

Pennsylvania Clean Indoor Air Act

2019 Annual Legislative Report

**Bureau of Health
Promotion and Risk
Reduction**

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pennsylvania
DEPARTMENT OF HEALTH

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Background

Act 27 of 2008, Pennsylvania's Clean Indoor Air Act (CIAA), was signed on June 13, 2008, and became effective on Sept. 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 businesses that meet specific criteria and monitoring those exceptions; and 3) enforcing the CIAA to ensure public places without exceptions remain tobacco-free and that individuals are not wrongfully exposed to secondhand smoke. Eliminating exposure to secondhand smoke and promoting cessation are two evidence-based strategies that can contribute to a reduction in disease, disability and death.¹ Many reports and studies consistently document reductions in tobacco use following the implementation of smoke-free laws and policies.²

The CIAA legislation requires that an annual report to the General Assembly be submitted by Dec. 1 each year. This report presents CIAA data for the period Dec. 1, 2018, to Nov. 30, 2019.

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. Currently, there are 1,866 exceptions for drinking establishments, cigar bars and tobacco shops issued in Pennsylvania. See Attachments 1 and 2 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 fundraisers (which feature tobacco products); and private clubs, including fire, ambulance and rescue companies. These statutory exceptions do not require review and approval by the DOH.

Under the CIAA, establishments that have been denied an exception have the right to appeal that decision. DOH staff follow current departmental policy and work closely with the Office of Legal Counsel to conduct internal reviews of applications and appeals and make final determinations.

¹ Best Practices for Comprehensive Tobacco Control Programs, Centers for Disease Control and Prevention. https://www.cdc.gov/tobacco/stateandcommunity/best_practices/pdfs/2014/comprehensive.pdf. Published 2014. Accessed October 29, 2019.

² Best Practices for Comprehensive Tobacco Control Programs, Centers for Disease Control and Prevention. https://www.cdc.gov/tobacco/stateandcommunity/best_practices/pdfs/2014/comprehensive.pdf. Published 2014. Accessed October 29, 2019.

The DOH issues CIAA exceptions on an annual basis by completing the following steps:

For drinking establishment exception holders:

- Verifying active liquor license status and type 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 establishment type by review of business operation requirements.

For cigar bar exception holders:

- Verifying active liquor license status and type with the Pennsylvania Liquor Control Board (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 establishment type of review of business operation requirements.

For tobacco shop exception holders:

- Verifying with the DOR that the percentage of tobacco and tobacco-related products is at or above 50 percent of the gross annual sales and verifying establishment type by review of business operation requirements.

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

Administration

The DOH uses the online CIAA database to store data and information, generate and produce custom reports and track applications.

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 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 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 and 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 that are licensed by the Pennsylvania Liquor Control Board;
- 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 to meet CIAA exception criteria;
- The Pennsylvania Department of Human Services (DHS) – responds to complaints related to personal care homes and foster family residences;
- The Pennsylvania Department of Corrections (DOC) – handles complaints related to state correctional facilities;
- The Pennsylvania Public Utility Commission (PUC) – handles complaints related to taxi cabs;
- The Pennsylvania Department of Agriculture (DOA) – addresses complaints of smoking occurring in kitchens/food preparation areas in establishments;
- The Philadelphia Department of Public Health (PDPH) – responds to complaints of establishments located in Philadelphia County, since the CIAA applies to all counties except Philadelphia.

During this reporting period, the department received 144 complaints of alleged violations and sent out 48 warning/education letters in response to violations (establishments under DOH enforcement jurisdiction). Additionally, of the total number of complaints received:

- 28 were referred to BLCE;
- 5 were referred to the PGCB;
- 3 were referred to DOR;
- 0 were referred to DHS;
- 4 were referred to DOC;
- 0 were referred to PUC;
- 1 was referred to DOA;
- 0 were related to an establishment that has filed an appeal, which prohibited the DOH from sending an additional warning letter to that establishment;
- 2 were referred to the PDPH;
- 46 were invalid complaints;³ and
- 7 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, listing the violation(s) and fine(s) to be assessed. During this reporting period, the DOH did not issue any orders to show cause.

³ Invalid complaints are those that do not indicate a violation of the CIAA (i.e., complaints against establishments that have an exception).

Appeal Process

Establishments that are denied an exception to the CIAA prohibition on smoking have a right to appeal that denial. The DOH implements appeal procedures in accordance with the Pennsylvania's General Rules of Administrative Practice and Procedure (GRAPP). Pursuant to GRAPP, establishments are required to direct their appeal of a denial directly to the secretary of health. If the secretary of health upholds the denial, establishments have the right to appeal to Commonwealth Court. Appeals proceed pursuant to all Commonwealth Court appellate rules and procedures. Ultimately, an establishment may ask the Supreme Court of Pennsylvania to review a decision of the Commonwealth Court. The Supreme Court has the right to accept or deny hearing the appeal request.

During this reporting period, the DOH received the following appeals:

- Appeals to secretary of health: 89
- Appeals to Commonwealth Court: 0
- Appeals to Supreme Court of Pennsylvania: 0

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 Human Services;
- Department of Revenue;
- Office of Administration, Bureau of Labor Relations;
- Office of General Counsel;
- Pennsylvania Gaming Control Board;
- Pennsylvania State Police, Bureau of Liquor Control Enforcement;
- Pennsylvania Liquor Control Board.

Collaboration with the BLCE and PLCB

The DOH continues 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 BLCE has implemented an internal communication protocol that ensures field office staff are immediately updated of new policies or procedures regarding the CIAA.

The BLCE continues to utilize a database of drinking establishments in Pennsylvania that includes 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. 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 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.

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. 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. The toolkit 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.

Individuals who have questions or need resources related to the CIAA may visit the DOH's CIAA website at www.health.state.pa.us/ciaa. Regional primary contractors continue to work steadily with local establishments and the public to provide education and business toolkits to promote compliance with the CIAA.

Clean Indoor Air Act Exception Data as of 11/30/19

Exception Type	Number of applications received	Number of applications 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 request for information status	Number in revoked status	Number in site visit requested status
Drinking establishment type I	3,573	1,474	130	1,457	29	5	80	339	10	49	0
Drinking establishment type II	798	225	220	217	9	3	28	90	0	6	0
Tobacco shop	397	153	3	179	1	0	1	54	1	5	0
Cigar bar type I	12	3	3	3	0	1	0	2	0	0	0
Cigar bar type II	30	11	4	8	0	1	1	5	0	0	0
Totals	4,810	1,866	360	1,864	39	10	110	490	11	60	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 if the application is a duplicate.

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.

Clean Indoor Air Act Exception and Complaints Data by County
Dec. 1, 2018 to Nov. 30, 2019

County	Total Number of Exceptions	Total Number of Complaints
Adams	16	1
Allegheny	372	31
Armstrong	30	0
Beaver	63	0
Bedford	8	0
Berks	32	3
Blair	26	5
Bradford	10	0
Bucks	47	4
Butler	27	6
Cambria	35	0
Cameron	2	0
Carbon	11	0
Centre	7	3
Chester	21	2
Clarion	13	1
Clearfield	22	1
Clinton	10	0
Columbia	10	1
Crawford	33	1
Cumberland	20	0
Dauphin	39	7
Delaware	67	2
Elk	9	1
Erie	62	12
Fayette	53	1
Forest	5	0
Franklin	18	0
Fulton	2	0
Greene	6	1
Huntingdon	9	1
Indiana	21	1
Jefferson	9	0
Juniata	3	0
Lackawanna	41	1
Lancaster	35	3
Lawrence	19	0
Lebanon	10	1
Lehigh	38	2

County	Total Number of Exceptions	Total Number of Complaints
Luzerne	114	5
Lycoming	21	0
McKean	15	0
Mercer	27	6
Mifflin	11	0
Monroe	5	2
Montgomery	40	14
Montour	1	1
Northampton	30	1
Northumberland	24	2
Perry	10	0
Philadelphia	0	2
Pike	9	0
Potter	3	0
Schuylkill	41	2
Snyder	4	1
Somerset	20	3
Sullivan	1	1
Susquehanna	10	0
Tioga	4	0
Union	0	0
Venango	16	0
Warren	13	1
Washington	56	3
Wayne	5	0
Westmoreland	75	7
Wyoming	9	0
York	41	1
Total	1,866	144