

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 294 Session of
1997

INTRODUCED BY SCHWARTZ, HELFRICK, WILLIAMS AND AFFLERBACH,
JANUARY 31, 1997

REFERRED TO PUBLIC HEALTH AND WELFARE, JANUARY 31, 1997

AN ACT

1 Amending the act of April 27, 1927 (P.L.465, No.299), entitled,
2 as amended, "An act to provide for the safety of persons
3 employed, housed, or assembled in certain buildings and
4 structures by requiring certain construction and ways of
5 egress, equipment, and maintenance; providing for the
6 licensing of projectionists, except in cities of the first
7 class and second class; requiring the submission of plans for
8 examination and approval; providing for the promulgation of
9 rules and regulations for the enforcement of this act;
10 providing for the enforcement of this act by the Department
11 of Labor and Industry, the Department of Health, boards of
12 school directors and, in certain cases, by the chiefs of fire
13 departments in cities of the third class; providing penalties
14 for violations of the provisions of this act; and repealing
15 certain acts," further prohibiting the use of tobacco on
16 school grounds; and further providing for smoking in public
17 places.

18 The General Assembly of the Commonwealth of Pennsylvania
19 hereby enacts as follows:

20 Section 1. Sections 3.5 and 10.1 of the act of April 27,
21 1927 (P.L.465, No.299), referred to as the Fire and Panic Act,
22 added December 21, 1988 (P.L.1315, No.168), are amended to read:

23 Section 3.5. School Tobacco Control.--(a) Tobacco use [by
24 pupils] is prohibited in school buildings and school buses and
25 on school property owned by, leased by or under the control of a

1 school district.

2 (b) (1) The board of school directors [may designate
3 smoking areas for employees and] shall establish policy to
4 enforce the prohibition of tobacco use under this section.

5 (2) The board of school directors shall notify employees,
6 students and parents of the policy developed in subsection
7 (b)(1) by publishing the information in a student handbook and
8 parent newsletter, and on posters or other efficient means.

9 (c) This section supersedes any municipal ordinance or
10 school board regulation to the contrary.

11 (d) Notwithstanding the provisions of section 15, this
12 section shall apply throughout this Commonwealth.

13 (e) As used in this section, the following words and phrases
14 shall have the meanings given to them in this subsection:

15 "School" means a school operated by a joint board, board of
16 directors or school board where pupils are enrolled in
17 compliance with Article XIII of the act of March 10, 1949
18 (P.L.30, No.14), known as the "Public School Code of 1949." The
19 term includes area vocational-technical schools and intermediate
20 units.

21 "Smoking" includes possession of a lighted cigarette, cigar,
22 pipe or other lighted smoking equipment.

23 "Tobacco use" includes smoking and the use of smokeless
24 tobacco in any form.

25 Section 10.1. Clean Indoor Air.--(a) The purpose of this
26 section is to protect the public health and to provide for the
27 comfort of all parties by regulating and controlling smoking in
28 certain governmental and nongovernmental public places and at
29 public meetings and in certain workplaces.

30 (b) As used in this section, the following words and phrases

1 shall have the meanings given to them in this subsection:

2 "Bar areas" means those areas which are devoted to the
3 serving of alcoholic beverages for consumption by guests on the
4 premises and in which the serving of food is only incidental to
5 the consumption of such beverages.

6 "Local government site" means an enclosed, indoor area owned,
7 leased, operated or under the direct control of a local
8 governmental agency and used by the general public or serving as
9 a place of work for public employes or a meeting place for a
10 public body, including an office, educational facility, health
11 facility, auditorium, arena, meeting room or public conveyance.

12 "Public meetings" means all meetings open to the public
13 pursuant to the act of July 3, 1986 (P.L.388, No.84), known as
14 the "Sunshine Act."

15 "Public place" means [either of the following:

16 (1) An enclosed, indoor area owned or operated by a State or
17 local governmental agency and used by the general public or
18 serving as a place of work for public employes or a meeting
19 place for a public body, including an office, educational
20 facility, health facility, auditorium, arena, meeting room or
21 public conveyance.

22 (2) An] an enclosed, indoor area which is not owned or
23 operated by a State or local governmental agency, which is used
24 by the general public and which is any of the following:

25 [(i)] (1) A workplace.

26 [(ii)] (2) An educational facility.

27 [(iii)] (3) A health facility.

28 [(iv)] (4) An auditorium.

29 [(v)] (5) An arena.

30 [(vi)] (6) A theater.

1 [(vii)] (7) A museum.

2 [(viii)] (8) A restaurant.

3 [(ix)] (9) A concert hall.

4 [(x)] (10) Any other facility during the period of its use
5 for a performance or exhibit of the arts.

6 "Restaurant" means any eating establishment which offers food
7 for sale to the public.

8 "Smoking" means the carrying by a person of a lighted cigar,
9 cigarette, pipe or other lighted smoking device.

10 "State government site" means an enclosed, indoor area owned,
11 leased, operated or under the direct control of the Commonwealth
12 or any agency thereof and used by the general public or serving
13 as a place of work for public employes or a meeting place for a
14 public body, including an office, educational facility, health
15 facility, auditorium, arena, meeting room or public conveyance.

16 "Workplace" means an enclosed, indoor area serving as a place
17 of employment, occupation, business, trade, craft or profession.

18 (c) (1) No person shall smoke in an area designated
19 nonsmoking by the proprietor or person in charge in a public
20 place or at a local government site or public meeting.

21 (2) No person shall smoke at a State government site.

22 (d) The following places shall be exempt from [this section]
23 subsection (c)(1):

24 (1) Private social functions where the area utilized is
25 under the control of the sponsor and not the proprietor.

26 (2) Factories, warehouses and similar places of work not
27 frequented by the general public.

28 (3) Restaurants seating fewer than seventy-five (75)
29 persons.

30 (4) Bar areas in a liquor licensee establishment.

1 (5) Areas in public places commonly referred to as lobbies
2 and hallways.

3 (6) Hotel and motel rooms.

4 (7) Retail stores, the primary business of which is the sale
5 of tobacco or tobacco-related products.

6 (e) The regulation of smoking in restaurants with seventy-
7 five (75) or more seats shall be governed by the following:

8 (1) Restaurants shall provide for their patrons smoking and
9 nonsmoking areas reasonably calculated to address the needs of
10 their clientele, the size of which may be increased or
11 decreased, by the proprietor or person in charge, according to
12 need.

13 (2) Restaurants shall make reasonable efforts to prevent
14 smoking in the designated nonsmoking section by:

15 (i) Posting appropriate signs which are readily visible. The
16 color, size and placement of the signs shall be left to the
17 discretion of the proprietor or person in charge in keeping with
18 the decor or aesthetics of the establishment.

19 (ii) Arranging seating so that smokers and nonsmokers are
20 placed in contiguous groupings.

21 (iii) Asking smokers to refrain from smoking in the
22 nonsmoking areas.

23 (f) The regulation of smoking in restaurants with fewer than
24 seventy-five (75) seats shall be left to the discretion of the
25 proprietor, provided that:

26 (1) Restaurants which choose not to provide a nonsmoking
27 area nor develop a no-smoking policy based upon customer
28 preference shall post notice of such lack of policy at each
29 entranceway.

30 (2) Restaurants which choose to provide a nonsmoking area

1 shall develop a policy in accordance with subsection (e).

2 (g) (1) Except as otherwise provided in this section,
3 employers shall develop, post and implement a policy to regulate
4 smoking in the workplace, provided that nothing in this section
5 or any local law, rule or regulation shall be construed as to
6 impair or diminish or otherwise affect any contractual
7 agreement, collective bargaining agreement, collective
8 bargaining rights or collective bargaining procedures. The
9 employer shall provide a copy of the policy to any employee upon
10 request.

11 (2) Notwithstanding paragraph (1), the provisions of
12 subsection (c)(2) shall supersede any conflicting provision of a
13 contractual or collective bargaining agreement entered into by
14 employees at a State government site on or after the effective
15 date of this paragraph.

16 (h) No proprietor or person in charge of a public place or
17 local government site who establishes a policy or designates
18 areas pursuant to this section shall be subject to any action in
19 any court by any party other than the Department of Health or
20 local board or department of health under this section.

21 (i) A violation of this section shall be punishable by a
22 civil fine of not more than fifty dollars (\$50.00).

23 (j) The Department of Health shall promulgate and adopt
24 rules and regulations as are necessary and reasonable to
25 implement the provisions of this section.

26 (k) The Department of Health, a local board or department of
27 health or any affected party may institute an action in any
28 court with jurisdiction to enjoin violations of subsection
29 (c)(2).

30 Section 2. This act shall take effect in 180 days.