

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 SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES,
JULY 15, 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~~ SALES OF TOBACCO AND TOBACCO-RELATED <—
4 PRODUCTS GENERATED 75% OR MORE OF ITS ANNUAL GROSS INCOME IN THE
5 CALENDAR YEAR ENDING DECEMBER 31, 2005, AND, ON AN ONGOING
6 BASIS, THE CALENDAR YEAR PRECEDING AN ESTABLISHMENT'S CLAIM OF
7 BEING A CIGAR BAR.

8 "DEPARTMENT." THE DEPARTMENT OF HEALTH OF THE COMMONWEALTH.

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

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

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

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

28 "PRIVATE CLUB." ANY REPUTABLE GROUP OF INDIVIDUALS <—
29 ASSOCIATED TOGETHER AS A NOT-FOR-PROFIT ORGANIZATION FOR
30 LEGITIMATE PURPOSES OF MUTUAL BENEFIT, ENTERTAINMENT, FELLOWSHIP

1 OR LAWFUL CONVENIENCE WHICH REGULARLY AND EXCLUSIVELY OCCUPIES,
2 AS OWNER OR LESSEE, A CLUBHOUSE OR QUARTERS FOR THE USE OF ITS
3 MEMBERS AND WHICH HOLDS REGULAR MEETINGS, CONDUCTS BUSINESS
4 THROUGH OFFICERS REGULARLY ELECTED, ADMITS MEMBERS BY WRITTEN
5 APPLICATION, INVESTIGATION AND BALLOT, AND CHARGES AND COLLECTS
6 DUES FROM ELECTED MEMBERS. THE CLUB SHALL EITHER BE INCORPORATED
7 OR, IF UNINCORPORATED, PROVIDE PROOF OF CONTINUOUS EXISTENCE FOR
8 THE PAST TEN YEARS IN A MANNER DEEMED SUFFICIENT BY THE
9 DEPARTMENT OF HEALTH.

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

12 "RETAIL TOBACCO BUSINESS." A SOLE PROPRIETORSHIP, LIMITED
13 LIABILITY COMPANY, CORPORATION, PARTNERSHIP OR OTHER ENTERPRISE
14 IN WHICH THE PRIMARY ACTIVITY IS THE RETAIL SALE OF TOBACCO
15 PRODUCTS AND ACCESSORIES WHERE THE SALE OF ~~GOODS GENERATED 25%~~ <—
16 ~~OR LESS~~ TOBACCO AND TOBACCO-RELATED PRODUCTS GENERATED 75% OR <—
17 MORE OF ITS ANNUAL GROSS INCOME IN THE CALENDAR YEAR ENDING
18 DECEMBER 31, 2005, AND, ON AN ONGOING BASIS, THE CALENDAR YEAR
19 PRECEDING AN ESTABLISHMENT'S CLAIM OF BEING A RETAIL TOBACCO
20 BUSINESS.

21 "SCHOOL ~~GROUNDS~~ FACILITIES." A BUILDING OR STRUCTURE LOCATED <—
22 WITHIN A PUBLIC OR PRIVATE PRESCHOOL, NURSERY SCHOOL, ELEMENTARY
23 OR SECONDARY SCHOOL'S LEGALLY DEFINED PROPERTY BOUNDARIES AND
24 ANY VEHICLES OPERATED DIRECTLY BY THE SCHOOL OR UNDER THEIR <—
25 CONTRACT USED TO TRANSPORT CHILDREN OR SCHOOL PERSONNEL.

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

28 "SUBSTANTIALLY ENCLOSED." HAVING A CEILING OR ROOF, WITH AN
29 OPENING IN THE WALLS CONSTITUTING LESS THAN HALF THE TOTAL AREA
30 OF THE WALLS. THE AREA OF THE OPENING DOES NOT INCLUDE DOORS,

1 WINDOWS OR OTHER FITTINGS OPENED OR SHUT.

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

6 SECTION 4. SMOKING RESTRICTIONS.

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

10 (1) WORKPLACES.

11 (2) BARS.

12 (3) RESTAURANTS.

13 (4) ENCLOSED OR SUBSTANTIALLY ENCLOSED AREAS OPEN TO THE
14 PUBLIC.

15 (5) MEANS OF MASS TRANSPORTATION, INCLUDING SUBWAYS,
16 BUSES, TRAINS, TAXICABS AND LIMOUSINES.

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

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

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

25 (9) SCHOOL FACILITIES.

26 (10) PUBLIC AND PRIVATE COLLEGES, UNIVERSITIES AND OTHER
27 EDUCATIONAL AND VOCATIONAL INSTITUTIONS.

28 (11) HEALTH CARE OR GOVERNMENT HOUSING FACILITIES. THIS
29 PARAGRAPH, HOWEVER, SHALL NOT PROHIBIT SMOKING BY PATIENTS OR
30 RESIDENTS IN SEPARATE ENCLOSED ROOMS OF RESIDENTIAL HEALTH

1 CARE FACILITIES, GOVERNMENT HOUSING FACILITIES, ADULT CARE
2 FACILITIES, COMMUNITY MENTAL HEALTH RESIDENCES OR FACILITIES
3 WHERE DAY TREATMENT PROGRAMS ARE PROVIDED, WHICH ARE
4 DESIGNATED AS SMOKING ROOMS FOR PATIENTS OF THE FACILITIES OR
5 PROGRAMS, OR IN PRIVATE RESIDENCES WITHIN THE FACILITIES,
6 PROVIDED THAT THE ROOMS OR RESIDENCES ARE VENTILATED TO THE
7 OUTSIDE.

8 (12) COMMERCIAL ESTABLISHMENTS USED FOR THE PURPOSE OF
9 CARRYING ON OR EXERCISING ANY TRADE, PROFESSION, VOCATION OR
10 CHARITABLE ACTIVITY.

11 (13) INDOOR ARENAS.

12 (14) ZOOS.

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

16 (16) LICENSED FACILITIES, AS DEFINED UNDER 4 PA.C.S. §
17 1103 (RELATING TO DEFINITIONS), OR ANY OTHER SIMILAR TYPE OF
18 FACILITY AUTHORIZED UNDER STATE LAW.

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

22 (B) SIGNAGE.--"SMOKING" OR "NO SMOKING" SIGNS OR THE
23 INTERNATIONAL "NO SMOKING" SYMBOL, WHICH CONSISTS OF A PICTORIAL
24 REPRESENTATION OF A BURNING CIGARETTE IN A CIRCLE WITH A BAR
25 ACROSS IT, SHALL BE PROMINENTLY POSTED AND PROPERLY MAINTAINED
26 WHERE SMOKING IS REGULATED BY THIS SECTION, BY THE OWNER,
27 OPERATOR, MANAGER OR OTHER PERSON HAVING CONTROL OF THE AREA.

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

30 (1) PRIVATE HOMES, PRIVATE RESIDENCES AND PRIVATE

1 AUTOMOBILES UNLESS THE PRIVATE HOME, PRIVATE RESIDENCE OR
2 PRIVATE VEHICLE IS BEING USED AT THE TIME FOR THE PROVISION
3 OF CHILD-CARE SERVICES OR SERVICES RELATED TO THE CARE OF
4 CHILDREN AND YOUTH IN STATE OR COUNTY CUSTODY, PURSUANT TO
5 SUBSECTION (A)(7), (8) AND (9).

6 (2) RETAIL TOBACCO BUSINESSES.

7 (3) CIGAR BARS.

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

12 (5) WORKPLACES OF ANY MANUFACTURER, IMPORTER OR
13 WHOLESALE OF TOBACCO PRODUCTS, OF ANY TOBACCO LEAF DEALER OR
14 PROCESSOR AND ALL TOBACCO STORAGE FACILITIES.

15 (6) A PRIVATE CLUB. ←

16 (7) AN EXHIBITION HALL, CONFERENCE ROOM OR SIMILAR
17 FACILITY USED EXCLUSIVELY FOR AN EVENT TO WHICH THE PUBLIC IS
18 INVITED FOR THE PRIMARY PURPOSE OF PROMOTING AND SAMPLING
19 TOBACCO PRODUCTS, AND WHERE THE SERVICE OF FOOD AND DRINK IS
20 INCIDENTAL, IF THE SPONSOR OR ORGANIZER GIVES NOTICE IN ALL
21 ADVERTISEMENTS AND OTHER PROMOTIONAL MATERIALS GIVE NOTICE
22 THAT SMOKING WILL NOT BE RESTRICTED. AT LEAST 75% OF ALL
23 PRODUCTS DISPLAYED OR DISTRIBUTED AT THE EVENT SHALL BE
24 TOBACCO OR TOBACCO-RELATED PRODUCTS. NOTICE THAT SMOKING WILL
25 NOT BE RESTRICTED MUST BE PROMINENTLY POSTED AT THE ENTRANCE
26 TO THE FACILITY. NO RETAILER, MANUFACTURER OR DISTRIBUTOR OF
27 TOBACCO MAY CONDUCT MORE THAN SIX DAYS OF A PROMOTIONAL EVENT
28 UNDER THIS PARAGRAPH IN ANY CALENDAR YEAR.

29 (D) RELATIONSHIP TO OTHER LAWS.--SMOKING MAY NOT BE
30 PERMITTED WHERE PROHIBITED BY ANY OTHER LAW, RULE OR REGULATION

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

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

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

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

29 (F) PENALTY FOR UNLAWFUL CONDUCT.--

30 (1) IF THE ENFORCEMENT OFFICER DETERMINES THAT A

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

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

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

27 SECTION 5. RETALIATION PROHIBITED.

28 NO PERSON OR EMPLOYER SHALL DISCHARGE, REFUSE TO HIRE OR IN
29 ANY MANNER RETALIATE AGAINST ANY EMPLOYEE OR APPLICANT FOR
30 EMPLOYMENT BECAUSE THE EMPLOYER OR APPLICANT EXERCISES ANY RIGHT

1 TO A SMOKE-FREE ENVIRONMENT REQUIRED BY THIS ACT.

2 SECTION 6. RULES AND REGULATIONS.

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

13 SECTION 7. CONSTRUCTION.

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

19 SECTION 8. REPEAL.

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

23 SECTION 9. EFFECTIVE DATE.

24 THIS ACT SHALL TAKE EFFECT IN 90 DAYS.