



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB0246

Introduced 1/19/2007, by Rep. Karen A. Yarbrough - Julie Hamos
and Kathleen A. Ryg

SYNOPSIS AS INTRODUCED:

See Index

Creates the Smoke Free Illinois Act. Sets forth the findings of the General Assembly. Creates several definitions. Prohibits smoking in public places, places of employment, and governmental vehicles. Requires "No Smoking" signs to be posted in each public place and place of employment where smoking is prohibited. Requires ashtrays to be removed from any area where smoking is prohibited. Prohibits smoking in student dormitories, including, but not limited to, sleeping rooms, dining areas, restrooms, laundry areas, lobbies, and hallways, of a building used in whole or in part as a student dormitory that is owned and operated or otherwise utilized by a public or private institution of higher education. Provides that the Department of Public Health, State-certified local public health departments, and local law enforcement agencies shall enforce the provisions of the Act. Sets forth fines for violations of the Act. Provides that 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 of the Act. Prohibits discrimination against individuals who exercise their rights afforded by the Act. Provides that a home rule unit may regulate smoking in public places, but that regulation must be no less restrictive than the provisions in the Act. Prohibits smoking within a minimum distance of 15 feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where smoking is prohibited. Amends the State Mandates Act to require implementation without reimbursement. Repeals the Illinois Clean Indoor Air Act.

LRB095 04883 KBJ 24947 b

FISCAL NOTE ACT
MAY APPLY

HOME RULE NOTE
ACT MAY APPLY

STATE MANDATES
ACT MAY REQUIRE
REIMBURSEMENT

A BILL FOR

1 AN ACT concerning public health.

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

4 Section 1. Short title. This Act may be cited as the Smoke
5 Free Illinois Act.

6 Section 5. Findings. The General Assembly finds that
7 tobacco smoke is a harmful and dangerous carcinogen to human
8 beings and a hazard to public health. Secondhand tobacco smoke
9 causes at least 65,000 deaths each year from heart disease and
10 lung cancer according to the National Cancer Institute.
11 Secondhand tobacco smoke causes heart disease, stroke, cancer,
12 sudden infant death syndrome, low-birth-weight in infants,
13 asthma and exacerbation of asthma, bronchitis and pneumonia in
14 children and adults. Secondhand tobacco smoke is the third
15 leading cause of preventable death in the United States.
16 Illinois workers exposed to secondhand tobacco smoke are at
17 increased risk of premature death. An estimated 2,900 Illinois
18 citizens die each year from exposure to secondhand tobacco
19 smoke.

20 The General Assembly also finds that the United States
21 Surgeon General's 2006 report has determined that there is no
22 risk-free level of exposure to secondhand smoke; the scientific
23 evidence that secondhand smoke causes serious diseases,

1 including lung cancer, heart disease, and respiratory
2 illnesses such as bronchitis and asthma, is massive and
3 conclusive; separating smokers from nonsmokers, cleaning the
4 air, and ventilating buildings cannot eliminate secondhand
5 smoke exposure; smoke-free workplace policies are effective in
6 reducing secondhand smoke exposure; and smoke-free workplace
7 policies do not have an adverse economic impact on the
8 hospitality industry.

9 The General Assembly also finds that the Environmental
10 Protection Agency has determined that secondhand smoke cannot
11 be reduced to safe levels in businesses by high rates of
12 ventilation. Air cleaners, which are capable only of filtering
13 the particulate matter and odors in smoke, do not eliminate the
14 known toxins in secondhand smoke. The American Society of
15 Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE)
16 bases its ventilation standards on totally smoke-free
17 environments because it cannot determine a safe level of
18 exposure to secondhand smoke, which contains cancer-causing
19 chemicals, and ASHRAE acknowledges that technology does not
20 exist that can remove chemicals that cause cancer from the air.
21 A June 30, 2005 ASHRAE position document on secondhand smoke
22 concludes that, at present, the only means of eliminating
23 health risks associated with indoor exposure is to eliminate
24 all smoking activity indoors.

25 Section 10. Definitions. In this Act:

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

7 "Department" means the Department of Public Health.

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

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

16 "Enclosed area" means all space between a floor and a
17 ceiling that is enclosed or partially enclosed with (i) solid
18 walls or windows, exclusive of doorways, or (ii) solid walls
19 with partitions and no windows, exclusive of doorways, that
20 extend from the floor to the ceiling, including, without
21 limitation, lobbies and corridors.

22 "Enclosed or partially enclosed sports arena" means any
23 sports pavilion, stadium, gymnasium, health spa, boxing arena,
24 swimming pool, roller rink, ice rink, bowling alley, or other
25 similar place where members of the general public assemble to
26 engage in physical exercise or participate in athletic

1 competitions or recreational activities or to witness sports,
2 cultural, recreational, or other events.

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

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

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

21 "Place of employment" means any area under the control of a
22 public or private employer that employees are required to
23 enter, leave, or pass through during the course of employment,
24 including, but not limited to entrances and exits to places of
25 employment, including a minimum distance, as set forth in
26 Section 70 of this Act, of 15 feet from entrances, exits,

1 windows that open, and ventilation intakes that serve an
2 enclosed area where smoking is prohibited; offices and work
3 areas; restrooms; conference and classrooms; break rooms and
4 cafeterias; and other common areas. A private residence or
5 home-based business, unless used to provide licensed child
6 care, foster care, adult care, or other similar social service
7 care on the premises, is not a "place of employment".

8 "Private club" means a not-for-profit association that (1)
9 has been in active and continuous existence for at least 3
10 years prior to the effective date of this amendatory Act of the
11 95th General Assembly, whether incorporated or not, (2) is the
12 owner, lessee, or occupant of a building or portion thereof
13 used exclusively for club purposes at all times, (3) is
14 operated solely for a recreational, fraternal, social,
15 patriotic, political, benevolent, or athletic purpose, but not
16 for pecuniary gain, and (4) only sells alcoholic beverages
17 incidental to its operation. For purposes of this definition,
18 "private club" means an organization that is managed by a board
19 of directors, executive committee, or similar body chosen by
20 the members at an annual meeting, has established bylaws, a
21 constitution, or both to govern its activities, and has been
22 granted an exemption from the payment of federal income tax as
23 a club under 26 U.S.C. 501.

24 "Private residence" means the part of a structure used as a
25 dwelling, including, without limitation: a private home,
26 townhouse, condominium, apartment, mobile home, vacation home,

1 cabin, or cottage. For the purposes of this definition, a
2 hotel, motel, inn, resort, lodge, bed and breakfast or other
3 similar public accommodation, hospital, nursing home, or
4 assisted living facility shall not be considered a private
5 residence.

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

1 or State subcontract, healthcare facilities or clinics,
2 enclosed shopping centers, retail service establishments,
3 financial institutions, educational facilities, ticket areas,
4 public hearing facilities, public restrooms, waiting areas,
5 lobbies, bars, taverns, bowling alleys, skating rinks,
6 reception areas, and no less than 75% of the sleeping quarters
7 within a hotel, motel, resort, inn, lodge, bed and breakfast,
8 or other similar public accommodation that are rented to
9 guests, but excludes private residences.

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

17 "Retail tobacco store" means a retail establishment that
18 derives more than 80% of its gross revenue from the sale of
19 loose tobacco, plants, or herbs and cigars, cigarettes, pipes,
20 and other smoking devices for burning tobacco and related
21 smoking accessories and in which the sale of other products is
22 merely incidental. "Retail tobacco store" does not include a
23 tobacco department or section of a larger commercial
24 establishment or any establishment with any type of liquor,
25 food, or restaurant license.

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

18 Section 20. Posting of signs; removal of ashtrays.

19 (a) "No Smoking" signs or the international "No Smoking"
20 symbol, consisting of a pictorial representation of a burning
21 cigarette enclosed in a red circle with a red bar across it,
22 shall be clearly and conspicuously posted in each public place
23 and place of employment where smoking is prohibited by this Act
24 by the owner, operator, manager, or other person in control of

1 that place.

2 (b) Each public place and place of employment where smoking
3 is prohibited by this Act shall have posted at every entrance a
4 conspicuous sign clearly stating that smoking is prohibited.

5 (c) All ashtrays shall be removed from any area where
6 smoking is prohibited by this Act by the owner, operator,
7 manager, or other person having control of the area.

8 Section 25. Smoking prohibited in student dormitories.
9 Notwithstanding any other provision of this Act, smoking is
10 prohibited in any portion of the living quarters, including,
11 but not limited to, sleeping rooms, dining areas, restrooms,
12 laundry areas, lobbies, and hallways, of a building used in
13 whole or in part as a student dormitory that is owned and
14 operated or otherwise utilized by a public or private
15 institution of higher education.

16 Section 30. Designation of other nonsmoking areas.
17 Notwithstanding any other provision of this Act, any employer,
18 owner, occupant, lessee, operator, manager, or other person in
19 control of any public place or place of employment may
20 designate a non-enclosed area of a public place or place of
21 employment, including outdoor areas, as an area where smoking
22 is also prohibited provided that such employer, owner, lessee
23 or occupant shall conspicuously post signs prohibiting smoking
24 in the manner described in subsections (a) and (b) of Section

1 20 of this Act.

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

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

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

24 (3) Private and semi-private rooms in nursing homes and
25 long-term care facilities that are occupied by one or more

1 persons, all of whom are smokers and have requested in
2 writing to be placed or to remain in a room where smoking
3 is permitted and the smoke shall not infiltrate other areas
4 of the nursing home.

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

15 Section 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 and may assess fines pursuant to
19 Section 45 of this Act.

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).

1 Section 45. Violations.

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

6 (b) A person who smokes in an area where smoking is
7 prohibited under Section 15 of this Act shall be fined in an
8 amount that is not less than \$100 and not more than \$250. A
9 person who owns, operates, or otherwise controls a public place
10 or place of employment that violates Section 15 of this Act
11 shall be fined (i) not less than \$250 for the first violation,
12 (ii) not less than \$500 for the second violation within one
13 year after the first violation, and (iii) not less than \$2,500
14 for each additional violation within one year after the first
15 violation.

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

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

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

22 Section 50. Injunctions. The Department, a State-certified
23 local public health department, local law enforcement agency,
24 or any individual personally affected by repeated violations
25 may institute, in a circuit court, an action to enjoin

1 violations of this Act.

2 Section 55. Discrimination prohibited. No individual may
3 be discriminated against in any manner because of the exercise
4 of any rights afforded by this Act.

5 Section 60. Severability. If any provision, clause or
6 paragraph of this Act shall be held invalid by a court of
7 competent jurisdiction, such validity shall not affect the
8 other provisions of this Act.

9 Section 65. Home rule and other local regulation.

10 (a) Any home rule unit of local government, any non-home
11 rule municipality, or any non-home rule county within the
12 unincorporated territory of the county may regulate smoking in
13 public places, but that regulation must be no less restrictive
14 than this Act. This subsection (a) is a limitation on the
15 concurrent exercise of home rule power under subsection (i) of
16 Section 6 of Article VII of the Illinois Constitution.

17 (b) In addition to any regulation authorized under
18 subsection (a) or authorized under home rule powers, any home
19 rule unit of local government, any non-home rule municipality,
20 or any non-home rule county within the unincorporated territory
21 of the county may regulate smoking in any enclosed indoor area
22 used by the public or serving as a place of work if the area
23 does not fall within the definition of a "public place" under

1 this Act.

2 Section 70. Entrances, exits, windows, and ventilation
3 intakes. Smoking is prohibited within a minimum distance of 15
4 feet from entrances, exits, windows that open, and ventilation
5 intakes that serve an enclosed area where smoking is prohibited
6 under this Act so as to ensure that tobacco smoke does not
7 enter the area through entrances, exits, open windows, or other
8 means.

9 Section 75. Rules. The Department shall adopt rules
10 necessary for the administration of this Act.

11 Section 80. The State Mandates Act is amended by adding
12 Section 8.31 as follows:

13 (30 ILCS 805/8.31 new)

14 Sec. 8.31. Exempt mandate. Notwithstanding Sections 6 and 8
15 of this Act, no reimbursement by the State is required for the
16 implementation of any mandate created by this amendatory Act of
17 the 95th General Assembly.

18 (410 ILCS 80/Act rep.)

19 Section 90. The Illinois Clean Indoor Air Act is repealed.

1 INDEX

2 Statutes amended in order of appearance

3 New Act

4 30 ILCS 805/8.31 new

5 410 ILCS 80/Act rep.