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THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 246 Session of 2007

Report of the Committee of Conference

To the Members of the Senate and House of Representatives:

We, the undersigned, Committee of Conference on the part of the Senate and House of Representatives for the purpose of considering Senate Bill No. 246, entitled:

~~"An act prohibiting smoking in certain public places and workplaces; imposing duties upon the Department of Health; imposing penalties; preempting local regulations; and repealing a related provision of the Fire and Panic Act.~~

ESTABLISHING THE SMOKE FREE PENNSYLVANIA ACT; PROHIBITING SMOKING IN ENCLOSED AND SUBSTANTIALLY ENCLOSED AREAS; IMPOSING DUTIES UPON THE DEPARTMENT OF HEALTH; IMPOSING PENALTIES; AND MAKING A RELATED REPEAL,"

respectfully submit the following bill as our report:

STEWART J. GREENLEAF

CHARLES T. McILHINNEY, JR.

(Committee on the part of the Senate.)

MICHAEL F. GERBER

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(Committee on the part of the House of Representatives.)

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AN ACT

1 Regulating smoking in this Commonwealth; imposing powers and
2 duties on the Department of Health and local boards of
3 health; providing penalties; preempting local action; and
4 making a related repeal.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Short title.

8 This act shall be known and may be cited as the Clean Indoor
9 Air Act.

10 Section 2. Definitions.

11 The following words and phrases when used in this act shall
12 have the meanings given to them in this section unless the
13 context clearly indicates otherwise:

14 "Cigar bar." Any of the following:

15 (1) An establishment which, on the effective date of
16 this section, operates pursuant to an eating place retail
17 dispenser's or restaurant liquor license under the act of
18 April 12, 1951 (P.L.90, No.21), known as the Liquor Code, and
19 is physically connected by a door, passageway or other
20 opening and directly adjacent to a tobacco shop.

21 (2) An establishment which, at any time, operates
22 pursuant to an eating place retail dispenser's license, malt
23 or brewed beverage distributor's license or restaurant liquor
24 license under the Liquor Code, and has total annual sales of
25 tobacco products, including tobacco, accessories or cigar
26 storage lockers or humidors of at least 15% of the combined
27 gross sales of the establishment.

28 "Department." The Department of Health of the Commonwealth.

29 "Drinking establishment." Any of the following:

30 (1) An establishment which:

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1 (i) operates pursuant to an eating place license,
2 restaurant license or retail dispenser license under the
3 act of April 12, 1951 (P.L.90, No.21), known as the
4 Liquor Code;

5 (ii) has total annual sales of food sold for on-
6 premises consumption of less than or equal to 20% of the
7 combined gross sales of the establishment; and

8 (iii) does not permit individuals under 18 years of
9 age.

10 (2) An enclosed area within an establishment which, on
11 the effective date of this section:

12 (i) operates pursuant to an eating place license,
13 restaurant license or retail dispenser license under the
14 Liquor Code;

15 (ii) is a physically connected or directly adjacent
16 enclosed area which is separate from the eating area, has
17 a separate air system and has a separate outside
18 entrance;

19 (iii) has total annual sales of food sold for on-
20 premises consumption of less than or equal to 20% of the

21 combined gross sales within the permitted smoking area of
 22 the establishment; and

23 (iv) does not permit individuals under 18 years of
 24 age.

25 The term does not include a nightclub.

26 "Full service truck stop." An establishment catering to
 27 long-haul truck drivers that provides shower facilities for a
 28 fee.

29 "Gaming floor." Any portion of a licensed facility where
 30 slot machines have been installed for use or play as approved by
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1 the Pennsylvania Gaming Control Board. The term does not include
 2 an area adjacent to the gaming floor, including any hallway,
 3 reception area, retail space, bar, nightclub, restaurant, hotel,
 4 entertainment venue or office space.

5 "Licensed facility." As defined in 4 Pa.C.S. § 1103
 6 (relating to definitions).

7 "Night club." A public hall or hall for which admission is
 8 generally charged and which is primarily or predominantly
 9 devoted to dancing or to shows or cabarets as opposed to a
 10 facility that is primarily a bar, tavern or dining facility.

11 "Private club." An organization which is any of the
 12 following:

13 (1) A reputable group of individuals associated together
 14 as an organization for legitimate purposes of mutual benefit,
 15 entertainment, fellowship or lawful convenience which does
 16 all of the following:

17 (i) Regularly and exclusively occupies, as owner or
 18 lessee, a clubhouse or quarter for the use of its
 19 members.

20 (ii) Holds regular meetings; conducts its business
 21 through officers regularly elected; admits members by
 22 written application, investigation and ballot; and
 23 charges and collects dues from elected members.

24 (iii) Has been in continuous existence for a period
 25 of ten years as such an organization.

26 (2) A volunteer ambulance service.

27 (3) A volunteer fire company.

28 (4) A volunteer rescue company.

29 "Public meeting." A meeting open to the public. The term
 30 includes a meeting under 65 Pa.C.S. Ch. 7 (relating to open
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1 meetings).

2 "Public place." An enclosed area which serves as a
 3 workplace, commercial establishment or an area where the public
 4 is invited or permitted. The term includes:

5 (1) A facility which provides education, food or health
 6 care-related services.

7 (2) A vehicle used for mass transportation. This
 8 paragraph includes a train, subway, bus, including a
 9 chartered bus, plane, taxicab and limousine.

10 (3) A train station, subway station or bus station.

11 (4) A public facility. This paragraph includes a
 12 facility to which the public is invited or in which the
 13 public is permitted and a private home which provides child-
 14 care or adult day-care services.

15 (5) A sports or recreational facility, theater or
 16 performance establishment.

17 "Smoking." The carrying by a person of a lighted cigar,
 18 cigarette, pipe or other lighted smoking device.

19 "Tobacco shop." A business establishment whose sales of
 20 tobacco and tobacco related products, including cigars, pipe
 21 tobacco and smoking accessories, comprise of at least 50% of the
 22 gross annual sales. This term does not include a stand-alone
 23 kiosk or establishment comprised solely of cigarette vending

24 machines.

25 "Volunteer ambulance service." As defined in section 102 of
26 the act of July 31, 2003 (P.L.73, No.17), known as the Volunteer
27 Fire Company and Volunteer Ambulance Service Grant Act.

28 "Volunteer fire company." As defined in section 102 of the
29 act of July 31, 2003 (P.L.73, No.17), known as the Volunteer
30 Fire Company and Volunteer Ambulance Service Grant Act.

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1 "Volunteer rescue company." As defined in section 102 of the
2 act of July 31, 2003 (P.L.73, No.17), known as the Volunteer
3 Fire Company and Volunteer Ambulance Service Grant Act.

4 "Workplace." An indoor area serving as a place of
5 employment, occupation, business, trade, craft, professional or
6 volunteer activity.

7 Section 3. Prohibition.

8 (a) General rule.--Except as set forth under subsection (b),
9 an individual may not engage in smoking in a public place.

10 Nothing in this act shall preclude the owner of a public or
11 private property from prohibiting smoking on the property.

12 (b) Exceptions.--Subsection (a) shall not apply to any of
13 the following:

14 (1) A private home, private residence or private vehicle
15 unless the private home, private residence or private vehicle
16 is being used at the time for the provision of child-care
17 services, adult day-care services or services related to the
18 care of children and youth in State or county custody.

19 (2) Designated quarters:

20 (i) within a lodging establishment which are
21 available for rent to guests accounting for no more than
22 25% of the total number of lodging units within a single
23 lodging establishment; or

24 (ii) within a full service truck stop.

25 (3) A tobacco shop.

26 (4) A workplace of a manufacturer, importer or
27 wholesaler of tobacco products; a manufacturer of tobacco-
28 related products, including lighters; a tobacco leaf dealer
29 or processor; or a tobacco storage facility.

30 (5) Any of the following residential facilities:

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1 (i) A long-term care facility regulated under 42 CFR
2 483.15 (relating to quality of life). This subparagraph
3 shall not apply if 42 CFR 483.15 is abrogated or expires.

4 (ii) A separate enclosed room or designated smoking
5 room in a residential adult care facility, community
6 mental health care facility, drug and alcohol facility or
7 other residential health care facility not covered under
8 subparagraph (i).

9 (iii) A designated smoking room in a facility which
10 provides day treatment programs.

11 (6) Subject to subsection (c)(2), a private club, except
12 where the club is:

13 (i) open to the public through general advertisement
14 for a club-sponsored event; or

15 (ii) leased or used for a private event which is not
16 club-sponsored.

17 (7) A place where a fundraiser is conducted by a
18 nonprofit and charitable organization one time per year if
19 all of the following apply:

20 (i) The place is separate from other public areas
21 during the event.

22 (ii) Food and beverages are available to attendees.

23 (iii) Individuals under 18 years of age are not
24 permitted to attend.

25 (iv) Cigars are sold, auctioned or given as gifts,
26 and cigars are a feature of the event.

27 (8) An exhibition hall, conference room, catering hall
 28 or similar facility used exclusively for an event to which
 29 the public is invited for the primary purpose of promoting or
 30 sampling tobacco products, subject to the following:

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1 (i) All of the following must be met:
 2 (A) Service of food and drink is incidental.
 3 (B) The sponsor or organizer gives notice in all
 4 advertisements and other promotional materials that
 5 smoking will not be restricted.
 6 (C) At least 75% of all products displayed or
 7 distributed at the event are tobacco or tobacco-
 8 related products.
 9 (D) Notice that smoking will not be restricted
 10 is prominently posted at the entrance to the
 11 facility.
 12 (ii) A single retailer, manufacturer or distributor
 13 of tobacco may not conduct more than six days of a
 14 promotional event under this paragraph in any calendar
 15 year.

16 (9) A cigar bar.

17 (10) A drinking establishment.

18 (11) Unless otherwise increased under this paragraph,
 19 25% of the gaming floor at a licensed facility. No earlier
 20 than 90 days following the effective date of this section or
 21 the date of commencement of slot machine operations at a
 22 licensed facility, whichever is later, a licensed facility
 23 shall request a report from the Department of Revenue that
 24 analyzes the gross terminal revenue per slot machine unit in
 25 operation at the licensed facility within the 90-day period
 26 preceding the request. If the report shows that the average
 27 gross terminal revenue per slot machine unit in the
 28 designated smoking area equals or exceeds the average gross
 29 terminal revenue per slot machine unit in the designated
 30 nonsmoking area, the licensed facility may increase the

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1 designated smoking area of the gaming floor in proportion to
 2 the percentage difference in revenue. A licensed facility may
 3 request this report from the Department of Revenue on a
 4 quarterly basis and may increase the designated smoking area
 5 of the gaming floor accordingly. At no time may the
 6 designated smoking area exceed 50% of the gaming floor. The
 7 board shall have jurisdiction to verify the gross terminal
 8 revenues included in the report to ensure compliance with the
 9 requirements under this paragraph. Movement of the licensed
 10 facility from a temporary facility to a permanent facility
 11 shall not require the licensed facility to revert to the
 12 minimum percentage set forth under this paragraph.

13 (12) A designated outdoor smoking area within the
 14 confines of a sports or recreational facility, theater or
 15 performance establishment.

16 (c) Conditions and qualifications for exceptions.--

17 (1) In order to be excepted under subsection (b), a
 18 drinking establishment, cigar bar or tobacco shop must submit
 19 a letter, accompanied by verifiable supporting documentation,
 20 to the department claiming an exception under subsection (b).
 21 Exception shall be based upon the establishment's books,
 22 accounts, revenues or receipts, including those reported to
 23 the Department of Revenue for sales tax purposes, from the
 24 previous year or stated projected annual revenues, which
 25 shall be verified within six months.

26 (2) In order to qualify for the exception under
 27 subsection (b)(6), a private club must take and record a vote
 28 of its officers under the bylaws to address smoking in the
 29 private club's facilities.

30 Section 4. Signage.

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1 "Smoking" or "No Smoking" signs or the international "No
2 Smoking" symbol, which consists of a pictorial representation of
3 a burning cigarette in a circle with a bar across it, shall be
4 prominently posted and properly maintained where smoking is
5 regulated by this act, by the owner, operator, manager or other
6 person having control of the area. A "Smoking Permitted" sign
7 shall be prominently posted and maintained at every entrance to
8 a public place where smoking is permitted under this act.

9 Section 5. Enforcement.

10 (a) Complaints.--A complaint regarding a possible violation
11 of this act shall be made to the appropriate law enforcement
12 agency or to the department. A complaint to the department shall
13 be made in one of the following manners:

14 (1) In writing.

15 (2) By telephone call to the department's toll-free
16 telephone number.17 (3) By an electronic submission to the department's
18 regularly maintained Internet website.

19 (b) Responsibilities.--

20 (1) Except as provided under paragraphs (2) and (3),
21 upon receipt of a complaint by the department, the following
22 apply:23 (i) Except as set forth under subparagraph (ii), the
24 department shall investigate the complaint and enforce
25 this act.26 (ii) If the public place is subject to licensure by
27 the Commonwealth, in such case, the department shall
28 refer the complaint to the appropriate licensing agency
29 for investigation and enforcement of this act.

30 (2) If a complaint is made to the department regarding a

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1 public place located in a county under subsection (c), the
2 department shall notify the county board of health. The
3 county board of health shall investigate the complaint and
4 enforce this act.

5 (3) If the complaint is made to a law enforcement agency
6 regarding a public place, the agency shall investigate the
7 complaint and enforce this act.

8 (c) County election.--A county may elect to have its board
9 of health enforce this act by providing written notification to
10 the department. In such event, the county board of health shall
11 provide the department with sufficient information regarding its
12 enforcement actions for the department's annual report required
13 under section 8.

14 (d) Access to records.--A drinking establishment, cigar bar
15 and tobacco shop shall make available all books, accounts,
16 revenues, receipts and other information to the department, the
17 Department of Revenue, State licensing agency or county board of
18 health as necessary to enforce this act. All information
19 submitted to the Department of Health, county board or other
20 Commonwealth agency with enforcement duties under this act,
21 including information to verify the on-site food consumption of
22 a drinking establishment, shall be confidential and shall not be
23 subject to the act of June 21, 1957 (P.L.390, No.212), referred
24 to as the Right-to-Know Law.

25 Section 6. Violations, affirmative defenses and penalties.

26 (a) Violations.--It is a violation of this act to do any of
27 the following:

28 (1) Fail to post a sign as required by section 4.

29 (2) Permit smoking in a public place where smoking is
30 prohibited.

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1 (3) Smoke in a public place where smoking is prohibited.

2 (b) Affirmative defenses.--Any of the following shall be an
3 affirmative defense to a prosecution or imposition of an
4 administrative penalty under this act:

5 (1) When the violation occurred, the actual control of
6 the public place was not exercised by the owner, operator or
7 manager but by a lessee.

8 (2) The owner, operator or manager made a good faith
9 effort to prohibit smoking.

10 (3) The owner, operator or manager asserting the
11 affirmative defense shall do so in the form of a sworn
12 affidavit setting forth the relevant information mentioned
13 under paragraphs (1) and (2).

14 (c) Commonwealth administrative penalties.--

15 (1) If the department or a State licensing agency or a
16 county board of health determines that a person has violated
17 subsection (a), the person shall be subject to a penalty not
18 to exceed \$250.

19 (2) If the department or State licensing agency or a
20 county board of health determines that a person has violated
21 subsection (a) within one year of receiving a penalty under
22 paragraph (1), the person shall be subject to a penalty not
23 to exceed \$500.

24 (3) If the department or State licensing agency or a
25 county board of health determines that a person violated
26 subsection (a) within one year of receiving a penalty under
27 paragraph (2), the person shall be subject to a penalty not
28 to exceed \$1,000.

29 (4) This subsection is subject to 2 Pa.C.S. (relating to
30 administrative law and procedure).

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1 (5) The penalties collected under this subsection shall
2 be retained by the department or State licensing agency
3 initiating the enforcement action.

4 (d) Local administrative penalties.--

5 (1) If a county board of health determines that a person
6 violated subsection (a), the person shall be subject to a
7 penalty not to exceed \$250.

8 (2) If a county board of health determines that a person
9 has violated subsection (a) within one year of receiving a
10 penalty under paragraph (1), the person shall be subject to a
11 penalty not to exceed \$500.

12 (3) If a county board of health determines that a person
13 violated subsection (a) within one year of receiving a
14 penalty under paragraph (2), the person shall be subject to a
15 penalty not to exceed \$1,000.

16 (4) This subsection is subject to 2 Pa.C.S. Ch. 5 Subch.
17 B (relating to practice and procedure of local agencies) and
18 Ch. 7 Subch. B (relating to judicial review of local agency
19 action).

20 (5) The penalties collected under this subsection shall
21 be retained by the county board of health initiating the
22 enforcement action.

23 (e) Criminal penalties.--

24 (1) A person that violates this act commits a summary
25 offense and shall, upon conviction, be sentenced to pay a
26 fine of not more than \$250.

27 (2) A person that violates this act within one year of
28 being sentenced under paragraph (1) commits a summary offense
29 and shall, upon conviction, be sentenced to pay a fine of not
30 more than \$500.

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1 (3) A person that violates this act within one year of
2 being sentenced under paragraph (2) commits a summary offense
3 and shall, upon conviction, be sentenced to pay a fine of not
4 more than \$1,000.

5 (4) The following apply to actions by law enforcement
6 officers:

7 (i) Except as set forth in subparagraph (ii), the
8 penalties collected under this subsection shall be
9 retained by the municipality in which the law enforcement
10 agency initiating the enforcement action is located.

11 (ii) If an enforcement action is initiated by the
12 Pennsylvania State Police, the Pennsylvania State Police
13 shall retain the penalties collected under this
14 subsection.

15 Section 7. Retaliation prohibited.

16 A person may not discharge an employee, refuse to hire an
17 applicant for employment or retaliate against an employee
18 because the individual exercises a right to a smoke-free
19 environment required under this act.

20 Section 8. Annual reports.

21 (a) Requirement.--The department shall file an annual report
22 by December 1 with the chairman and minority chairman of the
23 Public Health and Welfare Committee of the Senate and the
24 chairman and minority chairman of the Health and Human Services
25 Committee of the House of Representatives.

26 (b) Contents.--The report shall include:

27 (1) The number of violations of this act by county as
28 reported to the department.

29 (2) The number of enforcement actions initiated under
30 this act by the department, by another State licensing agency
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1 or by a county board of health.

2 (3) A description of the enforcement activities of the
3 department. This paragraph includes the number of personnel
4 assigned to enforce this act, enforcement strategies
5 undertaken by the department or a licensing agency and other
6 information relating to the administration and implementation
7 of this act.

8 Section 9. Public education.

9 The department shall design and implement a program,
10 including the establishment of an Internet website, to educate
11 the public regarding the provisions of this act. The department
12 shall inform persons who own or operate a public place of the
13 requirements of this act.

14 Section 10. Administration.

15 (a) Regulations.--The department shall promulgate
16 regulations to implement this act.

17 (b) Revision of forms.--The Department of Revenue may revise
18 the form for reporting sales tax revenue to require separate
19 reporting of sales of alcohol and tobacco for purposes of
20 claiming exemptions under this act.

21 Section 11. Preemption of local ordinances.

22 (a) General rule.--Except as set forth in subsection (b),
23 the following apply:

24 (1) This act shall supersede any ordinance, resolution
25 or regulation adopted by a political subdivision concerning
26 smoking in a public place.

27 (2) No political subdivision shall have the authority to
28 adopt or enforce any ordinance, regulation or resolution
29 which is in conflict with this act.

30 (b) Exception.--Subsection (a) shall not apply to a city of
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1 the first class. A city of the first class may not change or
2 amend its ordinance to conflict with any provision of this act.

3 Section 29. Repeal.

4 (a) Intent.--The General Assembly declares that the repeal
5 under subsection (b) is necessary to effectuate this act.

6 (b) Provision.--Section 10.1 of the act of April 27, 1927
7 (P.L.465, No.299), referred to as the Fire and Panic Act, is

8 repealed.
9 Section 30. Effective date.
10 This act shall take effect in 90 days.

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