



Environmental Health Committee

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LRB095 05741 RPM 51191 a

1 AMENDMENT TO SENATE BILL 2707

2 AMENDMENT NO. _____. Amend Senate Bill 2707 by replacing
3 everything after the enacting clause with the following:

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

1 or a person who volunteers his or her services for a non-profit
2 entity.

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

7 "Enclosed area" means all space between a floor and a
8 ceiling that is enclosed or partially enclosed with (i) solid
9 walls or windows, exclusive of doorways, or (ii) solid walls
10 with partitions and no windows, exclusive of doorways, that
11 extend from the floor to the ceiling, including, without
12 limitation, lobbies and corridors.

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

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

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

1 "Healthcare facility" means an office or institution
2 providing care or treatment of diseases, whether physical,
3 mental, or emotional, or other medical, physiological, or
4 psychological conditions, including, but not limited to,
5 hospitals, rehabilitation hospitals, weight control clinics,
6 nursing homes, homes for the aging or chronically ill,
7 laboratories, and offices of surgeons, chiropractors, physical
8 therapists, physicians, dentists, and all specialists within
9 these professions. "Healthcare facility" includes all waiting
10 rooms, hallways, private rooms, semiprivate rooms, and wards
11 within healthcare facilities.

12 "Place of employment" means any area under the control of a
13 public or private employer that employees are required to
14 enter, leave, or pass through during the course of employment,
15 including, but not limited to entrances and exits to places of
16 employment, including a minimum distance, as set forth in
17 Section 70 of this Act, of 15 feet from entrances, exits,
18 windows that open, and ventilation intakes that serve an
19 enclosed area where smoking is prohibited; offices and work
20 areas; restrooms; conference and classrooms; break rooms and
21 cafeterias; and other common areas. A private residence or
22 home-based business, unless used to provide licensed child
23 care, foster care, adult care, or other similar social service
24 care on the premises, is not a "place of employment", nor are
25 enclosed laboratories, not open to the public, in an accredited
26 university or government facility where the activity of smoking

1 is exclusively conducted for the purpose of medical or
2 scientific health-related research. Notwithstanding any other
3 rulemaking authority that may exist, the Department may not
4 make or promulgate rules to implement or enforce the provisions
5 of this amendatory Act of the 95th General Assembly. Nothing
6 contained in this amendatory Act of the 95th General Assembly
7 shall be interpreted to grant rulemaking authority that is not
8 otherwise explicitly given. For the purposes of this amendatory
9 Act of the 95th General Assembly, the term "rules" is given the
10 meaning contained in Section 1-70 of the Illinois
11 Administrative Procedure Act.

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

1 a club under 26 U.S.C. 501.

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

10 "Public place" means that portion of any building or
11 vehicle used by and open to the public, regardless of whether
12 the building or vehicle is owned in whole or in part by private
13 persons or entities, the State of Illinois, or any other public
14 entity and regardless of whether a fee is charged for
15 admission, including a minimum distance, as set forth in
16 Section 70 of this Act, of 15 feet from entrances, exits,
17 windows that open, and ventilation intakes that serve an
18 enclosed area where smoking is prohibited. A "public place"
19 does not include a private residence unless the private
20 residence is used to provide licensed child care, foster care,
21 or other similar social service care on the premises. A "public
22 place" includes, but is not limited to, hospitals, restaurants,
23 retail stores, offices, commercial establishments, elevators,
24 indoor theaters, libraries, museums, concert halls, public
25 conveyances, educational facilities, nursing homes,
26 auditoriums, enclosed or partially enclosed sports arenas,

1 meeting rooms, schools, exhibition halls, convention
2 facilities, polling places, private clubs, gaming facilities,
3 all government owned vehicles and facilities, including
4 buildings and vehicles owned, leased, or operated by the State
5 or State subcontract, healthcare facilities or clinics,
6 enclosed shopping centers, retail service establishments,
7 financial institutions, educational facilities, ticket areas,
8 public hearing facilities, public restrooms, waiting areas,
9 lobbies, bars, taverns, bowling alleys, skating rinks,
10 reception areas, and no less than 75% of the sleeping quarters
11 within a hotel, motel, resort, inn, lodge, bed and breakfast,
12 or other similar public accommodation that are rented to
13 guests, but excludes private residences.

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

21 "Retail tobacco store" means a retail establishment that
22 derives more than 80% of its gross revenue from the sale of
23 loose tobacco, plants, or herbs and cigars, cigarettes, pipes,
24 and other smoking devices for burning tobacco and related
25 smoking accessories and in which the sale of other products is
26 merely incidental. "Retail tobacco store" includes an enclosed

1 workplace that manufactures, imports, or distributes tobacco
2 or tobacco products, when, as a necessary and integral part of
3 the process of making, manufacturing, importing, or
4 distributing a tobacco product for the eventual retail sale of
5 that tobacco or tobacco product, tobacco is heated, burned, or
6 smoked, or a lighted tobacco product is tested, provided that
7 the involved business entity: (1) maintains a specially
8 designated area or areas within the workplace for the purpose
9 of the heating, burning, smoking, or lighting activities, and
10 does not create a facility that permits smoking throughout; (2)
11 satisfies the 80% requirement related to gross sales; and (3)
12 delivers tobacco products to consumers, retail establishments,
13 or other wholesale establishments as part of its business.

14 "Retail tobacco store" does not include a tobacco department or
15 section of a larger commercial establishment or any
16 establishment with any type of liquor, food, or restaurant
17 license. Notwithstanding any other rulemaking authority that
18 may exist, the Department may not make or promulgate rules to
19 implement or enforce the provisions of this amendatory Act of
20 the 95th General Assembly. Nothing contained in this amendatory
21 Act of the 95th General Assembly shall be interpreted to grant
22 rulemaking authority that is not otherwise explicitly given.
23 For the purposes of this amendatory Act of the 95th General
24 Assembly, the term "rules" is given the meaning contained in
25 Section 1-70 of the Illinois Administrative Procedure Act.

26 "Smoke" or "smoking" means the carrying, smoking, burning,

1 inhaling, or exhaling of any kind of lighted pipe, cigar,
2 cigarette, hookah, weed, herbs, or any other lighted smoking
3 equipment.

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

7 "Unit of local government" has the meaning ascribed to it
8 in Section 1 of Article VII of the Illinois Constitution of
9 1970.

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

11 (410 ILCS 82/15)

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

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

22 (410 ILCS 82/35)

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

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

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

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

26 (4) Hotel and motel sleeping rooms that are rented to

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

10 (5) Enclosed laboratories that are excluded from the
11 definition of "place of employment" in Section 10 of this
12 Act. Notwithstanding any other rulemaking authority that
13 may exist, the Department may not make or promulgate rules
14 to implement or enforce the provisions of this amendatory
15 Act of the 95th General Assembly. Nothing contained in this
16 amendatory Act of the 95th General Assembly shall be
17 interpreted to grant rulemaking authority that is not
18 otherwise explicitly given. For the purposes of this
19 amendatory Act of the 95th General Assembly, the term
20 "rules" is given the meaning contained in Section 1-70 of
21 the Illinois Administrative Procedure Act.

22 (6) Common smoking rooms in long-term care facilities
23 operated under the authority of the Illinois Department of
24 Veterans' Affairs that are accessible only to residents who
25 are smokers and have requested in writing to have access to
26 the common smoking room where smoking is permitted and the

1 smoke shall not infiltrate other areas of the long-term
2 care facility. Notwithstanding any other rulemaking
3 authority that may exist, the Department may not make or
4 promulgate rules to implement or enforce the provisions of
5 this amendatory Act of the 95th General Assembly. Nothing
6 contained in this amendatory Act of the 95th General
7 Assembly shall be interpreted to grant rulemaking
8 authority that is not otherwise explicitly given. For the
9 purposes of this amendatory Act of the 95th General
10 Assembly, the term "rules" is given the meaning contained
11 in Section 1-70 of the Illinois Administrative Procedure
12 Act.

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

14 (410 ILCS 82/40)

15 Sec. 40. Enforcement; complaints.

16 (a) The Department, State-certified local public health
17 departments, and local law enforcement agencies shall enforce
18 the provisions of this Act through the issuance of citations
19 and may assess fines pursuant to Section 45 of this Act.

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

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

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

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

1 (4) the name of the enforcing agency;

2 (5) the name of the violator;

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

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

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

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

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

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

25 (c) The Department shall afford a violator the opportunity
26 to pay the fine without objection or to contest the citation in

1 accordance with the Illinois Administrative Procedure Act,
2 except that in case of a conflict between the Illinois
3 Administrative Procedure Act and this Act, the provisions of
4 this Act shall control.

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

16 The Department shall notify the violator in writing of the
17 time, place, and location of the hearing. The hearing shall be
18 conducted at the nearest regional office of the Department, or
19 in a location contracted by the Department in the county where
20 the citation was issued.

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

26 (f) Notwithstanding any other rulemaking authority that

1 may exist, the Department may not make or promulgate rules to
2 implement or enforce the provisions of this amendatory Act of
3 the 95th General Assembly. Nothing contained in this amendatory
4 Act of the 95th General Assembly shall be interpreted to grant
5 rulemaking authority that is not otherwise explicitly given.
6 For the purposes of this amendatory Act of the 95th General
7 Assembly, the term "rules" is given the meaning contained in
8 Section 1-70 of the Illinois Administrative Procedure Act.

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

10 (410 ILCS 82/45)

11 Sec. 45. Violations.

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

16 (b) A person who smokes in an area where smoking is
17 prohibited under Section 15 of this Act shall be fined in an
18 amount that is ~~not less than~~ \$100 for a first offense and ~~not~~
19 ~~more than~~ \$250 for each subsequent offense. A person who owns,
20 operates, or otherwise controls a public place or place of
21 employment that violates Section 15 of this Act shall be fined
22 (i) ~~not less than~~ \$250 for the first violation, (ii) ~~not less~~
23 ~~than~~ \$500 for the second violation within one year after the
24 first violation, and (iii) ~~not less than~~ \$2,500 for each
25 additional violation within one year after the first violation.

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

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

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

7 (d) Notwithstanding any other rulemaking authority that
8 may exist, the Department may not make or promulgate rules to
9 implement or enforce the provisions of this amendatory Act of
10 the 95th General Assembly. Nothing contained in this amendatory
11 Act of the 95th General Assembly shall be interpreted to grant
12 rulemaking authority that is not otherwise explicitly given.
13 For the purposes of this amendatory Act of the 95th General
14 Assembly, the term "rules" is given the meaning contained in
15 Section 1-70 of the Illinois Administrative Procedure Act.

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

17 (410 ILCS 82/50)

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

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

1 (410 ILCS 82/60)

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

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

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