

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1245 Session of 2009

INTRODUCED BY SCAVELLO, CHRISTIANA, BOYD, D. COSTA, EVERETT, FRANKEL, FREEMAN, GIBBONS, GINGRICH, JOSEPHS, MELIO, MUNDY, MURT, SWANGER AND VULAKOVICH, APRIL 8, 2009

REFERRED TO COMMITTEE ON HEALTH AND HUMAN SERVICES, APRIL 8, 2009

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 prohibiting smoking in  
6 public places; providing for local ordinances; and making a  
7 related repeal of the Fire and Panic Act.

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

10 Section 1. The title of the act of June 13, 2008 (P.L.182,  
11 No.27), known as the Clean Indoor Air Act, is amended to read:

AN ACT

13 Regulating smoking in this Commonwealth; imposing powers and  
14 duties on the Department of Health and local boards of  
15 health; providing penalties; [preempting] repealing  
16 provisions relating to preemption of local action; providing  
17 for effect on local ordinances; and making [a related repeal]  
18 related repeals.

19 Section 2. Sections 2, 3(b) and (c), 4, 5(d), 6(c) and 10 of

1 the act are amended to read:

2 Section 2. Definitions.

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

6 "Cigar bar." Any of the following:

7 (1) An establishment which, on [the effective date of  
8 this section] September 11, 2008, operates pursuant to an  
9 eating place retail dispenser's or restaurant liquor license  
10 under the act of April 12, 1951 (P.L.90, No.21), known as the  
11 Liquor Code, and is physically connected by a door,  
12 passageway or other opening and directly adjacent to a  
13 tobacco shop.

14 (2) An establishment which, at any time, operates  
15 pursuant to an eating place retail dispenser's license, malt  
16 or brewed beverage distributor's license or restaurant liquor  
17 license under the Liquor Code, and has total annual sales of  
18 tobacco products, including tobacco, accessories or cigar  
19 storage lockers or humidors of at least 15% of the combined  
20 gross sales of the establishment.

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

22 "Drinking establishment." [Any of the following:

23 (1)] An establishment which[:

24 (i)] operates pursuant to an eating place retail  
25 dispenser's license, restaurant liquor license or retail  
26 dispenser's license under the act of April 12, 1951  
27 (P.L.90, No.21), known as the Liquor Code[;]. The term  
28 also includes a nightclub.

29 [(ii) has total annual sales of food sold for on-  
30 premises consumption of less than or equal to 20% of the

combined gross sales of the establishment; and

(iii) does not permit individuals under 18 years of age.

(2) An enclosed area within an establishment which, on the effective date of this section:

(i) operates pursuant to an eating place retail dispenser's license, restaurant liquor license or retail dispenser's license under the Liquor Code;

(ii) is a physically connected or directly adjacent enclosed area which is separate from the eating area, has a separate air system and has a separate outside entrance;

(iii) has total annual sales of food sold for on-premises consumption of less than or equal to 20% of the combined gross sales within the permitted smoking area of the establishment; and

(iv) does not permit individuals under 18 years of age.

The term does not include a nightclub.]

"Full-service truck stop." An establishment catering to long-haul truck drivers that provides shower facilities for a fee.

"Gaming floor." Any portion of a licensed facility where slot machines have been installed for use or play as approved by the Pennsylvania Gaming Control Board. [The term does not include an area adjacent to the gaming floor, including any hallway, reception area, retail space, bar, nightclub, restaurant, hotel, entertainment venue or office space.]

"Licensed facility." As defined in 4 Pa.C.S. § 1103 (relating to definitions).

1 "Night club." A public hall or hall for which admission is  
2 generally charged and which is primarily or predominantly  
3 devoted to dancing or to shows or cabarets as opposed to a  
4 facility that is primarily a bar, tavern or dining facility.

5 "Private club." An organization [which is any of the  
6 following:] including, but not limited to:

7 (1) A reputable group of individuals associated together  
8 as an organization for legitimate purposes of mutual benefit,  
9 entertainment, fellowship or lawful convenience. [which does  
10 all of the following:

11 (i) Regularly and exclusively occupies, as owner or  
12 lessee, a clubhouse or quarter for the use of its  
13 members.

14 (ii) Holds regular meetings; conducts its business  
15 through officers regularly elected; admits members by  
16 written application, investigation and ballot; and  
17 charges and collects dues from elected members.

18 (iii) Has been in continuous existence for a period  
19 of ten years as such an organization.]

20 (2) A volunteer ambulance service.

21 (3) A volunteer fire company.

22 (4) A volunteer rescue company.

23 "Public meeting." A meeting open to the public. The term  
24 includes a meeting under 65 Pa.C.S. Ch. 7 (relating to open  
25 meetings).

26 "Public place." An enclosed area which serves as a  
27 workplace, commercial establishment or an area where the public  
28 is invited or permitted. The term includes:

29 (1) A facility which provides education, food or health  
30 care-related services.

1           (2) A vehicle used for mass transportation. This  
2 paragraph includes a train, subway, bus, including a  
3 chartered bus, plane, taxicab and limousine.

4           (3) A train station, subway station or bus station.

5           (4) A public facility. This paragraph includes a  
6 facility to which the public is invited or in which the  
7 public is permitted and a private home which provides child-  
8 care or adult day-care services.

9           (5) A sports or recreational facility, theater or  
10 performance establishment.

11           (6) A full service truck stop.

12           (7) A residential facility.

13           (8) A private club.

14           (9) A drinking establishment.

15           (10) A gaming floor.

16           (11) Any outdoor deck, patio or similar outdoor service  
17 area which is part of a food or drinking establishment.

18           "Residential facilities." The term includes any of the  
19 following:

20           (1) A long-term care facility regulated under 42 CFR  
21 483.15 (relating to quality of life).

22           (2) Residential adult care facility.

23           (3) Community mental health care facility.

24           (4) Drug or alcohol facility.

25           (5) Day treatment programs.

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

28           "Tobacco shop." A business establishment whose sales of  
29 tobacco and tobacco-related products, including cigars, pipe  
30 tobacco and smoking accessories, comprise at least 50% of the

1 gross annual sales. This term does not include a stand-alone  
2 kiosk or establishment comprised solely of cigarette vending  
3 machines.

4 "Volunteer ambulance service." As defined in section 102 of  
5 the act of July 31, 2003 (P.L.73, No.17), known as the Volunteer  
6 Fire Company and Volunteer Ambulance Service Grant Act.

7 "Volunteer fire company." As defined in section 102 of the  
8 act of July 31, 2003 (P.L.73, No.17), known as the Volunteer  
9 Fire Company and Volunteer Ambulance Service Grant Act.

10 "Volunteer rescue company." As defined in section 102 of the  
11 act of July 31, 2003 (P.L.73, No.17), known as the Volunteer  
12 Fire Company and Volunteer Ambulance Service Grant Act.

13 "Workplace." An indoor area serving as a place of  
14 employment, occupation, business, trade, craft, professional or  
15 volunteer activity.

16 Section 3. Prohibition.

17 \* \* \*

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

20 (1) A private home, private residence or private vehicle  
21 unless the private home, private residence or private vehicle  
22 is being used at the time for the provision of child-care  
23 services, adult day-care services or services related to the  
24 care of children and youth in State or county custody.

25 (2) Designated quarters[:

26 (i)] within a lodging establishment which are  
27 available for rent to guests accounting for no more than  
28 25% of the total number of lodging units within a single  
29 lodging establishment.]; or

30 (ii) within a full-service truck stop.]

1 (3) A tobacco shop.

2 (4) A workplace of a manufacturer, importer or  
3 wholesaler of tobacco products; a manufacturer of tobacco-  
4 related products, including lighters; a tobacco leaf dealer  
5 or processor; or a tobacco storage facility.

6 [(5) Any of the following residential facilities:

7 (i) A long-term care facility regulated under 42 CFR  
8 483.15 (relating to quality of life). This subparagraph  
9 shall not apply if 42 CFR 483.15 is abrogated or expires.

10 (ii) A separate enclosed room or designated smoking  
11 room in a residential adult care facility, community  
12 mental health care facility, drug and alcohol facility or  
13 other residential health care facility not covered under  
14 subparagraph (i).

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

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

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

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

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

26 (i) The place is separate from other public areas  
27 during the event.

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

29 (iii) Individuals under 18 years of age are not  
30 permitted to attend.

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

(8) An exhibition hall, conference room, catering hall  
or similar facility used exclusively for an event to which  
the public is invited for the primary purpose of promoting or  
sampling tobacco products, subject to the following:

(i) All of the following must be met:

(A) Service of food and drink is incidental.

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

(C) At least 75% of all products displayed or  
distributed at the event are tobacco or tobacco-  
related products.

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

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

(9) A cigar bar.

[(10) A drinking establishment.

(11) Unless otherwise increased under this paragraph,  
25% of the gaming floor at a licensed facility. No earlier  
than 90 days following the effective date of this section or  
the date of commencement of slot machine operations at a  
licensed facility, whichever is later, a licensed facility  
shall request a report from the Department of Revenue that  
analyzes the gross terminal revenue per slot machine unit in



1 operation at the licensed facility within the 90-day period  
2 preceding the request. If the report shows that the average  
3 gross terminal revenue per slot machine unit in the  
4 designated smoking area equals or exceeds the average gross  
5 terminal revenue per slot machine unit in the designated  
6 nonsmoking area, the licensed facility may increase the  
7 designated smoking area of the gaming floor in proportion to  
8 the percentage difference in revenue. A licensed facility may  
9 request this report from the Department of Revenue on a  
10 quarterly basis and may increase the designated smoking area  
11 of the gaming floor accordingly. At no time may the  
12 designated smoking area exceed 50% of the gaming floor. The  
13 board shall have jurisdiction to verify the gross terminal  
14 revenues included in the report to ensure compliance with the  
15 requirements under this paragraph. Movement of the licensed  
16 facility from a temporary facility to a permanent facility  
17 shall not require the licensed facility to revert to the  
18 minimum percentage set forth under this paragraph.]

19 (12) A designated outdoor smoking area within the  
20 confines of a sports or recreational facility, theater or  
21 performance establishment.

22 (c) Conditions and qualifications for exceptions.--

23 [(1)] In order to be excepted under subsection (b), a  
24 [drinking establishment,] cigar bar or tobacco shop must  
25 submit a letter, accompanied by verifiable supporting  
26 documentation, to the department claiming an exception under  
27 subsection (b). Exception shall be based upon the  
28 establishment's books, accounts, revenues or receipts,  
29 including those reported to the Department of Revenue for  
30 sales tax purposes, from the previous year or stated

1 projected annual revenues, which shall be verified within six  
2 months.

3 [(2) In order to qualify for the exception under  
4 subsection (b)(6), a private club must take and record a vote  
5 of its officers under the bylaws to address smoking in the  
6 private club's facilities.]

7 Section 4. Signage.

8 "Smoking Permitted" or "No Smoking" signs or the  
9 international "No Smoking" symbol, which consists of a pictorial  
10 representation of a burning cigarette in a circle with a bar  
11 across it, shall be prominently posted and properly maintained  
12 where smoking is regulated by this act by the owner, operator,  
13 manager or other person having control of the area. A "Smoking  
14 Permitted" sign shall be prominently posted and maintained at  
15 every entrance to a public place where smoking is permitted  
16 under this act.

17 Section 5. Enforcement.

18 \* \* \*

19 (d) Access to records.--A [drinking establishment,] cigar  
20 bar and tobacco shop shall make available all books, accounts,  
21 revenues, receipts and other information to the department, the  
22 Department of Revenue, the State licensing agency or a county  
23 board of health as necessary to enforce this act. All  
24 information submitted to the Department of Health, a county  
25 board or other Commonwealth agency with enforcement duties under  
26 this act[, including information to verify the on-site food  
27 consumption of a drinking establishment,] shall be confidential  
28 and shall not be subject to the [act of June 21, 1957 (P.L.390,  
29 No.212), referred to as the Right-to-Know Law] act of February  
30 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law.

1 Section 6. Violations, affirmative defenses and penalties.

2 \* \* \*

3 (c) Commonwealth administrative penalties.--

4 (1) If the department or a State licensing agency [or a  
5 county board of health] determines that a person has violated  
6 subsection (a), the person shall be subject to a penalty not  
7 to exceed \$250.

8 (2) If the department or a State licensing agency [or a  
9 county board of health] determines that a person has violated  
10 subsection (a) within one year of receiving a penalty under  
11 paragraph (1), the person shall be subject to a penalty not  
12 to exceed \$500.

13 (3) If the department or a State licensing agency [or a  
14 county board of health] determines that a person violated  
15 subsection (a) within one year of receiving a penalty under  
16 paragraph (2), the person shall be subject to a penalty not  
17 to exceed \$1,000.

18 (4) This subsection is subject to 2 Pa.C.S. (relating to  
19 administrative law and procedure).

20 (5) The penalties collected under this subsection shall  
21 be retained by the department or the State licensing agency  
22 initiating the enforcement action.

23 \* \* \*

24 Section 10. Administration.

25 (a) Regulations.--The department shall promulgate  
26 regulations to implement this act.

27 (b) Revision of forms.--The Department of Revenue may revise  
28 the form for reporting sales tax revenue to require separate  
29 reporting of sales of [alcohol and] tobacco and tobacco-related  
30 products for purposes of claiming exemptions under this act.

1 Section 3. Section 11 of the act is repealed:

2 [Section 11. Preemption of local ordinances.

3 (a) General rule.--Except as set forth in subsection (b),  
4 the following apply:

5 (1) This act shall supersede any ordinance, resolution  
6 or regulation adopted by a political subdivision concerning  
7 smoking in a public place.

8 (2) No political subdivision shall have the authority to  
9 adopt or enforce any ordinance, regulation or resolution  
10 which is in conflict with this act.

11 (b) Exception.--Subsection (a) shall not apply to a city of  
12 the first class. A city of the first class may not change or  
13 amend its ordinance to conflict with any provision of this act.]

14 Section 4. The act is amended by adding a section to read:  
15 Section 12. Effect on local rules and ordinances.

16 This act shall not be construed to restrict the power of a  
17 political subdivision to adopt and enforce any rule or ordinance  
18 that complies with at least the minimum applicable standards set  
19 forth in this act.

20 Section 5. Sections 29 and 30 of the act are amended to  
21 read:

22 Section [29] 13. [Repeal] Repeals.

23 (a) Intent.--The General Assembly declares that the repeal  
24 under subsection (b) is necessary to effectuate this act.

25 (b) [Provision] Provisions.--

26 (1) Section 10.1 of the act of April 27, 1927 (P.L.465,  
27 No.299), referred to as the Fire and Panic Act, is repealed.

28 (2) Section 15.1 of the Fire and Panic Act is repealed  
29 insofar as it refers to section 10.1 of that act and to the  
30 extent of any inconsistency with this act.

1 Section [30] 14. Effective date.

2 This act shall take effect in 90 days.

3 Section 6. This act shall take effect in 60 days.