



Pennsylvania Clean Indoor Air Act

2012 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. The DOH's responsibilities related to the CIAA include: 1) educating businesses on how to comply with the CIAA and providing CIAA information to the public; 2) issuing exceptions to business that meet specific criteria and monitoring those exceptions; and 3) enforcing the CIAA to ensure public places without exceptions remain tobacco-free and individuals are not wrongfully exposed to secondhand smoke. Eliminating exposure to secondhand smoke 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 each year. This report presents CIAA data for the period December 1, 2011, to November 30, 2012.

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 4,275 applications for exception from drinking establishments, cigar bars and tobacco shops, and 2,693 approvals/renewals have been issued. See Attachment 1 for 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 the Office of Legal Counsel to conduct an internal review of requests for reconsideration and make final determinations.

Exception Renewals

As initiated in November 2010, the DOH continues to renew exceptions on a two-year basis to reduce the number of mailings sent to establishments. By mailing renewal letters and certificates to establishments every other year, the DOH saves an estimated \$3,500 per year. Even though exception renewals occur every two years, the DOH still conducts an internal review of information for each exception on an annual basis by completing 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; and
- Verifying through a site visit conducted by DOH 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); and
- 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.

If an establishment fails to meet any of the above exception criteria prior to the date the exception expires, DOH revokes their exception.

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 of establishments under DOH enforcement jurisdiction, the DOH notifies the establishment of the complaint, with a copy of the DOH notification of alleged violation letter sent to the DOH regional primary contractor. The regional primary contractor provides additional education and resources as a follow-up to the letter. Regional primary contractors also conduct compliance site visits to establishments for which the DOH has received multiple complaints to provide further follow-up to ensure compliance with the CIAA.

The other agencies involved in CIAA enforcement include:

- 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 for the investigation and enforcement of complaints against licensed casinos.
- The Pennsylvania Department of Revenue (DOR) - handles complaints related to businesses possibly falsifying food sales figures in order to meet CIAA exception criteria.
- The Pennsylvania Department of Public Welfare (DPW) - responds to complaints related to personal care homes and foster care facilities.
- The Pennsylvania Public Utility Commission (PUC) - handles complaints related to taxi cabs.

During this report period, the Department received 439 complaints of alleged violations and sent out 121 warning/education letters in response to violations (establishments under DOH enforcement jurisdiction). Additionally, of the total number of complaints received:

- 76 were referred to BLCE
- 1 was referred to the PGCB
- 10 were referred to DOR
- 1 was referred to DPW
- 1 was referred to PUC
- 2 were related to establishments currently under appeal, which prohibited the DOH from sending additional warning letters to those establishments
- 42 were invalid complaints¹
- 55 resulted in DOH requesting regional primary contractors to conduct compliance site visits

See Attachment 2 for more detailed information on complaints.

If an establishment not licensed by another agency 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 that 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 eight DPW facilities not in compliance with the CIAA.

Administration

The DOH utilizes the online CIAA database 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;

¹ Invalid complaints are those that do not indicate a violation of the CIAA (i.e., complaints against establishments that have an exception).

- Office of General Counsel;
- Pennsylvania Gaming Control Board;
- Pennsylvania State Police;
- Pennsylvania Liquor Control Board; and
- Bureau of Liquor Control Enforcement.

Collaboration with the BLCE and PLCB

Within the past year, the DOH has 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.

Additionally, during this reporting period, the BLCE implemented a new database of drinking establishments in Pennsylvania that will include whether or not establishments have an exception to the CIAA. BLCE Officers frequently utilize the DOH's CIAA website that lists establishments with exceptions when conducting investigations. In order to provide more comprehensive information to BLCE Officers, the BLCE requested that DOH list the Liquor Identification number (LID) of establishments on the CIAA webpage in order for their new database software to easily search the site to determine if a business has a CIAA exception. DOH received approval from the Bureau of Licensing, Pennsylvania Liquor Control Board, to post LIDs on the CIAA website so BLCE Officers may have access to current CIAA exception information and DOH's Bureau of Information Technology provided assistance so DOH could accommodate this request.

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.

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 CIAA business toolkit, explains the law, provides guidance on talking to the public and employees and on the placement of signage and provides local contacts for additional technical assistance. IT has been distributed in hard copy to over 1,000 businesses impacted by the CIAA in the hospitality industry and is now available online along with the following CIAA resources at

www.health.state.pa.us/ciaa:

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

After conducting an assessment of the number of calls to the toll-free CIAA helpline (877-835-9535) and associated costs, the Department deactivated the helpline on February 1, 2012. Individuals who contacted the helpline after that date were referred to the Department's Clean Indoor Air website at www.health.state.pa.us/ciaa to request a Clean Indoor Air Toolkit and signs and to report violations.

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. Regional primary contractors continue to work steadily with local establishments to provide education and business toolkits to promote compliance with the CIAA.

CIAA Exception Information per Legislative District

The map in Attachment 3 represents CIAA exception information specific to legislative districts in Pennsylvania. DOH can generate this map for any legislative district upon request. Please contact the DOH Division of Tobacco Prevention and Control at (717) 783-6600 for further information or to request this data.

Clean Indoor Air Act Exception Data as of 11/30/12

| Exception Type | Number of Applications Received | Number Approved/Renewed | Number Denied | Number Renewal Denied | Number in Appeal Status | Number in Pending Status | Number in Relinquish Status | Number in Closed Status | Number in Hold Status | Number in Request for Information Status | Number in Revoked Status | Number in Site Visit Requested Status |
|--------------------------------|---------------------------------|-------------------------|---------------|-----------------------|-------------------------|--------------------------|-----------------------------|-------------------------|-----------------------|--|--------------------------|---------------------------------------|
| Drinking Establishment Type I | 3,249 | 2,164 | 101 | 696 | 1 | 5 | 27 | 209 | 0 | 6 | 40 | 0 |
| Drinking Establishment Type II | 735 | 340 | 207 | 91 | 22 | 0 | 12 | 58 | 0 | 2 | 3 | 0 |
| Tobacco Shop | 271 | 179 | 0 | 74 | 0 | 0 | 0 | 14 | 0 | 1 | 3 | 0 |
| Cigar Bar Type I | 8 | 2 | 3 | 2 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 |
| Cigar Bar Type II | 12 | 8 | 1 | 2 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 |
| Totals | 4,275 | 2,693 | 312 | 865 | 23 | 5 | 39 | 283 | 0 | 9 | 46 | 0 |

Definitions of Status Types

Renewal Denied - An application is in this status if it has not met annual renewal criteria (active liquor license status, food sales not exceeding 20 percent, etc.).

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

Relinquish - An application is in this status if a business owner with a valid exception has voluntarily requested that the exception be revoked.

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 DOH. For example, DOH 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.

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 DOH within 10 days.

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

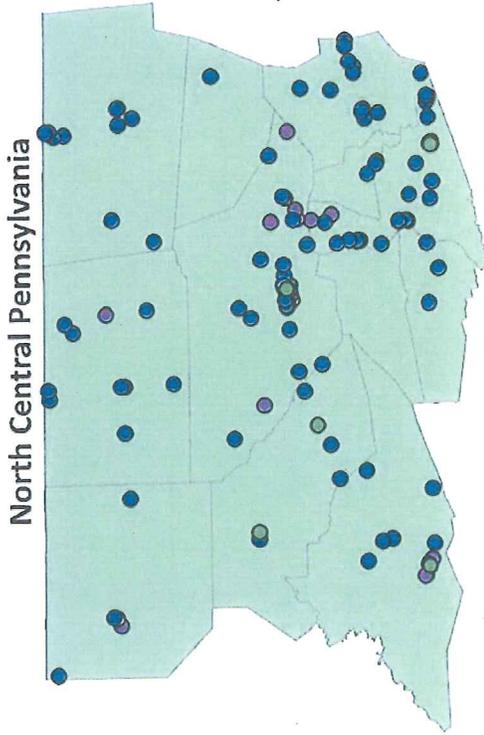
Site Visit Requested - An application is in this status if DOH staff requested that an on-site visit be conducted by a Regional Primary Contractor to assess the establishment's structural compliance with the CIAA. This status applies only to Drinking Establishment Type II and Cigar Bar Type I applications.

**Number of Complaints Reported
to the Department of Health
December 1, 2011 to November 30, 2012**

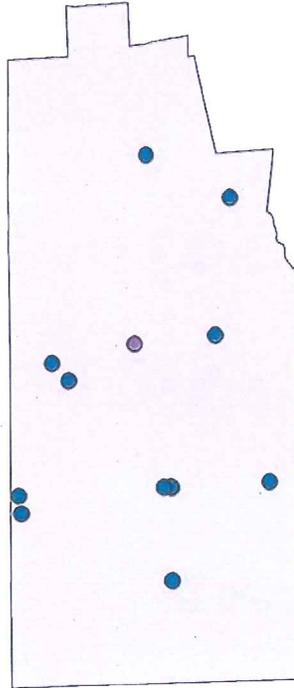
| County | Total |
|------------|-------|
| Adams | 1 |
| Allegheny | 149 |
| Armstrong | 0 |
| Beaver | 10 |
| Bedford | 5 |
| Berks | 13 |
| Blair | 3 |
| Bradford | 3 |
| Bucks | 5 |
| Butler | 2 |
| Cambria | 12 |
| Cameron | 0 |
| Carbon | 2 |
| Centre | 3 |
| Chester | 1 |
| Clarion | 0 |
| Clearfield | 1 |
| Clinton | 0 |
| Columbia | 4 |
| Crawford | 1 |
| Cumberland | 12 |
| Dauphin | 19 |
| Delaware | 9 |
| Elk | 2 |
| Erie | 20 |
| Fayette | 10 |
| Forest | 0 |
| Franklin | 5 |
| Fulton | 0 |
| Greene | 8 |
| Huntingdon | 1 |
| Indiana | 1 |
| Jefferson | 2 |
| Juniata | 0 |
| Lackawanna | 13 |
| Lancaster | 7 |
| Lawrence | 0 |
| Lebanon | 2 |
| Lehigh | 5 |

| County | Total |
|------------------|--------------|
| Luzerne | 19 |
| Lycoming | 4 |
| McKean | 0 |
| Mercer | 4 |
| Mifflin | 3 |
| Monroe | 2 |
| Montgomery | 15 |
| Montour | 1 |
| Northampton | 8 |
| Northumberland | 1 |
| Perry | 0 |
| Philadelphia+D28 | 2 |
| Pike | 0 |
| Potter | 0 |
| Schuylkill | 9 |
| Snyder | 0 |
| Somerset | 0 |
| Sullivan | 0 |
| Susquehanna | 0 |
| Tioga | 0 |
| Union | 0 |
| Venango | 3 |
| Warren | 3 |
| Washington | 17 |
| Wayne | 2 |
| Westmoreland | 10 |
| Wyoming | 0 |
| York | 5 |
| Total | 439 |

Pennsylvania Clean Indoor Air Act Exempt* Venues by select region and legislative district (December 2011)



PA House District 68 - Rep. Baker



Economic analyses on taxable sales data confirm that Pennsylvania's 2008 Clean Indoor Air Act had **no negative economic impact** on restaurants or drinking establishments. (www.health.state.pa.us)

Each year, exposure to secondhand smoke causes nearly **50,000 deaths** among adults in the United States. (www.cdc.gov and www.tfk.org)

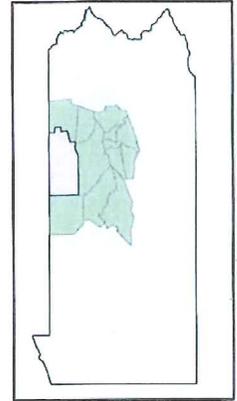
Even brief exposure to secondhand smoke could trigger a heart attack.

(www.cdc.gov, www.iom.edu and www.surgeongeneral.gov)



Legend

- Tobacco Shop
- Type I Drinking Establishment
- Type II Drinking Establishment



Data Sources: US Census Bureau, Pennsylvania Department of Health and PASDA.

* Included here are all application-based exemptions. Additional venues are exempt from the Act by definition (e.g., private clubs, etc.). All casinos in Pennsylvania have provided "proof of hardship" to receive their exempt status.

Notes: For more information about Pennsylvania's 2008 Clean Indoor Air Act (CIAA), visit: www.pactonline.org. 2,816 venues have CIAA exceptions as of December 2011. North Central has 149 exemptions. Venues with invalid addresses have approximate locations based on zip code center.

Map prepared by Public Health Management Corporation (PHMC), Research and Evaluation Group