

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1459 Session of
2015

INTRODUCED BY PASHINSKI, BISHOP, V. BROWN, ENGLISH, DAVIS,
McNEILL, COHEN, MURT, WATSON, McCARTER AND MILNE,
JULY 22, 2015

REFERRED TO COMMITTEE ON HEALTH, JULY 22, 2015

AN ACT

1 Amending the act of June 13, 2008 (P.L.182, No.27), entitled "An
2 act regulating smoking in this Commonwealth; imposing powers
3 and duties on the Department of Health and local boards of
4 health; providing penalties; preempting local action; and
5 making a related repeal," further providing for definitions,
6 for prohibition and for enforcement.

7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 Section 1. The definition of "smoking" in section 2 of the
10 act of June 13, 2008 (P.L.182, No.27), known as the Clean Indoor
11 Air Act, is amended and the section is amending by adding
12 definitions to read:

13 Section 2. Definitions.

14 The following words and phrases when used in this act shall
15 have the meanings given to them in this section unless the
16 context clearly indicates otherwise:

17 * * *

18 "Electronic cigarette." An electronic product or device that
19 produces a vapor which delivers nicotine or other substances to

1 the person inhaling from the device to simulate smoking and is
2 likely to be offered to or purchased by consumers as an
3 electronic cigarette, electronic cigar, electronic cigarillo or
4 electronic pipe. The term does not include:

5 (1) A cigarette or tobacco product.

6 (2) A product that is a drug, a device or combination
7 product under sections 201 and 503 of the Federal Food, Drug,
8 and Cosmetic Act (52 Stat. 1040, 21 U.S.C §§ 321 and 353).

9 "Electronic cigarette shop." A business establishment whose
10 sales of liquid nicotine, electronic cigarettes and related
11 components and products comprise at least 50% of the gross
12 annual sales. The term does not include a stand-alone kiosk or
13 establishment comprised solely of electronic cigarette vending
14 machines, liquid nicotine vending machines or a combination
15 thereof.

16 * * *

17 "Smoking." The carrying by a person of a lighted cigar,
18 cigarette, pipe or other lighted smoking device, or the
19 inhalation or exhalation of an electronic cigarette.

20 * * *

21 Section 2. Sections 3(b) and 5(d) of the act are amended to
22 read:

23 Section 3. Prohibition.

24 * * *

25 (b) Exceptions.--Subsection (a) shall not apply to any of
26 the following:

27 (1) A private home, private residence or private vehicle
28 unless the private home, private residence or private vehicle
29 is being used at the time for the provision of child-care
30 services, adult day-care services or services related to the

1 care of children and youth in State or county custody.

2 (2) Designated quarters:

3 (i) within a lodging establishment which are
4 available for rent to guests accounting for no more than
5 25% of the total number of lodging units within a single
6 lodging establishment; or

7 (ii) within a full-service truck stop.

8 (3) A tobacco shop.

9 (3.1) An electronic cigarette shop.

10 (4) A workplace of a manufacturer, importer or
11 wholesaler of tobacco products; a manufacturer of tobacco-
12 related products, including lighters; a tobacco leaf dealer
13 or processor; or a tobacco storage facility.

14 (5) Any of the following residential facilities:

15 (i) A long-term care facility regulated under 42 CFR
16 483.15 (relating to quality of life). This subparagraph
17 shall not apply if 42 CFR 483.15 is abrogated or expires.

18 (ii) A separate enclosed room or designated smoking
19 room in a residential adult care facility, community
20 mental health care facility, drug and alcohol facility or
21 other residential health care facility not covered under
22 subparagraph (i).

23 (iii) A designated smoking room in a facility which
24 provides day treatment programs.

25 (6) Subject to subsection (c)(2), a private club, except
26 where the club is:

27 (i) open to the public through general advertisement
28 for a club-sponsored event; or

29 (ii) leased or used for a private event which is not
30 club sponsored.

1 (7) A place where a fundraiser is conducted by a
2 nonprofit and charitable organization one time per year if
3 all of the following apply:

4 (i) The place is separate from other public areas
5 during the event.

6 (ii) Food and beverages are available to attendees.

7 (iii) Individuals under 18 years of age are not
8 permitted to attend.

9 (iv) Cigars are sold, auctioned or given as gifts,
10 and cigars are a feature of the event.

11 (8) An exhibition hall, conference room, catering hall
12 or similar facility used exclusively for an event to which
13 the public is invited for the primary purpose of promoting or
14 sampling tobacco products, liquid nicotine, electronic
15 cigarettes and related products, subject to the following:

16 (i) All of the following must be met:

17 (A) Service of food and drink is incidental.

18 (B) The sponsor or organizer gives notice in all
19 advertisements and other promotional materials that
20 smoking will not be restricted.

21 (C) At least 75% of all products displayed or
22 distributed at the event are tobacco [or] tobacco-
23 related products or electronic cigarette products.

24 (D) Notice that smoking will not be restricted
25 is prominently posted at the entrance to the
26 facility.

27 (ii) A single retailer, manufacturer or distributor
28 of tobacco may not conduct more than six days of a
29 promotional event under this paragraph in any calendar
30 year.

1 (9) A cigar bar.

2 (10) A drinking establishment.

3 (11) Unless otherwise increased under this paragraph,
4 25% of the gaming floor at a licensed facility. No earlier
5 than 90 days following the effective date of this section or
6 the date of commencement of slot machine operations at a
7 licensed facility, whichever is later, a licensed facility
8 shall request a report from the Department of Revenue that
9 analyzes the gross terminal revenue per slot machine unit in
10 operation at the licensed facility within the 90-day period
11 preceding the request. If the report shows that the average
12 gross terminal revenue per slot machine unit in the
13 designated smoking area equals or exceeds the average gross
14 terminal revenue per slot machine unit in the designated
15 nonsmoking area, the licensed facility may increase the
16 designated smoking area of the gaming floor in proportion to
17 the percentage difference in revenue. A licensed facility may
18 request this report from the Department of Revenue on a
19 quarterly basis and may increase the designated smoking area
20 of the gaming floor accordingly. At no time may the
21 designated smoking area exceed 50% of the gaming floor. The
22 board shall have jurisdiction to verify the gross terminal
23 revenues included in the report to ensure compliance with the
24 requirements under this paragraph. Movement of the licensed
25 facility from a temporary facility to a permanent facility
26 shall not require the licensed facility to revert to the
27 minimum percentage set forth under this paragraph.

28 (12) A designated outdoor smoking area within the
29 confines of a sports or recreational facility, theater or
30 performance establishment.

1 * * *

2 Section 5. Enforcement.

3 * * *

4 (d) Access to records.--A drinking establishment, cigar bar
5 [and], tobacco shop and electronic cigarette shop shall make
6 available all books, accounts, revenues, receipts and other
7 information to the department, the Department of Revenue, the
8 State licensing agency or a county board of health as necessary
9 to enforce this act. All information submitted to the Department
10 of Health, a county board or other Commonwealth agency with
11 enforcement duties under this act, including information to
12 verify the on-site food consumption of a drinking establishment,
13 shall be confidential and shall not be subject to the act of
14 [June 21, 1957 (P.L.390, No.212), referred to as the Right-to-
15 Know Law] February 14, 2008 (P.L.6, No.3), known as the Right-
16 to-Know Law.

17 Section 3. This act shall take effect in 60 days.