



Adopted in House Comm. on Jan 08, 2009

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LRB095 19981 RPM 53761 a

1 AMENDMENT TO SENATE BILL 2757

2 AMENDMENT NO. _____. Amend Senate Bill 2757 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. Rulemaking authority to
3 implement this amendatory Act of the 95th General Assembly, if
4 any, is conditioned on the rules being adopted in accordance
5 with all provisions of the Illinois Administrative Procedure
6 Act and all rules and procedures of the Joint Committee on
7 Administrative Rules; any purported rule not so adopted, for
8 whatever reason, is unauthorized.

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

25 "Private residence" means the part of a structure used as a
26 dwelling, including, without limitation: a private home,

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

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

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

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

18 "Retail tobacco store" means a retail establishment that
19 derives more than 80% of its gross revenue from the sale of
20 loose tobacco, plants, or herbs and cigars, cigarettes, pipes,
21 and other smoking devices for burning tobacco and related
22 smoking accessories and in which the sale of other products is
23 merely incidental. "Retail tobacco store" includes an enclosed
24 workplace that manufactures, imports, or distributes tobacco
25 or tobacco products, when, as a necessary and integral part of
26 the process of making, manufacturing, importing, or

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

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

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

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

1 repealed).

2 "Unit of local government" has the meaning ascribed to it
3 in Section 1 of Article VII of the Illinois Constitution of
4 1970.

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

6 (410 ILCS 82/15)

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

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

17 (410 ILCS 82/35)

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

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

24 (2) Retail tobacco stores as defined in Section 10 of

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

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

21 (4) Hotel and motel sleeping rooms that are rented to
22 guests and are designated as smoking rooms, provided that
23 all smoking rooms on the same floor must be contiguous and
24 smoke from these rooms must not infiltrate into nonsmoking
25 rooms or other areas where smoking is prohibited. Not more
26 than 25% of the rooms rented to guests in a hotel or motel

1 may be designated as rooms where smoking is allowed. The
2 status of rooms as smoking or nonsmoking may not be
3 changed, except to permanently add additional nonsmoking
4 rooms.

5 (5) Enclosed laboratories that are excluded from the
6 definition of "place of employment" in Section 10 of this
7 Act. Rulemaking authority to implement this amendatory Act
8 of the 95th General Assembly, if any, is conditioned on the
9 rules being adopted in accordance with all provisions of
10 the Illinois Administrative Procedure Act and all rules and
11 procedures of the Joint Committee on Administrative Rules;
12 any purported rule not so adopted, for whatever reason, is
13 unauthorized.

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

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

2 (410 ILCS 82/40)

3 Sec. 40. Enforcement; complaints.

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

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

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

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

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

14 (4) the name of the enforcing agency;

15 (5) the name of the violator;

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

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

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

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

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

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

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

19 (d) Upon receipt of a request for hearing to contest the
20 imposition of a fine imposed by a citation, the enforcing
21 agency shall immediately forward a copy of the citation and
22 notice of the request for hearing to the Department for
23 initiation of a hearing conducted in accordance with the
24 Illinois Administrative Procedure Act and the rules
25 established thereto by the Department applicable to contested
26 cases, except that in case of a conflict between the Illinois

1 Administrative Procedure Act and this Act, the provisions of
2 this Act shall control. Parties to the hearing shall be the
3 enforcing agency and the violator.

4 The Department shall notify the violator in writing of the
5 time, place, and location of the hearing. The hearing shall be
6 conducted at the nearest regional office of the Department, or
7 in a location contracted by the Department in the county where
8 the citation was issued.

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

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

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

22 (410 ILCS 82/45)

23 Sec. 45. Violations.

24 (a) A person, corporation, partnership, association or
25 other entity who violates Section 15 of this Act shall be fined

1 pursuant to this Section. Each day that a violation occurs is a
2 separate violation.

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

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

9 (i) ~~not less than~~ \$250 for the first violation, (ii) ~~not less~~
10 ~~than~~ \$500 for the second violation within one year after the
11 first violation, and (iii) ~~not less than~~ \$2,500 for each
12 additional violation within one year after the first violation.

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

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

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

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

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

1 (410 ILCS 82/50)

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

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

9 (410 ILCS 82/60)

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

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

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