

No. 2008-27

AN ACT

SB 246

Regulating smoking in this Commonwealth; imposing powers and duties on the Department of Health and local boards of health; providing penalties; preempting local action; and making a related repeal.

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

Section 1. Short title.

This act shall be known and may be cited as the Clean Indoor Air Act.

Section 2. Definitions.

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

“Cigar bar.” Any of the following:

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

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

“Department.” The Department of Health of the Commonwealth.

“Drinking establishment.” Any of the following:

(1) An establishment which:

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

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

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

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

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

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

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

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

The term does not include a nightclub.

“Full-service truck stop.” An establishment catering to long-haul truck drivers that provides shower facilities for a fee.

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

“Licensed facility.” As defined in 4 Pa.C.S. § 1103 (relating to definitions).

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

“Private club.” An organization which is any of the following:

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

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

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

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

(2) A volunteer ambulance service.

(3) A volunteer fire company.

(4) A volunteer rescue company.

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

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

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

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

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

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

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

“Smoking.” The carrying by a person of a lighted cigar, cigarette, pipe or other lighted smoking device.

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

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

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

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

“Workplace.” An indoor area serving as a place of employment, occupation, business, trade, craft, professional or volunteer activity.

Section 3. Prohibition.

(a) General rule.—Except as set forth under subsection (b), an individual may not engage in smoking in a public place. Nothing in this act shall preclude the owner of a public or private property from prohibiting smoking on the property.

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

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

(2) Designated quarters:

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

(ii) within a full-service truck stop.

(3) A tobacco shop.

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

(5) Any of the following residential facilities:

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

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

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

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

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

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

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

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

(ii) Food and beverages are available to attendees.

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

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

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

(i) All of the following must be met:

(A) Service of food and drink is incidental.

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

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

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

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

(9) A cigar bar.

(10) A drinking establishment.

(11) Unless otherwise increased under this paragraph, 25% of the gaming floor at a licensed facility. No earlier than 90 days following the effective date of this section or the date of commencement of slot machine operations at a licensed facility, whichever is later, a licensed facility shall request a report from the Department of Revenue that analyzes the gross terminal revenue per slot machine unit in operation at the licensed facility within the 90-day period preceding the request. If the report shows that

the average gross terminal revenue per slot machine unit in the designated smoking area equals or exceeds the average gross terminal revenue per slot machine unit in the designated nonsmoking area, the licensed facility may increase the designated smoking area of the gaming floor in proportion to the percentage difference in revenue. A licensed facility may request this report from the Department of Revenue on a quarterly basis and may increase the designated smoking area of the gaming floor accordingly. At no time may the designated smoking area exceed 50% of the gaming floor. The board shall have jurisdiction to verify the gross terminal revenues included in the report to ensure compliance with the requirements under this paragraph. Movement of the licensed facility from a temporary facility to a permanent facility shall not require the licensed facility to revert to the minimum percentage set forth under this paragraph.

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

(c) Conditions and qualifications for exceptions.—

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

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

Section 4. Signage.

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

Section 5. Enforcement.

(a) Complaints.—A complaint regarding a possible violation of this act shall be made to the appropriate law enforcement agency or to the department. A complaint to the department shall be made in one of the following manners:

- (1) In writing.
- (2) By a telephone call to the department's toll-free telephone number.
- (3) By an electronic submission to the department's regularly maintained Internet website.

(b) Responsibilities.—

(1) Except as provided under paragraphs (2) and (3), upon receipt of a complaint by the department, the following apply:

(i) Except as set forth under subparagraph (ii), the department shall investigate the complaint and enforce this act.

(ii) If the public place is subject to licensure by the Commonwealth, in such case, the department shall refer the complaint to the appropriate licensing agency for investigation and enforcement of this act.

(2) If a complaint is made to the department regarding a public place located in a county under subsection (c), the department shall notify the county board of health. The county board of health shall investigate the complaint and enforce this act.

(3) If the complaint is made to a law enforcement agency regarding a public place, the agency shall investigate the complaint and enforce this act.

(c) County election.—A county may elect to have its board of health enforce this act by providing written notification to the department. In such event, the county board of health shall provide the department with sufficient information regarding its enforcement actions for the department's annual report required under section 8.

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

Section 6. Violations, affirmative defenses and penalties.

(a) Violations.—It is a violation of this act to do any of the following:

(1) Fail to post a sign as required by section 4.

(2) Permit smoking in a public place where smoking is prohibited.

(3) Smoke in a public place where smoking is prohibited.

(b) Affirmative defenses.—Any of the following shall be an affirmative defense to a prosecution or imposition of an administrative penalty under this act:

(1) When the violation occurred, the actual control of the public place was not exercised by the owner, operator or manager but by a lessee.

(2) The owner, operator or manager made a good faith effort to prohibit smoking.

(3) The owner, operator or manager asserting the affirmative defense shall do so in the form of a sworn affidavit setting forth the relevant information mentioned under paragraphs (1) and (2).

(c) Commonwealth administrative penalties.—

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

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

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

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

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

(d) Local administrative penalties.—

(1) If a county board of health determines that a person violated subsection (a), the person shall be subject to a penalty not to exceed \$250.

(2) If a county board of health determines that a person has violated subsection (a) within one year of receiving a penalty under paragraph (1), the person shall be subject to a penalty not to exceed \$500.

(3) If a county board of health determines that a person violated subsection (a) within one year of receiving a penalty under paragraph (2), the person shall be subject to a penalty not to exceed \$1,000.

(4) This subsection is subject to 2 Pa.C.S. Ch. 5 Subch. B (relating to practice and procedure of local agencies) and Ch. 7 Subch. B (relating to judicial review of local agency action).

(5) The penalties collected under this subsection shall be retained by the county board of health initiating the enforcement action.

(e) Criminal penalties.—

(1) A person that violates this act commits a summary offense and shall, upon conviction, be sentenced to pay a fine of not more than \$250.

(2) A person that violates this act within one year of being sentenced under paragraph (1) commits a summary offense and shall, upon conviction, be sentenced to pay a fine of not more than \$500.

(3) A person that violates this act within one year of being sentenced under paragraph (2) commits a summary offense and shall, upon conviction, be sentenced to pay a fine of not more than \$1,000.

(4) The following apply to actions by law enforcement officers:

(i) Except as set forth in subparagraph (ii), the penalties collected under this subsection shall be retained by the municipality in which the law enforcement agency initiating the enforcement action is located.

(ii) If an enforcement action is initiated by the Pennsylvania State Police, the Pennsylvania State Police shall retain the penalties collected under this subsection.

Section 7. Retaliation prohibited.

A person may not discharge an employee, refuse to hire an applicant for employment or retaliate against an employee because the individual exercises a right to a smoke-free environment required under this act.

Section 8. Annual reports.

(a) Requirement.—The department shall file an annual report by December 1 with the chairman and minority chairman of the Public Health and Welfare Committee of the Senate and the chairman and minority chairman of the Health and Human Services Committee of the House of Representatives.

(b) Contents.—The report shall include:

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

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

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

Section 9. Public education.

The department shall design and implement a program, including the establishment of an Internet website, to educate the public regarding the provisions of this act. The department shall inform persons who own or operate a public place of the requirements of this act.

Section 10. Administration.

(a) Regulations.—The department shall promulgate regulations to implement this act.

(b) Revision of forms.—The Department of Revenue may revise the form for reporting sales tax revenue to require separate reporting of sales of alcohol and tobacco for purposes of claiming exemptions under this act.

Section 11. Preemption of local ordinances.

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

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

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

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

Section 29. Repeal.

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

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

Section 30. Effective date.

This act shall take effect in 90 days.

APPROVED—The 13th day of June, A.D. 2008.

EDWARD G. RENDELL