

Delaware

TITLE 16

Health and Safety

PART II

Regulatory Provisions Concerning Public Health

CHAPTER 29. CLEAN INDOOR AIR ACT

§ 2901. Legislative intent.

The General Assembly finds that it is in the best interest of the people of this State to protect nonsmokers from involuntary exposure to environmental tobacco smoke in most indoor areas open to the public, public meetings, foods service establishments and places of employment.

The General Assembly recognizes that a balance should be struck between the health concerns of nonconsumers of tobacco products and the need to minimize unwarranted governmental intrusion into and regulation of private spheres of conduct and choice with respect to the use or nonuse of tobacco products in certain designated public areas and in private places. Therefore, the General Assembly declares that the purpose of this act is to preserve and improve the health, comfort and environment of the people of this State by limiting exposure to tobacco smoke. (69 Del. Laws, c. 287, § 1.)

§ 2902. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) "Auditorium" means the part of a public building where an audience sits and any corridors, hallways or lobbies adjacent thereto.

(2) "Bar" means any indoor area open to the public operated primarily for the sale and service of alcoholic beverages for on-premises consumption and where the service of food is secondary to the consumption of such beverages. An establishment which has been licensed by the Delaware Alcoholic Beverage Control Commission as a

"taproom or tavern" as that term is defined in Title 4 shall be considered a "bar" for purposes of the application of the provisions of this chapter.

(3) "Employer" means any person, partnership, association, corporation or nonprofit entity that employs 1 or more persons, including the legislative, executive and judicial branches of state government; any county, city, town, village or any other political subdivision of the State, public improvement or special district, public authority, commission, agency or public benefit corporation; or any other separate corporate instrumentality or unit of state or local government.

(4) "Environmental tobacco smoke" (ETS) or "secondhand smoke" is the complex mixture formed from the escaping smoke of a burning tobacco product (termed as "sidestream smoke") and smoke exhaled by the smoker. Exposure to ETS is also frequently referred to as "passive smoking" or "involuntary smoking".

(5) "Food service establishment" means any indoor area open to the public or portion thereof in which the principal business is the sale of food for on-premises consumption including, but not limited to, restaurants, cafeterias, coffee shops, diners, sandwich shops or short order cafes. A food service establishment shall not include the bar area of such establishment. An establishment which has been licensed by the Delaware Alcoholic Beverage Control Commission as a "restaurant" as that term is defined in Title 4 shall be considered a "food service establishment" for purposes of the application of the provisions of this chapter.

(6) "Indoor area open to the public" means any indoor area or portion thereof generally accessible to the public.

(7) "Place of employment" means any indoor area or portion thereof under the control of an employer in which employees of the employer perform services but that is not generally accessible to the public.

(8) "Public building" means any building owned or operated by the State, including the legislative, executive and judicial branches of state government; any county, city, town, village or any other political subdivision of the State, public improvement or special district, public authority, commission, agency or public benefit corporation; or any other separate corporate instrumentality or unit of state or local government.

(9) "Public meeting" means all meetings open to the public pursuant to the laws of Delaware and its political subdivisions.

(10) "Smoke-free work area" means an indoor area in a place of employment where no smoking occurs.

(11) "Smoking" means the burning of a lighted cigarette, cigar, pipe or any other matter or substance that contains tobacco.

(12) "Tobacco business" means a sole proprietorship, corporation, partnership or other enterprise engaged primarily in the sale, manufacture or promotion of tobacco, tobacco products and accessories either at wholesale or retail, and in which the sale, manufacture or promotion of other products is merely incidental.

(13) "Work area" means an area in a place of employment where 1 or more employees are routinely assigned and perform services for their employer. (69 Del. Laws, c. 287, § 1; 73 Del. Laws, c. 275, §§ 1, 2, 3, 4, 5, 6.)

§ 2903. Smoking restrictions.

Except as is provided in § 2904 of this title, and in order to reduce the levels of exposure to environmental tobacco smoke, smoking shall not be permitted and no person shall smoke in any indoor enclosed area to which the general public is invited or in which the general public is permitted, including, but not limited to:

(1) Public meetings;

(2) Elevators;

(3) Government owned and/or operated means of mass transportation including buses, vans, trains, taxicabs and limousines;

(4) Grocery stores;

(5) Gymnasiums;

(6) Jury waiting and deliberation rooms;

(7) Courtrooms;

(8) Child day care facilities;

(9) Health care facilities including hospitals, health care clinics, doctor's offices or other health-care-related facilities;

(10) Any workplace not exempted;

(11) Restrooms, lobbies, reception areas, hallways and other common-use areas;

(12) Restaurants as licensed by the Division of Public Health or defined by Title 4;

(13) Gaming facilities that are open to the public;

(14) Any indoor sports arena;

(15) Lobbies, hallways and other common areas in apartment buildings, condominiums and other multiple-unit residential facilities;

(16) Lobbies, hallways and other common areas in hotels and motels, and in no less than 75% of the sleeping quarters within a hotel or motel that are rented to guests;

(17) Bowling alleys;

(18) Billiard or pool halls;

(19) Retirement facilities and nursing homes not including any private residence;

(20) Public buildings;

(21) Auditoria;

(22) Theaters;

(23) Museums;

(24) Libraries;

(25) Public and nonpublic schools;

(26) Other educational and vocational institutions.

or (27) Establishments defined as a motorsports speedway, tavern taproom by Title 4.

§ 2904. Smoking restrictions inapplicable.

This chapter shall not apply to:

(1) Private homes, private residences and private automobiles; provided, however, it shall only apply when such homes, residences or vehicles are being used for child care or day care or when the private vehicle is being used for the public transportation of children or as part of health care or day care transportation;

(2) Any indoor area where private social functions are being held when seating arrangements are under the control of the sponsor of the function and not the owner, operator, manager or person in charge of such indoor area;

(3) Limousines under private hire;

(4) A hotel or motel room rented to 1 or more guests; provided that the total percentage of such hotel or motel rooms does not exceed 25%;

(5) Any fund raising activity or function sponsored by a volunteer fire company, auxiliary of a fire company, or a volunteer ambulance or volunteer rescue company; provided, however, that the fund raising activity or function takes place upon property owned or leased by the volunteer fire, rescue or ambulance company; and

(6) Any fund raising activity or function sponsored by a fraternal benefit society as defined by § 6201 of Title 18; provided, however, that the fund raising activity or function takes place upon property owned or leased by said organization. (69 Del. Laws, c. 287, § 1; 73 Del. Laws, c. 275, § 8.)

§ 2905. Posting of signs.

"Warning: Smoking Permitted" signs shall be prominently posted and properly maintained where smoking is permitted pursuant to § 2904(2) and (4) of this title. Such signs shall be posted and maintained by the owner, operator, manager or other person having control of such area. The letters on such signs shall be at least 1 inch in height. (69 Del. Laws, c. 287, § 1; 73 Del. Laws, c. 275, § 9.)

§ 2906. Implementation; rules and regulations.

(a) The Department of Labor shall adopt rules and regulations as are necessary and reasonable to implement the provisions of this chapter as they apply to employers, employees, places of employment and the work place.

(b) The Department of Health and Social Services shall adopt rules and regulations as are necessary and reasonable to implement remaining provisions of this chapter not affecting employers, employees and the work place.

(c) The Department of Health and Social Services and the Department of Labor may upon request waive the provisions of this chapter if they determine there are compelling reasons to do so, and such waiver will not significantly affect the health and comfort of nonconsumers of tobacco products.

(d) The Department of Health and Social Services and the Department of Labor shall file annual reports by the January 15 to the General Assembly outlining their enforcement efforts for the prior year and the results of those efforts. The first report shall be due 1 year after the effective date of the legislation. (69 Del. Laws, c. 287, § 1; 73 Del. Laws, c. 275, § 10.)

§ 2907. Administrative penalties.

(a) Any person who violates any provision of this chapter or any rule or regulation promulgated pursuant thereto shall be subject to an administrative penalty of \$100 for a first violation and not less than \$250 for each subsequent violation.

(b) Any employer who discharges or in any manner discriminates against an employee because that employee has made a complaint or has given information to the Department of Labor pursuant to this chapter, or because the employee has caused to be instituted or is about to cause to be instituted any proceedings under this chapter, or testified or is about to testify in any such proceedings, shall be deemed in violation of this chapter and shall be subject to a civil penalty of not less than \$2,000 nor more than \$10,000 for each violation.