



Rep. Karen A. Yarbrough

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LRB095 17072 RPM 49582 a

1 AMENDMENT TO HOUSE BILL 4310

2 AMENDMENT NO. _____. Amend House Bill 4310, AS AMENDED, by
3 replacing everything after the enacting clause with the
4 following:

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

7 (410 ILCS 82/10)

8 Sec. 10. Definitions. In this Act:

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

15 "Department" means the Department of Public Health.

16 "Employee" means a person who is employed by an employer in

1 consideration for direct or indirect monetary wages or profits
2 or a person who volunteers his or her services for a non-profit
3 entity.

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

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

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

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

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

1 revenue.

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

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

1 university or government facility where the activity of smoking
2 is exclusively conducted for the purpose of medical or
3 scientific health-related research.

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" includes an enclosed
19 workplace that manufactures, imports, or distributes tobacco
20 or tobacco products, when, as a necessary and integral part of
21 the process of making, manufacturing, importing, or
22 distributing a tobacco product for the eventual retail sale of
23 that tobacco or tobacco product, tobacco is heated, burned, or
24 smoked, or a lighted tobacco product is tested, provided that
25 the involved business entity: (1) maintains a specially
26 designated area or areas within the workplace for the purpose

1 of the heating, burning, smoking, or lighting activities, and
2 does not create a facility that permits smoking throughout; (2)
3 satisfies the 80% requirement related to gross sales; and (3)
4 delivers tobacco products to consumers, retail establishments,
5 or other wholesale establishments as part of its business.

6 "Retail tobacco store" does not include a tobacco department or
7 section of a larger commercial establishment or any
8 establishment with any type of liquor, food, or restaurant
9 license.

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

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

17 "Unit of local government" has the meaning ascribed to it
18 in Section 1 of Article VII of the Illinois Constitution of
19 1970.

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

21 (410 ILCS 82/15)

22 Sec. 15. Smoking in public places, places of employment,
23 and governmental vehicles prohibited. No person shall smoke in
24 a public place or in any place of employment or within 15 feet
25 of any entrance to a public place or place of employment. No

1 person may smoke in any vehicle owned, leased, or operated by
2 the State or a political subdivision of the State. An owner
3 shall reasonably assure that smoking ~~Smoking~~ is prohibited in
4 indoor public places and workplaces unless specifically
5 exempted by Section 35 of this Act.

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

7 (410 ILCS 82/35)

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

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

14 (2) Retail tobacco stores as defined in Section 10 of
15 this Act in operation prior to the effective date of this
16 amendatory Act of the 95th General Assembly. The retail
17 tobacco store shall annually file with the Department by
18 January 31st an affidavit stating the percentage of its
19 gross income during the prior calendar year that was
20 derived from the sale of loose tobacco, plants, or herbs
21 and cigars, cigarettes, pipes, or other smoking devices for
22 smoking tobacco and related smoking accessories. Any
23 retail tobacco store that begins operation after the
24 effective date of this amendatory Act may only qualify for
25 an exemption if located in a freestanding structure

1 occupied solely by the business and smoke from the business
2 does not migrate into an enclosed area where smoking is
3 prohibited.

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

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

20 (5) Enclosed laboratories that are excluded from the
21 definition of "place of employment" in Section 10 of this
22 Act.

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

24 (410 ILCS 82/40)

25 Sec. 40. Enforcement; complaints.

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

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

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

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

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

11 (4) the name of the enforcing agency;

12 (5) the name of the violator;

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

15 (7) the address and phone number of the enforcing
16 agency where the violator can request a hearing before the
17 Department to contest the imposition of the citation under
18 the rules and procedures of the Administrative Procedure
19 Act;

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

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

25 (a-3) One copy of the citation shall be provided to the
26 violator, one copy shall be retained by the enforcing agency,

1 and one copy shall be provided to the entity otherwise
2 authorized by the enforcing agency to receive fines on their
3 behalf.

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

9 (c) The Department shall afford a violator the opportunity
10 to pay the fine without objection or to contest the citation in
11 accordance with the Illinois Administrative Procedure Act,
12 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.

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

26 The Department shall notify the violator in writing of the

1 time, place, and location of the hearing. The hearing shall be
2 conducted at the nearest regional office of the Department, or
3 in a location contracted by the Department in the county where
4 the citation was issued.

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

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

11 (410 ILCS 82/45)

12 Sec. 45. Violations.

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

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

21 operates, or otherwise controls a public place or place of
22 employment that violates Section 15 of this Act shall be fined

23 (i) ~~not less than~~ \$250 for the first violation, (ii) ~~not less~~
24 ~~than~~ \$500 for the second violation within one year after the
25 first violation, and (iii) ~~not less than~~ \$2,500 for each

1 additional violation within one year after the first violation.

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

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

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

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

9 (410 ILCS 82/50)

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

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

17 (410 ILCS 82/60)

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

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

23 Section 99.Effective date. This Act takes effect upon

1 becoming law.".