



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

HB5355

Introduced 2/15/2012, by Rep. Robert Rita

#### SYNOPSIS AS INTRODUCED:

65 ILCS 5/11-42-10.3 new

235 ILCS 5/4-4

410 ILCS 82/35

from Ch. 43, par. 112

Amends the Illinois Municipal Code. Provides that the local liquor control commission shall issue a smoking license to any establishment eligible for a smoking license under the Liquor Control Act of 1934. Limits the concurrent exercise of home rule powers. Amends the Liquor Control Act of 1934. Provides that a local liquor control commissioner shall issue a smoking license to certain eligible establishments and provides that an eligible establishment must be able to document that it has an air filtration system that meets certain standards. Limits the concurrent exercise of home rule powers. Amends the Smoke Free Illinois Act. Authorizes smoking in any eligible establishment that has obtained a license to allow smoking on the premises from the local liquor control commission. Also makes technical changes. Effective immediately.

LRB097 17422 AJ0 63843 b

FISCAL NOTE ACT  
MAY APPLY

HOME RULE NOTE  
ACT MAY APPLY

A BILL FOR

1 AN ACT concerning civil law.

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

4 Section 5. The Illinois Municipal Code is amended by adding  
5 Section 11-42-10.3 as follows:

6 (65 ILCS 5/11-42-10.3 new)

7 Sec. 11-42-10.3. Smoking licenses. The local liquor  
8 control commission shall issue a smoking license to any  
9 establishment eligible for a smoking license under Section 4-4  
10 of the Liquor Control Act of 1934.

11 A home rule unit may not issue smoking licenses in a manner  
12 inconsistent with the regulation of the issuance of smoking  
13 licenses under this Section. This Section is a limitation under  
14 subsection (i) of Section 6 of Article VII of the Illinois  
15 Constitution on the concurrent exercise by home rule units of  
16 home rule units of powers and functions exercised by the State.

17 Section 10. The Liquor Control Act of 1934 is amended by  
18 changing Section 4-4 as follows:

19 (235 ILCS 5/4-4) (from Ch. 43, par. 112)

20 Sec. 4-4. Additional powers.

21 (a) Each local liquor control commissioner shall also have

1 the following powers, functions, and duties with respect to  
2 licenses, other than licenses to manufacturers, importing  
3 distributors, distributors, foreign importers, non-resident  
4 dealers, non-beverage users, brokers, railroads, airplanes,  
5 and boats.

6 1. To grant and or suspend for not more than thirty  
7 days or revoke for cause all local licenses issued to  
8 persons for premises within his jurisdiction;

9 2. To enter or to authorize any law enforcing officer  
10 to enter at any time upon any premises licensed hereunder  
11 to determine whether any of the provisions of this Act or  
12 any rules or regulations adopted by him or by the State  
13 Commission have been or are being violated, and at such  
14 time to examine said premises of said licensee in  
15 connection therewith;

16 3. To notify the Secretary of State where a club  
17 incorporated under the General Not for Profit Corporation  
18 Act of 1986 or a foreign corporation functioning as a club  
19 in this State under a certificate of authority issued under  
20 that Act has violated this Act by selling or offering for  
21 sale at retail alcoholic liquors without a retailer's  
22 license;

23 4. To receive complaint from any citizen within his  
24 jurisdiction that any of the provisions of this Act, or any  
25 rules or regulations adopted pursuant hereto, have been or  
26 are being violated and to act upon such complaints in the

1 manner hereinafter provided;

2 5. To receive local license fees and pay the same  
3 forthwith to the city, village, town or county treasurer as  
4 the case may be.

5 (b) Each local liquor control commissioner shall issue a  
6 smoking license to the following eligible establishments:

7 (1) any bar that can provide written documentation that  
8 less than 10% of its total revenue comes from the sale of  
9 food;

10 (2) any venue where gambling operations are conducted  
11 pursuant to the Riverboat Gambling Act or the Illinois  
12 Horse Racing Act of 1975;

13 (3) any venue for adult entertainment where a person  
14 must be at least 18 years old to enter;

15 (4) any private club, as defined in Section 10 of the  
16 Smoke Free Illinois Act, provided that at least  
17 three-fifths of the private club's members have requested  
18 in writing that the private club designate areas for  
19 smoking; or

20 (5) any establishment hosting a convention or  
21 exposition for the specific purpose of exhibiting or  
22 selling cigars, pipes, tobacco, and related smoking  
23 devices or accessories.

24 An eligible establishment must be able to document that (i)  
25 it has disclosed to all employees that if a smoking license is  
26 granted to the establishment, smoking will be permitted on the

1 premises; (ii) all employees have acknowledged receiving the  
2 disclosure; and (iii) it has an air filtration system that  
3 meets the size and use standards of the International  
4 Mechanical Code. If the eligible establishment has a liquor  
5 license, then it must be in compliance with all of the terms of  
6 the liquor license in order to receive a license to allow  
7 smoking on the premises.

8 A home rule unit may not issue smoking licenses in a manner  
9 inconsistent with the issuance of smoking licenses under this  
10 subsection (b). This subsection (b) is a limitation under  
11 subsection (i) of Section 6 of Article VII of the Illinois  
12 Constitution on the concurrent exercise by home rule units of  
13 home rule units of powers and functions exercised by the State.

14 (c) Each local liquor commissioner also has the duty to  
15 notify the Secretary of State of any convictions or  
16 dispositions of court supervision for a violation of Section  
17 6-20 of this Act or a similar provision of a local ordinance.

18 (d) In counties and municipalities, the local liquor  
19 control commissioners shall also have the power to levy fines  
20 in accordance with Section 7-5 of this Act.

21 (Source: P.A. 95-166, eff. 1-1-08.)

22 Section 15. The Smoke Free Illinois Act is amended by  
23 changing Section 35 as follows:

24 (410 ILCS 82/35)

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

3           (1) Private residences or dwelling places, except when  
4 used as a child care, adult day care, or healthcare  
5 facility or any other home-based business open to the  
6 public.

7           (2) Retail tobacco stores as defined in Section 10 of  
8 this Act in operation prior to the effective date of this  
9 amendatory Act of the 95th General Assembly. The retail  
10 tobacco store shall annually file with the Department by  
11 January 31st an affidavit stating the percentage of its  
12 gross income during the prior calendar year that was  
13 derived from the sale of loose tobacco, plants, or herbs  
14 and cigars, cigarettes, pipes, or other smoking devices for  
15 smoking tobacco and related smoking accessories. Any  
16 retail tobacco store that begins operation after the  
17 effective date of this amendatory Act may only qualify for  
18 an exemption if located in a freestanding structure  
19 occupied solely by the business and smoke from the business  
20 does not migrate into an enclosed area where smoking is  
21 prohibited.

22           (3) (Blank).

23           (4) Hotel and motel sleeping rooms that are rented to  
24 guests and are designated as smoking rooms, provided that  
25 all smoking rooms on the same floor must be contiguous and  
26 smoke from these rooms must not infiltrate into nonsmoking

1 rooms or other areas where smoking is prohibited. Not more  
2 than 25% of the rooms rented to guests in a hotel or motel  
3 may be designated as rooms where smoking is allowed. The  
4 status of rooms as smoking or nonsmoking may not be  
5 changed, except to permanently add additional nonsmoking  
6 rooms.

7 (5) Enclosed laboratories that are excluded from the  
8 definition of "place of employment" in Section 10 of this  
9 Act. Rulemaking authority to implement this amendatory Act  
10 of the 95th General Assembly, if any, is conditioned on the  
11 rules being adopted in accordance with all provisions of  
12 the Illinois Administrative Procedure Act and all rules and  
13 procedures of the Joint Committee on Administrative Rules;  
14 any purported rule not so adopted, for whatever reason, is  
15 unauthorized.

16 (6) Common smoking rooms in long-term care facilities  
17 operated under the authority of the Illinois Department of  
18 Veterans' Affairs or licensed under the Nursing Home Care  
19 Act that are accessible only to residents who are smokers  
20 and have requested in writing to have access to the common  
21 smoking room where smoking is permitted and the smoke shall  
22 not infiltrate other areas of the long-term care facility.  
23 Rulemaking authority to implement this amendatory Act of  
24 the 95th General Assembly, if any, is conditioned on the  
25 rules being adopted in accordance with all provisions of  
26 the Illinois Administrative Procedure Act and all rules and

1 procedures of the Joint Committee on Administrative Rules;  
2 any purported rule not so adopted, for whatever reason, is  
3 unauthorized.

4 (7) Any eligible establishment that has obtained a  
5 license to allow smoking on the premises from the local  
6 liquor control commission. An eligible establishment must  
7 post prominent signage notifying the public that the  
8 establishment has been designated as a smoking  
9 establishment.

10 (Source: P.A. 95-17, eff. 1-1-08; 95-1029, eff. 2-4-09;  
11 96-1357, eff. 1-1-11.)

12 Section 99. Effective date. This Act takes effect upon  
13 becoming law.