
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 567 Session of
2015

INTRODUCED BY GREENLEAF, YAW, BLAKE AND COSTA, FEBRUARY 25, 2015

REFERRED TO PUBLIC HEALTH AND WELFARE, FEBRUARY 25, 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 prohibiting smoking in
6 public places; providing for local ordinances; and repealing
7 certain provisions 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:

21 Section 2. Definitions.

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

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

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

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

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

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

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

28 (3) Has a humidor on the premises.

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

30 Revenue generated from other tobacco sales, including cigarette

1 vending machines, shall not be used to determine whether an
2 establishment satisfies the definition of a cigar bar.

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

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

8 (2) Has a humidor on the premises.

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

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

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

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

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

18 (1)] An establishment which[:

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

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

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

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

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

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

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

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

14 The term does not include a nightclub.]

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

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

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

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

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

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

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

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

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

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

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

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

30 (2) A volunteer ambulance service.

1 (3) A volunteer fire company.

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

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

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

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

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

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

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

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

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

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

29 (2) A vehicle used for mass transportation. This
30 paragraph includes a train, subway, bus, including a

1 chartered bus, plane, taxicab and limousine.

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

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

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

9 (6) A truck stop.

10 (7) A residential facility.

11 (8) A private club.

12 (9) A drinking establishment.

13 (10) A licensed facility.

14 (11) A patio.

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

17 (1) A long-term care facility regulated under 42 CFR §
18 483.15 (relating to quality of life).

19 (2) Residential adult care facility.

20 (3) Community mental health care facility.

21 (4) Drug or alcohol treatment facility.

22 (5) Day treatment programs.

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

1 of smoking in this act.

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

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

11 "Volunteer fire company." As defined in section 102 of the
12 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 rescue 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 "Workplace." An indoor area serving as a place of
18 employment, occupation, business, trade, craft, professional or
19 volunteer activity[.], including, but not limited to, work
20 areas, private offices, employee lounges, restrooms, conference
21 rooms, meeting rooms, classrooms, employee cafeterias, hallways,
22 construction sites, temporary offices and work vehicles.

23 Section 3. Prohibition.

24 * * *

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

27 (1) A private home, private residence or private vehicle
28 unless the private home, private residence or private vehicle
29 is [being used at the] used at any time for the provision of
30 child-care services, adult day-care services or services

1 related to the care of children and youth in State or county
2 custody.

3 [(2) Designated quarters:

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

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

9 (3) A tobacco shop.

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

14 (5) Any of the following residential facilities:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (9) A cigar bar.

1 (10) A drinking establishment.

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

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

30 (13) A cigar bar or cigar lounge that, as of the

1 effective date of this paragraph, operated as a cigar bar or
2 cigar lounge and satisfies all of the following requirements:

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

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

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

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

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

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

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

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

1 immediately lose its exception status and shall not be
2 eligible for the exception in the future.

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

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

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

18 Section 4. Signage.

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

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

29 (1) A person who manages, operates or controls a cigar
30 bar or cigar lounge shall post or cause to be posted health

1 warning signage that states:

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

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

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] act of February
26 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law.

27 Section 6. Violations, affirmative defenses and penalties.

28 * * *

29 (c) Commonwealth administrative penalties.--

30 (1) If the department or a State licensing agency [or a

1 county board of health] determines that a person has violated
2 subsection (a), the person shall be subject to a penalty not
3 to exceed \$250.

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

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

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

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

19 * * *

20 Section 10. Administration.

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

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

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

28 [Section 11. Preemption of local ordinances.

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

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

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

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

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

11 Section 12. Effect on local rules and ordinances.

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

16 Section 5. Section 29 of the act is amended to read:

17 Section 29. [Repeal] Repeals.

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

20 (b) [Provision] Provisions.--

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

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

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