

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 720 Session of
2007

INTRODUCED BY KENNEY, OLIVER, McILHATTAN, ROSS, CURRY, SHIMKUS,
REICHLEY, GINGRICH, WHEATLEY, MUNDY, WATSON, TRUE,
BENNINGTON, BLACKWELL, CAPPELLI, CLYMER, COHEN, DALEY, DALLY,
DeLUCA, DePASQUALE, J. EVANS, EVERETT, FRANKEL, FREEMAN,
HORNAMAN, JOSEPHS, KILLION, MOUL, RUBLEY, SIPTROTH, STEIL,
SWANGER, WALKO AND YOUNGBLOOD, MARCH 9, 2007

REFERRED TO COMMITTEE ON HEALTH AND HUMAN SERVICES,
MARCH 9, 2007

AN ACT

1 Establishing the Clean Indoor Air Act; imposing duties upon the
2 Department of Health; imposing penalties; and making a
3 related repeal.

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

6 Section 1. Short title.

7 This act shall be known and may be cited as the Clean Indoor
8 Air Act.

9 Section 2. Legislative findings and purpose.

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

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

14 (2) The Department of Environmental Protection has
15 classified secondhand tobacco smoke as a Class A carcinogen,
16 a classification reserved for the most lethal environmental

1 hazards, such as asbestos, benzene, formaldehyde and radon.

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

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

8 (5) Tobacco smoke is also responsible for up to
9 1,000,000 attacks of asthma, 8,000 to 26,000 new cases of
10 asthma and significant reduction in lung function and causes
11 serious middle ear infections among children each year.

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

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

20 Section 3. Definitions.

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

24 "Bar" or "tavern." A place of business, including outdoor
25 seating, devoted to the serving of alcoholic beverages for
26 consumption on the premises and where the service of food is
27 incidental to the consumption of alcoholic beverages.

28 "Bingo hall." Any association licensed to conduct bingo
29 pursuant to the act of July 10, 1981 (P.L.214, No.67), known as
30 the Bingo Law.

1 "Common access area." An area that is used by the public to
2 access a building, shopping mall or other facility.

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

4 "Educational facility." An institution, public or private,
5 whose purpose is to educate students ranging from
6 prekindergarten through 12th grade. The term includes an
7 institution providing post high school degrees, both technical
8 and academic.

9 "Enclosed area." All space between a floor and ceiling which
10 is enclosed on all sides by solid walls or windows, exclusive of
11 doors or passageways, which extend from the floor to the
12 ceiling.

13 "Enforcement officer." The board of health of a county or,
14 in the absence of one, an officer of a county designated for
15 such purpose by the governing body of the county.

16 "Health facility." An office or institution providing care
17 or treatment of diseases, whether physical, mental or emotional,
18 or other medical physiological or psychological conditions,
19 including, but not limited to, hospitals, rehabilitation
20 hospitals, or other clinics, including weight control clinics,
21 nursing homes, homes for the aged or chronically ill,
22 laboratories and offices of surgeons, chiropractors, physical
23 therapists, physicians, dentists and all specialists within
24 these professions. The term includes all waiting rooms,
25 hallways, private rooms, semiprivate rooms and wards within
26 health care facilities. The term also includes patient transport
27 vehicles owned or leased by the health care facility.

28 "Licensed gaming facility." Any facility or entity licensed
29 by the Pennsylvania Gaming Control Board pursuant to 4 Pa.C.S.
30 Pt. II (relating to gaming).

1 "Lodging establishment." Any hotel, motel, inn, resort,
2 guesthouse, bed and breakfast establishment or other building
3 which holds itself out by any means, including advertising,
4 license, registration with an innkeepers' group convention
5 listing association, travel publication or similar association
6 or with a government agency, as being available to provide
7 overnight lodging or use of facility space, such as space for
8 food and beverage service or meeting rooms, for consideration to
9 persons seeking temporary accommodations.

10 "Passageway." An enclosed means of ingress and egress to any
11 regulated area, used by employees, residents, guests,
12 contractors or the public, up to and including 20 feet from the
13 outermost point of public contact with such area.

14 "Private club." Any reputable group of individuals
15 associated together as a not-for-profit organization for
16 legitimate purposes of mutual benefit, entertainment, fellowship
17 or lawful convenience which regularly and exclusively occupies,
18 as owner or lessee, a clubhouse or quarters for the use of its
19 members and which holds regular meetings, conducts business
20 through officers regularly elected, admits members by written
21 application, investigation and ballot, and charges and collects
22 dues from elected members. The club shall either be incorporated
23 or, if unincorporated, provide proof of continuous existence for
24 the past ten years in a manner deemed sufficient by the
25 Department of Health.

26 "Public meeting." Any meeting open to the public, including
27 any meeting open to the public pursuant to 65 Pa.C.S. Ch. 7
28 (relating to open meetings).

29 "Public place." Any enclosed area to which the public is
30 invited or in which the public is permitted, including, but not

1 limited to, any place listed in section 5. A private club is a
2 public place when being used for a function to which the general
3 public is invited. A private residence is not a public place
4 unless it is used as a licensed facility for child care, adult
5 care or health care.

6 "Public transit." Any means of mass transportation,
7 including subways, underground subway stations, buses, school
8 buses, vans, taxicabs and limousines. The term includes
9 terminals, ticketing, boarding and waiting areas in public
10 transportation terminals.

11 "Restaurant." Any restaurant, bar, coffee shop, cafeteria,
12 sandwich stand, diner, fast-food establishment, cafeteria,
13 banquet hall, catering facility, food court or any other eating
14 or drinking establishment, including outdoor seating, which
15 gives or offers for sale food or drink to the public, guests or
16 employees, whether for consumption on or off the premises, and
17 including any such eating or drinking establishment located in a
18 lodging establishment, sports or recreational facility or
19 theater or performance establishment.

20 "Regulated area." Any area where smoking is prohibited by
21 this act.

22 "Service line." Any line at which one or more persons are
23 waiting for or receiving service of any kind, whether or not
24 such service involves the exchange of money.

25 "Shopping mall." An enclosed public area that houses
26 multiple retail or professional establishments. This term
27 includes the enclosed public walkways or halls that connect the
28 retail and professional establishments within the shopping mall.

29 "Smoking." The carrying by a person of a lighted cigar,
30 cigarette, pipe or other lighted smoking device.

1 "Specialty tobacco establishment." A place of business
2 devoted to the site sales or rentals of tobacco, tobacco-related
3 products and accessories for consumption or use on or off the
4 premises and where the service of food or beverage is incidental
5 to the consumption of tobacco products.

6 "Sports or recreational facility." Any enclosed or
7 unenclosed stadium, pavilion, gymnasium, health club, spa,
8 swimming pool, roller or ice rink, bowling alley, boxing arena,
9 billiard parlor, pool hall or other similar place where members
10 of the general public assemble either to engage in physical
11 exercise, participate in recreational activities or athletic
12 competition or witness sports or other events.

13 "Tobacco products distribution business." An establishment
14 whose primary business is the retail or wholesale sale of
15 tobacco, tobacco-related products and accessories for
16 consumption on or off the premises. The term may also include
17 areas for the import, export, storage and distribution of
18 tobacco, tobacco-related products and accessories, areas for
19 testing of such products and accessories by employees and
20 accessory office space. The term shall not include the selling
21 or offering of any food or beverages to customers.

22 "Workplace." An indoor area serving as a place of
23 employment, occupation, business, trade, craft, profession or
24 volunteer activity. A private residence is not a workplace
25 unless it is used as a licensed facility for child care, adult
26 day care or health care.

27 Section 4. Prohibition.

28 No person shall smoke in a public place or in a workplace.

29 Section 5. Public place.

30 A public place includes, but is not limited to, the following

1 areas:

- 2 (1) A place in which a public meeting is held.
- 3 (2) An educational facility.
- 4 (3) A school bus.
- 5 (4) A health facility.
- 6 (5) An auditorium.
- 7 (6) An arena.
- 8 (7) A theater.
- 9 (8) A museum.
- 10 (9) A restaurant.
- 11 (10) A bar or tavern.
- 12 (11) A concert hall.
- 13 (12) A commercial establishment.
- 14 (13) A retail store.
- 15 (14) A service line.
- 16 (15) A grocery store.
- 17 (16) A bingo hall.
- 18 (17) A licensed gaming facility.
- 19 (18) A waiting room or area.
- 20 (19) A hallway.
- 21 (20) A passageway.
- 22 (21) A polling place.
- 23 (22) A restroom.
- 24 (23) A sports arena.
- 25 (24) A convention hall.
- 26 (25) An elevator.
- 27 (26) Public transit.
- 28 (27) A public food assistance program and facility.
- 29 (28) A shopping mall.
- 30 (29) An exhibition hall.

1 (30) A rotunda or lobby.

2 (31) A zoo.

3 Section 6. Exceptions.

4 This act shall not apply to the following places:

5 (1) A private residence, except for a private residence
6 licensed as a child-care facility, adult day-care facility or
7 health care facility.

8 (2) Licensed entities that provide residential services
9 to adults such as group homes, long-term care facilities,
10 nursing homes and personal care homes that provide a
11 designated, separately enclosed smoking room for residents of
12 such facilities.

13 (3) A private club as defined in section 3, except for
14 those areas of a private club that are used for a function to
15 which the general public is admitted.

16 (4) Sleeping quarters of lodging facilities that are
17 designated as smoking. No more than 25% of the total number
18 of sleeping quarters within a single lodging facility that
19 are rented to guests may be designated smoking. Smoke from
20 these rooms must not infiltrate into other areas of the
21 facility where smoking is prohibited.

22 (5) Specialty tobacco establishments, unless such
23 establishment is adjoined to or shares a common access area
24 with any business or entity that is subject to the provisions
25 of this act.

26 (6) Tobacco products distribution businesses, including
27 the workplaces of any manufacturer, importer or wholesaler of
28 tobacco products, of any tobacco leaf dealer or processor and
29 all tobacco storage facilities.

30 Section 7. Retaliation prohibited.

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

5 Section 8. Enforcement.

6 (a) Citations.--The owner, operator, manager, employer or
7 other person in control of every place where smoking is
8 regulated by this act shall not be cited for violations of this
9 act provided the following actions are taken:

10 (1) Post "No Smoking" signs and other signs relating to
11 smoking on the premises.

12 (2) Take reasonable measures to assure that no person
13 smokes in violation of this act. This includes informing an
14 individual smoking in the regulated area that smoking is
15 prohibited by law and request the individual either
16 immediately stop smoking or leave the regulated area.

17 (b) Enforcement officer.--The enforcement officer shall have
18 sole jurisdiction to enforce the provisions of this act on a
19 countywide basis.

20 (c) Complaints.--Complaints regarding unlawful smoking shall
21 be reported to the enforcement officer.

22 (d) Issuance of citation.--The enforcement officer shall
23 determine whether a violation of section 4 has occurred. If a
24 violation has been determined, the enforcement officer may issue
25 a citation for a violation of the provisions of this act.

26 Section 9. Penalty.

27 (a) Persons.--Any person who smokes in a public place or in
28 a workplace or violates any other provision of this act commits
29 a summary offense and shall pay:

30 (1) A fine not exceeding \$100 for a first violation.

1 (2) A fine not exceeding \$200 for a second violation
2 that occurs within one calendar year from the date of the
3 first offense.

4 (3) A fine not exceeding \$500 for each additional
5 violation that occurs within one calendar year from the date
6 of the first offense.

7 (b) Business or entity.--A business or entity that is
8 subject to the provisions of this act and that violates any
9 provision of this act commits a summary offense and shall be
10 subject to the following:

11 (1) A fine not exceeding \$100 for a first violation.

12 (2) A fine not exceeding \$200 for a second violation
13 that occurs within one calendar year from the date of the
14 first offense.

15 (3) A fine not exceeding \$500 for each additional
16 violation that occurs within one calendar year from the date
17 of the first offense.

18 (4) Repeated failure to comply with section 4 may result
19 in a suspension of other business licenses issued by State
20 and local agencies, including, but not limited to, licenses
21 issued for liquor, gaming, bingo or food service.

22 (c) Disposition of fines.--Fines collected from violations
23 of this section shall be allocated toward funding tobacco
24 cessation and prevention programs operated by the department.

25 Section 10. Rules and regulations.

26 The department shall promulgate and adopt rules and
27 regulations as are necessary and reasonable to implement the
28 provisions of this act. The department shall also engage in a
29 continuing program to explain and clarify the purposes and
30 requirements of this act to persons affected by it and to guide

1 owners, operators and managers in their compliance with it. The
2 programs may include publication of a brochure for affected
3 businesses and individuals explaining the provisions of this
4 act.

5 Section 11. Construction.

6 In any dispute arising under the provisions of this act, the
7 authority adjudicating the dispute shall construe the provisions
8 of this act in favor of the health concerns of persons who do
9 not engage in smoking and whose concerns shall represent the
10 public interest.

11 Section 12. Effect on local rules and ordinances.

12 This act shall preempt and supersede any local ordinance or
13 rule concerning the subject matter of this section.

14 Section 13. Repeal.

15 (a) Intent.--The General Assembly declares that the repeal
16 under subsection (b) is necessary to effectuate the provisions
17 of this act.

18 (b) Provision.--Section 10.1 of the act of April 27, 1927
19 (P.L.465, No.299), referred to as the Fire and Panic Act, is
20 repealed.

21 Section 14. Effective date.

22 This act shall take effect January 1, 2008.