

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 35 Session of 2011

INTRODUCED BY GREENLEAF, PICCOLA, ERICKSON, ALLOWAY, FARNESE AND
LEACH, JANUARY 12, 2011

REFERRED TO PUBLIC HEALTH AND WELFARE, JANUARY 12, 2011

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
14 and 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
20 the act are amended to read:

1 Section 2. Definitions.

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

5 "Cigar bar." Any of the following:

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

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

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

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

22 (1)] An establishment which[:

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

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

"Night club." A public hall or hall for which admission is

1 generally charged and which is primarily or predominantly
2 devoted to dancing or to shows or cabarets as opposed to a
3 facility that is primarily a bar, tavern or dining facility.

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

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

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

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

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

19 (2) A volunteer ambulance service.

20 (3) A volunteer fire company.

21 (4) A volunteer rescue company.

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

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

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

30 (2) A vehicle used for mass transportation. This

paragraph includes a train, subway, bus, including a chartered bus, plane, taxicab and limousine.

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

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

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

(6) A full service truck stop.

(7) A residential facility.

(8) A private club.

(9) A drinking establishment.

(10) A gaming floor.

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

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

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

(2) Residential adult care facility.

(3) Community mental health care facility.

(4) Drug or alcohol facility.

(5) Day treatment programs.

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

"Tobacco shop." A business establishment whose sales of tobacco and tobacco-related products, including cigars, pipe tobacco and smoking accessories, comprise at least 50% of the gross annual sales. This term does not include a stand-alone

1 kiosk or establishment comprised solely of cigarette vending
2 machines.

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

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

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

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

15 Section 3. Prohibition.

16 * * *

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

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

24 (2) Designated quarters[:

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

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

30 (3) A tobacco shop.

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

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

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

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

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

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

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

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

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

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

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

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

30 (iv) Cigars are sold, auctioned or given as gifts,

1 and cigars are a feature of the event.

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

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

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

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

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

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

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

21 (9) A cigar bar.

22 [(10) A drinking establishment.

23 (11) Unless otherwise increased under this paragraph,
24 25% of the gaming floor at a licensed facility. No earlier
25 than 90 days following the effective date of this section or
26 the date of commencement of slot machine operations at a
27 licensed facility, whichever is later, a licensed facility
28 shall request a report from the Department of Revenue that
29 analyzes the gross terminal revenue per slot machine unit in
30 operation at the licensed facility within the 90-day period

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

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

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

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

1 months.

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

6 Section 4. Signage.

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

16 Section 5. Enforcement.

17 * * *

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

30 Section 6. Violations, affirmative defenses and penalties.

1 * * *

2 (c) Commonwealth administrative penalties.--

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

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

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

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

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

22 * * *

23 Section 10. Administration.

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

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

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

1 [Section 11. Preemption of local ordinances.

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

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

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

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

13 Section 4. The act is amended by adding a section to read:

14 Section 12. Effect on local rules and ordinances.

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

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

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

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

24 (b) [Provision] Provisions.--

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

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

30 Section [30] 14. Effective date.

1 This act shall take effect in 90 days.

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