

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1541 Session of  
2007

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JUNE 11, 2007

REFERRED TO COMMITTEE ON HEALTH AND HUMAN SERVICES,  
JUNE 11, 2007

AN ACT

1 Establishing the Smoke Free Pennsylvania Act; prohibiting  
2 smoking in enclosed and substantially enclosed areas;  
3 imposing duties upon the Department of Health; imposing  
4 penalties; and making a related repeal.

5 The General Assembly of the Commonwealth of Pennsylvania  
6 hereby enacts as follows:

7 Section 1. Short title.

8 This act shall be known and may be cited as the Smoke Free  
9 Pennsylvania Act.

10 Section 2. Legislative findings and purpose.

11 (a) Findings.--The General Assembly finds as follows:

12 (1) The use of tobacco products is dangerous not only to  
13 the person smoking, but also to nonsmokers who must breath  
14 the contaminated air.

15 (2) The Department of Environmental Protection has

1 classified secondhand tobacco smoke as a Class A carcinogen,  
2 a classification reserved for the most lethal environmental  
3 hazards, such as asbestos, benzene, formaldehyde and radon.

4 (3) Approximately 53,000 nonsmokers in the United States  
5 die annually from lung and heart disease due to exposure to  
6 passive smoke.

7 (4) Three hundred thousand children exposed to tobacco  
8 smoke have increased frequency of lower respiratory  
9 infections, such as pneumonia and bronchitis.

10 (5) Second hand smoke exposure has been linked to sudden  
11 infant death syndrome.

12 (6) Tobacco smoke is also responsible for up to  
13 1,000,000 attacks of asthma, 8,000 to 26,000 new cases of  
14 asthma and significant reduction in lung function and causes  
15 serious middle ear infections among children each year.

16 (7) In a comprehensive report released by the Office of  
17 the Surgeon General in June 2006, there is no risk-free level  
18 of exposure to secondhand smoke. Nonsmokers exposed to  
19 secondhand smoke face up to a 30% risk of developing heart  
20 disease and lung cancer.

21 (b) Purpose.--The General Assembly intends to protect the  
22 public health, the comfort of all persons and the environment by  
23 prohibiting smoking in public places and workplaces.

#### 24 Section 3. Definitions.

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

28 "Bar." Any area, enclosed or substantially enclosed, devoted  
29 to the sale and service of alcoholic beverages for on-premises  
30 consumption and where the service of food is only incidental to

1 the consumption of such beverages.

2 "Cigar bar." Any area, enclosed or substantially enclosed,  
3 devoted to the sale and service of tobacco products and  
4 accessories and the rental of onsite humidors for on-premises  
5 consumption where the service of food and alcoholic beverages  
6 generated 25% or less of its annual gross income in the calendar  
7 year ending December 31, 2005, and, on an ongoing basis, the  
8 calendar year preceding an establishment's claim of being a  
9 cigar bar.

10 "Department." The Department of Health of the Commonwealth.

11 "Enclosed." Having a ceiling or roof, except for doors,  
12 windows or passageways, wholly enclosed either on a permanent or  
13 temporary basis.

14 "Enforcement officer." The board of health of a county or in  
15 a county that does not have a board of health, the department.

16 "Government housing facility." Government-owned, multiple-  
17 unit residential facilities.

18 "Health care facility." Any health care facility providing  
19 clinically related health services, including, but not limited  
20 to, a general or special hospital, including psychiatric  
21 hospitals, rehabilitation hospitals, ambulatory surgical  
22 facilities, long-term care nursing facilities, cancer treatment  
23 centers using radiation therapy or special hospital, including  
24 psychiatric hospitals, rehabilitation hospitals, ambulatory  
25 surgical facilities, long-term care nursing facilities, cancer  
26 treatment centers using radiation therapy on an ambulatory basis  
27 and inpatient drug and alcohol treatment facilities, both profit  
28 and nonprofit and including those operated by an agency or State  
29 or local government. The term shall also include a hospice.

30 "Restaurant." Any area, enclosed or substantially enclosed,

1 devoted to the sale or service of food.

2 "Retail tobacco business." A sole proprietorship, limited  
3 liability company, corporation, partnership or other enterprise  
4 in which the primary activity is the retail sale of tobacco  
5 products and accessories where the sale of goods generated 25%  
6 or less of its annual gross income in the calendar year ending  
7 December 31, 2005, and, on an ongoing basis, the calendar year  
8 preceding an establishment's claim of being a retail tobacco  
9 business.

10 "School grounds." A building or structure located within a  
11 public or private preschool, nursery school, elementary or  
12 secondary school's legally defined property boundaries and any  
13 vehicles used to transport children or school personnel.

14 "Smoking." The burning of a lighted cigar, cigarette, pipe  
15 or any other matter or substance which contains tobacco.

16 "Substantially enclosed." Having a ceiling or roof, with an  
17 opening in the walls constituting less than half the total area  
18 of the walls. The area of the opening does not include doors,  
19 windows or other fittings opened or shut.

20 "Workplace." An enclosed or substantially enclosed area  
21 serving as a place of employment, occupation, business, trade,  
22 craft, profession or volunteer activity, including employer-  
23 owned vehicles with more than one occupant.

24 Section 4. Smoking restrictions.

25 (a) Restrictions.--Smoking shall not be permitted and no  
26 individual shall smoke in any of the following areas if they are  
27 enclosed or substantially enclosed areas:

- 28 (1) Workplaces.
- 29 (2) Bars.
- 30 (3) Restaurants.

1 (4) Enclosed or substantially enclosed areas open to the  
2 public.

3 (5) Means of mass transportation, including subways,  
4 buses, trains, taxicabs and limousines.

5 (6) Ticketing, boarding and waiting areas in public  
6 transportation terminals, including, but not limited to,  
7 underground subway stations, train stations and bus stations.

8 (7) A public or private facility that houses or treats  
9 children and youth in State or county custody, including  
10 youth detention centers, group homes and private homes.

11 (8) A public or private facility, including a private  
12 home that provides child-care and/or adult day-care services.

13 (9) School facilities.

14 (10) Public and private colleges, universities and other  
15 educational and vocational institutions.

16 (11) Health care or government housing facilities. This  
17 paragraph, however, shall not prohibit smoking by patients or  
18 residents in separate enclosed rooms of residential health  
19 care facilities, government housing facilities, adult care  
20 facilities, community mental health residences or facilities  
21 where day treatment programs are provided, which are  
22 designated as smoking rooms for patients of the facilities or  
23 programs, or in private residences within the facilities,  
24 provided that the rooms or residences are ventilated to the  
25 outside.

26 (12) Commercial establishments used for the purpose of  
27 carrying on or exercising any trade, profession, vocation or  
28 charitable activity.

29 (13) Indoor arenas.

30 (14) Zoos.

1 (15) Facilities where bingo, as defined in the act of  
2 July 10, 1981 (P.L.214, No.67), known as the Bingo Law, is  
3 played.

4 (16) Licensed facilities, as defined under 4 Pa.C.S. §  
5 1103 (relating to definitions), or any other similar type of  
6 facility authorized under State law.

7 (17) At least 75% of the total number of sleeping  
8 quarters available for rent to guests within a single lodging  
9 establishment such as a hotel or motel.

10 (b) Signage.--"Smoking" or "No Smoking" signs or the  
11 international "No Smoking" symbol, which consists of a pictorial  
12 representation of a burning cigarette in a circle with a bar  
13 across it, shall be prominently posted and properly maintained  
14 where smoking is regulated by this section, by the owner,  
15 operator, manager or other person having control of the area.

16 (c) Exceptions.--The provisions of this section shall not  
17 apply to any of the following:

18 (1) Private homes, private residences and private  
19 automobiles unless the private home, private residence or  
20 private vehicle is being used at the time for the provision  
21 of child-care services or services related to the care of  
22 children and youth in State or county custody, pursuant to  
23 section 4(a)(7), (8) and (9).

24 (2) Retail tobacco businesses.

25 (3) Cigar bars.

26 (4) Designated sleeping quarters within a lodging  
27 establishment available for rent to guests accounting for no  
28 more than 25% of the total number of lodging units within a  
29 single lodging establishment such as a hotel or motel.

30 (5) Workplaces of any manufacturer, importer or

1 wholesaler of tobacco products, of any tobacco leaf dealer or  
2 processor and all tobacco storage facilities.

3 (d) Relationship to other laws.--Smoking may not be  
4 permitted where prohibited by any other law, rule or regulation  
5 of any Commonwealth agency or any political subdivision. Nothing  
6 in this section shall be construed to restrict the power of any  
7 political subdivision to adopt and enforce additional local  
8 laws, ordinances or regulations that are more restrictive than  
9 this section and comply with the standards set forth under this  
10 section.

11 (e) Prohibited acts.--The following shall be unlawful:

12 (1) For any employer or other person that owns, manages,  
13 operates or otherwise controls the use of an area in which  
14 smoking is prohibited or restricted under this section to  
15 fail to comply with the provisions of this section. It shall  
16 be an affirmative defense that during the relevant time  
17 period actual control of the area was not exercised by the  
18 employer or other person, but rather by a lessee or a  
19 sublessee. It shall also be an affirmative defense that the  
20 employer or other person has made a good faith effort to  
21 ensure compliance with the provisions of this section. To  
22 establish an affirmative defense, the employer or other  
23 person who controls the area shall submit an affidavit and  
24 may submit any other relevant proof indicating that the  
25 person did not exercise actual control of the area during the  
26 relevant time period, or that he made a good faith effort to  
27 ensure compliance with the law. The affidavit and other proof  
28 shall be sent by certified mail to the appropriate  
29 enforcement officer within 30 days of receipt by the person  
30 of a notice of violation.

1           (2) For an individual to smoke in any area where smoking  
2 is prohibited or restricted under this section.

3           (f) Penalty for unlawful conduct.--

4           (1) If the enforcement officer determines that a  
5 violation of subsection (e) has occurred, the enforcement  
6 officer may impose a civil penalty of \$250 for the first  
7 offense, \$500 for the second offense and \$1,000 for each  
8 subsequent offense. The money shall go to the county board of  
9 health or in counties that do not have a board of health, the  
10 department, to be used to enforce this act. In addition, a  
11 court of competent jurisdiction may order immediate  
12 compliance with the provisions of this section.

13           (2) The enforcement officer may bring an action to  
14 recover the civil penalty provided under paragraph (1) in any  
15 court of competent jurisdiction. A civil penalty recovered  
16 under the provisions of this section shall be recovered by  
17 and in the name of the county board of health or the county  
18 for whom the enforcement officer has been designated.

19           (g) Enforcement officer.--If a county does not have a board  
20 of health, the governing body of the county shall, by resolution  
21 adopted within 30 days following the effective date of this  
22 section, designate an officer for the purpose of enforcing this  
23 section. The designation shall be filed with the department  
24 within 30 days after adoption and shall be effective 30 days  
25 after it is filed with the department. The enforcement officer  
26 shall have sole jurisdiction to enforce the provisions of this  
27 section on a countywide basis under the guidelines developed and  
28 published by the department. Any person who desires to register  
29 a complaint under this section may do so with the appropriate  
30 enforcement officer.

1 Section 5. Retaliation prohibited.

2 No person or employer shall discharge, refuse to hire or in  
3 any manner retaliate against any employee or applicant for  
4 employment because the employer or applicant exercises any right  
5 to a smoke-free environment required by this act.

6 Section 6. Rules and regulations.

7 The department shall promulgate and adopt rules and  
8 regulations as are necessary and reasonable to implement the  
9 provisions of this act including the enforcement of this act in  
10 the event individual counties fail to enforce this act. The  
11 department shall also engage in a continuing program to explain  
12 and clarify the purposes and requirements of this act to persons  
13 affected by it and to guide owners, operators and managers in  
14 their compliance with this act. The programs may include  
15 publication of a brochure for affected businesses and  
16 individuals explaining the provisions of this act.

17 Section 7. Construction.

18 In any dispute arising under the provisions of this act, the  
19 authority adjudicating the dispute shall construe the provisions  
20 of this act in favor of the health concerns of persons who do  
21 not engage in smoking and whose concerns shall represent the  
22 public interest.

23 Section 8. Repeal.

24 Section 10.1 of the act of April 27, 1927 (P.L.465, No.299),  
25 referred to as the Fire and Panic Act, is repealed in order to  
26 effectuate the provisions of this act.

27 Section 9. Effective date.

28 This act shall take effect in 90 days.