

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 681 Session of 2023

INTRODUCED BY COSTA, SCHWANK, HAYWOOD, BREWSTER, SANTARSIERO,
FONTANA, COMMITTA, MUTH AND CAPPELLETTI, MAY 23, 2023

REFERRED TO HEALTH AND HUMAN SERVICES, MAY 23, 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, 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. Definitions.

20 The following words and phrases when used in this act shall
21 have the meanings given to them in this section unless the

1 context clearly indicates otherwise:

2 "Adult day care." As defined in section 1001 of the act of
3 June 13, 1967 (P.L.31, No.21), known as the Human Services Code.

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

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

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

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

20 the effective date of this section, a permit or license to
21 sell alcoholic beverages under the act of April 12, 1951
22 (P.L.90, No.21), known as the Liquor Code, that satisfies all
23 of the following:

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

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

30 (3) Has a humidor on the premises.

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

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

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

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

11 (2) Has a humidor on the premises.

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

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

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

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

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

21 (1) An establishment which:

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

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

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

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

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

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

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

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

16 The term does not include a nightclub.

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

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

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

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

1 facility that is primarily a bar, tavern or dining facility.

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.]

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

27 "Hookah bar." A smoking establishment whose business
28 operation is devoted primarily to the on-site sale or rental of
29 shisha and paraphernalia and in which the sale of other products
30 is ancillary. The sale of other products shall be considered

1 ancillary if sales generate less than 50% of the total annual
2 gross sales. The term includes establishments identified as
3 hookah parlors, hookah cafes and hookah lounges.

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.

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

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

30 "Volunteer ambulance service." As defined in section 102 of

1 the act of July 31, 2003 (P.L.73, No.17), known as the Volunteer
2 Fire Company and Volunteer Ambulance Service Grant Act.

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

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

9 term includes the space within at least 20 feet of a public
10 entrance to the area, a sports or recreational facility, theater
11 or performance establishment, park and playground. The term does
12 not include a street.

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

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

26 Section 3. Prohibition.

27 * * *

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

30 (1) A private home, private residence or private vehicle

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

6 [(2) Designated quarters:

7 (i) within a lodging establishment which are
8 available for rent to guests accounting for no more than
9 25% of the total number of lodging units within a single
10 lodging establishment; or

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

12 (3) A tobacco shop.

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

17 (5) Any of the following residential facilities:

18 (i) A long-term care facility regulated under 42 CFR
19 483.15 (relating to quality of life). This subparagraph
20 shall not apply if 42 CFR 483.15 is abrogated or expires.

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

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

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

30 (i) open to the public through general advertisement

1 for a club-sponsored event; or

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

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

7 (i) The place is separate from other public areas
8 during the event.

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

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

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

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

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

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

20 (B) The sponsor or organizer gives notice in all
21 advertisements and other promotional materials that
22 smoking will not be restricted.

23 (C) At least 75% of all products displayed or
24 distributed at the event are tobacco or tobacco-
25 related products.

26 (D) Notice that smoking will not be restricted
27 is prominently posted at the entrance to the
28 facility.

29 (ii) A single retailer, manufacturer or distributor
30 of tobacco may not conduct more than six days of a

1 promotional event under this paragraph in any calendar
2 year.

3 (9) A cigar bar.

4 (10) A drinking establishment.

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

30 (12) A designated outdoor smoking area within the

1 confines of a sports or recreational facility, theater or
2 performance establishment.]

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

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

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

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

19 Section 4. Signage.

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

29 Section 5. Enforcement.

30 * * *

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

13 Section 8. Annual reports.

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

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

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

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

25 (3) A description of the enforcement activities of the
26 department. This paragraph includes the number of personnel
27 assigned to enforce this act, enforcement strategies
28 undertaken by the department or a licensing agency and other
29 information relating to the administration and implementation
30 of this act.

1 Section 10. Administration.

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

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

8 Section 11. [Preemption of local ordinances.]

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

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

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

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

20 Effect on local rules and ordinances.

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

25 Section 29. [Repeal] Repeals.

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

29 (b) [Provision.--Section 10.1 of the act of April 27, 1927
30 (P.L.465, No.299), referred to as the Fire and Panic Act, is

1 repealed.] Provisions.--The following parts of acts are

2 repealed:

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

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

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