

Pennsylvania

Clean Indoor Air Act

2010 Annual Legislative Report

Background

Senate Bill 246, Pennsylvania's Clean Indoor Air Act (CIAA), was passed on June 10, 2008, and became effective on September 11, 2008. This legislation named the Department of Health (DOH) the lead agency for implementation of the CIAA. Eliminating exposure to secondhand smoke (SHS) and promoting cessation are two evidence-based strategies cited by the U.S. Centers for Disease Control and Prevention (CDC) that can contribute to a reduction in disease, disability and death. Many reports and studies consistently document reductions in tobacco use following the implementation of smoke-free laws and policies.

The CIAA legislation requires that an Annual Report to the Legislature be submitted by December 1 of each year. This report presents CIAA data for the period December 1, 2009, to November 30, 2010.

Elimination of Secondhand Smoke across the United States

Secondhand smoke is a proven cause of serious diseases and premature death, which is why a growing number of cities, states and countries are enacting laws that require workplaces and public places to be smoke-free. Pennsylvania is pleased to join 28 other states, Washington, D.C., Puerto Rico, and hundreds of cities across the country to pass smoke-free laws. Other states with such laws include Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Rhode Island, Utah, Vermont, Washington and Wisconsin. Four other states (Florida, Idaho, Louisiana and Nevada) have smoke-free laws that cover restaurants but exempt stand-alone bars.¹

Exceptions

The CIAA has numerous exceptions, five of which require review and approval by the DOH. Exceptions include two types of drinking establishments (referred to in the CIAA as Type I drinking establishments and Type II drinking establishments), two types of cigar bars (referred to in the CIAA as Type I cigar bars and Type II cigar bars) and tobacco shops. To date, the DOH has received 4,002 applications for exception from drinking establishments, cigar bars and tobacco shops and 2,816 approvals/renewals have been issued. See Attachment 1 for more detailed exception information.

Other exceptions include up to 50 percent of gaming floors of casinos and up to 25 percent of hotel and motel rooms; designated sleeping quarters within full service truck stops; tobacco manufacturer cigar exhibitions, non-profit fund raisers (which feature tobacco products) and private clubs, including fire, ambulance and rescue companies. These exceptions are part of the CIAA and do not require review and approval by the DOH.

Under the CIAA, establishments that have been denied an exception have the right to request reconsideration of that decision. DOH staff follow current Departmental policy and work closely with

¹ Source: Campaign for Tobacco-Free Kids, July 2010

the Office of Legal Counsel to conduct an internal review of requests for reconsideration and make final determinations.

Exception Renewals

Since CIAA exceptions are valid for one year, the DOH conducts an annual review of information for each exception by completing an internal review that includes the following steps:

For Drinking Establishment exception holders:

- Verifying active liquor license status with the Pennsylvania Liquor Control Board (PLCB).
- Verifying with the Department of Revenue (DOR) that the percentage of food sales for the entire establishment (for Drinking Establishment Type II holders, the smoking area) is at or below 20 percent.
- Verifying through a site visit conducted by Department staff that the Drinking Establishment Type II exception continues to meet the physical criteria as required by the CIAA.

For Cigar Bar exception holders:

- Verifying active liquor license status with the PLCB
- Verifying with the DOR that the percentage of tobacco and tobacco-related products is at least 15 percent of the combined gross annual sales of the establishment (for Cigar Bar Type II holders)
- Verifying a cigar bar is physically connected to a tobacco shop (for Cigar Bar Type I holders)

For Tobacco Shop exception holders, the internal review includes verifying with the DOR that the percentage of tobacco and tobacco-related products is at or above 50 percent of the gross annual sales.

Sales and Use Tax (SUT) may be filed electronically with the DOR through the Electronic Tax Information and Data Exchange System (e-TIDES). Because there is a direct link to e-TIDES in the DOH's CIAA database, DOH staff may view SUT information during the internal review process. To educate business owners and encourage utilization of e-TIDES, the DOH collaborated with the DOR to develop an e-TIDES fact sheet that provides details on how to file SUT information for the CIAA on e-TIDES. These instructions are sent to all exception holders and can also be found on the DOH's CIAA website. For establishments who do not have access to a computer and, therefore, cannot file SUT information through e-TIDES, the DOH mails an SUT form to complete and submit before the exception expires in order to determine eligibility for renewal. CIAA exception holders do not need to annually reapply for an exception. The DOH will contact business owners during the internal review process if additional information is needed.

Enforcement

If a public place is subject to licensure by the commonwealth, the CIAA directs the DOH to refer the complaint to the appropriate licensing agency for investigation and enforcement. The DOH has coordinated implementation, enforcement and reporting protocols with all of the state agencies involved in the administration of the CIAA. If there is not a state licensing agency with jurisdiction over the potential violator, the complaint is handled by the DOH.

Upon receipt of a first complaint, the DOH notifies the establishment of the complaint, with a copy of the DOH notification of alleged violation letter sent to the appropriate state licensing agency and the DOH regional Primary Contractor. The Primary Contractor provides additional education and resources as a follow-up to the letter.

In addition to the DOH, there are two primary agencies involved in enforcement. The Bureau of Liquor Control Enforcement (BLCE) handles complaints filed against drinking establishments, cigar bars, bar/restaurants, bar/private clubs and bar/bowling alleys. The Pennsylvania Gaming Control Board (PGCB) has responsibility relating to the investigation and enforcement of complaints against licensed casinos.

During this report period, the Department received 933 complaints of alleged violations and sent out 383 warning/education letters. Of the total number of complaints received, 117 were invalid complaints², 79 were related to establishments currently under appeal (which prohibited the DOH from sending additional warning letters to those establishments) and 39 were either related to casinos (which were referred to the PGCB) or duplicate complaints. See Attachment 2 for more detailed information on complaints.

If an establishment not licensed by the BLCE has been determined to be in violation of the CIAA, the DOH will issue an order to show cause which lists the violation(s) and fine(s) to be assessed. To date, the DOH issued nine orders to show cause, all of which have been required to pay fines of \$250 to \$500.

The Department of Public Welfare (DPW) continues to notify the DOH of licensing action it has taken against personal care homes. Three of DPW's personal care home regulations directly address the CIAA; personal care homes are cited if a violation is determined during an inspection. DPW tracks the number of homes which fail to comply with the CIAA and submits a report to the DOH on a quarterly basis. Upon receipt of the report, CIAA staff send warning letters and toolkits to homes on the list to educate them about the CIAA and encourage compliance. After letters are sent, the DOH notifies DPW that warning letters have been sent to the homes. During this report period, the DOH sent warning letters to 26 DPW facilities not in compliance with the CIAA.

Pennsylvania Gaming Air Quality Study

In October 2007, an air quality study of Pennsylvania's gaming industry was completed. Five casinos were visited to collect air quality samples. At that time, it was scientifically concluded that the air quality in casinos was "significantly unhealthy and often very unhealthy to hazardous levels" as compared with the Environmental Protection Agency's air quality standards. The DOH plans to repeat this study during the Fall of 2010 and conduct air quality assessments at all casinos. The goals of the proposed Air Quality Study are to better understand the health effects of Pennsylvania's current CIAA and the overall secondhand smoke exposure risk to patrons and employees of the Pennsylvania gaming industry. Results are expected by early 2011.

CIAA Economic Impact Study

The Pennsylvania Alliance to Control Tobacco (PACT) and Public Health Management Corporation (PHMC) will conduct an Economic Impact Study related to Pennsylvania's CIAA. The goal of the proposed Economic Impact Study is to investigate economic changes among restaurants and bars in the 15+ months before and after Pennsylvania's current CIAA.

The proposed Economic Impact Study will examine liquor license information and disaggregated taxable sales data for restaurants and bars in Pennsylvania from 2002 to 2009. Numerous economic impact studies of local and statewide clean indoor air policies around the United States have found no adverse economic changes for bars, restaurants and other hospitality industries resulting from clean

² Invalid complaints are those that do not indicate a violation of the CIAA (i.e., complaints against establishments that have an exception).

indoor air legislation. Analyses of these data and appropriate control data will allow Pennsylvania to better understand potential economic impacts on a key industry.

Administration

The DOH has developed an online CIAA database that is used to store data and information, run custom reports and enable Division staff to track applications and sanctions and provide reports.

Coordination of Resources

The DOH continues to partner with the following agencies to coordinate and enforce the CIAA.

- Department of Aging
- Department of Agriculture
- Department of General Services
- Department of Public Welfare
- Department of Revenue
- Office of Administration, Bureau of Labor Relations
- Office of General Counsel
- Pennsylvania Gaming Control Board
- Pennsylvania State Police
- Pennsylvania Liquor Control Board
- Bureau of Liquor Control Enforcement

Collaboration with the BLCE and PLCB

Within the past year, the DOH continued to partner with the BLCE and PLCB to enforce the CIAA. Staff from these offices have been very responsive to CIAA-related needs and have played a vital role in CIAA enforcement. Complaints of violations for establishments with liquor licenses are investigated promptly, and findings, including citation information, are reported back to the DOH in a timely manner. BLCE has implemented an internal communication protocol that ensures field office staff are immediately updated of new policies or procedures regarding the CIAA.

DOH Regional Primary Contractors

The eight DOH Regional Primary Contractors are responsible for providing tobacco use prevention and cessation services throughout the commonwealth, including services relating to the implementation of the CIAA. All Primary Contractors receive CIAA training, provide technical assistance to affected establishments and assist the DOH in the verification of exception requests. Some types of CIAA exceptions require a site visit to the establishment to check for structural compliance to the CIAA. The regional Primary Contractors are diligent in conducting these on-site reviews and submitting results to the DOH.

Education

The DOH implemented the CIAA in cooperation with the Pennsylvania Alliance to Control Tobacco (PACT) with a focus on providing information and tools to all businesses affected by the CIAA. The Business Toolkit, which explains the law, provides guidance on talking to the public and employees and on the placement of signage. It also provides local contacts for additional technical assistance, having been distributed to over 1,000 businesses impacted by the CIAA in the hospitality industry. The DOH continues to distribute toolkits through the Regional Primary Contractors, at conferences and trainings and as attachments to all warning letters. The toll-free CIAA helpline (1-877-835-9535) activated in June 2008 accepts complaints and allows the DOH to respond to requests for information. To date, 3,955 calls to the helpline have been received. The DOH also offers the following CIAA resources on the web site www.health.state.pa.us/tobacco:

- Frequently asked questions
- Guidance for public places and workplaces
- Exception request formats
- Specific guidance related to private clubs
- Reports of violations
- Business toolkit
- Listing by county of establishments that have been approved for an exception

To date, DOH staff have responded to 1,918 web inquiries.

Other key partners with the DOH in providing statewide and local education include the Pennsylvania Restaurant Association, the Pennsylvania Tavern Association, as well as the Commanders of the Pennsylvania Veterans of Foreign Wars and the American Legion. Primary contractors work steadily with local establishments to provide education and business toolkits to promote compliance with the CIAA.

Clean Indoor Air Act Exception Data as of 11/30/10											
Exception Type	Number of Applications Received	Number Approved	Number Denied	Number in Appeal Status	Number in Pending Status	Number in Closed Status	Number in Hold Status	Number in Other Status	Number in Request for Information Status	Number in Revoked Status	Number in Site Visit Requested Status
Drinking Establishment Type I	3,056	2,292	404	145	10	164	1	0	0	40	0
Drinking Establishment Type II	718	348	254	51	0	56	0	0	0	3	6
Tobacco Shop, Cigar Bar Type I, Cigar Bar Type II	228	176	33	0	3	12	1	0	1	2	0
Totals	4,002	2,816	691	196	13	232	2	0	1	45	6

Definitions of Status Types

Pending - An application is in this status if it has been submitted and is under review.

Closed - An application is in this status if an applicant failed to submit missing information within the requested timeframe or is a duplicate application.

Hold - An application is in this status if it is pending but contingent upon a decision to be made by the Department. For example, Department staff often need to consult with the Office of Legal Counsel about the CIAA if it is unclear if an establishment fits into one of the five exception categories.

Other - These are casino applications that are in the process of being reviewed.

Request for Information - An application is in this status if it was submitted without all of the required information. In such cases, Department staff notifies applicants via letter of the missing information and asks them to supply the information to the Department within 10 days.

Revoked - An application in this status has been revoked due to an inactive liquor license as reported by PLCB or not meeting annual renewal criteria (active liquor license status, food sales not exceeding 20 percent or structural criteria).

Site Visit Requested - An application is in this status if Department staff requested that an on-site visit be conducted by a Regional Primary Contractor to assess the establishment's structural compliance with the CIAA. This status applies only to Drinking Establishment Type II and Cigar Bar Type I applications.

**Number of Complaints Reported to the Department of Health
December 1, 2009 to November 30, 2010**

County	Total	# Valid	# Invalid
Adams	2	2	0
Allegheny	218	187	31
Armstrong	5	3	2
Beaver	31	28	3
Bedford	2	2	0
Berks	19	18	1
Blair	7	6	1
Bradford	2	2	0
Bucks	31	30	1
Butler	13	12	1
Cambria	11	11	0
Cameron	0	0	0
Carbon	2	1	1
Centre	4	4	0
Chester	3	2	1
Clarion	0	0	0
Clearfield	7	6	1
Clinton	1	1	0
Columbia	3	3	0
Crawford	14	14	0
Cumberland	12	11	1
Dauphin	21	16	5
Delaware	19	19	0
Elk	1	1	0
Erie	57	47	10
Fayette	20	19	1
Forest	0	0	0
Franklin	6	6	0
Fulton	0	0	0
Greene	1	1	0
Huntingdon	2	2	0
Indiana	4	4	0
Jefferson	5	5	0
Juniata	0	0	0
Lackawanna	19	14	5
Lancaster	30	28	2
Lawrence	43	38	5
Lebanon	2	2	0
Lehigh	14	13	1

County	Total
Luzerne	40
Lycoming	13
McKean	16
Mercer	41
Mifflin	8
Monroe	3
Montgomery	19
Montour	0
Northampton	5
Northumberland	5
Perry	3
Philadelphia	3
Pike	7
Potter	1
Schuylkill	17
Snyder	5
Somerset	12
Sullivan	0
Susquehanna	1
Tioga	2
Union	0
Venango	4
Warren	9
Washington	24
Wayne	2
Westmoreland	38
Wyoming	1
York	23
Total	933

# Valid	# Invalid
36	4
13	0
13	3
34	7
8	0
3	0
14	5
0	0
5	0
5	0
2	1
1	2
6	1
1	0
14	3
4	1
10	2
0	0
1	0
2	0
0	0
4	0
8	1
16	8
2	0
35	3
0	1
21	2
816	117