
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 682 Session of
2015

INTRODUCED BY MURT, ACOSTA, BRIGGS, V. BROWN, COHEN, D. COSTA,
FRANKEL, MAHER AND McCARTER, MARCH 4, 2015

REFERRED TO COMMITTEE ON HEALTH, MARCH 4, 2015

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 further prohibiting smoking in public places, for signage,
7 for enforcement, for penalties and for administration;
8 repealing provisions relating to preemption; providing for
9 local ordinances; and making a related repeal of the Fire and
10 Panic Act.

11 The General Assembly of the Commonwealth of Pennsylvania
12 hereby enacts as follows:

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

15 AN ACT

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

22 Section 2. Sections 2, 3(b) and (c), 4, 5(d), 6(c) and 10 of

1 the act are amended to read:

2 Section 2. Definitions.

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

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

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

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

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

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

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

30 (3) Has a humidor on the premises.

1 (4) Does not allow individuals under 18 years of age to
2 enter the premises.

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

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

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

11 (2) Has a humidor on the premises.

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

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

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

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

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

21 (1)] An establishment which[:

22 (i)] operates pursuant to an eating place retail
23 dispenser's license, restaurant liquor license or retail
24 dispenser's license under the act of April 12, 1951 (P.L.
25 90, No.21), known as the Liquor Code[;]. The term also
26 includes a nightclub.

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

30 (iii) does not permit individuals under 18 years of

1 age.

2 (2) An enclosed area within an establishment which, on
3 the effective date of this section:

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

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

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

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

17 The term does not include a nightclub.]

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

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

1 ["Full-service truck stop." An establishment catering to
2 long-haul truck drivers that provides shower facilities for a
3 fee.

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

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

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

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

18 "Private club." An organization [which is any of the
19 following:

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

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

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

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

3 (2) A volunteer ambulance service.

4 (3) A volunteer fire company.

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

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

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

13 (3) Which only sells alcoholic beverages incidental to
14 its operation.

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

18 (5) Which has established bylaws or a constitution to
19 govern its activities.

20 (6) Has been granted an exemption from the payment of
21 Federal income tax as a club under section 501 of the
22 Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §
23 501).

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

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

30 (1) A facility which provides education, food or health

1 care-related services.

2 (2) A vehicle used for mass transportation. This
3 paragraph includes a train, subway, bus, including a
4 chartered bus, plane, taxicab and limousine.

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

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

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

12 (6) A truck stop.

13 (7) A residential facility.

14 (8) A private club.

15 (9) A drinking establishment.

16 (10) A licensed facility.

17 (11) A patio.

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

20 (1) A long-term care facility regulated under 42 CFR §
21 483.15 (relating to quality of life).

22 (2) Residential adult care facility.

23 (3) Community mental health care facility.

24 (4) Drug or alcohol treatment facility.

25 (5) Day treatment program.

26 "Smoking." [The carrying by a person of a lighted cigar,
27 cigarette, pipe or other lighted smoking device.] Inhaling,
28 exhaling, burning or carrying any lighted or heated cigar,
29 cigarette or pipe or any other lighted or heated tobacco plant
30 product intended for inhalation, in any manner or in any form.

1 The term includes the use of an e-cigarette which creates a
2 vapor in any manner or in any form or the use of any oral
3 smoking device for the purpose of circumventing the prohibition
4 of smoking in this act.

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

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

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

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

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

26 Section 3. Prohibition.

27 * * *

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

30 (1) A private home, private residence or private vehicle

1 unless the private home, private residence or private vehicle
2 is [being used at the] used at any time for the provision of
3 child-care services, adult day-care services or services
4 related to the care of children and youth in State or county
5 custody.

6 [(2) Designated quarters:

7 (i) within a lodging establishment which are
8 available for rent to guests accounting for no more than
9 25% of the total number of lodging units within a single
10 lodging establishment; or

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

12 (3) A tobacco shop.

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

17 (5) Any of the following residential facilities:

18 (i) A long-term care facility regulated under 42 CFR
19 483.15 (relating to quality of life). This subparagraph
20 shall not apply if 42 CFR 483.15 is abrogated or expires.

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

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

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

30 (i) open to the public through general advertisement

1 for a club-sponsored event; or
2 (ii) leased or used for a private event which is not
3 club sponsored.

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

7 (i) The place is separate from other public areas
8 during the event.

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

10 (iii) Individuals under 18 years of age are not
11 permitted to attend.

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

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

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

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

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

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

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

29 (ii) A single retailer, manufacturer or distributor
30 of tobacco may not conduct more than six days of a

1 promotional event under this paragraph in any calendar
2 year.

3 (9) A cigar bar.

4 (10) A drinking establishment.

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

30 (12) A designated outdoor smoking area within the

1 confines of a sports or recreational facility, theater or
2 performance establishment.

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

6 (i) Smoke from the cigar bar or cigar lounge does
7 not migrate into an enclosed area where smoking is
8 prohibited under this act.

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

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

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

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

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

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

29 This paragraph shall not apply to any business that is
30 established for the purpose of avoiding compliance with this

1 act. Any cigar bar or cigar lounge that fails to satisfy any
2 of the requirements of this paragraph, including the gross
3 revenue requirements, in any one calendar quarter shall
4 immediately cease to qualify for the exception and shall not
5 be eligible for the exception in the future.

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

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

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

21 Section 4. Signage.

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

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

2 (1) A person who manages, operates or controls a cigar
3 bar or cigar lounge shall post or cause to be posted health
4 warning signage that states:

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

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

16 Section 5. Enforcement.

17 * * *

18 (d) Access to records.--A [drinking establishment,] cigar
19 bar and tobacco shop shall make available all books, accounts,
20 revenues, receipts and other information to the department, the
21 Department of Revenue, the State licensing agency or a county
22 board of health as necessary to enforce this act. All
23 information submitted to the Department of Health, a county
24 board or other Commonwealth agency with enforcement duties under
25 this act[, including information to verify the on-site food
26 consumption of a drinking establishment,] shall be confidential
27 and shall not be subject to the [act of June 21, 1957 (P.L.390,
28 No.212), referred to as the Right-to-Know Law] act of February
29 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law.

30 Section 6. Violations, affirmative defenses and penalties.

1 * * *

2 (c) Commonwealth administrative penalties.--

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

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

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

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

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

22 * * *

23 Section 10. Administration.

24 (a) Regulations.--The department shall promulgate
25 regulations to implement this act.

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

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

1 [Section 11. Preemption of local ordinances.

2 (a) General rule.--Except as set forth in subsection (b),
3 the following apply:

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

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

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

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

14 Section 12. Effect on local rules and ordinances.

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

19 Section 5. Sections 29 and 30 of the act are amended to
20 read:

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

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

24 (b) [Provision] Provisions--

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

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

30 Section [30] 14. Effective date.

1 This act shall take effect in 90 days.

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