

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2149 Session of
2014

INTRODUCED BY MURT, THOMAS, VITALI, CLYMER, MCCARTER, COHEN,
MULLERY AND FRANKEL, APRIL 8, 2014

REFERRED TO COMMITTEE ON LIQUOR CONTROL, APRIL 8, 2014

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 providing for definitions,
6 for prohibitions and for enforcement.

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

9 Section 1. The definitions of "drinking establishment" and
10 "public place" in section 2 of the act of June 13, 2008
11 (P.L.182, No.27), known as the Clean Indoor Air Act, are amended
12 to read:

13 Section 2. Definitions.

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

17 * * *

18 "Drinking establishment." [Any of the following:

19 (1) An establishment which:

20 (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;

(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 the effective date of this section:

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

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

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

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

The term does not include a nightclub.] An establishment that 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. This term also includes a night club.

* * *

"Public place." An enclosed area which serves as a

workplace, commercial establishment or an area where the public is invited or permitted. The term includes:

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

(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 licensed drinking establishment.

* * *

Section 2. Sections 3 and 5(d) of the act are amended to read:

Section 3. Prohibition.

(a) General rule.--Except as set forth under subsection (b), an individual may not engage in smoking in a public place. Nothing in this act shall preclude the owner of a public or private property from prohibiting smoking on the property.

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

(1) A private home, private residence or private vehicle unless the private home, private residence or private vehicle is being used at the time for the provision of child-care services, adult day-care services or services related to the care of children and youth in State or county custody.

1 (2) Designated quarters:

2 (i) within a lodging establishment which are
3 available for rent to guests accounting for no more than
4 25% of the total number of lodging units within a single
5 lodging establishment; or

6 (ii) within a full-service truck stop.

7 (3) A tobacco shop.

8 (4) A workplace of a manufacturer, importer or
9 wholesaler of tobacco products; a manufacturer of tobacco-
10 related products, including lighters; a tobacco leaf dealer
11 or processor; or a tobacco storage facility.

12 (5) Any of the following residential facilities:

13 (i) A long-term care facility regulated under 42 CFR
14 483.15 (relating to quality of life). This subparagraph
15 shall not apply if 42 CFR 483.15 is abrogated or expires.

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

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

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

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

27 (ii) leased or used for a private event which is not
28 club sponsored.

29 (7) A place where a fundraiser is conducted by a
30 nonprofit and charitable organization one time per year if

1 all of the following apply:

2 (i) The place is separate from other public areas
3 during the event.

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

5 (iii) Individuals under 18 years of age are not
6 permitted to attend.

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

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

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

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

15 (B) The sponsor or organizer gives notice in all
16 advertisements and other promotional materials that
17 smoking will not be restricted.

18 (C) At least 75% of all products displayed or
19 distributed at the event are tobacco or tobacco-
20 related products.

21 (D) Notice that smoking will not be restricted
22 is prominently posted at the entrance to the
23 facility.

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

28 (9) A cigar bar.

29 [(10) A drinking establishment.]

30 (11) Unless otherwise increased under this paragraph,

1 25% of the gaming floor at a licensed facility. No earlier
2 than 90 days following the effective date of this section or
3 the date of commencement of slot machine operations at a
4 licensed facility, whichever is later, a licensed facility
5 shall request a report from the Department of Revenue that
6 analyzes the gross terminal revenue per slot machine unit in
7 operation at the licensed facility within the 90-day period
8 preceding the request. If the report shows that the average
9 gross terminal revenue per slot machine unit in the
10 designated smoking area equals or exceeds the average gross
11 terminal revenue per slot machine unit in the designated
12 nonsmoking area, the licensed facility may increase the
13 designated smoking area of the gaming floor in proportion to
14 the percentage difference in revenue. A licensed facility may
15 request this report from the Department of Revenue on a
16 quarterly basis and may increase the designated smoking area
17 of the gaming floor accordingly. At no time may the
18 designated smoking area exceed 50% of the gaming floor. The
19 board shall have jurisdiction to verify the gross terminal
20 revenues included in the report to ensure compliance with the
21 requirements under this paragraph. Movement of the licensed
22 facility from a temporary facility to a permanent facility
23 shall not require the licensed facility to revert to the
24 minimum percentage set forth under this paragraph.

25 (12) A designated outdoor smoking area within the
26 confines of a sports or recreational facility, theater or
27 performance establishment.

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

29 (1) In order to be excepted under subsection (b), a
30 [drinking establishment,] cigar bar or tobacco shop must

1 submit a letter, accompanied by verifiable supporting
2 documentation, to the department claiming an exception under
3 subsection (b). Exception shall be based upon the
4 establishment's books, accounts, revenues or receipts,
5 including those reported to the Department of Revenue for
6 sales tax purposes, from the previous year or stated
7 projected annual revenues, which shall be verified within six
8 months.

9 (2) In order to qualify for the exception under
10 subsection (b)(6), a private club must take and record a vote
11 of its officers under the bylaws to address smoking in the
12 private club's facilities.

13 Section 5. Enforcement.

14 * * *

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

26 Section 3. This act shall take effect in 60 days.