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# SUMMARY

## SENATE BILL 246

Printer's No. 2099

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**Synopsis:**

Adopts the Clean Indoor Air Act to prohibit smoking in a public place.

**Summary:**

Prohibits smoking in a public place. A public place includes a workplace, commercial establishment or area where the public is invited or permitted. Provides examples of public places, including: education and food service facilities; mass transportation facilities, including train and subway stations; public homes that provide day-care or adult day-care; and sports and recreational facilities.

Provides exceptions, including:

1. A private residence except when used as a childcare facility regulated by the Department of Public Welfare or adult day-care facility.
2. Designated sleeping quarters within a lodging establishment that are available for rent to guests accounting for no more than 25% of the total number of units. Designated quarters within a full service truck stop.
3. A wholesale or retail tobacco shop where tobacco products comprise 50% or more of annual sales.
4. Workplaces of a manufacturer, importer or wholesaler of tobacco products, or a tobacco leaf dealer or processor and all tobacco storage facilities.
5. A long-term care facility, enclosed rooms in a residential health care facility, drug and alcohol facility or other residential health care facility. Includes designated smoking room in a facility that provides day treatment programs.
6. A private club except when it is open to the public through general advertisement for a club sponsored event or is leased for a private event. Exempts volunteer ambulance services, volunteer fire companies and volunteer rescue companies.
7. A drinking establishment whose annual sales include food sales that are less than 20% of gross sales.
8. An annual nonprofit fundraiser held in a nonpublic area at which cigars are sold or given as gifts as a featured part of the event. The fund raiser may not permit minors and must serve food and beverages.
9. An exhibition hall used for an event where the public is invited to promote and sample tobacco products.
10. A cigar bar.

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11. A drinking establishment which operates under a liquor license has a total annual sale of food of 20% and does not permit individual less than 18 years of age. Includes an enclosed area within an establishment that is connected but separate from the eating area and has a separate air system separate outside entrance, food sales of less than 20% and prohibits individual under 18.

10. Up to 25% of the gaming floor in a licensed gaming facility. If the facility can show that its smoking machines have greater gross terminal revenue than its nonsmoking machines, the facility may increase the smoking area to up to 50% of the gaming floor.

11. A designated outdoor smoking area with a sports or recreation facility, theater or performance establishment.

Cigar bars, tobacco shops and drinking establishments must send a letter and documentation to the Department of Health in order to claim an exemption. A private club must take and record a vote of its officers to approve the exemption.

In order to qualify for an exemption, a person must conspicuously post a sign at every public entrance stating that smoking is permitted.

No person or employer shall discharge, refuse to hire or retaliate against an employee for exercising a right to a smoke-free environment under the act.

A complaint must be made to the appropriate law enforcement agency or to the department. Allows complaints to the department to be electronic or by telephone call to the department's toll-free number. The department shall investigate the complaint or refer the complaint to the appropriate licensing agency for enforcement.

A county may elects to have its board of health enforce the act by providing written notice to the department.

It shall be a violation to fail to post appropriate signs or to permit smoking where prohibited. Provides an affirmative defense if the control of the public place was not exercised by the owner but by a lessee or the owner or operator made a good faith effort to prevent smoking.

Provides a \$250 fine. Provides a \$500 for a second violation within one year and a \$1,000 fine for a subsequent violation.

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Fines shall be remitted to the department of other State licensing agency that initiated the enforcement action. Penalties collected locally shall go to the county board of health.

A violation is a summary offense. The offense carries a \$250 fine, a \$500 find for a second violation within a year and a \$1,000 find for a subsequent offense. Criminal penalties shall be retained by the municipality where the law enforcement agency initiating the action is located, including the PSP.

Prohibits retaliation against an employee who exercises a right to a smoke-free environment.

Requires the department to file an annual report with the Public Health and Welfare Committee of the Senate and the Health and Human Services Committee of the House of Representatives. The report shall include the number of violations of the act by county, the number of enforcement actions initiated and a description of enforcement activities of the department.

Requires the department to promulgate regulations to implement the act. Requires the department to implement a program to educate the public and to inform person who own or operate public places. Requires the Department of Revenue to revise the form for reporting sales tax revenue to require separate reporting of sales of alcohol and tobacco.

Requires the provisions of the act to be construed in favor of the health concerns of persons who do not engage in smoking and the public interest. Prohibits the act from being construed to restrict the power of a political subdivision to adopt provisions which comply with at least the minimum applicable standards of the act.

Preempts more restrictive local law, except for a city of the first class. A city of the first class may not change its ordinance to conflict with the act.

Repeals current provisions in the Fire and Panic Act providing for non-smoking areas in public places.

Effective in 90 days.

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**Comment:**

Differences with Senate passed version:

1. Allows gaming floor exemption to go from 25% to 50% if machines where smoking is allowed have greater gross terminal revenue.
2. Adds a new drinking establishment exception for an enclosed area with a separate entrance within a restaurant. The enclosed area must serve less than 20% food and not permit minors. Amends the prior drinking establishment exemption to require than minors be excluded.
3. Exempts lodging areas in truck stops.
4. Exempts designated outdoor smoking areas in sports or recreational facilities, theaters or performance establishment.
5. Decreases the amount of tobacco products required to be sold in a tobacco shop from 85% to 50%.
6. Senate passed version did not include enforcement provisions. Conference committee requires licensing agencies, such as the LCE to be engaged in enforcement activities.
7. Senate version had total preemption. Conference committee exempts Philadelphia.

Passed Senate 6/26/07 (33-17)

Passed House of Representatives 7/16/07 (141-62)

Senate non-concurred in House amendments 7/16/07

House insists on its amendments 10/23/07

Conference committee reported presented to

Senate and House 6/3/08

Eakin 1/31/07 7/16/07 6/4/08