

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1657 Session of 2023

INTRODUCED BY FRANKEL, RABB, D. WILLIAMS, SANCHEZ, McNEILL, ZABEL, MADDEN, HOWARD, FREEMAN, OTTEN, KHAN, KINKEAD, N. NELSON, WAXMAN, MAYES, BOROWSKI, MARSHALL, CEPEDA-FREYTIZ, DELLOSO, BENHAM, SMITH-WADE-EL, BOYD AND MULLINS, SEPTEMBER 5, 2023

AS REPORTED FROM COMMITTEE ON HEALTH, HOUSE OF REPRESENTATIVES, AS AMENDED, NOVEMBER 15, 2023

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 administration, for preemption of local <--
8 ordinances and for repeal; and making editorial changes.

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

11 Section 1. The title and sections 2, 3(b) and (c), 4, 5(d),
12 8, 10, 11 and 29 of the act of June 13, 2008 (P.L.182, No.27), <--
13 known as the Clean Indoor Air Act, are 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. 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 "Adult day care." As defined in section 1001 of the act of
5 June 13, 1967 (P.L.31, No.21), known as the Human Services Code.

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

8 †"Cigar bar." Any of the following: <--

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

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

22 (3) A SMOKING LOUNGE LOCATED INSIDE A PRIVATE CLUB THAT: <--

23 (I) IS FULLY ENCLOSED;

24 (II) HAS 100% POWERED EXHAUST, FRESH AIR MAKEUP;

25 (III) IS UNDER NEGATIVE AIR PRESSURE; AND

26 (IV) COMPLIES WITH MINIMUM VENTILATION RATES UNDER
27 THE 2018 INTERNATIONAL MECHANICAL CODE, TABLE 403.3.1.1
28 FOR SMOKING LOUNGES.

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

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

1 (1) An establishment which:

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

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

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

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

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

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

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

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

26 The term does not include a nightclub.

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

30 "Gaming floor." Any portion of a licensed facility where

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

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

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

12 "ELECTRONIC SMOKING DEVICE." AN ELECTRONIC DEVICE THAT
13 CONTAINS OR DELIVERS NICOTINE OR ANOTHER SUBSTANCE TO AN
14 INDIVIDUAL INHALING FROM THE DEVICE. THE TERM INCLUDES, BUT IS
15 NOT LIMITED TO, ANY DEVICE, WHETHER MANUFACTURED, DISTRIBUTED,
16 MARKETED OR SOLD AS AN ELECTRONIC NICOTINE DELIVERY SYSTEM,
17 ELECTRONIC CIGARETTE, ELECTRONIC CIGAR, ELECTRONIC PIPE, VAPE
18 PEN OR OTHER ELECTRONIC DEVICE UNDER ANY OTHER PRODUCT NAME OR
19 DESCRIPTOR.

20 "Private club." An organization which is any of the
21 following:

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

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

29 (ii) Holds regular meetings; conducts its business
30 through officers regularly elected; admits members by

1 written application, investigation and ballot; and
2 charges and collects dues from elected members.

3 (iii) Has been in continuous existence for a period
4 of [ten] 25 years as such an organization. <--

5 [(2) A volunteer ambulance service. <--

6 (3) A volunteer fire company.

7 (4) A volunteer rescue company.]

8 ~~"Electronic smoking device." An electronic device that~~ <--
9 ~~contains or delivers nicotine or another substance to an~~
10 ~~individual inhaling from the device. The term includes, but is~~
11 ~~not limited to, any device, whether manufactured, distributed,~~
12 ~~marketed or sold as an electronic nicotine delivery system,~~
13 ~~electronic cigarette, electronic cigar, electronic pipe, vape~~
14 ~~pen or other electronic device under any other product name or~~
15 ~~descriptor.~~

16 "PATIO." AN OUTDOOR DECK OR SIMILAR OUTDOOR SERVICE AREA <--
17 ENCLOSED ON NO MORE THAN TWO SIDES WHICH IS PART OF AN
18 ESTABLISHMENT THAT SERVES FOOD OR DRINKS.

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

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

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

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

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

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

5 (5) A sports or recreational facility, theater or
6 performance establishment.] The term includes the space
7 within at least 20 feet of a public entrance to the area, a
8 sports or recreational facility, theater or performance
9 establishment, park and playground. The term does not include
10 a street OR PATIO. <--

11 ["Smoking." The carrying by a person of a lighted cigar,
12 cigarette, pipe or other lighted smoking device.] <--

13 "SMOKING." INHALING, EXHALING, BURNING OR CARRYING ANY
14 LIGHTED OR HEATED CIGAR, CIGARETTE, PIPE OR ANY OTHER LIGHTED OR
15 HEATED TOBACCO OR PLANT PRODUCT INTENDED FOR INHALATION,
16 INCLUDING MARIJUANA, WHETHER NATURAL OR SYNTHETIC, IN ANY MANNER
17 OR FORM. THE TERM INCLUDES THE USE OF AN ELECTRONIC SMOKING
18 DEVICE WHICH CREATES AN AEROSOL OR VAPOR, IN ANY MANNER OR FORM.

19 "Tobacco shop." A business establishment whose sales of
20 tobacco and tobacco-related products, including cigars, pipe
21 tobacco and smoking accessories, comprise at least 50% of the
22 gross annual sales. This term does not include a stand-alone
23 kiosk or establishment comprised solely of cigarette vending
24 machines.

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

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

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

4 ~~"Smoking." Inhaling, exhaling, burning or carrying any <--
5 lighted or heated cigar, cigarette, pipe or any other lighted or
6 heated tobacco or plant product intended for inhalation,
7 including marijuana, whether natural or synthetic, in any manner
8 or form. The term includes the use of an electronic smoking
9 device which creates an aerosol or vapor, in any manner or form.~~

10 "Workplace." An [indoor] area serving as a place of
11 employment, occupation, business, trade, craft, professional or
12 volunteer activity. The term includes work areas, private
13 offices, employee lounges, restrooms, conference rooms, meeting
14 rooms, classrooms, employee cafeterias, hallways, construction
15 sites, temporary offices and work vehicles.

16 Section 3. Prohibition.

17 * * *

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

20 (1) A private home, private residence or private vehicle
21 unless the private home, private residence or private vehicle
22 is [being used at the] used at any time as a workplace or for <--
23 the provision of child-care services, adult [day-care] day
24 care services or services related to the care of children and
25 youth in State or county custody.

26 [(2) Designated quarters:

27 (i) within a lodging establishment which are
28 available for rent to guests accounting for no more than
29 25% of the total number of lodging units within a single
30 lodging establishment; or

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

2 (3) A tobacco shop.

3 (4) A workplace of a manufacturer, importer or
4 wholesaler of tobacco products; a manufacturer of tobacco-
5 related products, including lighters; a tobacco leaf dealer
6 or processor; or a tobacco storage facility.

7 [(5) Any of the following residential facilities: <--

8 (i) A long-term care facility regulated under 42 CFR
9 483.15 (relating to quality of life). This subparagraph
10 shall not apply if 42 CFR 483.15 is abrogated or expires.

11 (ii) A separate enclosed room or designated smoking
12 room in a residential adult care facility, community
13 mental health care facility, drug and alcohol facility or
14 other residential health care facility not covered under
15 subparagraph (i).

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

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

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

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

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

27 (i) The place is separate from other public areas
28 during the event.

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

30 (iii) Individuals under 18 years of age are not

1 permitted to attend.

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

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

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

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

10 (B) The sponsor or organizer gives notice in all
11 advertisements and other promotional materials that
12 smoking will not be restricted.

13 (C) At least 75% of all products displayed or
14 distributed at the event are tobacco or tobacco-
15 related products.

16 (D) Notice that smoking will not be restricted
17 is prominently posted at the entrance to the
18 facility.

19 (ii) A single retailer, manufacturer or distributor
20 of tobacco may not conduct more than six days of a
21 promotional event under this paragraph in any calendar
22 year.] <--

23 (9) A cigar bar.

24 [(10) A drinking establishment. <--

25 (11) Unless otherwise increased under this paragraph,
26 25% of the gaming floor at a licensed facility. No earlier
27 than 90 days following the effective date of this section or
28 the date of commencement of slot machine operations at a
29 licensed facility, whichever is later, a licensed facility
30 shall request a report from the Department of Revenue that

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

20 (12) A designated outdoor smoking area within the
21 confines of a sports or recreational facility, theater or
22 performance establishment.]

23 (13) A PATIO.

24 (c) †Conditions and qualifications for exceptions.--

25 (1) In order to be excepted under subsection (b), a
26 [drinking establishment,] cigar bar or tobacco shop must
27 submit a letter, accompanied by verifiable supporting
28 documentation, to the department claiming an exception under
29 subsection (b). Exception shall be based upon the
30 establishment's books, accounts, revenues or receipts,

<--

<--

<--

1 including those reported to the Department of Revenue for
2 sales tax purposes, from the previous year or stated
3 projected annual revenues, which shall be verified within six
4 months.

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

9 Section 4. Signage.

10 "Smoking Permitted" or "No Smoking" signs or the
11 international "No Smoking" symbol, which consists of a pictorial
12 representation of a burning cigarette and electronic smoking
13 device in a circle with a bar across it, shall be prominently
14 posted and properly maintained where smoking is regulated by
15 this act by the owner, operator, manager or other person having
16 control of the area. A "Smoking Permitted" sign shall be
17 prominently posted and maintained at every entrance to a public
18 place where smoking is permitted under this act. Signage
19 requirements shall not apply to parties exempt under section
20 3(b) (1).

21 Section 5. Enforcement.

22 * * *

23 †(d) Access to records.--A [drinking establishment,] cigar <--
24 bar and tobacco shop shall make available all books, accounts,
25 revenues, receipts and other information to the department, the
26 Department of Revenue, the State licensing agency or a county
27 board of health as necessary to enforce this act. All
28 information submitted to the Department of Health, a county
29 board or other Commonwealth agency with enforcement duties under
30 this act[, including information to verify the on-site food <--

1 consumption of a drinking establishment,] shall be confidential <--
2 and shall not be subject to the act of June 21, 1957 (P.L.390,
3 No.212), referred to as the Right-to-Know Law.} <--

4 Section 8. Annual reports.

5 (a) Requirement.--The department shall file an annual report
6 by December 1 with the chairman and minority chairman of the
7 [Public] Health and [Welfare] Human Services Committee of the
8 Senate and the chairman and minority chairman of the Health [and
9 Human Services] Committee of the House of Representatives.

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

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

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

16 (3) A description of the enforcement activities of the
17 department. This paragraph includes the number of personnel
18 assigned to enforce this act, enforcement strategies
19 undertaken by the department or a licensing agency and other
20 information relating to the administration and implementation
21 of this act.

22 ~~Section 10. Administration.~~ <--

23 ~~{(a) Regulations.}The department shall promulgate~~
24 ~~regulations to implement this act.~~

25 ~~{(b) Revision of forms. The Department of Revenue may~~
26 ~~revise the form for reporting sales tax revenue to require~~
27 ~~separate reporting of sales of alcohol and tobacco for purposes~~
28 ~~of claiming exemptions under this act.}~~

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 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 under this act.

15 Section 29. [~~Repeal~~] Repeals.

16 (a) Intent.--The General Assembly declares that the [~~repeal~~]
17 repeals under subsection (b) [~~is~~] are necessary to effectuate
18 this act.

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

22 repealed:

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.

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

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