

**98TH GENERAL ASSEMBLY****State of Illinois****2013 and 2014****SB0053**

Introduced 1/16/2013, by Sen. David Koehler

**SYNOPSIS AS INTRODUCED:**

410 ILCS 82/10  
410 ILCS 82/15  
410 ILCS 82/35

Amends the Smoke Free Illinois Act. Defines "permeable" to mean permitting smoke to pass through. Provides that an owner shall reasonably assure that smoking is prohibited in enclosed (rather than indoor) public places and workplaces unless specifically exempted. Provides that smoking is allowed on an outdoor patio controlled by the proprietor of a place of employment or public space that is designated by the proprietor as an area where smoking is permitted, if the area is 15 feet or more from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where smoking is prohibited. Provides that the outdoor patio shall have at least one side that contains a majority of open space or permeable material, unless the outdoor patio has either no overhead covering or an overhead covering that consists of permeable material or a combination of open space and permeable material. Provides that an area where smoking is permitted on a rooftop must satisfy the requirements for an outdoor patio. Provides that an outdoor patio where smoking is permitted shall be situated so that patrons of the indoor public place or indoor place of employment need not enter an outdoor patio area where smoking is permitted in order to gain access to the indoor area. Provides that nothing in the new provisions shall limit the authority to designate all or part of an outdoor patio as a non-smoking area. Provides that an employee shall not be required, as a condition of employment, to enter an outdoor patio where smoking is permitted. Provides that the Department of Public Health shall adopt rules necessary for the administration of the new provisions within 12 months after the effective date of the amendatory Act.

LRB098 04209 RPM 34234 b

FISCAL NOTE ACT  
MAY APPLY

**A BILL FOR**

1 AN ACT concerning 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, 15, 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 "Permeable" means permitting smoke to pass through.

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

1 Administrative Rules; any purported rule not so adopted, for  
2 whatever reason, is unauthorized.

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

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

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

1 reception areas, and no less than 75% of the sleeping quarters  
2 within a hotel, motel, resort, inn, lodge, bed and breakfast,  
3 or other similar public accommodation that are rented to  
4 guests, but excludes private residences.

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

12 "Retail tobacco store" means a retail establishment that  
13 derives more than 80% of its gross revenue from the sale of  
14 loose tobacco, plants, or herbs and cigars, cigarettes, pipes,  
15 and other smoking devices for burning tobacco and related  
16 smoking accessories and in which the sale of other products is  
17 merely incidental. "Retail tobacco store" includes an enclosed  
18 workplace that manufactures, imports, or distributes tobacco  
19 or tobacco products, when, as a necessary and integral part of  
20 the process of making, manufacturing, importing, or  
21 distributing a tobacco product for the eventual retail sale of  
22 that tobacco or tobacco product, tobacco is heated, burned, or  
23 smoked, or a lighted tobacco product is tested, provided that  
24 the involved business entity: (1) maintains a specially  
25 designated area or areas within the workplace for the purpose  
26 of the heating, burning, smoking, or lighting activities, and

1 does not create a facility that permits smoking throughout; (2)  
2 satisfies the 80% requirement related to gross sales; and (3)  
3 delivers tobacco products to consumers, retail establishments,  
4 or other wholesale establishments as part of its business.  
5 "Retail tobacco store" does not include a tobacco department or  
6 section of a larger commercial establishment or any  
7 establishment with any type of liquor, food, or restaurant  
8 license. Rulemaking authority to implement this amendatory Act  
9 of the 95th General Assembly, if any, is conditioned on the  
10 rules being adopted in accordance with all provisions of the  
11 Illinois Administrative Procedure Act and all rules and  
12 procedures of the Joint Committee on Administrative Rules; any  
13 purported rule not so adopted, for whatever reason, is  
14 unauthorized.

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

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 82/15)

6 Sec. 15. Smoking in public places, places of employment,  
7 and governmental vehicles prohibited. No person shall smoke in  
8 a public place or in any place of employment or within 15 feet  
9 of any entrance to a public place or place of employment. No  
10 person may smoke in any vehicle owned, leased, or operated by  
11 the State or a political subdivision of the State. An owner  
12 shall reasonably assure that smoking is prohibited in enclosed  
13 ~~indoor~~ public places and workplaces unless specifically  
14 exempted by Section 35 of this Act. The Department shall adopt  
15 rules necessary for the administration of this Section within  
16 12 months after the effective date of this amendatory Act of  
17 the 98th General Assembly.

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

19 (410 ILCS 82/35)

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

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

1 public.

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

17 (3) (Blank).

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

1 rooms.

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

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

25 (7) An outdoor patio controlled by the proprietor of a  
26 place of employment or public space that is designated by

1 the proprietor as an area where smoking is permitted, if  
2 the area is 15 feet or more from entrances, exits, windows  
3 that open, and ventilation intakes that serve an enclosed  
4 area where smoking is prohibited. The outdoor patio shall  
5 have at least one side that contains a majority of open  
6 space or permeable material, unless the outdoor patio has  
7 either no overhead covering or an overhead covering that  
8 consists of permeable material or a combination of open  
9 space and permeable material. An area where smoking is  
10 permitted on a rooftop must satisfy the requirements for an  
11 outdoor patio contained in this paragraph (7). An outdoor  
12 patio where smoking is permitted shall be situated so that  
13 patrons of the indoor public place or indoor place of  
14 employment need not enter an outdoor patio area where  
15 smoking is permitted in order to gain access to the indoor  
16 area. Nothing in this exemption shall limit the authority  
17 under Section 30 to designate all or part of an outdoor  
18 patio as a non-smoking area. An employee shall not be  
19 required, as a condition of employment, to enter an outdoor  
20 patio where smoking is permitted. The Department shall  
21 adopt rules necessary for the administration of this  
22 paragraph (7) within 12 months after the effective date of  
23 this amendatory Act of the 98th General Assembly.

24 (Source: P.A. 95-17, eff. 1-1-08; 95-1029, eff. 2-4-09;  
25 96-1357, eff. 1-1-11.)