



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB6158

Introduced 2/11/2010, by Rep. David Reis

SYNOPSIS AS INTRODUCED:

410 ILCS 82/10
410 ILCS 82/35

Amends the Smoke Free Illinois Act. Provides that locations where incense is burned in conjunction with a religious ceremony are exempt from the provisions of the Act.

LRB096 19095 RPM 34486 b

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 5. The Smoke Free Illinois Act is amended by
5 changing Sections 10 and 35 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
17 or a person who volunteers his or her services for a non-profit
18 entity.

19 "Employer" means a person, business, partnership,
20 association, or corporation, including a municipal
21 corporation, trust, or non-profit entity, that employs the
22 services of one or more individual persons.

23 "Enclosed area" means all space between a floor and a

1 ceiling that is enclosed or partially enclosed with (i) solid
2 walls or windows, exclusive of doorways, or (ii) solid walls
3 with partitions and no windows, exclusive of doorways, that
4 extend from the floor to the ceiling, including, without
5 limitation, lobbies and corridors.

6 "Enclosed or partially enclosed sports arena" means any
7 sports pavilion, stadium, gymnasium, health spa, boxing arena,
8 swimming pool, roller rink, ice rink, bowling alley, or other
9 similar place where members of the general public assemble to
10 engage in physical exercise or participate in athletic
11 competitions or recreational activities or to witness sports,
12 cultural, recreational, or other events.

13 "Gaming equipment or supplies" means gaming
14 equipment/supplies as defined in the Illinois Gaming Board
15 Rules of the Illinois Administrative Code.

16 "Gaming facility" means an establishment utilized
17 primarily for the purposes of gaming and where gaming equipment
18 or supplies are operated for the purposes of accruing business
19 revenue.

20 "Healthcare facility" means an office or institution
21 providing care or treatment of diseases, whether physical,
22 mental, or emotional, or other medical, physiological, or
23 psychological conditions, including, but not limited to,
24 hospitals, rehabilitation hospitals, weight control clinics,
25 nursing homes, homes for the aging or chronically ill,
26 laboratories, and offices of surgeons, chiropractors, physical

1 therapists, physicians, dentists, and all specialists within
2 these professions. "Healthcare facility" includes all waiting
3 rooms, hallways, private rooms, semiprivate rooms, and wards
4 within healthcare facilities.

5 "Place of employment" means any area under the control of a
6 public or private employer that employees are required to
7 enter, leave, or pass through during the course of employment,
8 including, but not limited to entrances and exits to places of
9 employment, including a minimum distance, as set forth in
10 Section 70 of this Act, of 15 feet from entrances, exits,
11 windows that open, and ventilation intakes that serve an
12 enclosed area where smoking is prohibited; offices and work
13 areas; restrooms; conference and classrooms; break rooms and
14 cafeterias; and other common areas. A private residence or
15 home-based business, unless used to provide licensed child
16 care, foster care, adult care, or other similar social service
17 care on the premises, is not a "place of employment", nor are
18 enclosed laboratories, not open to the public, in an accredited
19 university or government facility where the activity of smoking
20 is exclusively conducted for the purpose of medical or
21 scientific health-related research. Rulemaking authority to
22 implement this amendatory Act of the 95th General Assembly, if
23 any, is conditioned on the rules being adopted in accordance
24 with all provisions of the Illinois Administrative Procedure
25 Act and all rules and procedures of the Joint Committee on
26 Administrative Rules; any purported rule not so adopted, for

1 whatever reason, is unauthorized.

2 "Private club" means a not-for-profit association that (1)
3 has been in active and continuous existence for at least 3
4 years prior to the effective date of this amendatory Act of the
5 95th General Assembly, whether incorporated or not, (2) is the
6 owner, lessee, or occupant of a building or portion thereof
7 used exclusively for club purposes at all times, (3) is
8 operated solely for a recreational, fraternal, social,
9 patriotic, political, benevolent, or athletic purpose, but not
10 for pecuniary gain, and (4) only sells alcoholic beverages
11 incidental to its operation. For purposes of this definition,
12 "private club" means an organization that is managed by a board
13 of directors, executive committee, or similar body chosen by
14 the members at an annual meeting, has established bylaws, a
15 constitution, or both to govern its activities, and has been
16 granted an exemption from the payment of federal income tax as
17 a club under 26 U.S.C. 501.

18 "Private residence" means the part of a structure used as a
19 dwelling, including, without limitation: a private home,
20 townhouse, condominium, apartment, mobile home, vacation home,
21 cabin, or cottage. For the purposes of this definition, a
22 hotel, motel, inn, resort, lodge, bed and breakfast or other
23 similar public accommodation, hospital, nursing home, or
24 assisted living facility shall not be considered a private
25 residence.

26 "Public place" means that portion of any building or

1 vehicle used by and open to the public, regardless of whether
2 the building or vehicle is owned in whole or in part by private
3 persons or entities, the State of Illinois, or any other public
4 entity and regardless of whether a fee is charged for
5 admission, including a minimum distance, as set forth in
6 Section 70 of this Act, of 15 feet from entrances, exits,
7 windows that open, and ventilation intakes that serve an
8 enclosed area where smoking is prohibited. A "public place"
9 does not include a private residence unless the private
10 residence is used to provide licensed child care, foster care,
11 or other similar social service care on the premises. A "public
12 place" includes, but is not limited to, hospitals, restaurants,
13 retail stores, offices, commercial establishments, elevators,
14 indoor theaters, libraries, museums, concert halls, public
15 conveyances, educational facilities, nursing homes,
16 auditoriums, enclosed or partially enclosed sports arenas,
17 meeting rooms, schools, exhibition halls, convention
18 facilities, polling places, private clubs, gaming facilities,
19 all government owned vehicles and facilities, including
20 buildings and vehicles owned, leased, or operated by the State
21 or State subcontract, healthcare facilities or clinics,
22 enclosed shopping centers, retail service establishments,
23 financial institutions, educational facilities, ticket areas,
24 public hearing facilities, public restrooms, waiting areas,
25 lobbies, bars, taverns, bowling alleys, skating rinks,
26 reception areas, and no less than 75% of the sleeping quarters

1 within a hotel, motel, resort, inn, lodge, bed and breakfast,
2 or other similar public accommodation that are rented to
3 guests, but excludes private residences.

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

11 "Retail tobacco store" means a retail establishment that
12 derives more than 80% of its gross revenue from the sale of
13 loose tobacco, plants, or herbs and cigars, cigarettes, pipes,
14 and other smoking devices for burning tobacco and related
15 smoking accessories and in which the sale of other products is
16 merely incidental. "Retail tobacco store" includes an enclosed
17 workplace that manufactures, imports, or distributes tobacco
18 or tobacco products, when, as a necessary and integral part of
19 the process of making, manufacturing, importing, or
20 distributing a tobacco product for the eventual retail sale of
21 that tobacco or tobacco product, tobacco is heated, burned, or
22 smoked, or a lighted tobacco product is tested, provided that
23 the involved business entity: (1) maintains a specially
24 designated area or areas within the workplace for the purpose
25 of the heating, burning, smoking, or lighting activities, and
26 does not create a facility that permits smoking throughout; (2)

1 satisfies the 80% requirement related to gross sales; and (3)
2 delivers tobacco products to consumers, retail establishments,
3 or other wholesale establishments as part of its business.
4 "Retail tobacco store" does not include a tobacco department or
5 section of a larger commercial establishment or any
6 establishment with any type of liquor, food, or restaurant
7 license. 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 the
10 Illinois Administrative Procedure Act and all rules and
11 procedures of the Joint Committee on Administrative Rules; any
12 purported rule not so adopted, for whatever reason, is
13 unauthorized.

14 "Smoke" or "smoking" means the carrying, smoking, burning,
15 inhaling, or exhaling of any kind of lighted pipe, cigar,
16 cigarette, hookah, weed, herbs, or any other lighted smoking
17 equipment. "Smoke" or "smoking" does not include (1) smoking
18 that is associated with a native recognized religious ceremony,
19 ritual, or activity by American Indians that is in accordance
20 with the federal American Indian Religious Freedom Act, 42
21 U.S.C. 1996 and 1996a or (2) the burning of incense in
22 conjunction with a religious ceremony.

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

26 "Unit of local government" has the meaning ascribed to it

1 in Section 1 of Article VII of the Illinois Constitution of
2 1970.

3 (Source: P.A. 95-17, eff. 1-1-08; 95-1029, eff. 2-4-09; 96-797,
4 eff. 1-1-10.)

5 (410 ILCS 82/35)

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

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

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

1 prohibited.

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

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

18 (5) Enclosed laboratories that are excluded from the
19 definition of "place of employment" in Section 10 of this
20 Act. Rulemaking authority to implement this amendatory Act
21 of the 95th General Assembly, if any, is conditioned on the
22 rules being adopted in accordance with all provisions of
23 the Illinois Administrative Procedure Act and all rules and
24 procedures of the Joint Committee on Administrative Rules;
25 any purported rule not so adopted, for whatever reason, is
26 unauthorized.

1 (6) Common smoking rooms in long-term care facilities
2 operated under the authority of the Illinois Department of
3 Veterans' Affairs that are accessible only to residents who
4 are smokers and have requested in writing to have access to
5 the common smoking room where smoking is permitted and the
6 smoke shall not infiltrate other areas of the long-term
7 care facility. Rulemaking authority to implement this
8 amendatory Act of the 95th General Assembly, if any, is
9 conditioned on the rules being adopted in accordance with
10 all provisions of the Illinois Administrative Procedure
11 Act and all rules and procedures of the Joint Committee on
12 Administrative Rules; any purported rule not so adopted,
13 for whatever reason, is unauthorized.

14 (7) Locations where incense is burned in conjunction
15 with a religious ceremony.

16 (Source: P.A. 95-17, eff. 1-1-08; 95-1029, eff. 2-4-09.)