

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 246 Session of 2007

INTRODUCED BY GREENLEAF, ERICKSON, O'PAKE, CORMAN, WASHINGTON, C. WILLIAMS, LOGAN, ORIE, STACK, FERLO AND DINNIMAN, JANUARY 29, 2007

AS AMENDED ON THIRD CONSIDERATION, JUNE 25, 2007

AN ACT

1 ~~Establishing the Clean Indoor Air Act; imposing duties upon the~~ <—
2 PROHIBITING SMOKING IN CERTAIN PUBLIC PLACES AND WORKPLACES; <—
3 IMPOSING DUTIES UPON THE Department of Health; imposing
4 penalties; PREEMPTING LOCAL REGULATIONS; and repealing a <—
5 related provision of the Fire and Panic Act.

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

8 Section 1. Short title.

9 This act shall be known and may be cited as the Clean Indoor
10 Air Act.

11 Section 2. Legislative findings and purpose.

12 (a) Findings.--The General Assembly finds as follows:

13 (1) The use of tobacco products is dangerous not only to
14 the person smoking, but also to nonsmokers who must breathe
15 the contaminated air.

16 (2) The Environmental Protection Agency has classified
17 second-hand tobacco smoke as a Class A carcinogen, a
18 classification reserved for the most lethal environmental

1 ~~hazards, such as asbestos, benzene, formaldehyde and radon.~~ <—

2 (3) Approximately 53,000 nonsmokers in the United States
3 die annually from lung and heart disease due to exposure to
4 passive smoke.

5 (4) Three hundred thousand children exposed to tobacco
6 smoke have increased frequency of lower respiratory
7 infections, such as pneumonia and bronchitis.

8 (5) Tobacco smoke is also responsible for up to
9 1,000,000 attacks of asthma, 8,000 to 26,000 new cases of
10 asthma and significant reduction in lung function, and causes
11 serious middle ear infections among children each year.

12 (b) Purpose.--By enactment of this legislation, the General
13 Assembly intends to protect the public health, the comfort of
14 all persons and the environment by prohibiting smoking in public
15 places and workplaces.

16 Section 3. Definitions.

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

20 "CIGAR BAR." AN ESTABLISHMENT WHICH OPERATES PURSUANT TO AN <—
21 EATING PLACE OR RESTAURANT LIQUOR LICENSE UNDER THE ACT OF APRIL
22 12, 1951 (P.L.90, NO.21), KNOWN AS THE LIQUOR CODE, THAT IS
23 PHYSICALLY CONNECTED AND DIRECTLY ADJACENT TO A TOBACCO SHOP.

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

25 "DRINKING ESTABLISHMENT." AN ESTABLISHMENT WHICH OPERATES <—
26 PURSUANT TO AN EATING PLACE, RESTAURANT LICENSE OR RETAIL
27 DISPENSER LICENSE UNDER THE ACT OF APRIL 12, 1951 (P.L.90,
28 NO.21), KNOWN AS THE LIQUOR CODE, HAS TOTAL ANNUAL SALES OF FOOD
29 SOLD FOR ON-PREMISES CONSUMPTION OF LESS THAN OR EQUAL TO 20% OF
30 THE COMBINED GROSS SALES OF THE ESTABLISHMENT.

1 "GAMING FLOOR." ANY PORTION OF A LICENSED GAMING FACILITY
2 WHERE SLOT MACHINES HAVE BEEN INSTALLED FOR USE OR PLAY AS
3 APPROVED BY THE PENNSYLVANIA GAMING CONTROL BOARD. THE AREA
4 SHALL NOT INCLUDE NONGAMING FLOOR ASSOCIATED AREAS ADJACENT TO
5 THE GAMING FLOOR, INCLUDING HALLWAYS, RECEPTION AREAS, RETAIL
6 SPACE, BARS, NIGHTCLUBS, RESTAURANTS, HOTELS, ENTERTAINMENT
7 VENUES OR OFFICE SPACES.

8 "PRIVATE CLUB." AN ORGANIZATION WHICH IS ANY OF THE
9 FOLLOWING:

10 (1) A REPUTABLE GROUP OF INDIVIDUALS ASSOCIATED TOGETHER
11 AS A NOT-FOR-PROFIT ORGANIZATION FOR LEGITIMATE PURPOSES OF
12 MUTUAL BENEFIT, ENTERTAINMENT, FELLOWSHIP OR LAWFUL
13 CONVENIENCE THAT:

14 (I) REGULARLY AND EXCLUSIVELY OCCUPIES, AS OWNER OR
15 LESSEE, A CLUBHOUSE OR QUARTERS FOR THE USE OF ITS
16 MEMBERS;

17 (II) HOLDS REGULAR MEETINGS, CONDUCTS ITS BUSINESS
18 THROUGH OFFICERS REGULARLY ELECTED, ADMITS MEMBERS BY
19 WRITTEN APPLICATION, INVESTIGATION AND BALLOT AND CHARGES
20 AND COLLECTS DUES FROM ELECTED MEMBERS; AND

21 (III) HAS BEEN IN CONTINUOUS EXISTENCE FOR A PERIOD
22 OF TEN YEARS.

23 (2) A VOLUNTEER AMBULANCE SERVICE.

24 (3) A VOLUNTEER FIRE COMPANY.

25 (4) A VOLUNTEER RESCUE COMPANY.

26 "Public meeting." A meeting open to the public including any
27 meeting open to the public pursuant to 65 Pa.C.S. Ch. 7
28 (relating to open meetings).

29 "Public place." An enclosed area to which the public is
30 invited or in which the public is permitted, including any place

1 listed in section 5.

2 "Restaurant." An eating establishment that offers food for
3 sale to the public.

4 "Service line." A line at which one or more persons are
5 waiting for or receiving service of any kind, whether or not
6 such service involves the exchange of money.

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

9 "Sports arena." A sports stadium, sports pavilion,
10 exhibition hall, gymnasium, health spa, boxing arena, swimming
11 pool, roller or ice rink, bowling alley or similar place where
12 members of the general public assemble to engage in physical
13 exercise, participate in athletic competition or witness sports
14 events.

15 "Tobacco shop." A business establishment the main purpose of
16 which is the sale of tobacco products including cigars, pipe
17 tobacco and smoking accessories.

18 "VOLUNTEER AMBULANCE SERVICE." AS DEFINED IN SECTION 102 OF <—
19 THE ACT OF JULY 31, 2003 (P.L.73, NO.17), KNOWN AS THE VOLUNTEER
20 FIRE COMPANY AND VOLUNTEER AMBULANCE SERVICE GRANT ACT.

21 "VOLUNTEER FIRE COMPANY." AS DEFINED IN SECTION 102 OF THE
22 ACT OF JULY 31, 2003 (P.L.73, NO.17), KNOWN AS THE VOLUNTEER
23 FIRE COMPANY AND VOLUNTEER AMBULANCE SERVICE GRANT ACT.

24 "VOLUNTEER RESCUE COMPANY." AS DEFINED IN SECTION 102 OF THE
25 ACT OF JULY 31, 2003 (P.L.73, NO.17), KNOWN AS THE VOLUNTEER
26 FIRE COMPANY AND VOLUNTEER AMBULANCE SERVICE GRANT ACT.

27 "Workplace." An indoor area serving as a place of
28 employment, occupation, business, trade, craft, profession or
29 volunteer activity.

30 Section 4. Prohibition.

1 No person shall smoke in a public place or in a workplace.

2 Section 5. Public place.

3 The following enclosed areas are examples of public places:

4 (1) A place in which a public meeting is held.

5 (2) An educational facility.

6 (3) A school bus.

7 (4) A health facility.

8 (5) An auditorium.

9 (6) An arena.

10 (7) A theater.

11 (8) A museum.

12 (9) A restaurant.

13 (10) A bar or tavern.

14 (11) A concert hall.

15 (12) A commercial establishment.

16 (13) A retail store.

17 (14) A service line.

18 (15) A grocery store.

19 (16) A bingo hall.

20 (17) A waiting room or area.

21 (18) A hallway.

22 (19) A polling place.

23 (20) A restroom.

24 (21) A sports arena.

25 (22) A convention hall.

26 (23) An elevator.

27 (24) Public transit.

28 (25) A public food assistance program and facility.

29 (26) A shopping mall.

30 (27) An exhibition hall.

1 (28) A rotunda or lobby.

2 (29) A licensed gaming facility.

3 (30) At least 75% of the total number of sleeping
4 quarters that are available for rent to guests within any
5 single lodging establishment.

6 Section 6. Exception.

7 ~~This~~ (A) GENERAL RULE.--SUBJECT TO SUBSECTION (B), THIS act <—
8 shall not apply to the following places:

9 (1) A private residence, except when used as a
10 ~~childcare, adult daycare or health care facility.~~ CHILD DAY- <—
11 CARE CENTER OR GROUP OR FAMILY DAY-CARE HOME SUBJECT TO
12 LICENSURE, REGISTRATION OR CERTIFICATION BY THE DEPARTMENT OF
13 PUBLIC WELFARE.

14 (2) Designated sleeping quarters within a lodging
15 establishment that are available for rent to guests
16 accounting for no more than 25% of the total number of
17 lodging units within a single lodging establishment.

18 (3) A wholesale or retail tobacco shop whose sales of
19 tobacco products comprise 85% or more of gross sales on an
20 annual basis.

21 (4) All workplaces of any manufacturer, importer or
22 wholesaler of tobacco products, of any tobacco leaf dealer or
23 processor, and all tobacco storage facilities.

24 (5) THE FOLLOWING RESIDENTIAL FACILITIES: <—

25 (I) A LONG-TERM CARE FACILITY REGULATED UNDER 42 CFR
26 483.15 (RELATING TO QUALITY OF LIFE) OR SIMILAR
27 REGULATION. THIS EXCEPTION SHALL NOT APPLY IF 42 CFR
28 483.15, OR SIMILAR REGULATION, IS REPEALED OR EXPIRES.

29 (II) SEPARATE ENCLOSED ROOMS OR DESIGNATED SMOKING
30 ROOMS IN A RESIDENTIAL ADULT CARE FACILITY, COMMUNITY

1 MENTAL HEALTH CARE FACILITY, DRUG AND ALCOHOL FACILITY OR
2 AN ADULT CARE FACILITY OR OTHER RESIDENTIAL HEALTH CARE
3 FACILITY NOT COVERED UNDER SUBPARAGRAPH (I).

4 (III) DESIGNATED SMOKING ROOMS IN A FACILITY THAT
5 PROVIDES DAY TREATMENT PROGRAMS.

6 (6) A CIGAR BAR.

7 (7) UP TO 25% OF A GAMING FLOOR WITHIN A LICENSED GAMING
8 FACILITY.

9 (8) A PRIVATE CLUB, EXCEPT WHERE THE CLUB IS:

10 (I) OPEN TO THE PUBLIC THROUGH GENERAL ADVERTISEMENT
11 FOR A CLUB-SPONSORED EVENT; OR

12 (II) IS LEASED OR USED FOR A PRIVATE EVENT THAT IS
13 NOT CLUB-SPONSORED.

14 (9) A DRINKING ESTABLISHMENT.

15 (10) A PLACE WHERE A FUNDRAISER IS CONDUCTED BY A
16 NONPROFIT AND CHARITABLE ORGANIZATION ONE TIME PER YEAR IF:

17 (I) THE PLACE IS SEPARATE FROM OTHER PUBLIC AREAS
18 DURING THE EVENT.

19 (II) FOOD AND BEVERAGES ARE AVAILABLE TO THE
20 ATTENDEES.

21 (III) INDIVIDUALS UNDER 18 YEARS OF AGE ARE NOT
22 PERMITTED TO ATTEND.

23 (IV) CIGARS ARE SOLD, AUCTIONED OR GIVEN AS GIFTS
24 AND CIGARS ARE A FEATURE OF THE EVENT.

25 (11) AN EXHIBITION HALL, CONFERENCE ROOM OR SIMILAR
26 FACILITY USED EXCLUSIVELY FOR AN EVENT TO WHICH THE PUBLIC IS
27 INVITED FOR THE PRIMARY PURPOSE OF PROMOTING AND SAMPLING
28 TOBACCO PRODUCTS, AND WHERE THE SERVICE OF FOOD AND DRINK IS
29 INCIDENTAL, IF THE SPONSOR OR ORGANIZER GIVES NOTICE IN ALL
30 ADVERTISEMENTS AND OTHER PROMOTIONAL MATERIALS GIVE NOTICE

1 THAT SMOKING WILL NOT BE RESTRICTED. AT LEAST 75% OF ALL
2 PRODUCTS DISPLAYED OR DISTRIBUTED AT THE EVENT SHALL BE
3 TOBACCO OR TOBACCO-RELATED PRODUCTS. NOTICE THAT SMOKING WILL
4 NOT BE RESTRICTED MUST BE PROMINENTLY POSTED AT THE ENTRANCE
5 TO THE FACILITY. NO RETAILER, MANUFACTURER OR DISTRIBUTOR OF
6 TOBACCO MAY CONDUCT MORE THAN SIX DAYS OF A PROMOTIONAL EVENT
7 UNDER THIS PARAGRAPH IN ANY CALENDAR YEAR.

8 (B) NOTICE.--TO QUALIFY FOR EXEMPTION UNDER SUBSECTION (A),
9 THE OWNER OR LESSEE OF THE PLACE MUST CONSPICUOUSLY POST AT
10 EVERY PUBLIC ENTRANCE TO THE PLACE A SIGN STATING THAT SMOKING
11 IS PERMITTED ON THE PREMISES.

12 Section 7. Retaliation prohibited.

13 No person or employer shall discharge, refuse to hire or in
14 any manner retaliate against any employee or applicant for
15 employment because the employee or applicant exercises any right
16 to a smoke-free environment required by this act.

17 Section 8. Enforcement.

18 The Department of Health, a local board or department of
19 health or any affected party may institute an action in any
20 court with jurisdiction to enjoin a violation of the provisions
21 of this act.

22 Section 9. Penalty.

23 Any person who smokes in a public place or in a workplace or
24 violates any other provision of this act commits a summary
25 offense and shall pay:

26 (1) A fine not exceeding ~~\$100~~ \$250 for a first violation. <—

27
28 (2) A fine not exceeding ~~\$200~~ \$500 for a second violation that occurs within one year. <—

29
30 (3) A fine not exceeding ~~\$500~~ \$1,000 for each additional <—

1 violation that occurs within one year.

2 SECTION 10. ANNUAL REPORTS. <—

3 THE DEPARTMENT SHALL FILE AN ANNUAL REPORT BY DECEMBER 1 OF
4 EACH YEAR WITH THE CHAIRMAN AND MINORITY CHAIRMAN OF THE PUBLIC
5 HEALTH AND WELFARE COMMITTEE OF THE SENATE AND THE CHAIRMAN AND
6 MINORITY CHAIRMAN OF THE HEALTH AND HUMAN SERVICES COMMITTEE OF
7 THE HOUSE OF REPRESENTATIVES. THE REPORT SHALL INCLUDE THE
8 NUMBER OF VIOLATIONS OF THIS ACT BY COUNTY, THE NUMBER OF
9 ENFORCEMENT ACTIONS INITIATED UNDER THIS ACT WITHIN EACH COUNTY,
10 A DESCRIPTION OF THE ENFORCEMENT ACTIVITIES OF THE DEPARTMENT,
11 INCLUDING THE NUMBER OF PERSONNEL, ENFORCEMENT STRATEGIES AND
12 OTHER ISSUES RELATING TO THE ADMINISTRATION AND IMPLEMENTATION
13 OF THIS ACT.

14 Section ~~10~~ 11. Rules and regulations. <—

15 The Department of Health shall promulgate and adopt, WITHIN <—
16 180 DAYS OF THE EFFECTIVE DATE OF THIS SECTION, rules and
17 regulations as are necessary and reasonable to implement the
18 provisions of this act. The department shall also engage in a
19 continuing program to explain and clarify the purposes and
20 requirements of this act to persons affected by it and to guide
21 owners, operators and managers in their compliance with it. The
22 programs may include publication of a brochure for affected
23 businesses and individuals explaining the provisions of this
24 act.

25 Section ~~11~~ 12. Construction. <—

26 In any dispute arising under the provisions of this act, the
27 authority adjudicating the dispute shall construe the provisions
28 of this act in favor of the health concerns of persons who do
29 not engage in smoking and whose concerns shall represent the
30 public interest.

1 ~~Section 12. Effect on local rules and ordinances.~~ <—

2 ~~This act shall not be construed to restrict the power of any~~
3 ~~political subdivision to adopt and enforce any rule or ordinance~~
4 ~~which complies with at least the minimum applicable standards~~
5 ~~set forth in this act.~~

6 SECTION 13. PREEMPTION OF LOCAL ORDINANCES. <—

7 THE PROVISIONS OF THIS ACT SHALL SUPERSEDE ANY ORDINANCE OR
8 RULE OR REGULATION ADOPTED BY A POLITICAL SUBDIVISION CONCERNING
9 SMOKING IN AN INDOOR PUBLIC PLACE OR WORKPLACE. NO POLITICAL
10 SUBDIVISION SHALL HAVE THE AUTHORITY TO ADOPT OR ENFORCE ANY
11 RULE OR ORDINANCE WHICH IS MORE RESTRICTIVE THAN THE STANDARDS
12 SET FORTH IN THIS ACT.

13 Section ~~13~~ 14. Repeal. <—

14 Repeals are as follows:

15 (1) The General Assembly declares that the repeal under
16 paragraph (2) is necessary to effectuate this act.

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

19 Section ~~14~~ 15. Effective date. <—

20 ~~This act shall take effect in 90 days.~~ <—

21 THIS ACT SHALL TAKE EFFECT AS FOLLOWS: <—

22 (1) SECTION 10 SHALL TAKE EFFECT IMMEDIATELY.

23 (2) THE REMAINDER OF THIS ACT SHALL TAKE EFFECT IN 180
24 DAYS.