in a better understanding of the Act. Useful information explaining the dangers of secondhand smoke, news archives, tips for compliance, program updates, answers to frequently asked questions about the Law, and links to valuable resources are also available. In addition, users can now download the mySmokeFreeAZ mobile phone application.

The Smoke-Free Arizona website is maintained continuously by updating or adding relevant information that can aid in reaching the general public and assisting proprietors on how to comply with the Act. This year, the “Downloads” page was updated to add the Smoke-Free Arizona newsletters. These newsletters were created to inform proprietors and citizens of Arizona about the requirements of Act. The first issue, created in November 2009, reviewed the basic information the public should know about the Act. Every issue since then has explained a different requirement of the Act thus helping citizens to have a deeper understanding of the Law. These newsletters have covered information about outdoor patios and the 20 Foot Rule, outdoor areas, and multi-family housing.

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 required “No-Smoking” signage free of charge from the website. In addition, concerned citizens continue to 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 an effective 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 1,385 calls were received between May 1, 2011 and April 30, 2012.

ADHS received 789 calls during business hours.

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

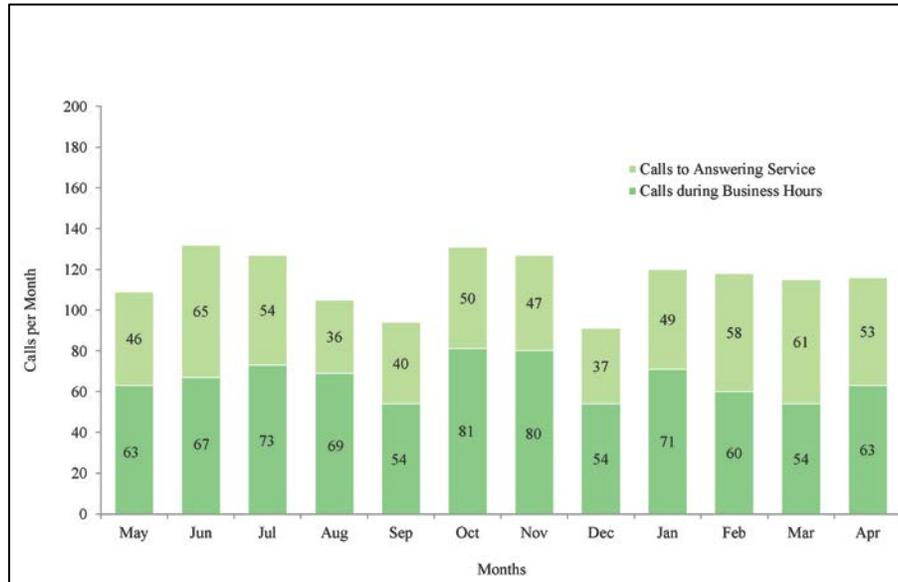
As required by the Smoke-Free Arizona Act, ADHS provides a 24/7 toll-free information line to answer inquiries from the general public and business owners. During business hours, ADHS Smoke-Free Arizona Program staff answers the calls. After business hours, live assistance is provided by an answering 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 returns calls from people requesting further assistance during the next business day. An approximate combined total of 1,385 calls were received between May 1, 2011 and April 30, 2012.

ADHS received a total of 789 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.

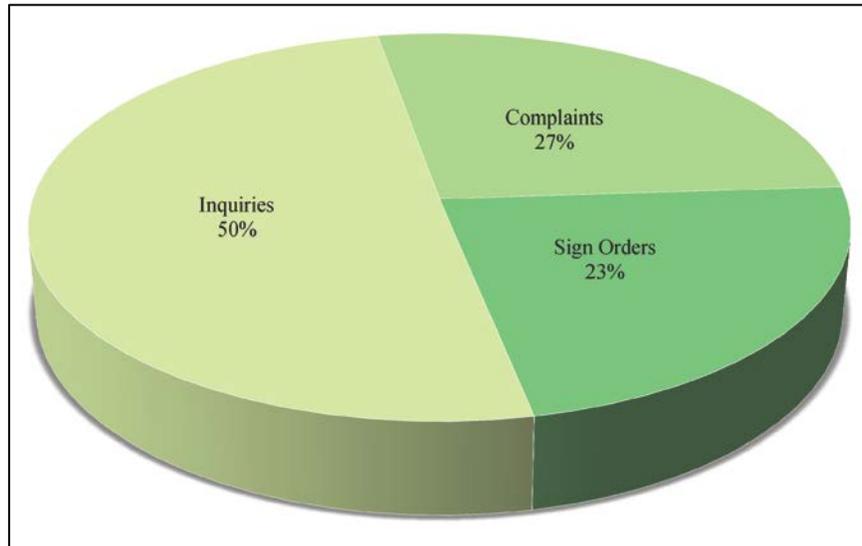
The graph below shows the number of calls received during and after business hours.

Graph 2.1 Number of Calls Received by ADHS and by the After Hours Answering Service between May 1, 2011 and April 30, 2012



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, 2011 and April 30, 2012

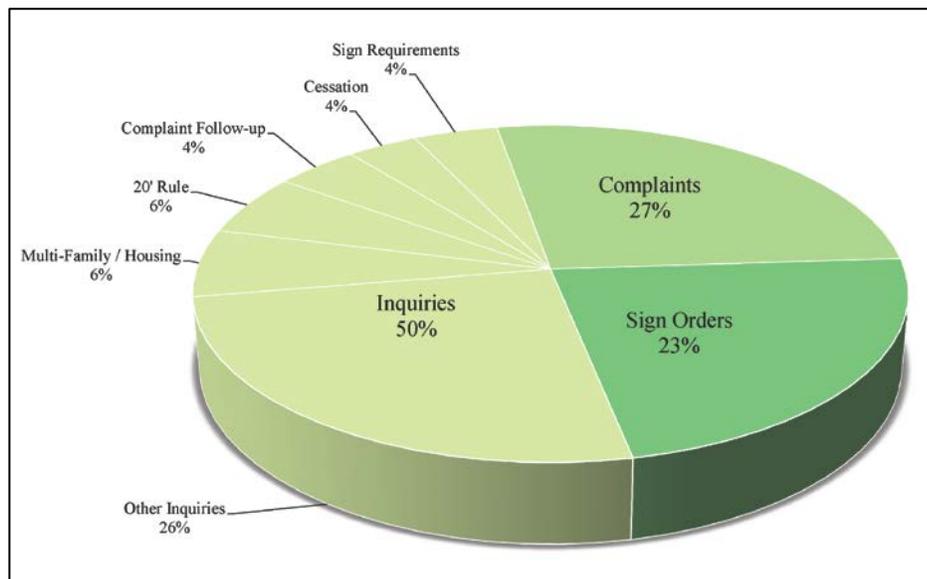


Of these calls, the top five types of inquiries received during business hours were regarding:

1. The reasonable distance from entrances where smoking is prohibited (the “20 Foot Rule”),
2. Smoking in multi-family housing,
3. Cessation information,
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, 2011 and April 30, 2012 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 offers 4 x 6 inch “No-Smoking” stickers with an adhesive on the back that can attach to any surface in four different designs. New this year, the Smoke Free Arizona Program has created a 4 x 12 inch sticker that includes all the required information and the 20 Foot Rule. This new and improved design makes these signs more clearly visible and accentuates the 20 Foot Rule. Due to its design and size, we are confident that this new sign will aid businesses to achieve compliance with the Act by keeping employees and customers at least 20 feet away from entrances.

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)
- 4 x 12 inch English sticker (with the 20 Foot Rule disclosure)

The 4 by 6 sticker is the most popular sign because of its ease of use due to the adhesive on the back, its design, and its UV coating on the front to protect the sign from fading in the Arizona sun.

The demand for free signs has remained steady over the last year. A total of 1,447 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 51,750 signs were distributed statewide.

The image below is the new 4 x 12 “No-Smoking” sticker.



2.5 Advisory Visits

Smoke-Free Arizona Program staff provides compliance assistance to proprietors by performing advisory visits at their public place or place of employment. 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. In 2011, the Smoke-Free Arizona Program created two advisory forms as a tool to document compliance efforts during these educational visits and provide information to business proprietors. The standard Advisory Form not only documents the visit and the establishment's information, but it also includes a list of requirements of the Act to which proprietors must comply.

Since most advisory visits are requested by proprietors that have questions about outdoor patios and/or designated smoking areas, the Smoke-Free Arizona Program also 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, 2011 and April 30, 2012, a total of 49,203 educational visits and consultations were conducted.

Between May 1, 2011 and April 30, 2012, the ADHS Smoke-Free Arizona Program Specialists as well as county health educators and county environmental health specialists conducted 209 educational presentations to large employers and community partners such as WIC clinics, Head Start programs, juvenile probation and transitional housing facilities, multi-family housing management, and collegiate campuses. Combined, an estimated 6,370 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 distributing companies, hotels, health clubs, insurance providers, and car dealerships.

MySmokeFreeAZ App

In response to the emergent mobile media surge, the ADHS Smoke-Free Arizona Program launched a phone application that will allow Arizonans to quickly and easily submit complaints when they observe violations of the Smoke-Free Arizona Act. This free phone App will allow Arizonans to take a picture of the violation and send it, along with GPS coordinates and other descriptive information about the business in violation, to the Smoke-Free Arizona Program. The App can be downloaded for iPhones and Androids by searching for the keyword “mysmokefreeaz.” Once installed, users can open the App and follow the prompts under the “Report” tab to submit their complaints.

Cottonwood and Surrounding Areas Mass Mailing

Due to an increased volume of complaints in Yavapai County, the Smoke-Free Arizona Program decided to focus education efforts towards the city of Cottonwood and its adjacent surrounding areas. In February 2012, letters were mailed to 646 businesses in the Verde Valley area of Yavapai County explaining the requirements of the Act. An educational brochure and a required “No Smoking” sign were included with the

letter. Proprietors were encouraged to order or make additional signs as needed.

Property Management Outreach Project

Throughout the year, the Smoke-Free Arizona Program received numerous inquiries regarding how the requirements of the Act apply to office buildings, commercial and retail properties, and enclosed areas of apartment buildings, condominiums, or other multi-family housing facilities. For this reason, in April 2012, the Smoke-Free Arizona Program outreached to property management companies of such facilities statewide. 456 letters and 193 emails were sent to these management companies to assist them in achieving compliance with the Act.

Health Fairs

The Smoke-Free Arizona Program actively participates in forums that can reach the community on a one-to-one basis. A perfect example of such forums is health fairs. The Smoke-Free Arizona Program partners with the Wellness Council of Arizona to outreach to large employers and distribute information at wellness health fairs. This year, the Smoke-Free Arizona Program attended 5 employee health fairs hosted by Earnhardt Ford, Desert Mountain Club, Blue Cross Blue Shield, The Hilton Squaw Peak Resort, and Golden Eagle Distributors. Information about the Act was distributed to approximately 650 combined attendees.

3.2 Reaching Out to the Community: Success Stories

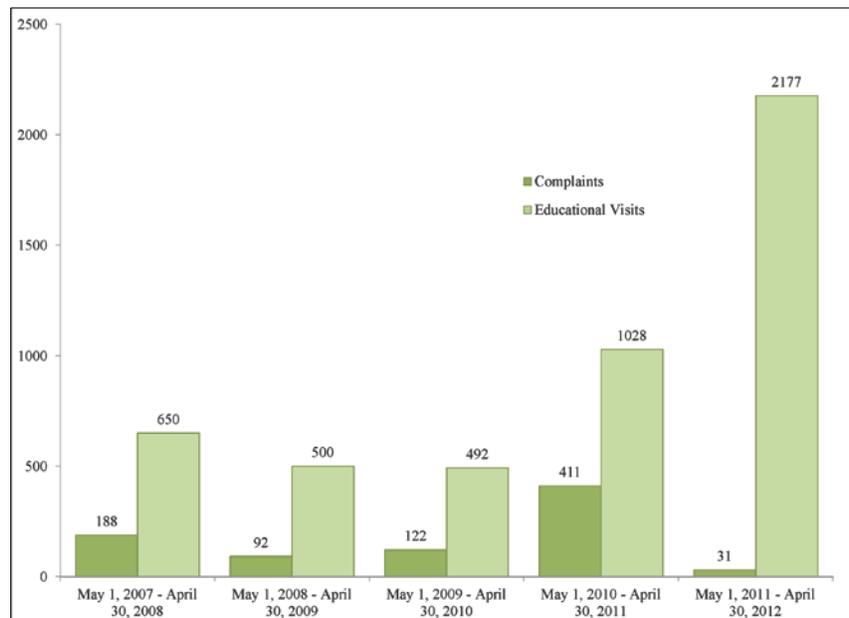
Maricopa County: Multi-Family Housing Workshop

The Maricopa County Office of Tobacco and Chronic Disease Prevention convened a smoke-free multi-housing workshop of more than thirty stakeholders in the community in March 2012. Key partners who assisted in the recruitment of participants included Tanner Community Development Corporation, Asian Pacific Community in Action, Inter Tribal Council of Arizona, Native Health, and Arizonans Concerned About Smoking. Day one of the workshop included presentations on working with multi-family housing properties by two out of state experts from Minnesota and Colorado. Day two of the workshop entailed a Call to Action Round Table Brainstorming Session. The Call to Action Round Table Brainstorming Session addressed the following four areas: 1) Coalition Formation, Recruitment, and Consensus Building, 2) Education/Marketing, 3) Technical Assistance to Properties Wanting to go Smoke-Free, and 4) Policies, Laws, and Initiatives. These partnerships with multi-family property management companies will hopefully raise awareness about the Act in the multi-family complex industry and have a positive impact on families' health.

Mohave County: Reducing Complaints through Educational Visits

For the past year, the Mohave County Department of Public Health made a conscious effort to increase their educational on-site visits to businesses throughout the county. In addition to the county health department inspectors that conduct routine inspections, the department had a full-time employee dedicated to the Smoke-Free Arizona Program. Unfortunately, this full time position was reduced to a part-time health educator position. Due to this reduction, the department was able to save salary funds for future projects. The Mohave County Health Department decided to have the health educator focus his time and efforts on conducting mostly educational visits while still responding to complaints that were filed. The department’s active participation and focus on education drastically reduced complaints received in Mohave County. As the number of educational visits increased from 1,028 in 2011 to 2,177 in 2012, the number of complaints decreased from 411 to 31. As illustrated on the graph below, there is no doubt that educational visits had a huge impact on complaint reduction in Mohave County.

Graph 3.1 Number of Complaints vs. Educational Visits in Mohave County between May 1, 2007 and April 30, 2012



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.

As previously mentioned, Smoke-Free Arizona staff provide compliance assistance and education to businesses and proprietors throughout the State. This year’s compliance efforts focused on advisory visits in Santa Cruz County. During the month of June, advisory visits were conducted in Tubac and Nogales. During the month of January 2012, advisory visits were conducted in Sonoita and Nogales. A combined total of 111 advisory visits were conducted in Santa Cruz County. Proprietors received the required “No Smoking” signs to post at all business entrances as well as a general brochure that explains the basic information about the requirements of the Smoke-Free Arizona Act. In addition, Advisory Forms were used to document these educational visits, the establishment’s information, and provide a list of requirements of the Act that proprietors must comply with. The Smoke-Free Arizona Program hopes to see increased compliance in Santa Cruz County as a result of conducting proactive advisory visits.

A total of 111 advisory visits were conducted by Smoke-Free Arizona Program Specialists in Tubac, Sonoita, and Nogales in Santa Cruz County.

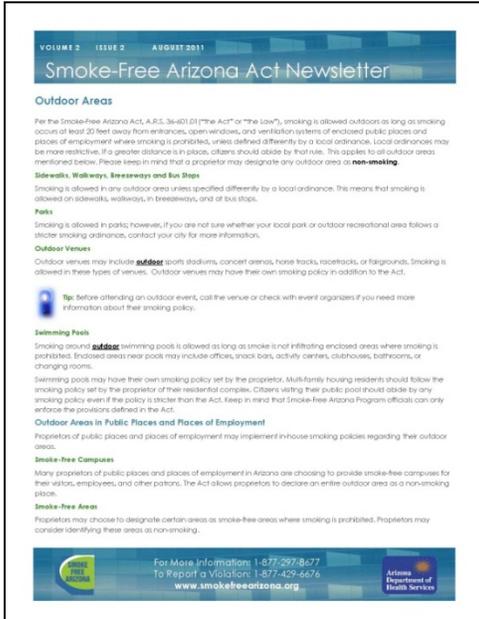
3.3 Educational Newsletter

In a continued effort to disseminate information about the Act, three new Smoke-Free Arizona newsletters were created and distributed to citizens and businesses of Arizona during the last year. The second issue of the second volume of the newsletter was designed with the intent of reviewing how the Act applies to outdoor areas such as sidewalks, walkways, breezeways, parks, swimming pools, outdoor venues, and bus stops. This newsletter was distributed electronically to approximately 12,670 business proprietors. The third issue of the second volume of the newsletter contained information about private residences and multi-family housing complexes. Many inquiries received by phone and email by the Smoke-Free Arizona Program are regarding multi-family housing complexes. This newsletter provided information about how the Act applies to enclosed common areas, outdoor common areas, and outdoor swimming pools in these residential complexes. This newsletter was sent to approximately 11,046 recipients via email. The first issue of the third volume of the newsletter discussed difference between the Smoke-Free Arizona Act, local ordinances, and in-house smoking policies. This newsletter also featured the new mysmokefreeaz mobile phone App that was recently launched. Approximately 9,777 business proprietors received this newsletter by email.

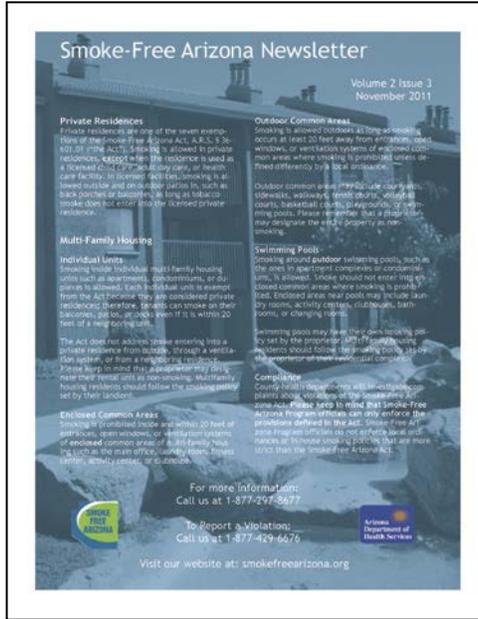
The three Smoke-Free Arizona newsletters were distributed electronically to a collective approximate total of 33,583 business proprietors throughout Arizona. The distribution of the Smoke-Free Arizona Newsletter is a successful and cost efficient educational outreach effort.



The images below are copies of the Smoke-Free Arizona Newsletters.



Volume 2, Issue 2



Volume 2, Issue 3



Volume 3, Issue 1



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 assistance, 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. Last year, the training was offered using *i-Linc* – a system that enabled users to join a conference call and log in from their computer and follow the PowerPoint presentation.

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. This year, for the first time, the training was offered as a YouTube video. Recorded audio was added to each slide of the PowerPoint training presentation and then it was uploaded as a video on YouTube. This training format was cost effective and also allowed educators and inspectors to take the training when convenient for their schedule. Each county health inspector who is a Registered Sanitarian is required to have at least 12 hours of continuing education units (CEUs). This training offered Registered Sanitarians 1CEU hour.

This year, for the first time, the Smoke-Free Arizona annual training for new and existing employees was offered as a YouTube video.

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. 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 the CEU requirement. Registered Sanitarians can obtain 12 CEU hours by attending this conference. For the past five years, the Smoke-Free Arizona Program has been invited 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 fifth 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, investigators go in pairs to perform inspections, 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

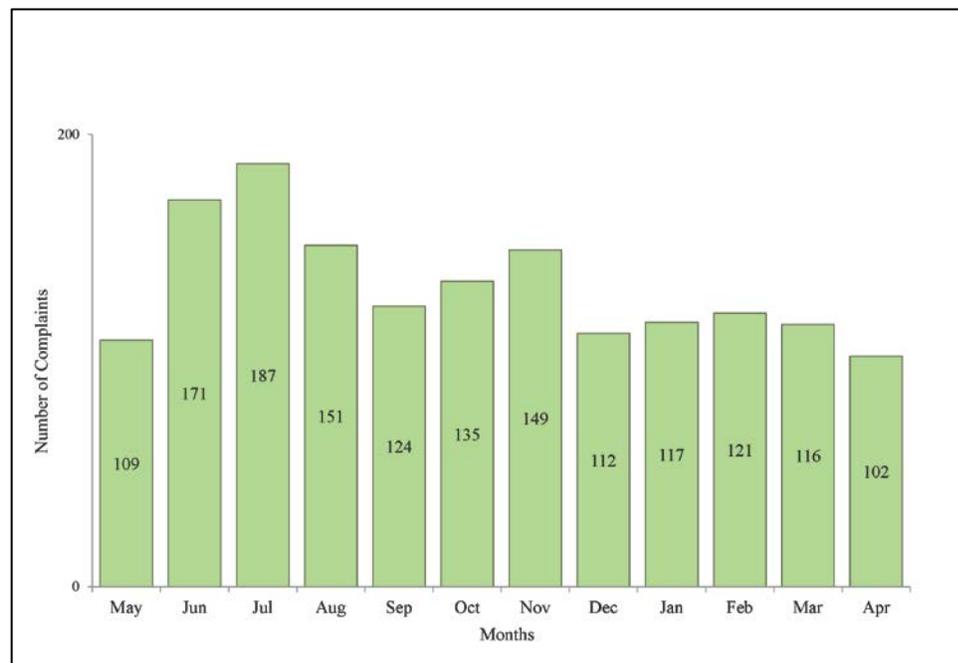
The ADHS Smoke-Free Arizona Program continues to encourage members of the public to report violations of the Smoke-Free Arizona Act. Complaints can be filed by one of the following:

- 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, or
- Capturing and sending a complaint using the mysмоkefreeaz App available for smartphones.

During the fifth year after the Law went into effect, between May 1, 2011 and April 30, 2012, a total of 1,594 complaints alleging violations of the Smoke-Free Arizona Act were filed statewide. The numbers of complaints filed this year resulted in a slight increase when compared to last year’s total of 1,450 complaints and the previous year’s total of 1,389 complaints filed statewide. Overall the complaint trend during the last three years has been consistent. 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, 2011 and April 30, 2012.

Graph 4.1 Total Complaints Filed Statewide from May 1, 2011 to April 30, 2012



The counties that received the highest number of complaints are: Maricopa (58%), Yavapai (16%), Pima (13%), Pinal (4%), and Mohave (2%). Of the 1,594 complaints received, 1,471 complaints reporting violations of the Act were located in these five counties.

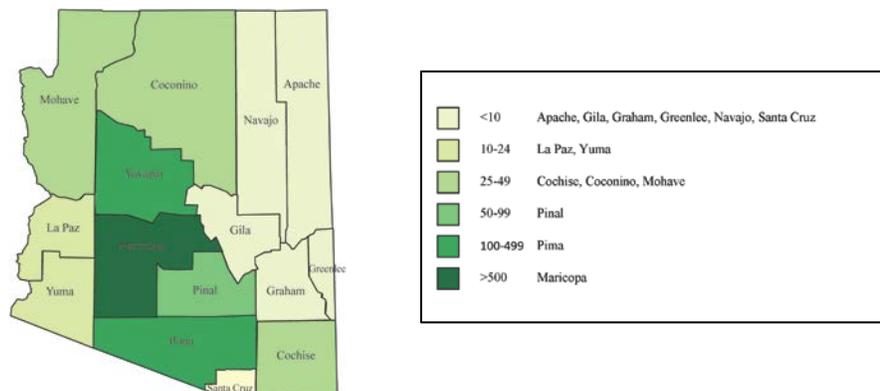
The top five counties that received the highest percentage of complaints between May 1, 2011 and April 30, 2012 are shown in the map below.

Map 4.1 Top Five Counties with the Highest Percentage of Complaints



The number of complaints received for each county between May 1, 2011 and April 30, 2012 is shown in the map below.

Map 4.2 Number of Complaints for Each County between May 1, 2011 and April 30, 2012

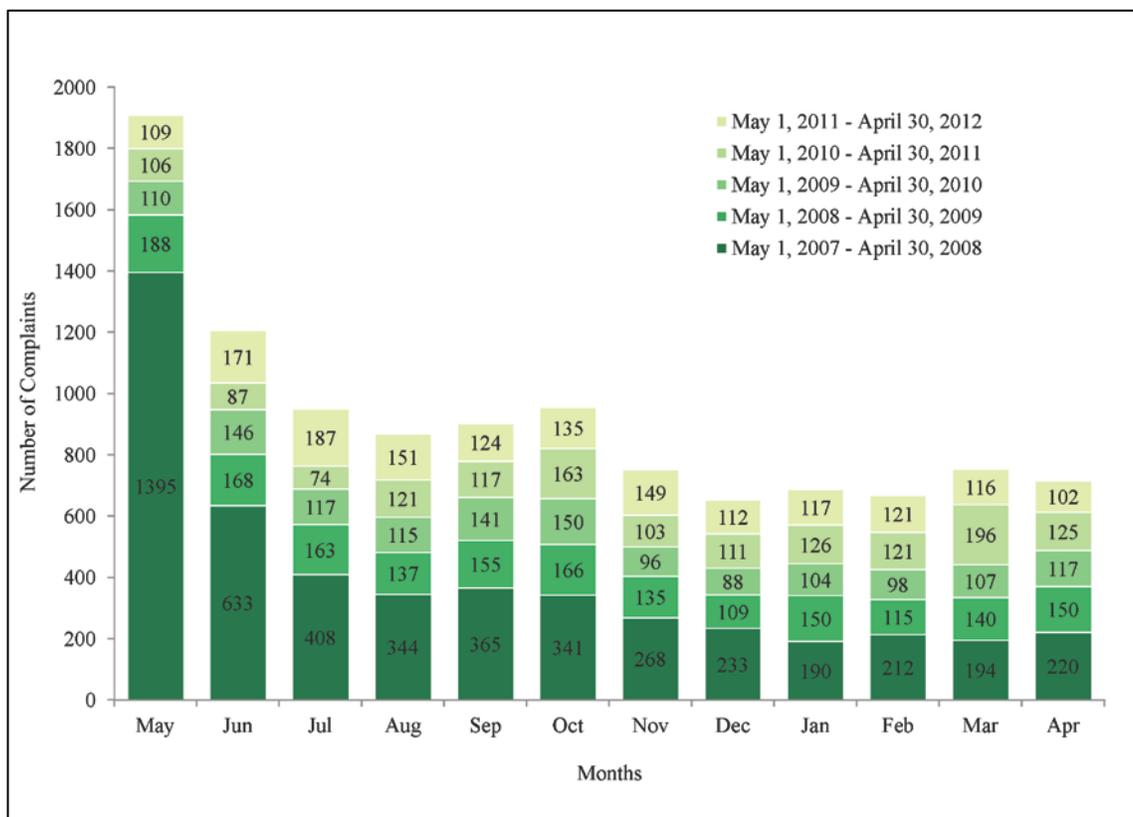


The complaints received during the fifth year after the Law went into effect remained consistent in comparison to the previous two year's May 1, 2010 to April 30, 2011 and May 1, 2009 to April 30, 2010. A total of 4,803 complaints were filed during the first year and a total of 1,776 complaints were 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 fourth year remained consistent with a total of 1,450 complaints filed statewide. The current year, saw the number of complaints slightly increase but generally followed a similar pattern to the two previous years with a total of 1,594 complaints filed statewide. Efforts to educate business owners and to incorporate compliance checks into 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, fourth, and fifth year after the Law went into effect.

Graph 4.2 Comparison of Complaints Filed Monthly Statewide between May 1, 2007 and April 30, 2012





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 5th 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.

A total of 17 NOVs were issued and a total of \$4,500 in civil penalty fines was collected statewide between May 1, 2011 and April 30, 2012.

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 17 NOVs were issued statewide between May 1, 2011 and April 30, 2012, 1 of which was issued by the ADHS Smoke-Free Arizona Program. A total of \$4,500 in civil penalty fines was collected statewide. The majority of the NOVs 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 NOVs issued to proprietors of public buildings and places of employment were greater than the number of NOVs issued to retail food establishments. 10 NOVs were issued to proprietors of places of employment and public places, such as jewelry stores, vehicle repair shops, and hair salons. 7 NOVs were issued to proprietors of retail food establishments, such as bars, restaurants, and gas station convenience stores.

The 1 NOV issued by the ADHS Smoke-Free Arizona Program, has completed the enforcement process and was successfully closed. The proprietor of the establishment chose not to appeal the NOV and assessment of civil penalties. A total of \$2,600.00 in possible civil penalty fines was assessed. The proprietor paid the civil penalty amount of \$2,600.00 in full.

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, 2011 and April 30, 2012, ADHS did not reach any settlement agreements with any enforcement proceedings. Additionally, ADHS has previously reported enforcement cases which have been referred to the Attorney Generals collections department for non-payment of civil penalties. 8 enforcement cases are currently referred to collections.

During the fifth year, 2 administrative hearings were held to determine the outcome of 17 enforcement cases statewide. The outcome for both 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, along with American Samoa, the Northern Mariana Islands, Puerto Rico, the U.S. Virgin Islands and the District of Columbia, that have passed comprehensive smoke-free air laws that protect the public and workers from the dangers of secondhand smoke by requiring that workplaces and/or restaurants and/or bars be 100% smoke-free (as of April 1, 2012).

This year once again and for the fourth 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.

Empower Pack kits were sent out to 350 childcare centers in Arizona containing a Smoke-Free Arizona “No Smoking” sign and an educational brochure.

6.2 Empower Pack

As in years past, the Smoke-Free Arizona Program has partnered with the ADHS Bureau of Nutrition and Physical Activity to provide educational materials for the Empower Pack Program. 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 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.

The Smoke-Free Arizona Program provided one “No Smoking” 4 x 6 sticker sign per Empower Pack kit. Also included was The Smoke-Free Arizona Act Clearing the Air for Employers brochure. This year, Empower Pack kits were sent out to 350 childcare centers in Arizona in addition to the 1,469 centers that received Smoke-Free Arizona materials in 2010. A link to the Smoke-Free Arizona website, www.smokefreearizona.org, can also be found on the Empower Pack website as a resource for Empower Centers to utilize.



7.0 Conclusion

The fifth year of the Smoke-Free Arizona Act saw a continuous number of inquiries from Arizona citizens and a continued stabilization although with a slight increase in the number 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. For the fourth consecutive year The American Lung Association State of Tobacco Control report card awarded an “A” to the Smoke-Free Arizona Program recognizing the success the program has achieved by using the previously mentioned methods.

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, by sending an email, or using the new mysmokefreeaz smartphone application. A total number of 1,594 complaints were filed between May 1, 2011 and April 30, 2012. 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 fifth 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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