

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 REPORTED FROM COMMITTEE ON HEALTH AND HUMAN SERVICES, HOUSE  
OF REPRESENTATIVES, AS AMENDED, JULY 8, 2007

AN ACT

1 ~~Prohibiting smoking in certain public places and workplaces;~~ <—  
2 ~~imposing duties upon the Department of Health; imposing~~  
3 ~~penalties; preempting local regulations; and repealing a~~  
4 ~~related provision of the Fire and Panic Act.~~

5 ESTABLISHING THE SMOKE FREE PENNSYLVANIA ACT; PROHIBITING <—  
6 SMOKING IN ENCLOSED AND SUBSTANTIALLY ENCLOSED AREAS;  
7 IMPOSING DUTIES UPON THE DEPARTMENT OF HEALTH; IMPOSING  
8 PENALTIES; AND MAKING A RELATED REPEAL.

9 The General Assembly of the Commonwealth of Pennsylvania  
10 hereby enacts as follows:

11 ~~Section 1. Short title.~~ <—

12 ~~This act shall be known and may be cited as the Clean Indoor~~  
13 ~~Air Act.~~

14 ~~Section 2. Legislative findings and purpose.~~

15 ~~(a) Findings. The General Assembly finds as follows:~~

16 ~~(1) The use of tobacco products is dangerous not only to~~  
17 ~~the person smoking, but also to nonsmokers who must breathe~~  
18 ~~the contaminated air.~~

19 ~~(2) The Environmental Protection Agency has classified~~

1 ~~second hand tobacco smoke as a Class A carcinogen, a~~  
2 ~~classification reserved for the most lethal environmental~~  
3 ~~hazards.~~

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

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

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

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

18 ~~Section 3. Definitions.~~

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

22 ~~"Cigar bar." An establishment which operates pursuant to an~~  
23 ~~eating place or restaurant liquor license under the act of April~~  
24 ~~12, 1951 (P.L.90, No.21), known as the Liquor Code, that is~~  
25 ~~physically connected and directly adjacent to a tobacco shop.~~

26 ~~"Department." The Department of Health of the Commonwealth.~~

27 ~~"Drinking establishment." An establishment which operates~~  
28 ~~pursuant to an eating place, restaurant license or retail~~  
29 ~~dispenser license under the act of April 12, 1951 (P.L.90,~~  
30 ~~No.21), known as the Liquor Code, has total annual sales of food~~

1 ~~sold for on premises consumption of less than or equal to 20% of~~  
2 ~~the combined gross sales of the establishment.~~

3 ~~"Gaming floor." Any portion of a licensed gaming facility~~  
4 ~~where slot machines have been installed for use or play as~~  
5 ~~approved by the Pennsylvania Gaming Control Board. The area~~  
6 ~~shall not include nongaming floor associated areas adjacent to~~  
7 ~~the gaming floor, including hallways, reception areas, retail~~  
8 ~~space, bars, nightclubs, restaurants, hotels, entertainment~~  
9 ~~venues or office spaces.~~

10 ~~"Private club." An organization which is any of the~~  
11 ~~following:~~

12 ~~(1) A reputable group of individuals associated together~~  
13 ~~as a not for profit organization for legitimate purposes of~~  
14 ~~mutual benefit, entertainment, fellowship or lawful~~  
15 ~~convenience that:~~

16 ~~(i) regularly and exclusively occupies, as owner or~~  
17 ~~lessee, a clubhouse or quarters for the use of its~~  
18 ~~members;~~

19 ~~(ii) holds regular meetings, conducts its business~~  
20 ~~through officers regularly elected, admits members by~~  
21 ~~written application, investigation and ballot and charges~~  
22 ~~and collects dues from elected members; and~~

23 ~~(iii) has been in continuous existence for a period~~  
24 ~~of ten years.~~

25 ~~(2) A volunteer ambulance service.~~

26 ~~(3) A volunteer fire company.~~

27 ~~(4) A volunteer rescue company.~~

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

1       ~~"Public place."—An enclosed area to which the public is~~  
2 ~~invited or in which the public is permitted, including any place~~  
3 ~~listed in section 5.~~

4       ~~"Restaurant."—An eating establishment that offers food for~~  
5 ~~sale to the public.~~

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

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

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

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

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

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

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

29       ~~"Workplace."—An indoor area serving as a place of~~  
30 ~~employment, occupation, business, trade, craft, profession or~~

1 ~~volunteer activity.~~

2 ~~Section 4.— Prohibition.~~

3 ~~No person shall smoke in a public place or in a workplace.~~

4 ~~Section 5.— Public place.~~

5 ~~The following enclosed areas are examples of public places:~~

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

7 ~~(2) An educational facility.~~

8 ~~(3) A school bus.~~

9 ~~(4) A health facility.~~

10 ~~(5) An auditorium.~~

11 ~~(6) An arena.~~

12 ~~(7) A theater.~~

13 ~~(8) A museum.~~

14 ~~(9) A restaurant.~~

15 ~~(10) A bar or tavern.~~

16 ~~(11) A concert hall.~~

17 ~~(12) A commercial establishment.~~

18 ~~(13) A retail store.~~

19 ~~(14) A service line.~~

20 ~~(15) A grocery store.~~

21 ~~(16) A bingo hall.~~

22 ~~(17) A waiting room or area.~~

23 ~~(18) A hallway.~~

24 ~~(19) A polling place.~~

25 ~~(20) A restroom.~~

26 ~~(21) A sports arena.~~

27 ~~(22) A convention hall.~~

28 ~~(23) An elevator.~~

29 ~~(24) Public transit.~~

30 ~~(25) A public food assistance program and facility.~~

- 1           ~~(26) A shopping mall.~~
- 2           ~~(27) An exhibition hall.~~
- 3           ~~(28) A rotunda or lobby.~~
- 4           ~~(29) A licensed gaming facility.~~
- 5           ~~(30) At least 75% of the total number of sleeping~~  
6           ~~quarters that are available for rent to guests within any~~  
7           ~~single lodging establishment.~~

8   Section 6. ~~Exception.~~

9           ~~(a) General rule. Subject to subsection (b), this act shall~~  
10   ~~not apply to the following places:~~

11           ~~(1) A private residence, except when used as a child~~  
12   ~~day care center or group or family day care home subject to~~  
13   ~~licensure, registration or certification by the Department of~~  
14   ~~Public Welfare.~~

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

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

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

25           ~~(5) The following residential facilities:~~

26           ~~(i) A long term care facility regulated under 42 CFR~~  
27   ~~483.15 (relating to quality of life) or similar~~  
28   ~~regulation. This exception shall not apply if 42 CFR~~  
29   ~~483.15, or similar regulation, is repealed or expires.~~

30           ~~(ii) Separate enclosed rooms or designated smoking~~

1 ~~rooms in a residential adult care facility, community~~  
2 ~~mental health care facility, drug and alcohol facility or~~  
3 ~~an adult care facility or other residential health care~~  
4 ~~facility not covered under subparagraph (i).~~

5 ~~(iii) Designated smoking rooms in a facility that~~  
6 ~~provides day treatment programs.~~

7 ~~(6) A cigar bar.~~

8 ~~(7) Up to 25% of a gaming floor within a licensed gaming~~  
9 ~~facility.~~

10 ~~(8) A private club, except where the club is:~~

11 ~~(i) open to the public through general advertisement~~  
12 ~~for a club sponsored event; or~~

13 ~~(ii) is leased or used for a private event that is~~  
14 ~~not club sponsored.~~

15 ~~(9) A drinking establishment.~~

16 ~~(10) A place where a fundraiser is conducted by a~~  
17 ~~nonprofit and charitable organization one time per year if:~~

18 ~~(i) The place is separate from other public areas~~  
19 ~~during the event.~~

20 ~~(ii) Food and beverages are available to the~~  
21 ~~attendees.~~

22 ~~(iii) Individuals under 18 years of age are not~~  
23 ~~permitted to attend.~~

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

26 ~~(11) An exhibition hall, conference room or similar~~  
27 ~~facility used exclusively for an event to which the public is~~  
28 ~~invited for the primary purpose of promoting and sampling~~  
29 ~~tobacco products, and where the service of food and drink is~~  
30 ~~incidental, if the sponsor or organizer gives notice in all~~

1 ~~advertisements and other promotional materials give notice~~  
2 ~~that smoking will not be restricted. At least 75% of all~~  
3 ~~products displayed or distributed at the event shall be~~  
4 ~~tobacco or tobacco related products. Notice that smoking will~~  
5 ~~not be restricted must be prominently posted at the entrance~~  
6 ~~to the facility. No retailer, manufacturer or distributor of~~  
7 ~~tobacco may conduct more than six days of a promotional event~~  
8 ~~under this paragraph in any calendar year.~~

9 ~~(b) Notice. To qualify for exemption under subsection (a),~~  
10 ~~the owner or lessee of the place must conspicuously post at~~  
11 ~~every public entrance to the place a sign stating that smoking~~  
12 ~~is permitted on the premises.~~

13 ~~Section 7. Retaliation prohibited.~~

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

18 ~~Section 8. Enforcement.~~

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

23 ~~Section 9. Penalty.~~

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

27 ~~(1) A fine not exceeding \$250 for a first violation.~~

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

30 ~~(3) A fine not exceeding \$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 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 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 13. Preemption of local ordinances.~~

2 ~~The provisions of this act shall supersede any ordinance or~~  
3 ~~rule or regulation adopted by a political subdivision concerning~~  
4 ~~smoking in an indoor public place or workplace. No political~~  
5 ~~subdivision shall have the authority to adopt or enforce any~~  
6 ~~rule or ordinance which is more restrictive than the standards~~  
7 ~~set forth in this act.~~

8 ~~Section 14. Repeal.~~

9 ~~Repeals are as follows:~~

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

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

14 ~~Section 15. Effective date.~~

15 ~~This act shall take effect as follows:~~

16 ~~(1) Section 10 shall take effect immediately.~~

17 ~~(2) The remainder of this act shall take effect in 180~~  
18 ~~days.~~

19 SECTION 1. SHORT TITLE.

<—

20 THIS ACT SHALL BE KNOWN AND MAY BE CITED AS THE SMOKE FREE  
21 PENNSYLVANIA ACT.

22 SECTION 2. LEGISLATIVE FINDINGS AND PURPOSE.

23 (A) FINDINGS.--THE GENERAL ASSEMBLY FINDS AS FOLLOWS:

24 (1) THE USE OF TOBACCO PRODUCTS IS DANGEROUS NOT ONLY TO  
25 THE PERSON SMOKING, BUT ALSO TO NONSMOKERS WHO MUST BREATHE  
26 THE CONTAMINATED AIR.

27 (2) THE DEPARTMENT OF ENVIRONMENTAL PROTECTION HAS  
28 CLASSIFIED SECONDHAND TOBACCO SMOKE AS A CLASS A CARCINOGEN,  
29 A CLASSIFICATION RESERVED FOR THE MOST LETHAL ENVIRONMENTAL  
30 HAZARDS, SUCH AS ASBESTOS, BENZENE, FORMALDEHYDE AND RADON.

1 (3) APPROXIMATELY 53,000 NONSMOKERS IN THE UNITED STATES  
2 DIE ANNUALLY FROM LUNG AND HEART DISEASE DUE TO EXPOSURE TO  
3 PASSIVE SMOKE.

4 (4) THREE HUNDRED THOUSAND CHILDREN EXPOSED TO TOBACCO  
5 SMOKE HAVE INCREASED FREQUENCY OF LOWER RESPIRATORY  
6 INFECTIONS, SUCH AS PNEUMONIA AND BRONCHITIS.

7 (5) SECOND HAND SMOKE EXPOSURE HAS BEEN LINKED TO SUDDEN  
8 INFANT DEATH SYNDROME.

9 (6) TOBACCO SMOKE IS ALSO RESPONSIBLE FOR UP TO  
10 1,000,000 ATTACKS OF ASTHMA, 8,000 TO 26,000 NEW CASES OF  
11 ASTHMA AND SIGNIFICANT REDUCTION IN LUNG FUNCTION AND CAUSES  
12 SERIOUS MIDDLE EAR INFECTIONS AMONG CHILDREN EACH YEAR.

13 (7) IN A COMPREHENSIVE REPORT RELEASED BY THE OFFICE OF  
14 THE SURGEON GENERAL IN JUNE 2006, THERE IS NO RISK-FREE LEVEL  
15 OF EXPOSURE TO SECONDHAND SMOKE. NONSMOKERS EXPOSED TO  
16 SECONDHAND SMOKE FACE UP TO A 30% RISK OF DEVELOPING HEART  
17 DISEASE AND LUNG CANCER.

18 (B) PURPOSE.--THE GENERAL ASSEMBLY INTENDS TO PROTECT THE  
19 PUBLIC HEALTH, THE COMFORT OF ALL PERSONS AND THE ENVIRONMENT BY  
20 PROHIBITING SMOKING IN PUBLIC PLACES AND WORKPLACES.

21 SECTION 3. DEFINITIONS.

22 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS ACT SHALL  
23 HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE  
24 CONTEXT CLEARLY INDICATES OTHERWISE:

25 "BAR." ANY AREA, ENCLOSED OR SUBSTANTIALLY ENCLOSED, DEVOTED  
26 TO THE SALE AND SERVICE OF ALCOHOLIC BEVERAGES FOR ON-PREMISES  
27 CONSUMPTION AND WHERE THE SERVICE OF FOOD IS ONLY INCIDENTAL TO  
28 THE CONSUMPTION OF SUCH BEVERAGES.

29 "CIGAR BAR." ANY AREA, ENCLOSED OR SUBSTANTIALLY ENCLOSED,  
30 DEVOTED TO THE SALE AND SERVICE OF TOBACCO PRODUCTS AND

1 ACCESSORIES AND THE RENTAL OF ONSITE HUMIDORS FOR ON-PREMISES  
2 CONSUMPTION WHERE THE SERVICE OF FOOD AND ALCOHOLIC BEVERAGES  
3 GENERATED 25% OR LESS OF ITS ANNUAL GROSS INCOME IN THE CALENDAR  
4 YEAR ENDING DECEMBER 31, 2005, AND, ON AN ONGOING BASIS, THE  
5 CALENDAR YEAR PRECEDING AN ESTABLISHMENT'S CLAIM OF BEING A  
6 CIGAR BAR.

7 "DEPARTMENT." THE DEPARTMENT OF HEALTH OF THE COMMONWEALTH.

8 "ENCLOSED." HAVING A CEILING OR ROOF, EXCEPT FOR DOORS,  
9 WINDOWS OR PASSAGEWAYS, WHOLLY ENCLOSED EITHER ON A PERMANENT OR  
10 TEMPORARY BASIS.

11 "ENFORCEMENT OFFICER." THE BOARD OF HEALTH OF A COUNTY OR IN  
12 A COUNTY THAT DOES NOT HAVE A BOARD OF HEALTH, THE DEPARTMENT.

13 "GOVERNMENT HOUSING FACILITY." GOVERNMENT-OWNED, MULTIPLE-  
14 UNIT RESIDENTIAL FACILITIES.

15 "HEALTH CARE FACILITY." ANY HEALTH CARE FACILITY PROVIDING  
16 CLINICALLY RELATED HEALTH SERVICES, INCLUDING, BUT NOT LIMITED  
17 TO, A GENERAL OR SPECIAL HOSPITAL, INCLUDING PSYCHIATRIC  
18 HOSPITALS, REHABILITATION HOSPITALS, AMBULATORY SURGICAL  
19 FACILITIES, LONG-TERM CARE NURSING FACILITIES, CANCER TREATMENT  
20 CENTERS USING RADIATION THERAPY OR SPECIAL HOSPITAL, INCLUDING  
21 PSYCHIATRIC HOSPITALS, REHABILITATION HOSPITALS, AMBULATORY  
22 SURGICAL FACILITIES, LONG-TERM CARE NURSING FACILITIES, CANCER  
23 TREATMENT CENTERS USING RADIATION THERAPY ON AN AMBULATORY BASIS  
24 AND INPATIENT DRUG AND ALCOHOL TREATMENT FACILITIES, BOTH PROFIT  
25 AND NONPROFIT AND INCLUDING THOSE OPERATED BY AN AGENCY OR STATE  
26 OR LOCAL GOVERNMENT. THE TERM SHALL ALSO INCLUDE A HOSPICE.

27 "RESTAURANT." ANY AREA, ENCLOSED OR SUBSTANTIALLY ENCLOSED,  
28 DEVOTED TO THE SALE OR SERVICE OF FOOD.

29 "RETAIL TOBACCO BUSINESS." A SOLE PROPRIETORSHIP, LIMITED  
30 LIABILITY COMPANY, CORPORATION, PARTNERSHIP OR OTHER ENTERPRISE

1 IN WHICH THE PRIMARY ACTIVITY IS THE RETAIL SALE OF TOBACCO  
2 PRODUCTS AND ACCESSORIES WHERE THE SALE OF GOODS GENERATED 25%  
3 OR LESS OF ITS ANNUAL GROSS INCOME IN THE CALENDAR YEAR ENDING  
4 DECEMBER 31, 2005, AND, ON AN ONGOING BASIS, THE CALENDAR YEAR  
5 PRECEDING AN ESTABLISHMENT'S CLAIM OF BEING A RETAIL TOBACCO  
6 BUSINESS.

7 "SCHOOL GROUNDS." A BUILDING OR STRUCTURE LOCATED WITHIN A  
8 PUBLIC OR PRIVATE PRESCHOOL, NURSERY SCHOOL, ELEMENTARY OR  
9 SECONDARY SCHOOL'S LEGALLY DEFINED PROPERTY BOUNDARIES AND ANY  
10 VEHICLES USED TO TRANSPORT CHILDREN OR SCHOOL PERSONNEL.

11 "SMOKING." THE BURNING OF A LIGHTED CIGAR, CIGARETTE, PIPE  
12 OR ANY OTHER MATTER OR SUBSTANCE WHICH CONTAINS TOBACCO.

13 "SUBSTANTIALLY ENCLOSED." HAVING A CEILING OR ROOF, WITH AN  
14 OPENING IN THE WALLS CONSTITUTING LESS THAN HALF THE TOTAL AREA  
15 OF THE WALLS. THE AREA OF THE OPENING DOES NOT INCLUDE DOORS,  
16 WINDOWS OR OTHER FITTINGS OPENED OR SHUT.

17 "WORKPLACE." AN ENCLOSED OR SUBSTANTIALLY ENCLOSED AREA  
18 SERVING AS A PLACE OF EMPLOYMENT, OCCUPATION, BUSINESS, TRADE,  
19 CRAFT, PROFESSION OR VOLUNTEER ACTIVITY, INCLUDING EMPLOYER-  
20 OWNED VEHICLES WITH MORE THAN ONE OCCUPANT.

21 SECTION 4. SMOKING RESTRICTIONS.

22 (A) RESTRICTIONS.--SMOKING SHALL NOT BE PERMITTED AND NO  
23 INDIVIDUAL SHALL SMOKE IN ANY OF THE FOLLOWING AREAS IF THEY ARE  
24 ENCLOSED OR SUBSTANTIALLY ENCLOSED AREAS:

25 (1) WORKPLACES.

26 (2) BARS.

27 (3) RESTAURANTS.

28 (4) ENCLOSED OR SUBSTANTIALLY ENCLOSED AREAS OPEN TO THE  
29 PUBLIC.

30 (5) MEANS OF MASS TRANSPORTATION, INCLUDING SUBWAYS,

1 BUSES, TRAINS, TAXICABS AND LIMOUSINES.

2 (6) TICKETING, BOARDING AND WAITING AREAS IN PUBLIC  
3 TRANSPORTATION TERMINALS, INCLUDING, BUT NOT LIMITED TO,  
4 UNDERGROUND SUBWAY STATIONS, TRAIN STATIONS AND BUS STATIONS.

5 (7) A PUBLIC OR PRIVATE FACILITY THAT HOUSES OR TREATS  
6 CHILDREN AND YOUTH IN STATE OR COUNTY CUSTODY, INCLUDING  
7 YOUTH DETENTION CENTERS, GROUP HOMES AND PRIVATE HOMES.

8 (8) A PUBLIC OR PRIVATE FACILITY, INCLUDING A PRIVATE  
9 HOME THAT PROVIDES CHILD-CARE AND/OR ADULT DAY-CARE SERVICES.

10 (9) SCHOOL FACILITIES.

11 (10) PUBLIC AND PRIVATE COLLEGES, UNIVERSITIES AND OTHER  
12 EDUCATIONAL AND VOCATIONAL INSTITUTIONS.

13 (11) HEALTH CARE OR GOVERNMENT HOUSING FACILITIES. THIS  
14 PARAGRAPH, HOWEVER, SHALL NOT PROHIBIT SMOKING BY PATIENTS OR  
15 RESIDENTS IN SEPARATE ENCLOSED ROOMS OF RESIDENTIAL HEALTH  
16 CARE FACILITIES, GOVERNMENT HOUSING FACILITIES, ADULT CARE  
17 FACILITIES, COMMUNITY MENTAL HEALTH RESIDENCES OR FACILITIES  
18 WHERE DAY TREATMENT PROGRAMS ARE PROVIDED, WHICH ARE  
19 DESIGNATED AS SMOKING ROOMS FOR PATIENTS OF THE FACILITIES OR  
20 PROGRAMS, OR IN PRIVATE RESIDENCES WITHIN THE FACILITIES,  
21 PROVIDED THAT THE ROOMS OR RESIDENCES ARE VENTILATED TO THE  
22 OUTSIDE.

23 (12) COMMERCIAL ESTABLISHMENTS USED FOR THE PURPOSE OF  
24 CARRYING ON OR EXERCISING ANY TRADE, PROFESSION, VOCATION OR  
25 CHARITABLE ACTIVITY.

26 (13) INDOOR ARENAS.

27 (14) ZOOS.

28 (15) FACILITIES WHERE BINGO, AS DEFINED IN THE ACT OF  
29 JULY 10, 1981 (P.L.214, NO.67), KNOWN AS THE BINGO LAW, IS  
30 PLAYED.

1 (16) LICENSED FACILITIES, AS DEFINED UNDER 4 PA.C.S. §  
2 1103 (RELATING TO DEFINITIONS), OR ANY OTHER SIMILAR TYPE OF  
3 FACILITY AUTHORIZED UNDER STATE LAW.

4 (17) AT LEAST 75% OF THE TOTAL NUMBER OF SLEEPING  
5 QUARTERS AVAILABLE FOR RENT TO GUESTS WITHIN A SINGLE LODGING  
6 ESTABLISHMENT SUCH AS A HOTEL OR MOTEL.

7 (B) SIGNAGE.--"SMOKING" 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 SECTION, BY THE OWNER,  
12 OPERATOR, MANAGER OR OTHER PERSON HAVING CONTROL OF THE AREA.

13 (C) EXCEPTIONS.--THE PROVISIONS OF THIS SECTION SHALL NOT  
14 APPLY TO ANY OF THE FOLLOWING:

15 (1) PRIVATE HOMES, PRIVATE RESIDENCES AND PRIVATE  
16 AUTOMOBILES UNLESS THE PRIVATE HOME, PRIVATE RESIDENCE OR  
17 PRIVATE VEHICLE IS BEING USED AT THE TIME FOR THE PROVISION  
18 OF CHILD-CARE SERVICES OR SERVICES RELATED TO THE CARE OF  
19 CHILDREN AND YOUTH IN STATE OR COUNTY CUSTODY, PURSUANT TO  
20 SECTION 4(A)(7), (8) AND (9).

21 (2) RETAIL TOBACCO BUSINESSES.

22 (3) CIGAR BARS.

23 (4) DESIGNATED SLEEPING QUARTERS WITHIN A LODGING  
24 ESTABLISHMENT AVAILABLE FOR RENT TO GUESTS ACCOUNTING FOR NO  
25 MORE THAN 25% OF THE TOTAL NUMBER OF LODGING UNITS WITHIN A  
26 SINGLE LODGING ESTABLISHMENT SUCH AS A HOTEL OR MOTEL.

27 (5) WORKPLACES OF ANY MANUFACTURER, IMPORTER OR  
28 WHOLESALE OF TOBACCO PRODUCTS, OF ANY TOBACCO LEAF DEALER OR  
29 PROCESSOR AND ALL TOBACCO STORAGE FACILITIES.

30 (D) RELATIONSHIP TO OTHER LAWS.--SMOKING MAY NOT BE

1 PERMITTED WHERE PROHIBITED BY ANY OTHER LAW, RULE OR REGULATION  
2 OF ANY COMMONWEALTH AGENCY OR ANY POLITICAL SUBDIVISION. NOTHING  
3 IN THIS SECTION SHALL BE CONSTRUED TO RESTRICT THE POWER OF ANY  
4 POLITICAL SUBDIVISION TO ADOPT AND ENFORCE ADDITIONAL LOCAL  
5 LAWS, ORDINANCES OR REGULATIONS THAT ARE MORE RESTRICTIVE THAN  
6 THIS SECTION AND COMPLY WITH THE STANDARDS SET FORTH UNDER THIS  
7 SECTION.

8 (E) PROHIBITED ACTS.--THE FOLLOWING SHALL BE UNLAWFUL:

9 (1) FOR ANY EMPLOYER OR OTHER PERSON THAT OWNS, MANAGES,  
10 OPERATES OR OTHERWISE CONTROLS THE USE OF AN AREA IN WHICH  
11 SMOKING IS PROHIBITED OR RESTRICTED UNDER THIS SECTION TO  
12 FAIL TO COMPLY WITH THE PROVISIONS OF THIS SECTION. IT SHALL  
13 BE AN AFFIRMATIVE DEFENSE THAT DURING THE RELEVANT TIME  
14 PERIOD ACTUAL CONTROL OF THE AREA WAS NOT EXERCISED BY THE  
15 EMPLOYER OR OTHER PERSON, BUT RATHER BY A LESSEE OR A  
16 SUBLESSEE. IT SHALL ALSO BE AN AFFIRMATIVE DEFENSE THAT THE  
17 EMPLOYER OR OTHER PERSON HAS MADE A GOOD FAITH EFFORT TO  
18 ENSURE COMPLIANCE WITH THE PROVISIONS OF THIS SECTION. TO  
19 ESTABLISH AN AFFIRMATIVE DEFENSE, THE EMPLOYER OR OTHER  
20 PERSON WHO CONTROLS THE AREA SHALL SUBMIT AN AFFIDAVIT AND  
21 MAY SUBMIT ANY OTHER RELEVANT PROOF INDICATING THAT THE  
22 PERSON DID NOT EXERCISE ACTUAL CONTROL OF THE AREA DURING THE  
23 RELEVANT TIME PERIOD, OR THAT HE MADE A GOOD FAITH EFFORT TO  
24 ENSURE COMPLIANCE WITH THE LAW. THE AFFIDAVIT AND OTHER PROOF  
25 SHALL BE SENT BY CERTIFIED MAIL TO THE APPROPRIATE  
26 ENFORCEMENT OFFICER WITHIN 30 DAYS OF RECEIPT BY THE PERSON  
27 OF A NOTICE OF VIOLATION.

28 (2) FOR AN INDIVIDUAL TO SMOKE IN ANY AREA WHERE SMOKING  
29 IS PROHIBITED OR RESTRICTED UNDER THIS SECTION.

30 (F) PENALTY FOR UNLAWFUL CONDUCT.--



1 (1) IF THE ENFORCEMENT OFFICER DETERMINES THAT A  
2 VIOLATION OF SUBSECTION (E) HAS OCCURRED, THE ENFORCEMENT  
3 OFFICER MAY IMPOSE A CIVIL PENALTY OF \$250 FOR THE FIRST  
4 OFFENSE, \$500 FOR THE SECOND OFFENSE AND \$1,000 FOR EACH  
5 SUBSEQUENT OFFENSE. THE MONEY SHALL GO TO THE COUNTY BOARD OF  
6 HEALTH OR IN COUNTIES THAT DO NOT HAVE A BOARD OF HEALTH, THE  
7 DEPARTMENT, TO BE USED TO ENFORCE THIS ACT. IN ADDITION, A  
8 COURT OF COMPETENT JURISDICTION MAY ORDER IMMEDIATE  
9 COMPLIANCE WITH THE PROVISIONS OF THIS SECTION.

10 (2) THE ENFORCEMENT OFFICER MAY BRING AN ACTION TO  
11 RECOVER THE CIVIL PENALTY PROVIDED UNDER PARAGRAPH (1) IN ANY  
12 COURT OF COMPETENT JURISDICTION. A CIVIL PENALTY RECOVERED  
13 UNDER THE PROVISIONS OF THIS SECTION SHALL BE RECOVERED BY  
14 AND IN THE NAME OF THE COUNTY BOARD OF HEALTH OR THE COUNTY  
15 FOR WHOM THE ENFORCEMENT OFFICER HAS BEEN DESIGNATED.

16 (G) ENFORCEMENT OFFICER.--IF A COUNTY DOES NOT HAVE A BOARD  
17 OF HEALTH, THE GOVERNING BODY OF THE COUNTY SHALL, BY RESOLUTION  
18 ADOPTED WITHIN 30 DAYS FOLLOWING THE EFFECTIVE DATE OF THIS  
19 SECTION, DESIGNATE AN OFFICER FOR THE PURPOSE OF ENFORCING THIS  
20 SECTION. THE DESIGNATION SHALL BE FILED WITH THE DEPARTMENT  
21 WITHIN 30 DAYS AFTER ADOPTION AND SHALL BE EFFECTIVE 30 DAYS  
22 AFTER IT IS FILED WITH THE DEPARTMENT. THE ENFORCEMENT OFFICER  
23 SHALL HAVE SOLE JURISDICTION TO ENFORCE THE PROVISIONS OF THIS  
24 SECTION ON A COUNTYWIDE BASIS UNDER THE GUIDELINES DEVELOPED AND  
25 PUBLISHED BY THE DEPARTMENT. ANY PERSON WHO DESIRES TO REGISTER  
26 A COMPLAINT UNDER THIS SECTION MAY DO SO WITH THE APPROPRIATE  
27 ENFORCEMENT OFFICER.

28 SECTION 5. RETALIATION PROHIBITED.

29 NO PERSON OR EMPLOYER SHALL DISCHARGE, REFUSE TO HIRE OR IN  
30 ANY MANNER RETALIATE AGAINST ANY EMPLOYEE OR APPLICANT FOR

1 EMPLOYMENT BECAUSE THE EMPLOYER OR APPLICANT EXERCISES ANY RIGHT  
2 TO A SMOKE-FREE ENVIRONMENT REQUIRED BY THIS ACT.

3 SECTION 6. RULES AND REGULATIONS.

4 THE DEPARTMENT SHALL PROMULGATE AND ADOPT RULES AND  
5 REGULATIONS AS ARE NECESSARY AND REASONABLE TO IMPLEMENT THE  
6 PROVISIONS OF THIS ACT INCLUDING THE ENFORCEMENT OF THIS ACT IN  
7 THE EVENT INDIVIDUAL COUNTIES FAIL TO ENFORCE THIS ACT. THE  
8 DEPARTMENT SHALL ALSO ENGAGE IN A CONTINUING PROGRAM TO EXPLAIN  
9 AND CLARIFY THE PURPOSES AND REQUIREMENTS OF THIS ACT TO PERSONS  
10 AFFECTED BY IT AND TO GUIDE OWNERS, OPERATORS AND MANAGERS IN  
11 THEIR COMPLIANCE WITH THIS ACT. THE PROGRAMS MAY INCLUDE  
12 PUBLICATION OF A BROCHURE FOR AFFECTED BUSINESSES AND  
13 INDIVIDUALS EXPLAINING THE PROVISIONS OF THIS ACT.

14 SECTION 7. CONSTRUCTION.

15 IN ANY DISPUTE ARISING UNDER THE PROVISIONS OF THIS ACT, THE  
16 AUTHORITY ADJUDICATING THE DISPUTE SHALL CONSTRUE THE PROVISIONS  
17 OF THIS ACT IN FAVOR OF THE HEALTH CONCERNS OF PERSONS WHO DO  
18 NOT ENGAGE IN SMOKING AND WHOSE CONCERNS SHALL REPRESENT THE  
19 PUBLIC INTEREST.

20 SECTION 8. REPEAL.

21 SECTION 10.1 OF THE ACT OF APRIL 27, 1927 (P.L.465, NO.299),  
22 REFERRED TO AS THE FIRE AND PANIC ACT, IS REPEALED IN ORDER TO  
23 EFFECTUATE THE PROVISIONS OF THIS ACT.

24 SECTION 9. EFFECTIVE DATE.

25 THIS ACT SHALL TAKE EFFECT IN 90 DAYS.