

# HB3551



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

HB3551

Introduced 2/24/2011, by Rep. Rita Mayfield

#### SYNOPSIS AS INTRODUCED:

410 ILCS 82/10  
410 ILCS 82/35

Amends the Smoke Free Illinois Act. Removes private clubs from the list of locations included in the definition of "public place". Exempts private clubs from the Act.

LRB097 08319 RPM 48446 b

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 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 smoking that  
18 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.

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24 repealed).

25 "Unit of local government" has the meaning ascribed to it  
26 in Section 1 of Article VII of the Illinois Constitution of



1 1970.

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

4 (410 ILCS 82/35)

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

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

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

1 (3) (Blank).

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

12 (5) Enclosed laboratories that are excluded from the  
13 definition of "place of employment" in Section 10 of this  
14 Act. 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  
17 the Illinois Administrative Procedure Act and all rules and  
18 procedures of the Joint Committee on Administrative Rules;  
19 any purported rule not so adopted, for whatever reason, is  
20 unauthorized.

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

1 not infiltrate other areas of the long-term care facility.  
2 Rulemaking authority to implement this amendatory Act of  
3 the 95th General Assembly, if any, is conditioned on the  
4 rules being adopted in accordance with all provisions of  
5 the Illinois Administrative Procedure Act and all rules and  
6 procedures of the Joint Committee on Administrative Rules;  
7 any purported rule not so adopted, for whatever reason, is  
8 unauthorized.

9 (7) A private club.

10 (Source: P.A. 95-17, eff. 1-1-08; 95-1029, eff. 2-4-09;  
11 96-1357, eff. 1-1-11.)