

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 610 Session of 2019

INTRODUCED BY LAUGHLIN, SCHWANK, KILLION, MENSCH, HUGHES AND HAYWOOD, NOVEMBER 26, 2019

REFERRED TO HEALTH AND HUMAN SERVICES, NOVEMBER 26, 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 definitions;
 6 further prohibiting smoking in public places; 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. Sections 2, 3(b) and (c), 4, 5(d), 6(c), 10 and
 11 29 of the act of June 13, 2008 (P.L.182, No.27), known as the
 12 Clean Indoor Air Act, are amended to read:

13 Section 2. Definitions.

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

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

18 (1) An establishment which, on the effective date of
 19 this section, operates pursuant to an eating place retail
 20 dispenser's or restaurant liquor license under the act of

1 April 12, 1951 (P.L.90, No.21), known as the Liquor Code, and
2 is physically connected by a door, passageway or other
3 opening and directly adjacent to a tobacco shop.

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

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

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

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

21 (3) Has a humidor on the premises.

22 (4) Does not permit individuals under 18 years of age to
23 enter the premises.

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

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

29 (1) Derives more than 80% of its quarterly gross revenue
30 from the sale of cigars for consumption on the premises by

1 customers.

2 (2) Has a humidior on the premises.

3 (3) Does not permit individuals under 18 years of age to
4 enter the premises.

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

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

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

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

12 (1)] An establishment which[:

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

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

21 (iii) does not permit individuals under 18 years of
22 age.

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

25 (i) operates pursuant to an eating place retail
26 dispenser's license, restaurant liquor license or retail
27 dispenser's license under the Liquor Code;

28 (ii) is a physically connected or directly adjacent
29 enclosed area which is separate from the eating area, has
30 a separate air system and has a separate outside

1 entrance;

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

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

8 The term does not include a nightclub.

9 "Full-service truck stop." An establishment catering to
10 long-haul truck drivers that provides shower facilities for a
11 fee.

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

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

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

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

30 "Patio." Any outdoor deck, patio or similar outdoor service

1 area which is part of a food or drinking establishment.

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

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

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

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

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

17 (2) A volunteer ambulance service.

18 (3) A volunteer fire company.

19 (4) A volunteer rescue company.], whether incorporated
20 or not:

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

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

27 (3) Which only sells alcoholic beverages incidental to
28 its operation.

29 (4) The affairs and management of which are conducted by
30 a board of directors, executive committee or similar body

1 chosen by the members at an annual meeting.

2 (5) Which has established bylaws or a constitution to
3 govern its activities.

4 (6) Has been granted an exemption from the payment of
5 Federal income tax as a club under section 501 of the
6 Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §
7 501).

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

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

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

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

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

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

24 (5) A sports or recreational facility, theater or
25 performance establishment.

26 (6) A truck stop.

27 (7) A residential facility.

28 (8) A private club.

29 (9) A drinking establishment.

30 (10) A licensed facility.

1 (11) A patio.

2 "Residential facility." The term includes any of the
3 following:

4 (1) A long-term care facility regulated under 42 CFR
5 Part 483, Subpt. B (relating to requirements for long term
6 care facilities).

7 (2) Residential adult care facility.

8 (3) Community mental health care facility.

9 (4) Drug or alcohol treatment facility.

10 (5) Day treatment programs.

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

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

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

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

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

28 "Workplace." An indoor area serving as a place of
29 employment, occupation, business, trade, craft, professional or
30 volunteer activity[.], including, but not limited to, work

1 areas, private offices, employee lounges, restrooms, conference
2 rooms, meeting rooms, classrooms, employee cafeterias, hallways,
3 construction sites, temporary offices and work vehicles.

4 Section 3. Prohibition.

5 * * *

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

8 (1) A private home, private residence or private vehicle
9 unless the private home, private residence or private vehicle
10 is [being used at the] used at any time for the provision of
11 child-care services, adult day-care services or services
12 related to the care of children and youth in State or county
13 custody.

14 [(2) Designated quarters:

15 (i) within a lodging establishment which are
16 available for rent to guests accounting for no more than
17 25% of the total number of lodging units within a single
18 lodging establishment; or

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

20 (3) A tobacco shop.

21 [(4) A workplace of a manufacturer, importer or
22 wholesaler of tobacco products; a manufacturer of tobacco-
23 related products, including lighters; a tobacco leaf dealer
24 or processor; or a tobacco storage facility.

25 (5) Any of the following residential facilities:

26 (i) A long-term care facility regulated under 42 CFR
27 483.15 (relating to quality of life). This subparagraph
28 shall not apply if 42 CFR 483.15 is abrogated or expires.

29 (ii) A separate enclosed room or designated smoking
30 room in a residential adult care facility, community

1 mental health care facility, drug and alcohol facility or
2 other residential health care facility not covered under
3 subparagraph (i).

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

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

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

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

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

15 (i) The place is separate from other public areas
16 during the event.

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

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

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

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

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

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

28 (B) The sponsor or organizer gives notice in all
29 advertisements and other promotional materials that
30 smoking will not be restricted.

1 (C) At least 75% of all products displayed or
2 distributed at the event are tobacco or tobacco-
3 related products.

4 (D) Notice that smoking will not be restricted
5 is prominently posted at the entrance to the
6 facility.

7 (ii) A single retailer, manufacturer or distributor
8 of tobacco may not conduct more than six days of a
9 promotional event under this paragraph in any calendar
10 year.

11 (9) A cigar bar.

12 (10) A drinking establishment.

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

1 designated smoking area exceed 50% of the gaming floor. The
2 board shall have jurisdiction to verify the gross terminal
3 revenues included in the report to ensure compliance with the
4 requirements under this paragraph. Movement of the licensed
5 facility from a temporary facility to a permanent facility
6 shall not require the licensed facility to revert to the
7 minimum percentage set forth under this paragraph.]

8 (12) A designated outdoor smoking area within the
9 confines of a sports or recreational facility, theater or
10 performance establishment.

11 (13) A cigar bar or cigar lounge that, as of the
12 effective date of this paragraph, operated as a cigar bar or
13 cigar lounge and satisfies all of the following requirements:

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

17 (ii) The cigar bar or cigar lounge is located in a
18 freestanding structure that shares no common walls with
19 other establishments and is occupied solely by the cigar
20 bar or cigar lounge.

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

24 (A) the revenue generated from the sale of
25 cigars for consumption on the premises by customers;
26 or

27 (B) the sale of cigars and alcoholic beverages
28 for consumption on the premises by customers as a
29 percentage of quarterly gross revenue.

30 The department shall determine whether any additional

1 documentation is required by the cigar bar or cigar
2 lounge to verify revenue data submitted by the cigar bar
3 or cigar lounge.

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

7 This paragraph shall not apply to any business that is
8 established for the purpose of avoiding compliance with this
9 act. Any cigar bar or cigar lounge that fails to satisfy any
10 of the requirements of this paragraph, including the gross
11 revenue requirements, in any one calendar quarter shall
12 immediately lose its exception status and shall not be
13 eligible for the exception in the future.

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

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

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

29 Section 4. Signage.

30 (a) General rule.--"Smoking Permitted" or "No Smoking" signs

1 or the international "No Smoking" symbol, which consists of a
2 pictorial representation of a burning cigarette in a circle with
3 a bar across it, shall be prominently posted and properly
4 maintained where smoking is regulated by this act by the owner,
5 operator, manager or other person having control of the area. A
6 "Smoking Permitted" sign shall be prominently posted and
7 maintained at every entrance to a public place where smoking is
8 permitted under this act.

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

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

13 WARNING: Cigar smoking causes lung cancer, heart
14 disease and other diseases and cancers. Cigars
15 contain nicotine, tar and carcinogens. Cigar smoking
16 is not a safe alternative to cigarette smoking.

17 (2) The health warning signage shall be clearly visible
18 to persons entering the cigar bar or cigar lounge and visibly
19 posted in 48-point font size or greater in every room where
20 smoking is permitted. The owner of the cigar bar or cigar
21 lounge shall provide the health warning required by paragraph
22 (1) on every menu available to customers, and the warning
23 shall be clearly stated in 14-point font size or greater.

24 Section 5. Enforcement.

25 * * *

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

1 act. All information submitted to the Department of Health, a
2 county board or other Commonwealth agency with enforcement
3 duties under this act[, including information to verify the on-
4 site food consumption of a drinking establishment,] shall be
5 confidential and shall not be subject to the [act of June 21,
6 1957 (P.L.390, No.212), referred to as the Right-to-Know Law]
7 act of February 14, 2008 (P.L.6, No.3), known as the Right-to-
8 Know Law.

9 Section 6. Violations, affirmative defenses and penalties.

10 * * *

11 (c) Commonwealth administrative penalties.--

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

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

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

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

28 (5) The penalties collected under this subsection shall
29 be retained by the department or the State licensing agency
30 initiating the enforcement action.

1 * * *

2 Section 10. Administration.

3 (a) Regulations.--The department shall promulgate
4 regulations to implement this act.

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

9 Section 29. [Repeal] Repeals.

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

12 (b) [Provision] Provisions--

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

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

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