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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 124 Session of  
2021

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INTRODUCED BY FONTANA, STREET, MUTH, BLAKE, SCHWANK, BREWSTER,  
CAPPELLETTI AND COSTA, JANUARY 26, 2021

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REFERRED TO HEALTH AND HUMAN SERVICES, JANUARY 26, 2021

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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 and for prohibition.

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

9 Section 1. The definitions of "drinking establishment,"  
10 "gaming floor," "night club" and "smoking" in section 2 of the  
11 act of June 13, 2008 (P.L.182, No.27), known as the Clean Indoor  
12 Air Act, are amended 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 "Drinking establishment." Any of the following:

19 (1) An establishment which:

20 (i) operates pursuant to an eating place retail

1 dispenser's license, restaurant liquor license or retail  
2 dispenser's license under the act of April 12, 1951  
3 (P.L.90, No.21), known as the Liquor Code;

4 (ii) has total annual sales of food sold for on-  
5 premises consumption of less than or equal to 20% of the  
6 combined gross sales of the establishment; [and]

7 (iii) does not permit individuals under 18 years of  
8 age[.]; and

9 (iv) is not located in a licensed facility.

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

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

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

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

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

25 The term does not include a nightclub.

26 \* \* \*

27 ["Gaming floor." Any portion of a licensed facility where  
28 slot machines have been installed for use or play as approved by  
29 the Pennsylvania Gaming Control Board. The term does not include  
30 an area adjacent to the gaming floor, including any hallway,

1 reception area, retail space, bar, nightclub, restaurant, hotel,  
2 entertainment venue or office space.]

3 \* \* \*

4 "Night club." A public hall or hall for which admission is  
5 generally charged and which is primarily or predominantly  
6 devoted to dancing or to shows or cabarets as opposed to a  
7 facility that is primarily a bar, tavern or dining facility and  
8 is not located in a licensed facility.

9 \* \* \*

10 "Smoking." The carrying by a person of a lighted cigar,  
11 cigarette, pipe or other lighted smoking device, including an  
12 electronic cigarette.

13 \* \* \*

14 Section 2. Section 3(b)(11) and (12) of the act are amended  
15 to read:

16 Section 3. Prohibition.

17 \* \* \*

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

20 \* \* \*

21 (11) [Unless otherwise increased under this paragraph,  
22 25% of the gaming floor at a licensed facility. No earlier  
23 than 90 days following the effective date of this section or  
24 the date of commencement of slot machine operations at a  
25 licensed facility, whichever is later, a licensed facility  
26 shall request a report from the Department of Revenue that  
27 analyzes the gross terminal revenue per slot machine unit in  
28 operation at the licensed facility within the 90-day period  
29 preceding the request. If the report shows that the average  
30 gross terminal revenue per slot machine unit in the

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

16 (Reserved).

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

20 \* \* \*

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