
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 436 Session of
2019

INTRODUCED BY F. KELLER, BARRAR, FRANKEL, FREEMAN, HILL-EVANS
AND SCHLOSSBERG, MARCH 25, 2019

REFERRED TO COMMITTEE ON JUDICIARY, MARCH 25, 2019

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:

14 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:

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

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

20 (1) An establishment which:

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

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

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

30 (2) An enclosed area within an establishment which, on

1 the effective date of this section:

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

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

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

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

15 The term does not include a nightclub.

16 "Full-service truck stop." An establishment catering to
17 long-haul truck drivers that provides shower facilities for a
18 fee.

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

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

27 "Night club." A public hall or hall for which admission is
28 generally charged and which is primarily or predominantly
29 devoted to dancing or to shows or cabarets as opposed to a
30 facility that is primarily a bar, tavern or dining facility.

1 "Private club." An organization which is any of the
2 following:

3 (1) A reputable group of individuals associated together
4 as an organization for legitimate purposes of mutual benefit,
5 entertainment, fellowship or lawful convenience which does
6 all of the following:

7 (i) Regularly and exclusively occupies, as owner or
8 lessee, a clubhouse or quarter for the use of its
9 members.

10 (ii) Holds regular meetings; conducts its business
11 through officers regularly elected; admits members by
12 written application, investigation and ballot; and
13 charges and collects dues from elected members.

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

16 (2) A volunteer ambulance service.

17 (3) A volunteer fire company.

18 (4) A volunteer rescue company.]

19 "Electronic smoking device." A product containing or
20 delivering nicotine or another substance intended for human
21 consumption that can be used by an individual in any manner for
22 the purpose of inhaling vapor or aerosol from the product. The
23 term includes any device, whether manufactured, distributed,
24 marketed or sold as an e-cigarette, e-cigar, e-pipe, e-hookah or
25 vape pen, or under any other product name or descriptor.

26 "Enclosed area." All space between a floor and a ceiling
27 that is bounded on at least two sides by walls, doorways or
28 windows, either open or closed. As used in this definition,
29 "wall" includes any retractable divider, garage door or other
30 physical barrier, whether temporary or permanent and whether or

1 not containing openings of any kind.

2 "Patio." An outdoor deck, patio or similar outdoor service
3 area which is part of a food or drinking establishment.

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

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

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

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

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

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

20 (5) A sports or recreational facility, theater or
21 performance establishment.] The term includes the space
22 within 20 feet of a public entrance to the enclosed area.

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 a lighted or heated cigar,
26 cigarette or pipe, or another lighted or heated tobacco or plant
27 product intended for inhalation, whether natural or synthetic,
28 including hookahs. The term also includes the use of an
29 electronic smoking device which creates an aerosol or vapor, in
30 any manner or in any form.

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 "Workplace." An [indoor] enclosed area serving as a place of
17 employment, occupation, business, trade, craft, professional or
18 volunteer activity. The term includes work areas, private
19 offices, employee lounges, restrooms, conference rooms, meeting
20 rooms, classrooms, employee cafeterias, hallways, construction
21 sites, temporary offices and work vehicles.

22 Section 3. Prohibition.

23 * * *

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

26 (1) A private home, private residence or private vehicle
27 unless the private home, private residence or private vehicle
28 is [being used at the] used at any time for the provision of
29 child-care services, adult day-care services or services
30 related to the care of children and youth in State or county

1 custody.

2 [(2) Designated quarters:

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

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

8 (3) A tobacco shop.

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

13 (5) Any of the following residential facilities:

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

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

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

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

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

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

30 (7) A place where a fundraiser is conducted by a

1 nonprofit and charitable organization one time per year if
2 all of the following apply:

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

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

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

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

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

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

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

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

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

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

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

29 (9) A cigar bar.

30 (10) A drinking establishment.

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

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

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

30 (1) In order to be excepted under subsection (b), a

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

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

23 Section 5. Enforcement.

24 * * *

25 [(d) Access to records.--A drinking establishment, cigar bar
26 and tobacco shop shall make available all books, accounts,
27 revenues, receipts and other information to the department, the
28 Department of Revenue, the State licensing agency or a county
29 board of health as necessary to enforce this act. All
30 information submitted to the Department of Health, a county

1 board or other Commonwealth agency with enforcement duties under
2 this act, including information to verify the on-site food
3 consumption of a drinking establishment, shall be confidential
4 and shall not be subject to the act of June 21, 1957 (P.L.390,
5 No.212), referred to as the Right-to-Know Law.]

6 Section 8. Annual reports.

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

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

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

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

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

24 Section 10. Administration.

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

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

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 Effect on local rules and ordinances.

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

18 Section 29. [Repeal] Repeals.

19 (a) Intent.--The General Assembly declares that the [repeal]
20 repeals under subsection (b) [is] are necessary to effectuate
21 this act.

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

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

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

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