



## 95TH GENERAL ASSEMBLY

### State of Illinois

2007 and 2008

SB2432

Introduced 2/15/2008, by Sen. John J. Cullerton

#### SYNOPSIS AS INTRODUCED:

410 ILCS 82/10  
410 ILCS 82/52 new

Amends the Smoke Free Illinois Act. Creates a definition of a "nuisance" under the Act, meaning anything that is injurious to health, indecent, offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property. Provides that for the purposes of the Act, "nuisance" includes tobacco smoke that drifts into any residential unit a person rents, leases, or owns, from another residential or commercial unit, and this smoke: (i) drifts in more than once in each of 2 or more consecutive 7-day periods and (ii) creates a condition that is injurious to health, indecent, offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property. Provides that an action for a nuisance may be brought by any person whose property is injuriously affected, or whose personal enjoyment is lessened by the nuisance. Provides that upon judgment, the nuisance may be enjoined or abated, and damages may be recovered. Provides that a cause of action for a nuisance shall not be brought under the Section in certain circumstances. Makes other changes. Effective January 1, 2009.

LRB095 16072 KBJ 42090 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 Section 10 and by adding Section 52 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 "Nuisance" means anything that is injurious to health,  
6 indecent, offensive to the senses, or an obstruction to the  
7 free use of property, so as to interfere with the comfortable  
8 enjoyment of life or property. For the purposes of this Act,  
9 "nuisance" includes tobacco smoke that drifts into any  
10 residential unit a person rents, leases, or owns, from another  
11 residential or commercial unit, and this smoke: (i) drifts in  
12 more than once in each of 2 or more consecutive 7-day periods  
13 and (ii) creates a condition that is injurious to health,  
14 indecent, offensive to the senses, or an obstruction to the  
15 free use of property, so as to interfere with the comfortable  
16 enjoyment of life or property.

17 "Place of employment" means any area under the control of a  
18 public or private employer that employees are required to  
19 enter, leave, or pass through during the course of employment,  
20 including, but not limited to entrances and exits to places of  
21 employment, including a minimum distance, as set forth in  
22 Section 70 of this Act, of 15 feet from entrances, exits,  
23 windows that open, and ventilation intakes that serve an  
24 enclosed area where smoking is prohibited; offices and work  
25 areas; restrooms; conference and classrooms; break rooms and  
26 cafeterias; and other common areas. A private residence or

1 home-based business, unless used to provide licensed child  
2 care, foster care, adult care, or other similar social service  
3 care on the premises, is not a "place of employment".

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

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

1 residence.

2 "Public place" means that portion of any building or  
3 vehicle used by and open to the public, regardless of whether  
4 the building or vehicle is owned in whole or in part by private  
5 persons or entities, the State of Illinois, or any other public  
6 entity and regardless of whether a fee is charged for  
7 admission, including a minimum distance, as set forth in  
8 Section 70 of this Act, of 15 feet from entrances, exits,  
9 windows that open, and ventilation intakes that serve an  
10 enclosed area where smoking is prohibited. A "public place"  
11 does not include a private residence unless the private  
12 residence is used to provide licensed child care, foster care,  
13 or other similar social service care on the premises. A "public  
14 place" includes, but is not limited to, hospitals, restaurants,  
15 retail stores, offices, commercial establishments, elevators,  
16 indoor theaters, libraries, museums, concert halls, public  
17 conveyances, educational facilities, nursing homes,  
18 auditoriums, enclosed or partially enclosed sports arenas,  
19 meeting rooms, schools, exhibition halls, convention  
20 facilities, polling places, private clubs, gaming facilities,  
21 all government owned vehicles and facilities, including  
22 buildings and vehicles owned, leased, or operated by the State  
23 or State subcontract, healthcare facilities or clinics,  
24 enclosed shopping centers, retail service establishments,  
25 financial institutions, educational facilities, ticket areas,  
26 public hearing facilities, public restrooms, waiting areas,

1 lobbies, bars, taverns, bowling alleys, skating rinks,  
2 reception areas, and no less than 75% of the sleeping quarters  
3 within a hotel, motel, resort, inn, lodge, bed and breakfast,  
4 or other similar public accommodation that are rented to  
5 guests, but excludes private residences.

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

13 "Retail tobacco store" means a retail establishment that  
14 derives more than 80% of its gross revenue from the sale of  
15 loose tobacco, plants, or herbs and cigars, cigarettes, pipes,  
16 and other smoking devices for burning tobacco and related  
17 smoking accessories and in which the sale of other products is  
18 merely incidental. "Retail tobacco store" does not include a  
19 tobacco department or section of a larger commercial  
20 establishment or any establishment with any type of liquor,  
21 food, or restaurant license.

22 "Smoke" or "smoking" means the carrying, smoking, burning,  
23 inhaling, or exhaling of any kind of lighted pipe, cigar,  
24 cigarette, hookah, weed, herbs, or any other lighted smoking  
25 equipment.

26 "State agency" has the meaning formerly ascribed to it in

1 subsection (a) of Section 3 of the Illinois Purchasing Act (now  
2 repealed).

3 "Unit of local government" has the meaning ascribed to it  
4 in Section 1 of Article VII of the Illinois Constitution of  
5 1970.

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

7 (410 ILCS 82/52 new)

8 Sec. 52. Nuisance.

9 (a) An action for a nuisance may be brought by any person  
10 whose property is injuriously affected, or whose personal  
11 enjoyment is lessened by the nuisance. Upon judgment, the  
12 nuisance may be enjoined or abated, and damages may be  
13 recovered. A cause of action for a nuisance shall not be  
14 brought under this Section if the rental, lease, restrictive  
15 covenant, or purchase agreement for the unit states in writing  
16 that:

17 (1) smoking is allowed in other units, either  
18 residential or commercial, and that tobacco smoke from  
19 those units may drift into the unit that is subject of the  
20 agreement; and

21 (2) the renter, lessee, or buyer acknowledges he has  
22 been informed that tobacco smoke may drift into the unit  
23 that he or she is renting, leasing, or purchasing, and he  
24 or she waives any right to a cause of action for nuisance  
25 under this Section.



1       (b) A cause of action for a nuisance under this Section may  
2 be brought against:

3           (1) the individual generating the tobacco smoke;

4           (2) the renter or lessee who permits or fails to  
5 control the generation of tobacco smoke in violation of the  
6 terms of his or her rental or lease agreement on the  
7 premises he or she rents or leases; or

8           (3) the landlord, but only if:

9           (i) the terms of the renter's or lessee's contract  
10 provide that the unit will not be subject to the  
11 nuisance of drifting tobacco smoke;

12           (ii) the complaining renter or lessee has provided  
13 to the landlord a statement in writing indicating that  
14 tobacco smoke is creating a nuisance in the renter's or  
15 lessee's unit; and

16           (iii) the landlord knowingly allows the  
17 continuation of a nuisance after receipt of written  
18 notice under this Section and in violation of the terms  
19 of the rental or lease agreement.

20       (c) This Section does not apply to residential rental units  
21 available for temporary rental, such as for vacations, or  
22 available for only 30 or fewer days at a time, hotel or motel  
23 rooms, or a timeshare interest.

24       Section 99. Effective date. This Act takes effect January  
25 1, 2009.