

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2466 Session of
2022

INTRODUCED BY FRANKEL, FREEMAN, McNEILL, RABB, HOHENSTEIN,
KINSEY, DeLUCA, SANCHEZ, MADDEN AND INNAMORATO,
MARCH 31, 2022

REFERRED TO COMMITTEE ON HEALTH, MARCH 31, 2022

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 title of act,
6 for definitions, for prohibition, for signage, for
7 enforcement, for annual reports, for administration, for
8 preemption of local ordinances and for repeal; and making
9 editorial changes.

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

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

AN ACT

15 Regulating smoking in this Commonwealth; imposing powers and
16 duties on the Department of Health and local boards of
17 health; providing penalties; [preempting local action;] and
18 making [a related repeal] related repeals.

19 Section 2. Sections 2, 3(b) and (c), 4, 5(d), 8, 10, 11 and
20 29 of 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 "Adult day care." As defined in section 1001 of the act of
6 June 13, 1967 (P.L.31, No.21), known as the Human Services Code.

7 "Child-care services." As defined in 23 Pa.C.S. § 6303
8 (relating to definitions).

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

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

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

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

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

30 (2) Generates 25% or more of its quarterly gross revenue

1 from the sale of cigars for consumption on the premises by
2 customers.

3 (3) Has a humidor on the premises.

4 (4) Does not permit individuals under 21 years of age to
5 enter the premises.

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

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

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

14 (2) Has a humidor on the premises.

15 (3) Does not permit individuals under 21 years of age to
16 enter the premises.

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

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

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

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

24 (1) An establishment which:

25 (i) operates pursuant to an eating place retail
26 dispenser's license, restaurant liquor license or retail
27 dispenser's license under the act of April 12, 1951
28 (P.L.90, No.21), known as the Liquor Code;

29 (ii) has total annual sales of food sold for on-
30 premises consumption of less than or equal to 20% of the

1 combined gross sales of the establishment; and
2 (iii) does not permit individuals under 18 years of
3 age.

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

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

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

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

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

19 The term does not include a nightclub.

20 "Full-service truck stop." An establishment catering to
21 long-haul truck drivers that provides shower facilities for a
22 fee.

23 "Gaming floor." Any portion of a licensed facility where
24 slot machines have been installed for use or play as approved by
25 the Pennsylvania Gaming Control Board. The term does not include
26 an area adjacent to the gaming floor, including any hallway,
27 reception area, retail space, bar, nightclub, restaurant, hotel,
28 entertainment venue or office space.

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

1 "Night club." A public hall or hall for which admission is
2 generally charged and which is primarily or predominantly
3 devoted to dancing or to shows or cabarets as opposed to a
4 facility that is primarily a bar, tavern or dining facility.

5 "Private club." An organization which is any of the
6 following:

7 (1) A reputable group of individuals associated together
8 as an organization for legitimate purposes of mutual benefit,
9 entertainment, fellowship or lawful convenience which does
10 all of the following:

11 (i) Regularly and exclusively occupies, as owner or
12 lessee, a clubhouse or quarter for the use of its
13 members.

14 (ii) Holds regular meetings; conducts its business
15 through officers regularly elected; admits members by
16 written application, investigation and ballot; and
17 charges and collects dues from elected members.

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

20 (2) A volunteer ambulance service.

21 (3) A volunteer fire company.

22 (4) A volunteer rescue company.]

23 "Electronic smoking device." An electronic device that
24 contains or delivers nicotine or another substance to an
25 individual inhaling from the device. The term includes, but is
26 not limited to, any device, whether manufactured, distributed,
27 marketed or sold as an electronic nicotine delivery system,
28 electronic cigarette, cigar, pipe, hookah, vape pen or other
29 device under any other product name or descriptor.

30 "Hookah bar." A smoking establishment whose business

1 operation is devoted primarily to the on-site sale or rental of
2 shisha and paraphernalia and in which the sale of other products
3 is ancillary. The sale of other products shall be considered
4 ancillary if sales generate less than 50% of the total annual
5 gross sales. The term includes establishments identified as
6 hookah parlors, hookah cafes and hookah lounges.

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

10 "Public place." An [enclosed] area which serves as a
11 workplace, commercial establishment, transit vehicle or an area
12 where the public is invited or permitted. [The term includes:

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

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

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

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

23 (5) A sports or recreational facility, theater or
24 performance establishment.] The term includes the space
25 within at least 20 feet of a public entrance to the area, a
26 sports or recreational facility, theater or performance
27 establishment, park and playground. The term does not include
28 a street.

29 ["Smoking." The carrying by a person of a lighted cigar,
30 cigarette, pipe or other lighted smoking device.

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

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

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

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

16 "Smoking." Inhaling, exhaling, burning or carrying any
17 lighted or heated cigar, cigarette, pipe, hookah or any other
18 lighted or heated tobacco or plant product intended for
19 inhalation, including marijuana, whether natural or synthetic,
20 in any manner or form. The term includes the use of an
21 electronic smoking device which creates an aerosol or vapor, in
22 any manner or form.

23 "Workplace." An indoor area serving as a place of
24 employment, occupation, business, trade, craft, professional or
25 volunteer activity. The term includes work areas, private
26 offices, employee lounges, restrooms, conference rooms, meeting
27 rooms, classrooms, employee cafeterias, hallways, construction
28 sites, temporary offices and work vehicles.

29 Section 3. Prohibition.

30 * * *

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

3 (1) A private home, private residence or private vehicle
4 unless the private home, private residence or private vehicle
5 is [being used at the] used at any time as a workplace or for
6 the provision of child-care services, adult [day-care] day_
7 care services or services related to the care of children and
8 youth in State or county custody.

9 [(2) Designated quarters:

10 (i) within a lodging establishment which are
11 available for rent to guests accounting for no more than
12 25% of the total number of lodging units within a single
13 lodging establishment; or

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

15 (3) A tobacco shop.

16 (4) A workplace of a manufacturer, importer or
17 wholesaler of tobacco products; a manufacturer of tobacco-
18 related products, including lighters; a tobacco leaf dealer
19 or processor; or a tobacco storage facility.

20 (5) Any of the following residential facilities:

21 (i) A long-term care facility regulated under 42 CFR
22 483.15 (relating to quality of life). This subparagraph
23 shall not apply if 42 CFR 483.15 is abrogated or expires.

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

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

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

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

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

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

10 (i) The place is separate from other public areas
11 during the event.

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

13 (iii) Individuals under 18 years of age are not
14 permitted to attend.

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

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

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

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

23 (B) The sponsor or organizer gives notice in all
24 advertisements and other promotional materials that
25 smoking will not be restricted.

26 (C) At least 75% of all products displayed or
27 distributed at the event are tobacco or tobacco-
28 related products.

29 (D) Notice that smoking will not be restricted
30 is prominently posted at the entrance to the

1 facility.

2 (ii) A single retailer, manufacturer or distributor
3 of tobacco may not conduct more than six days of a
4 promotional event under this paragraph in any calendar
5 year.

6 (9) A cigar bar.

7 (10) A drinking establishment.

8 (11) Unless otherwise increased under this paragraph,
9 25% of the gaming floor at a licensed facility. No earlier
10 than 90 days following the effective date of this section or
11 the date of commencement of slot machine operations at a
12 licensed facility, whichever is later, a licensed facility
13 shall request a report from the Department of Revenue that
14 analyzes the gross terminal revenue per slot machine unit in
15 operation at the licensed facility within the 90-day period
16 preceding the request. If the report shows that the average
17 gross terminal revenue per slot machine unit in the
18 designated smoking area equals or exceeds the average gross
19 terminal revenue per slot machine unit in the designated
20 nonsmoking area, the licensed facility may increase the
21 designated smoking area of the gaming floor in proportion to
22 the percentage difference in revenue. A licensed facility may
23 request this report from the Department of Revenue on a
24 quarterly basis and may increase the designated smoking area
25 of the gaming floor accordingly. At no time may the
26 designated smoking area exceed 50% of the gaming floor. The
27 board shall have jurisdiction to verify the gross terminal
28 revenues included in the report to ensure compliance with the
29 requirements under this paragraph. Movement of the licensed
30 facility from a temporary facility to a permanent facility

1 shall not require the licensed facility to revert to the
2 minimum percentage set forth under this paragraph.

3 (12) A designated outdoor smoking area within the
4 confines of a sports or recreational facility, theater or
5 performance establishment.]

6 (2) A cigar bar, cigar lounge or hookah bar.

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

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

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

22 Section 4. Signage.

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

1 place where smoking is permitted under this act.

2 Section 5. Enforcement.

3 * * *

4 (d) Access to records.--A [drinking establishment, cigar bar
5 and tobacco shop] cigar bar, cigar lounge or hookah bar shall
6 make available all books, accounts, revenues, receipts and other
7 information to the department, the Department of Revenue, the
8 State licensing agency or a county board of health as necessary
9 to enforce this act. [All information submitted to the
10 Department of Health, a county board or other Commonwealth
11 agency with enforcement duties under this act, including
12 information to verify the on-site food consumption of a drinking
13 establishment, shall be confidential and shall not be subject to
14 the act of June 21, 1957 (P.L.390, No.212), referred to as the
15 Right-to-Know Law.]

16 Section 8. Annual reports.

17 (a) Requirement.--The department shall file an annual report
18 by December 1 with the chairman and minority chairman of the
19 [Public] Health and [Welfare] Human Services Committee of the
20 Senate and the chairman and minority chairman of the Health [and
21 Human Services] Committee of the House of Representatives.

22 (b) Contents.--The report shall include:

23 (1) The number of violations of this act by county as
24 reported to the department.

25 (2) The number of enforcement actions initiated under
26 this act by the department, by another State licensing agency
27 or by a county board of health.

28 (3) A description of the enforcement activities of the
29 department. This paragraph includes the number of personnel
30 assigned to enforce this act, enforcement strategies

1 undertaken by the department or a licensing agency and other
2 information relating to the administration and implementation
3 of this act.

4 Section 10. Administration.

5 [(a) Regulations.--]The department shall promulgate
6 regulations to implement this act.

7 [(b) Revision of forms.--The Department of Revenue may
8 revise the form for reporting sales tax revenue to require
9 separate reporting of sales of alcohol and tobacco for purposes
10 of claiming exemptions under this act.]

11 Section 11. [Preemption of local ordinances.]

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

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

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

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

23 Effect on local rules and ordinances.

24 This act shall not be construed to restrict the power of a
25 political subdivision to adopt and enforce any rule or ordinance
26 that exceeds the minimum applicable standards set forth under
27 this act.

28 Section 29. [Repeal] Repeals.

29 (a) Intent.--The General Assembly declares that the [repeal]
30 repeals under subsection (b) [is] are necessary to effectuate

1 this act.

2 (b) [Provision.--Section 10.1 of the act of April 27, 1927
3 (P.L.465, No.299), referred to as the Fire and Panic Act, is
4 repealed.] Provisions.--The following parts of acts are
5 repealed:

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

8 (2) Section 15.1 of the Fire and Panic Act insofar as it
9 relates to clean indoor air.

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