

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1485 Session of
2013

INTRODUCED BY SCAVELLO, FRANKEL, SWANGER, TRUITT, COHEN,
DONATUCCI, SCHLOSSBERG, CLYMER, MUNDY AND MURT, JUNE 10, 2013

REFERRED TO COMMITTEE ON HUMAN SERVICES, JUNE 10, 2013

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 prohibiting smoking in
6 public places; providing for local ordinances; and making a
7 related repeal of the Fire and Panic Act.

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

10 Section 1. The title of the act of June 13, 2008 (P.L.182,
11 No.27), known as the Clean Indoor Air Act, is amended to read:

12 AN ACT

13 Regulating smoking in this Commonwealth; imposing powers
14 and duties on the Department of Health and local boards of
15 health; providing penalties; [preempting] repealing
16 provisions relating to preemption of local action; providing
17 for effect on local ordinances; and making [a related repeal]
18 related repeals.

19 Section 2. Sections 2, 3(b) and (c), 4, 5(d), 6(c) and 10 of
20 the act are amended to read:

1 Section 2. Definitions.

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

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

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

12 (2) An establishment which, at any time, operates
13 pursuant to an eating place retail dispenser's license, malt
14 or brewed beverage distributor's license or restaurant liquor
15 license under the Liquor Code, and has total annual sales of
16 tobacco products, including tobacco, accessories or cigar
17 storage lockers or humidors of at least 15% of the combined
18 gross sales of the establishment.]

19 "Cigar bar." An establishment with a permit or license to
20 sell alcoholic beverages pursuant to the act of April 12, 1951
21 (P.L.90, No.21), known as the Liquor Code, that satisfies all of
22 the following:

23 (1) Generates 60% or more of its quarterly gross revenue
24 from the sale of alcoholic beverages for consumption on the
25 premises by the customers.

26 (2) Generates 25% or more of its quarterly gross revenue
27 from the sale of cigars for consumption on the premises by
28 customers.

29 (3) Has a humidor on the premises.

30 (4) Does not permit individuals under 18 years of age.

Revenue generated from other tobacco sales, including cigarette vending machines, shall not be used to determine whether an establishment satisfies the definition of a cigar bar.

"Cigar lounge." An establishment without a license to sell alcoholic beverages that satisfies all of the following:

(1) Derives more than 80% of its quarterly gross revenue from the sale of cigars for consumption on the premises by customers.

(2) Has a humidor on the premises.

(3) Does not allow individuals under 18 year of age to enter the premises.

(4) May serve food and nonalcoholic beverages for consumption on the premises by customers.

Revenue generated from other tobacco sales, including cigarette vending machines, shall not be used to determine whether an establishment satisfies this definition.

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

"Drinking establishment." [Any of the following:

(1)] An establishment which[:

(i)] operates pursuant to an eating place retail dispenser's license, restaurant liquor license or retail dispenser's license under the act of April 12, 1951 (P.L. 90, No.21), known as the Liquor Code[;]. The term also includes a nightclub.

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

(iii) does not permit individuals under 18 years of age.

(2) An enclosed area within an establishment which, on

1 the effective date of this section:

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

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

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

13 (iv) does not permit individuals under 18 years of
14 age.

15 The term does not include a nightclub.]

16 "E-cigarette." Any electronic oral device, such as one
17 composed of a heating element, battery or electronic circuit,
18 which provides a vapor of nicotine or any other substances and
19 the use or inhalation of which simulates smoking. The term shall
20 include any such device, whether manufactured, distributed,
21 marketed or sold as an e-cigarette, e-cigar or e-pipe or under
22 any other product name or descriptor.

23 "Enclosed area." All space between a floor and a ceiling
24 that is bounded on at least two sides by walls, doorways or
25 windows, either open or closed. A wall includes any retractable
26 divider, garage door or other physical barrier, whether
27 temporary or permanent and whether or not containing openings of
28 any kinds.

29 ["Full-service truck stop." An establishment catering to
30 long-haul truck drivers that provides shower facilities for a

1 fee.

2 "Gaming floor." Any portion of a licensed facility where
3 slot machines have been installed for use or play as approved by
4 the Pennsylvania Gaming Control Board. The term does not include
5 an area adjacent to the gaming floor, including any hallway,
6 reception area, retail space, bar, nightclub, restaurant, hotel,
7 entertainment venue or office space.]

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

10 "Night club." A public hall or hall for which admission is
11 generally charged and which is primarily or predominantly
12 devoted to dancing or to shows or cabarets as opposed to a
13 facility that is primarily a bar, tavern or dining facility.

14 "Patio." Any outdoor deck, patio or similar outdoor service
15 area which is part of a food or drinking establishment.

16 "Private club." An organization [which is any of the
17 following:

18 (1) A reputable group of individuals associated together
19 as an organization for legitimate purposes of mutual benefit,
20 entertainment, fellowship or lawful convenience which does
21 all of the following:

22 (i) Regularly and exclusively occupies, as owner or
23 lessee, a clubhouse or quarter for the use of its
24 members.

25 (ii) Holds regular meetings; conducts its business
26 through officers regularly elected; admits members by
27 written application, investigation and ballot; and
28 charges and collects dues from elected members.

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

1 (2) A volunteer ambulance service.

2 (3) A volunteer fire company.

3 (4) A volunteer rescue company.], whether incorporated
4 or not:

5 (1) Which is the owner, lessee or occupant of a building
6 or portion thereof used exclusively for club purposes at all
7 times.

8 (2) Which is operated solely for a recreational,
9 fraternal, social, patriotic, political, benevolent or
10 athletic purpose, but not for pecuniary gain.

11 (3) Which only sells alcoholic beverages incidental to
12 its operation.

13 (4) The affairs and management of which are conducted by
14 a board of directors, executive committee or similar body
15 chosen by the members at an annual meeting.

16 (5) Which has established bylaws or a constitution to
17 govern its activities.

18 (6) Has been granted an exemption from the payment of
19 Federal income tax as a club under section 501 of the
20 Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §
21 501).

22 "Public meeting." A meeting open to the public. The term
23 includes a meeting under 65 Pa.C.S. Ch. 7 (relating to open
24 meetings).

25 "Public place." An enclosed area which serves as a
26 workplace, commercial establishment or an area where the public
27 is invited or permitted. The term includes:

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

30 (2) A vehicle used for mass transportation. This

paragraph includes a train, subway, bus, including a chartered bus, plane, taxicab and limousine.

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

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

(5) A sports or recreational facility, theater or performance establishment.

(6) A truck stop.

(7) A residential facility.

(8) A private club.

(9) A drinking establishment.

(10) A licensed facility.

(11) A patio.

"Residential facility." The term includes any of the following:

(1) A long-term care facility regulated under 42 CFR § 483.15 (relating to quality of life).

(2) Residential adult care facility.

(3) Community mental health care facility.

(4) Drug or alcohol treatment facility.

(5) Day treatment programs.

"Smoking." [The carrying by a person of a lighted cigar, cigarette, pipe or other lighted smoking device.] Inhaling, exhaling, burning or carrying any lighted or heated cigar, cigarette or pipe or any other lighted or heated tobacco plant product intended for inhalation, in any manner or in any form. The term includes the use of an e-cigarette which creates a vapor in any manner or in any form or the use of any oral

1 smoking device for the purpose of circumventing the prohibition
2 of smoking in this act.

3 "Tobacco shop." A business establishment whose sales of
4 tobacco and tobacco-related products, including cigars, pipe
5 tobacco and smoking accessories, comprise at least [50%] 80% of
6 the gross annual sales where sale of nontobacco items is
7 incidental. This term does not include a stand-alone kiosk or
8 establishment comprised solely of cigarette vending machines.

9 ["Volunteer ambulance service." As defined in section 102 of
10 the act of July 31, 2003 (P.L.73, No.17), known as the Volunteer
11 Fire Company and Volunteer Ambulance Service Grant Act.

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

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

18 "Workplace." An indoor area serving as a place of
19 employment, occupation, business, trade, craft, professional or
20 volunteer activity[.], including, but not limited to, work
21 areas, private offices, employee lounges, restrooms, conference
22 rooms, meeting rooms, classrooms, employee cafeterias, hallways,
23 construction sites, temporary offices and work vehicles.

24 Section 3. Prohibition.

25 * * *

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

28 (1) A private home, private residence or private vehicle
29 unless the private home, private residence or private vehicle
30 is [being used at the] used at any time for the provision of

1 child-care services, adult day-care services or services
2 related to the care of children and youth in State or county
3 custody.

4 [(2) Designated quarters:

5 (i) within a lodging establishment which are
6 available for rent to guests accounting for no more than
7 25% of the total number of lodging units within a single
8 lodging establishment; or

9 (ii) within a full-service truck stop.]

10 (3) A tobacco shop.

11 [(4) A workplace of a manufacturer, importer or
12 wholesaler of tobacco products; a manufacturer of tobacco-
13 related products, including lighters; a tobacco leaf dealer
14 or processor; or a tobacco storage facility.

15 (5) Any of the following residential facilities:

16 (i) A long-term care facility regulated under 42 CFR
17 483.15 (relating to quality of life). This subparagraph
18 shall not apply if 42 CFR 483.15 is abrogated or expires.

19 (ii) A separate enclosed room or designated smoking
20 room in a residential adult care facility, community
21 mental health care facility, drug and alcohol facility or
22 other residential health care facility not covered under
23 subparagraph (i).

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

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

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

30 (ii) leased or used for a private event which is not

1 club sponsored.

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

5 (i) The place is separate from other public areas
6 during the event.

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

8 (iii) Individuals under 18 years of age are not
9 permitted to attend.

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

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

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

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

18 (B) The sponsor or organizer gives notice in all
19 advertisements and other promotional materials that
20 smoking will not be restricted.

21 (C) At least 75% of all products displayed or
22 distributed at the event are tobacco or tobacco-
23 related products.

24 (D) Notice that smoking will not be restricted
25 is prominently posted at the entrance to the
26 facility.

27 (ii) A single retailer, manufacturer or distributor
28 of tobacco may not conduct more than six days of a
29 promotional event under this paragraph in any calendar
30 year.

1 (9) A cigar bar.

2 (10) A drinking establishment.

3 (11) Unless otherwise increased under this paragraph,
4 25% of the gaming floor at a licensed facility. No earlier
5 than 90 days following the effective date of this section or
6 the date of commencement of slot machine operations at a
7 licensed facility, whichever is later, a licensed facility
8 shall request a report from the Department of Revenue that
9 analyzes the gross terminal revenue per slot machine unit in
10 operation at the licensed facility within the 90-day period
11 preceding the request. If the report shows that the average
12 gross terminal revenue per slot machine unit in the
13 designated smoking area equals or exceeds the average gross
14 terminal revenue per slot machine unit in the designated
15 nonsmoking area, the licensed facility may increase the
16 designated smoking area of the gaming floor in proportion to
17 the percentage difference in revenue. A licensed facility may
18 request this report from the Department of Revenue on a
19 quarterly basis and may increase the designated smoking area
20 of the gaming floor accordingly. At no time may the
21 designated smoking area exceed 50% of the gaming floor. The
22 board shall have jurisdiction to verify the gross terminal
23 revenues included in the report to ensure compliance with the
24 requirements under this paragraph. Movement of the licensed
25 facility from a temporary facility to a permanent facility
26 shall not require the licensed facility to revert to the
27 minimum percentage set forth under this paragraph.]

28 (12) A designated outdoor smoking area within the
29 confines of a sports or recreational facility, theater or
30 performance establishment.

1 (13) A cigar bar or cigar lounge that, as of the
2 effective date of this paragraph, operated as a cigar bar or
3 cigar lounge and satisfies all of the following requirements:

4 (i) Smoke from the cigar bar or cigar lounge does
5 not migrate into an enclosed area where smoking is
6 prohibited pursuant to this act.

7 (ii) The cigar bar or cigar lounge is located in a
8 freestanding structure that shares no common walls with
9 other establishments and is occupied solely by the cigar
10 bar or cigar lounge.

11 (iii) The cigar bar or cigar lounge satisfactorily
12 reports on a quarterly basis to the department on a form
13 prescribed by the department one of the following:

14 (A) the revenue generated from the sale of
15 cigars for consumption on the premises by customers;
16 or

17 (B) the sale of cigars and alcoholic beverages
18 for consumption on the premises by customers as a
19 percentage of quarterly gross revenue.

20 The department shall determine whether any additional
21 documentation is required by the cigar bar or cigar
22 lounge to verify revenue data submitted by the cigar bar
23 or cigar lounge.

24 (iv) The cigar bar or cigar lounge does not expand
25 in size or change its location after the date of this
26 paragraph.

27 This paragraph shall not apply to any business that is
28 established for the purpose of avoiding compliance with this
29 act. Any cigar bar or cigar lounge that fails to satisfy any
30 of the requirements of this paragraph, including the gross

1 revenue requirements, in any one calendar quarter shall
2 immediately lose its exception status and shall not be
3 eligible for the exception in the future.

4 (c) Conditions and qualifications for exceptions.--

5 [(1)] In order to be excepted under subsection (b), a
6 [drinking establishment,] cigar bar, cigar lounge or tobacco
7 shop must submit a letter to the department, accompanied by
8 verifiable supporting documentation, [to the department]
9 claiming an exception under subsection (b). Exception shall
10 be based upon the establishment's books, accounts, revenues
11 or receipts, including those reported to the Department of
12 Revenue for sales tax purposes, from the previous year or
13 stated projected annual revenues, which shall be verified
14 within six months.

15 [(2) In order to qualify for the exception under
16 subsection (b) (6), a private club must take and record a vote
17 of its officers under the bylaws to address smoking in the
18 private club's facilities.]

19 Section 4. Signage.

20 (a) General rule.--"Smoking Permitted" or "No Smoking" signs
21 or the international "No Smoking" symbol, which consists of a
22 pictorial representation of a burning cigarette in a circle with
23 a bar across it, shall be prominently posted and properly
24 maintained where smoking is regulated by this act by the owner,
25 operator, manager or other person having control of the area. A
26 "Smoking Permitted" sign shall be prominently posted and
27 maintained at every entrance to a public place where smoking is
28 permitted under this act.

29 (b) Cigar bars and cigar lounges.--

30 (1) A person who manages, operates or controls a cigar

1 bar or cigar lounge shall post or cause to be posted health
2 warning signage that states:

3 WARNING: Cigar smoking causes lung cancer, heart disease
4 and other diseases and cancers. Cigars contain nicotine,
5 tar and carcinogens. Cigar smoking is not a safe
6 alternative to cigarette smoking.

7 (2) The health warning signage shall be clearly visible
8 to persons entering the cigar bar or cigar lounge and visibly
9 posted in 48-point font size or greater in every room where
10 smoking is permitted. The owner of the cigar bar or cigar
11 lounge shall provide the health warning required by paragraph
12 (1) on every menu available to customers, and the warning
13 shall be clearly stated in 14-point font size or greater.

14 Section 5. Enforcement.

15 * * *

16 (d) Access to records.--A [drinking establishment,] cigar
17 bar and tobacco shop shall make available all books, accounts,
18 revenues, receipts and other information to the department, the
19 Department of Revenue, the State licensing agency or a county
20 board of health as necessary to enforce this act. All
21 information submitted to the Department of Health, a county
22 board or other Commonwealth agency with enforcement duties under
23 this act[, including information to verify the on-site food
24 consumption of a drinking establishment,] shall be confidential
25 and shall not be subject to the [act of June 21, 1957 (P.L.390,
26 No.212), referred to as the Right-to-Know Law] act of February
27 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law.

28 Section 6. Violations, affirmative defenses and penalties.

29 * * *

30 (c) Commonwealth administrative penalties.--

1 (1) If the department or a State licensing agency [or a
2 county board of health] determines that a person has violated
3 subsection (a), the person shall be subject to a penalty not
4 to exceed \$250.

5 (2) If the department or a State licensing agency [or a
6 county board of health] determines that a person has violated
7 subsection (a) within one year of receiving a penalty under
8 paragraph (1), the person shall be subject to a penalty not
9 to exceed \$500.

10 (3) If the department or a State licensing agency [or a
11 county board of health] determines that a person violated
12 subsection (a) within one year of receiving a penalty under
13 paragraph (2), the person shall be subject to a penalty not
14 to exceed \$1,000.

15 (4) This subsection is subject to 2 Pa.C.S. (relating to
16 administrative law and procedure).

17 (5) The penalties collected under this subsection shall
18 be retained by the department or the State licensing agency
19 initiating the enforcement action.

20 * * *

21 Section 10. Administration.

22 (a) Regulations.--The department shall promulgate
23 regulations to implement this act.

24 (b) Revision of forms.--The Department of Revenue may revise
25 the form for reporting sales tax revenue to require separate
26 reporting of sales of [alcohol and] tobacco and tobacco-related
27 products for purposes of claiming exemptions under this act.

28 Section 3. Section 11 of the act is repealed:

29 [Section 11. Preemption of local ordinances.

30 (a) General rule.--Except as set forth in subsection (b),

1 the following apply:

2 (1) This act shall supersede any ordinance, resolution
3 or regulation adopted by a political subdivision concerning
4 smoking in a public place.

5 (2) No political subdivision shall have the authority to
6 adopt or enforce any ordinance, regulation or resolution
7 which is in conflict with this act.

8 (b) Exception.--Subsection (a) shall not apply to a city of
9 the first class. A city of the first class may not change or
10 amend its ordinance to conflict with any provision of this act.]

11 Section 4. The act is amended by adding a section to read:

12 Section 12. Effect on local rules and ordinances.

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

17 Section 5. Sections 29 and 30 of the act are amended to
18 read:

19 Section [29] 13. [Repeal] Repeals.

20 (a) Intent.--The General Assembly declares that the repeal
21 under subsection (b) is necessary to effectuate this act.

22 (b) [Provision] Provisions--

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

25 (2) Section 15.1 of the Fire and Panic Act is repealed
26 insofar as it refers to section 10.1 of that act and to the
27 extent of any inconsistency with this act.

28 Section [30] 14. Effective date.

29 This act shall take effect in 90 days.

30 Section 6. This act shall take effect in 60 days.