

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1657 Session of
2023

INTRODUCED BY FRANKEL, SEPTEMBER 5, 2023

REFERRED TO COMMITTEE ON HEALTH, SEPTEMBER 5, 2023

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 title of act,
6 for definitions, for prohibition, for signage, for
7 enforcement, for administration, for preemption of local
8 ordinances and for repeal; and making editorial changes.

9 The General Assembly of the Commonwealth of Pennsylvania

10 hereby enacts as follows:

11 Section 1. The title and sections 2, 3(b) and (c), 4, 5(d),
12 8, 10, 11 and 29 of the act of June 13, 2008 (P.L.182, No.27),
13 known as the Clean Indoor Air Act, are amended to read:

14 AN ACT

15 Regulating smoking in this Commonwealth; imposing powers and
16 duties on the Department of Health and local boards of
17 health; providing penalties; [preempting local action;] and
18 making [a related repeal] related repeals.

19 Section 2. Definitions.

20 The following words and phrases when used in this act shall
21 have the meanings given to them in this section unless the

1 context clearly indicates otherwise:

2 "Adult day care." As defined in section 1001 of the act of
3 June 13, 1967 (P.L.31, No.21), known as the Human Services Code.

4 "Child-care services." As defined in 23 Pa.C.S. § 6303
5 (relating to definitions).

6 ["Cigar bar." Any of the following:

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

27 (ii) has total annual sales of food sold for on-
28 premises consumption of less than or equal to 20% of the
29 combined gross sales of the establishment; and

30 (iii) does not permit individuals under 18 years of

1 age.

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

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

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

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

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

17 The term does not include a nightclub.

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

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

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

29 "Night club." A public hall or hall for which admission is
30 generally charged and which is primarily or predominantly

1 devoted to dancing or to shows or cabarets as opposed to a
2 facility that is primarily a bar, tavern or dining facility.

3 "Private club." An organization which is any of the
4 following:

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

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

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

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

18 (2) A volunteer ambulance service.

19 (3) A volunteer fire company.

20 (4) A volunteer rescue company.]

21 "Electronic smoking device." An electronic device that
22 contains or delivers nicotine or another substance to an
23 individual inhaling from the device. The term includes, but is
24 not limited to, any device, whether manufactured, distributed,
25 marketed or sold as an electronic nicotine delivery system,
26 electronic cigarette, electronic cigar, electronic pipe, vape
27 pen or other electronic device under any other product name or
28 descriptor.

29 "Public meeting." A meeting open to the public. The term
30 includes a meeting under 65 Pa.C.S. Ch. 7 (relating to open

1 meetings).

2 "Public place." An [enclosed] area which serves as a
3 workplace, commercial establishment, transit vehicle or an area
4 where the public is invited or permitted. [The term includes:

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

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

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

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

15 (5) A sports or recreational facility, theater or
16 performance establishment.] The term includes the space
17 within at least 20 feet of a public entrance to the area, a
18 sports or recreational facility, theater or performance
19 establishment, park and playground. The term does not include
20 a street.

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

23 "Tobacco shop." A business establishment whose sales of
24 tobacco and tobacco-related products, including cigars, pipe
25 tobacco and smoking accessories, comprise at least 50% of the
26 gross annual sales. This term does not include a stand-alone
27 kiosk or establishment comprised solely of cigarette vending
28 machines.

29 "Volunteer ambulance service." As defined in section 102 of
30 the act of July 31, 2003 (P.L.73, No.17), known as the Volunteer

1 Fire Company and Volunteer Ambulance Service Grant Act.

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

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

8 "Smoking." Inhaling, exhaling, burning or carrying any
9 lighted or heated cigar, cigarette, pipe or any other lighted or
10 heated tobacco or plant product intended for inhalation,
11 including marijuana, whether natural or synthetic, in any manner
12 or form. The term includes the use of an electronic smoking
13 device which creates an aerosol or vapor, in any manner or form.

14 "Workplace." An [indoor] area serving as a place of
15 employment, occupation, business, trade, craft, professional or
16 volunteer activity. The term includes work areas, private
17 offices, employee lounges, restrooms, conference rooms, meeting
18 rooms, classrooms, employee cafeterias, hallways, construction
19 sites, temporary offices and work vehicles.

20 Section 3. Prohibition.

21 * * *

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

24 (1) A private home, private residence or private vehicle
25 unless the private home, private residence or private vehicle
26 is [being used at the] used at any time as a workplace or for
27 the provision of child-care services, adult [day-care] day
28 care services or services related to the care of children and
29 youth in State or county custody.

30 [(2) Designated quarters:

1 (i) within a lodging establishment which are
2 available for rent to guests accounting for no more than
3 25% of the total number of lodging units within a single
4 lodging establishment; or

5 (ii) within a full-service truck stop.

6 (3) A tobacco shop.

7 (4) A workplace of a manufacturer, importer or
8 wholesaler of tobacco products; a manufacturer of tobacco-
9 related products, including lighters; a tobacco leaf dealer
10 or processor; or a tobacco storage facility.

11 (5) Any of the following residential facilities:

12 (i) A long-term care facility regulated under 42 CFR
13 483.15 (relating to quality of life). This subparagraph
14 shall not apply if 42 CFR 483.15 is abrogated or expires.

15 (ii) A separate enclosed room or designated smoking
16 room in a residential adult care facility, community
17 mental health care facility, drug and alcohol facility or
18 other residential health care facility not covered under
19 subparagraph (i).

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

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

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

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

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

1 (i) The place is separate from other public areas
2 during the event.

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

4 (iii) Individuals under 18 years of age are not
5 permitted to attend.

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

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

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

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

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

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

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

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

27 (9) A cigar bar.

28 (10) A drinking establishment.

29 (11) Unless otherwise increased under this paragraph,
30 25% of the gaming floor at a licensed facility. No earlier

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

24 (12) A designated outdoor smoking area within the
25 confines of a sports or recreational facility, theater or
26 performance establishment.]

27 (c) [Conditions and qualifications for exceptions.--

28 (1) In order to be excepted under subsection (b), a
29 drinking establishment, cigar bar or tobacco shop must submit
30 a letter, accompanied by verifiable supporting documentation,

1 to the department claiming an exception under subsection (b).
2 Exception shall be based upon the establishment's books,
3 accounts, revenues or receipts, including those reported to
4 the Department of Revenue for sales tax purposes, from the
5 previous year or stated projected annual revenues, which
6 shall be verified within six months.

7 (2) In order to qualify for the exception under
8 subsection (b) (6), a private club must take and record a vote
9 of its officers under the bylaws to address smoking in the
10 private club's facilities.] (Reserved).

11 Section 4. Signage.

12 "Smoking Permitted" or "No Smoking" signs or the
13 international "No Smoking" symbol, which consists of a pictorial
14 representation of a burning cigarette and electronic smoking
15 device in a circle with a bar across it, shall be prominently
16 posted and properly maintained where smoking is regulated by
17 this act by the owner, operator, manager or other person having
18 control of the area. A "Smoking Permitted" sign shall be
19 prominently posted and maintained at every entrance to a public
20 place where smoking is permitted under this act. Signage
21 requirements shall not apply to parties exempt under section
22 3(b) (1).

23 Section 5. Enforcement.

24 * * *

25 [(d) Access to records.--A drinking establishment, cigar bar
26 and tobacco shop shall make available all books, accounts,
27 revenues, receipts and other information to the department, the
28 Department of Revenue, the State licensing agency or a county
29 board of health as necessary to enforce this act. All
30 information submitted to the Department of Health, a county

1 board or other Commonwealth agency with enforcement duties under
2 this act, including information to verify the on-site food
3 consumption of a drinking establishment, shall be confidential
4 and shall not be subject to the act of June 21, 1957 (P.L.390,
5 No.212), referred to as the Right-to-Know Law.]

6 Section 8. Annual reports.

7 (a) Requirement.--The department shall file an annual report
8 by December 1 with the chairman and minority chairman of the
9 [Public] Health and [Welfare] Human Services Committee of the
10 Senate and the chairman and minority chairman of the Health [and
11 Human Services] Committee of the House of Representatives.

12 (b) Contents.--The report shall include:

13 (1) The number of violations of this act by county as
14 reported to the department.

15 (2) The number of enforcement actions initiated under
16 this act by the department, by another State licensing agency
17 or by a county board of health.

18 (3) A description of the enforcement activities of the
19 department. This paragraph includes the number of personnel
20 assigned to enforce this act, enforcement strategies
21 undertaken by the department or a licensing agency and other
22 information relating to the administration and implementation
23 of this act.

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
28 revise the form for reporting sales tax revenue to require
29 separate reporting of sales of alcohol and tobacco for purposes
30 of claiming exemptions under this act.]

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 Effect on local rules and ordinances.

14 This act shall not be construed to restrict the power of a
15 political subdivision to adopt and enforce any rule or ordinance
16 that exceeds the minimum applicable standards under this act.

17 Section 29. [Repeal] Repeals.

18 (a) Intent.--The General Assembly declares that the [repeal]
19 repeals under subsection (b) [is] are necessary to effectuate
20 this act.

21 (b) [Provision.--Section 10.1 of the act of April 27, 1927
22 (P.L.465, No.299), referred to as the Fire and Panic Act, is
23 repealed.] Provisions.--The following parts of acts are
24 repealed:

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.

27 (2) Section 15.1 of the Fire and Panic Act insofar as it
28 relates to clean indoor air.

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