



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB0263

Introduced 1/23/2009, by Rep. Karen A. Yarbrough

SYNOPSIS AS INTRODUCED:

410 ILCS 82/10
410 ILCS 82/15
410 ILCS 82/35
410 ILCS 82/40
410 ILCS 82/45
410 ILCS 82/50
410 ILCS 82/60

Amends the Smoke Free Illinois Act. Provides that enclosed laboratories, not open to the public, in an accredited university or government facility where the activity of smoking is exclusively conducted for the purpose of medical or scientific health-related research are not considered a "place of employment" and that smoking is allowed in these enclosed laboratories. Provides that a "retail tobacco store" includes an enclosed workplace that manufactures, imports, or distributes tobacco or tobacco products as a necessary and integral part of its business processes, provided that the involved business entity: (1) maintains a specially designated area or areas within the workplace for the purpose of the heating, burning, smoking, or lighting activities, and does not create a facility that permits smoking throughout; (2) satisfies the 80% requirement related to gross sales; and (3) delivers tobacco products to consumers, retail establishments, or other wholesale establishments as part of its business. Provides that owners of indoor public places and workplaces shall reasonably assure that smoking is prohibited. Provides that smoking is allowed in certain enclosed laboratories and common smoking rooms in long-term care facilities. Provides that the Department, State-certified local public health departments, and local law enforcement agencies shall enforce the provisions of this Act through the issuance of citations and that the citations will conspicuously include certain information. Sets forth procedures to contest a citation issued pursuant to the Act. Imposes conditions on any rulemaking authority. Makes other changes. Effective immediately.

LRB096 04464 RPM 14516 b

1 AN ACT concerning public health.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Smoke Free Illinois Act is amended by
5 changing Sections 10, 15, 35, 40, 45, 50, and 60 as follows:

6 (410 ILCS 82/10)

7 Sec. 10. Definitions. In this Act:

8 "Bar" means an establishment that is devoted to the serving
9 of alcoholic beverages for consumption by guests on the
10 premises and that derives no more than 10% of its gross revenue
11 from the sale of food consumed on the premises. "Bar" includes,
12 but is not limited to, taverns, nightclubs, cocktail lounges,
13 adult entertainment facilities, and cabarets.

14 "Department" means the Department of Public Health.

15 "Employee" means a person who is employed by an employer in
16 consideration for direct or indirect monetary wages or profits
17 or a person who volunteers his or her services for a non-profit
18 entity.

19 "Employer" means a person, business, partnership,
20 association, or corporation, including a municipal
21 corporation, trust, or non-profit entity, that employs the
22 services of one or more individual persons.

23 "Enclosed area" means all space between a floor and a

1 ceiling that is enclosed or partially enclosed with (i) solid
2 walls or windows, exclusive of doorways, or (ii) solid walls
3 with partitions and no windows, exclusive of doorways, that
4 extend from the floor to the ceiling, including, without
5 limitation, lobbies and corridors.

6 "Enclosed or partially enclosed sports arena" means any
7 sports pavilion, stadium, gymnasium, health spa, boxing arena,
8 swimming pool, roller rink, ice rink, bowling alley, or other
9 similar place where members of the general public assemble to
10 engage in physical exercise or participate in athletic
11 competitions or recreational activities or to witness sports,
12 cultural, recreational, or other events.

13 "Gaming equipment or supplies" means gaming
14 equipment/supplies as defined in the Illinois Gaming Board
15 Rules of the Illinois Administrative Code.

16 "Gaming facility" means an establishment utilized
17 primarily for the purposes of gaming and where gaming equipment
18 or supplies are operated for the purposes of accruing business
19 revenue.

20 "Healthcare facility" means an office or institution
21 providing care or treatment of diseases, whether physical,
22 mental, or emotional, or other medical, physiological, or
23 psychological conditions, including, but not limited to,
24 hospitals, rehabilitation hospitals, weight control clinics,
25 nursing homes, homes for the aging or chronically ill,
26 laboratories, and offices of surgeons, chiropractors, physical

1 therapists, physicians, dentists, and all specialists within
2 these professions. "Healthcare facility" includes all waiting
3 rooms, hallways, private rooms, semiprivate rooms, and wards
4 within healthcare facilities.

5 "Place of employment" means any area under the control of a
6 public or private employer that employees are required to
7 enter, leave, or pass through during the course of employment,
8 including, but not limited to entrances and exits to places of
9 employment, including a minimum distance, as set forth in
10 Section 70 of this Act, of 15 feet from entrances, exits,
11 windows that open, and ventilation intakes that serve an
12 enclosed area where smoking is prohibited; offices and work
13 areas; restrooms; conference and classrooms; break rooms and
14 cafeterias; and other common areas. A private residence or
15 home-based business, unless used to provide licensed child
16 care, foster care, adult care, or other similar social service
17 care on the premises, is not a "place of employment", nor are
18 enclosed laboratories, not open to the public, in an accredited
19 university or government facility where the activity of smoking
20 is exclusively conducted for the purpose of medical or
21 scientific health-related research. Rulemaking authority to
22 implement this amendatory Act of the 96th General Assembly, if
23 any, is conditioned on the rules being adopted in accordance
24 with all provisions of the Illinois Administrative Procedure
25 Act and all rules and procedures of the Joint Committee on
26 Administrative Rules; any purported rule not so adopted, for

1 whatever reason, is unauthorized.

2 "Private club" means a not-for-profit association that (1)
3 has been in active and continuous existence for at least 3
4 years prior to the effective date of this amendatory Act of the
5 95th General Assembly, whether incorporated or not, (2) is the
6 owner, lessee, or occupant of a building or portion thereof
7 used exclusively for club purposes at all times, (3) is
8 operated solely for a recreational, fraternal, social,
9 patriotic, political, benevolent, or athletic purpose, but not
10 for pecuniary gain, and (4) only sells alcoholic beverages
11 incidental to its operation. For purposes of this definition,
12 "private club" means an organization that is managed by a board
13 of directors, executive committee, or similar body chosen by
14 the members at an annual meeting, has established bylaws, a
15 constitution, or both to govern its activities, and has been
16 granted an exemption from the payment of federal income tax as
17 a club under 26 U.S.C. 501.

18 "Private residence" means the part of a structure used as a
19 dwelling, including, without limitation: a private home,
20 townhouse, condominium, apartment, mobile home, vacation home,
21 cabin, or cottage. For the purposes of this definition, a
22 hotel, motel, inn, resort, lodge, bed and breakfast or other
23 similar public accommodation, hospital, nursing home, or
24 assisted living facility shall not be considered a private
25 residence.

26 "Public place" means that portion of any building or

1 vehicle used by and open to the public, regardless of whether
2 the building or vehicle is owned in whole or in part by private
3 persons or entities, the State of Illinois, or any other public
4 entity and regardless of whether a fee is charged for
5 admission, including a minimum distance, as set forth in
6 Section 70 of this Act, of 15 feet from entrances, exits,
7 windows that open, and ventilation intakes that serve an
8 enclosed area where smoking is prohibited. A "public place"
9 does not include a private residence unless the private
10 residence is used to provide licensed child care, foster care,
11 or other similar social service care on the premises. A "public
12 place" includes, but is not limited to, hospitals, restaurants,
13 retail stores, offices, commercial establishments, elevators,
14 indoor theaters, libraries, museums, concert halls, public
15 conveyances, educational facilities, nursing homes,
16 auditoriums, enclosed or partially enclosed sports arenas,
17 meeting rooms, schools, exhibition halls, convention
18 facilities, polling places, private clubs, gaming facilities,
19 all government owned vehicles and facilities, including
20 buildings and vehicles owned, leased, or operated by the State
21 or State subcontract, healthcare facilities or clinics,
22 enclosed shopping centers, retail service establishments,
23 financial institutions, educational facilities, ticket areas,
24 public hearing facilities, public restrooms, waiting areas,
25 lobbies, bars, taverns, bowling alleys, skating rinks,
26 reception areas, and no less than 75% of the sleeping quarters

1 within a hotel, motel, resort, inn, lodge, bed and breakfast,
2 or other similar public accommodation that are rented to
3 guests, but excludes private residences.

4 "Restaurant" means (i) an eating establishment, including,
5 but not limited to, coffee shops, cafeterias, sandwich stands,
6 and private and public school cafeterias, that gives or offers
7 for sale food to the public, guests, or employees, and (ii) a
8 kitchen or catering facility in which food is prepared on the
9 premises for serving elsewhere. "Restaurant" includes a bar
10 area within the restaurant.

11 "Retail tobacco store" means a retail establishment that
12 derives more than 80% of its gross revenue from the sale of
13 loose tobacco, plants, or herbs and cigars, cigarettes, pipes,
14 and other smoking devices for burning tobacco and related
15 smoking accessories and in which the sale of other products is
16 merely incidental. "Retail tobacco store" includes an enclosed
17 workplace that manufactures, imports, or distributes tobacco
18 or tobacco products, when, as a necessary and integral part of
19 the process of making, manufacturing, importing, or
20 distributing a tobacco product for the eventual retail sale of
21 that tobacco or tobacco product, tobacco is heated, burned, or
22 smoked, or a lighted tobacco product is tested, provided that
23 the involved business entity: (1) maintains a specially
24 designated area or areas within the workplace for the purpose
25 of the heating, burning, smoking, or lighting activities, and
26 does not create a facility that permits smoking throughout; (2)

1 satisfies the 80% requirement related to gross sales; and (3)
2 delivers tobacco products to consumers, retail establishments,
3 or other wholesale establishments as part of its business.

4 "Retail tobacco store" does not include a tobacco department or
5 section of a larger commercial establishment or any
6 establishment with any type of liquor, food, or restaurant
7 license. Rulemaking authority to implement this amendatory Act
8 of the 96th General Assembly, if any, is conditioned on the
9 rules being adopted in accordance with all provisions of the
10 Illinois Administrative Procedure Act and all rules and
11 procedures of the Joint Committee on Administrative Rules; any
12 purported rule not so adopted, for whatever reason, is
13 unauthorized.

14 "Smoke" or "smoking" means the carrying, smoking, burning,
15 inhaling, or exhaling of any kind of lighted pipe, cigar,
16 cigarette, hookah, weed, herbs, or any other lighted smoking
17 equipment.

18 "State agency" has the meaning formerly ascribed to it in
19 subsection (a) of Section 3 of the Illinois Purchasing Act (now
20 repealed).

21 "Unit of local government" has the meaning ascribed to it
22 in Section 1 of Article VII of the Illinois Constitution of
23 1970.

24 (Source: P.A. 95-17, eff. 1-1-08.)

1 Sec. 15. Smoking in public places, places of employment,
2 and governmental vehicles prohibited. No person shall smoke in
3 a public place or in any place of employment or within 15 feet
4 of any entrance to a public place or place of employment. No
5 person may smoke in any vehicle owned, leased, or operated by
6 the State or a political subdivision of the State. An owner
7 shall reasonably assure that smoking ~~Smoking~~ is prohibited in
8 indoor public places and workplaces unless specifically
9 exempted by Section 35 of this Act.

10 (Source: P.A. 95-17, eff. 1-1-08.)

11 (410 ILCS 82/35)

12 Sec. 35. Exemptions. Notwithstanding any other provision
13 of this Act, smoking is allowed in the following areas:

14 (1) Private residences or dwelling places, except when
15 used as a child care, adult day care, or healthcare
16 facility or any other home-based business open to the
17 public.

18 (2) Retail tobacco stores as defined in Section 10 of
19 this Act in operation prior to the effective date of this
20 amendatory Act of the 95th General Assembly. The retail
21 tobacco store shall annually file with the Department by
22 January 31st an affidavit stating the percentage of its
23 gross income during the prior calendar year that was
24 derived from the sale of loose tobacco, plants, or herbs
25 and cigars, cigarettes, pipes, or other smoking devices for

1 smoking tobacco and related smoking accessories. Any
2 retail tobacco store that begins operation after the
3 effective date of this amendatory Act may only qualify for
4 an exemption if located in a freestanding structure
5 occupied solely by the business and smoke from the business
6 does not migrate into an enclosed area where smoking is
7 prohibited.

8 (3) Private and semi-private rooms in nursing homes and
9 long-term care facilities that are occupied by one or more
10 persons, all of whom are smokers and have requested in
11 writing to be placed or to remain in a room where smoking
12 is permitted and the smoke shall not infiltrate other areas
13 of the nursing home.

14 (4) Hotel and motel sleeping rooms that are rented to
15 guests and are designated as smoking rooms, provided that
16 all smoking rooms on the same floor must be contiguous and
17 smoke from these rooms must not infiltrate into nonsmoking
18 rooms or other areas where smoking is prohibited. Not more
19 than 25% of the rooms rented to guests in a hotel or motel
20 may be designated as rooms where smoking is allowed. The
21 status of rooms as smoking or nonsmoking may not be
22 changed, except to permanently add additional nonsmoking
23 rooms.

24 (5) Enclosed laboratories that are excluded from the
25 definition of "place of employment" in Section 10 of this
26 Act. Rulemaking authority to implement this amendatory Act

1 of the 96th General Assembly, if any, is conditioned on the
2 rules being adopted in accordance with all provisions of
3 the Illinois Administrative Procedure Act and all rules and
4 procedures of the Joint Committee on Administrative Rules;
5 any purported rule not so adopted, for whatever reason, is
6 unauthorized.

7 (6) Common smoking rooms in long-term care facilities
8 operated under the authority of the Illinois Department of
9 Veterans' Affairs that are accessible only to residents who
10 are smokers and have requested in writing to have access to
11 the common smoking room where smoking is permitted and the
12 smoke shall not infiltrate other areas of the long-term
13 care facility. Rulemaking authority to implement this
14 amendatory Act of the 96th General Assembly, if any, is
15 conditioned on the rules being adopted in accordance with
16 all provisions of the Illinois Administrative Procedure
17 Act and all rules and procedures of the Joint Committee on
18 Administrative Rules; any purported rule not so adopted,
19 for whatever reason, is unauthorized.

20 (Source: P.A. 95-17, eff. 1-1-08.)

21 (410 ILCS 82/40)

22 Sec. 40. Enforcement; complaints.

23 (a) The Department, State-certified local public health
24 departments, and local law enforcement agencies shall enforce
25 the provisions of this Act through the issuance of citations

1 and may assess fines pursuant to Section 45 of this Act.

2 (a-2) The citations issued pursuant to this Act shall
3 conspicuously include the following:

4 (1) the name of the offense and its statutory
5 reference;

6 (2) the nature and elements of the violation;

7 (3) the date and location of the violation;

8 (4) the name of the enforcing agency;

9 (5) the name of the violator;

10 (6) the amount of the imposed fine and the location
11 where the violator can pay the fine without objection;

12 (7) the address and phone number of the enforcing
13 agency where the violator can request a hearing before the
14 Department to contest the imposition of the fine imposed by
15 the citation under the rules and procedures of the
16 Administrative Procedure Act;

17 (8) the time period in which to pay the fine or to
18 request a hearing to contest the imposition of the fine
19 imposed by the citation; and

20 (9) the verified signature of the person issuing the
21 citation.

22 (a-3) One copy of the citation shall be provided to the
23 violator, one copy shall be retained by the enforcing agency,
24 and one copy shall be provided to the entity otherwise
25 authorized by the enforcing agency to receive fines on their
26 behalf.

1 (b) Any person may register a complaint with the
2 Department, a State-certified local public health department,
3 or a local law enforcement agency for a violation of this Act.
4 The Department shall establish a telephone number that a person
5 may call to register a complaint under this subsection (b).

6 (c) The Department shall afford a violator the opportunity
7 to pay the fine without objection or to contest the citation in
8 accordance with the Illinois Administrative Procedure Act,
9 except that in case of a conflict between the Illinois
10 Administrative Procedure Act and this Act, the provisions of
11 this Act shall control.

12 (d) Upon receipt of a request for hearing to contest the
13 imposition of a fine imposed by a citation, the enforcing
14 agency shall immediately forward a copy of the citation and
15 notice of the request for hearing to the Department for
16 initiation of a hearing conducted in accordance with the
17 Illinois Administrative Procedure Act and the rules
18 established thereto by the Department applicable to contested
19 cases, except that in case of a conflict between the Illinois
20 Administrative Procedure Act and this Act, the provisions of
21 this Act shall control. Parties to the hearing shall be the
22 enforcing agency and the violator.

23 The Department shall notify the violator in writing of the
24 time, place, and location of the hearing. The hearing shall be
25 conducted at the nearest regional office of the Department, or
26 in a location contracted by the Department in the county where

1 the citation was issued.

2 (e) Fines imposed under this Act may be collected in
3 accordance with all methods otherwise available to the
4 enforcing agency or the Department, except that there shall be
5 no collection efforts during the pendency of the hearing before
6 the Department.

7 (f) Rulemaking authority to implement this amendatory Act
8 of the 96th General Assembly, if any, is conditioned on the
9 rules being adopted in accordance with all provisions of the
10 Illinois Administrative Procedure Act and all rules and
11 procedures of the Joint Committee on Administrative Rules; any
12 purported rule not so adopted, for whatever reason, is
13 unauthorized.

14 (Source: P.A. 95-17, eff. 1-1-08.)

15 (410 ILCS 82/45)

16 Sec. 45. Violations.

17 (a) A person, corporation, partnership, association or
18 other entity who violates Section 15 of this Act shall be fined
19 pursuant to this Section. Each day that a violation occurs is a
20 separate violation.

21 (b) A person who smokes in an area where smoking is
22 prohibited under Section 15 of this Act shall be fined in an
23 amount that is ~~not less than~~ \$100 for a first offense and ~~not~~
24 ~~more than~~ \$250 for each subsequent offense. A person who owns,
25 operates, or otherwise controls a public place or place of

1 employment that violates Section 15 of this Act shall be fined
2 (i) ~~not less than~~ \$250 for the first violation, (ii) ~~not less~~
3 ~~than~~ \$500 for the second violation within one year after the
4 first violation, and (iii) ~~not less than~~ \$2,500 for each
5 additional violation within one year after the first violation.

6 (c) A fine imposed under this Section shall be allocated as
7 follows:

8 (1) one-half of the fine shall be distributed to the
9 Department; and

10 (2) one-half of the fine shall be distributed to the
11 enforcing agency.

12 (d) Rulemaking authority to implement this amendatory Act
13 of the 96th General Assembly, if any, is conditioned on the
14 rules being adopted in accordance with all provisions of the
15 Illinois Administrative Procedure Act and all rules and
16 procedures of the Joint Committee on Administrative Rules; any
17 purported rule not so adopted, for whatever reason, is
18 unauthorized.

19 (Source: P.A. 95-17, eff. 1-1-08.)

20 (410 ILCS 82/50)

21 Sec. 50. Injunctions. In addition to any other sanction or
22 remedy, the ~~The~~ Department, a State-certified local public
23 health department, local law enforcement agency, or any
24 individual personally affected by repeated violations may
25 institute, in a circuit court, an action to enjoin violations

1 of this Act.

2 (Source: P.A. 95-17, eff. 1-1-08.)

3 (410 ILCS 82/60)

4 Sec. 60. Severability. If any provision, clause or
5 paragraph of this Act shall be held invalid by a court of
6 competent jurisdiction, such invalidity ~~validity~~ shall not
7 affect the other provisions of this Act.

8 (Source: P.A. 95-17, eff. 1-1-08.)

9 Section 99. Effective date. This Act takes effect upon
10 becoming law.