

AN ACT concerning health.

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

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

(410 ILCS 82/10)

Sec. 10. Definitions. In this Act:

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

"Department" means the Department of Public Health.

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

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

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

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

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

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

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

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

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

"Place of employment" means any area under the control of a public or private employer that employees are required to enter, leave, or pass through during the course of employment, including, but not limited to entrances and exits to places of employment, including a minimum distance, as set forth in Section 70 of this Act, of 15 feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where smoking is prohibited; offices and work areas; restrooms; conference and classrooms; break rooms and cafeterias; and other common areas. A private residence or home-based business, unless used to provide licensed child care, foster care, adult care, or other similar social service care on the premises, is not a "place of employment", nor are 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. Rulemaking authority to implement this amendatory Act of the 95th General Assembly, if any, is conditioned on the rules being adopted in accordance with all provisions of the Illinois Administrative Procedure Act and all rules and procedures of the Joint Committee on Administrative Rules; any purported rule not so adopted, for

whatever reason, is unauthorized.

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

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

"Public place" means that portion of any building or

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

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

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

"Retail tobacco store" means a retail establishment that derives more than 80% of its gross revenue from the sale of loose tobacco, plants, or herbs and cigars, cigarettes, pipes, and other smoking devices for burning tobacco and related smoking accessories and in which the sale of other products is merely incidental. "Retail tobacco store" includes an enclosed workplace that manufactures, imports, or distributes tobacco or tobacco products, when, as a necessary and integral part of the process of making, manufacturing, importing, or distributing a tobacco product for the eventual retail sale of that tobacco or tobacco product, tobacco is heated, burned, or smoked, or a lighted tobacco product is tested, 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.

"Retail tobacco store" does not include a tobacco department or section of a larger commercial establishment or any establishment with any type of liquor, food, or restaurant license. Rulemaking authority to implement this amendatory Act of the 95th General Assembly, if any, is conditioned on the rules being adopted in accordance with all provisions of the Illinois Administrative Procedure Act and all rules and procedures of the Joint Committee on Administrative Rules; any purported rule not so adopted, for whatever reason, is unauthorized.

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

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

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

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

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

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

(410 ILCS 82/35)

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

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

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

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

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

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

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

of the 95th General Assembly, if any, is conditioned on the rules being adopted in accordance with all provisions of the Illinois Administrative Procedure Act and all rules and procedures of the Joint Committee on Administrative Rules; any purported rule not so adopted, for whatever reason, is unauthorized.

(6) Common smoking rooms in long-term care facilities operated under the authority of the Illinois Department of Veterans' Affairs that are accessible only to residents who are smokers and have requested in writing to have access to the common smoking room where smoking is permitted and the smoke shall not infiltrate other areas of the long-term care facility. Rulemaking authority to implement this amendatory Act of the 95th General Assembly, if any, is conditioned on the rules being adopted in accordance with all provisions of the Illinois Administrative Procedure Act and all rules and procedures of the Joint Committee on Administrative Rules; any purported rule not so adopted, for whatever reason, is unauthorized.

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

(410 ILCS 82/40)

Sec. 40. Enforcement; complaints.

(a) 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 may assess fines pursuant to Section 45 of this Act.

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

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

(2) the nature and elements of the violation;

(3) the date and location of the violation;

(4) the name of the enforcing agency;

(5) the name of the violator;

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

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

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

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

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

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

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

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

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

the citation was issued.

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

(f) Rulemaking authority to implement this amendatory Act of the 95th General Assembly, if any, is conditioned on the rules being adopted in accordance with all provisions of the Illinois Administrative Procedure Act and all rules and procedures of the Joint Committee on Administrative Rules; any purported rule not so adopted, for whatever reason, is unauthorized.

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

(410 ILCS 82/45)

Sec. 45. Violations.

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

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

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

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

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

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

(d) Rulemaking authority to implement this amendatory Act of the 95th General Assembly, if any, is conditioned on the rules being adopted in accordance with all provisions of the Illinois Administrative Procedure Act and all rules and procedures of the Joint Committee on Administrative Rules; any purported rule not so adopted, for whatever reason, is unauthorized.

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

(410 ILCS 82/50)

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

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of this Act.

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

(410 ILCS 82/60)

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

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

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