

ILLINOIS REGISTER

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED RULES

- 1) Heading of the Part: Smoke Free Illinois Code
- 2) Code Citation: 77 Ill. Adm. Code 975
- 3)

<u>Section Numbers</u> :	<u>Proposed Action</u> :
975.10	New
975.20	New
975.30	New
975.40	New
975.50	New
975.60	New
975.70	New
975.80	New
975.90	New
975.100	New
975.110	New
975.120	New
975.130	New
975.140	New
975.150	New
- 4) Statutory Authority: Smoke Free Illinois Act [30 ILCS 805/8.31]
- 5) A Complete Description of the Subjects and Issues Involved:

These rules implement the Smoke Free Illinois Act (Public Act 95-0017, effective January 1, 2008), which authorizes the Illinois Department of Public Health to enforce the provisions of the Act and to assess fines for violation of the Act. The Act prohibits smoking in public places, places of employment, and governmental vehicles. Smoking is prohibited in indoor public places and workplaces unless specifically exempted by Section 35 of the Act. The rules include: 1) the requirements for signage; 2) the prohibition of smoking in college dormitories; 3) designation of other non-smoking areas; and 4) exemptions allowing smoking in specific environments (including private homes, except when used as a home-based business open to the public); retail tobacco stores, private and semi-private rooms in nursing homes and long term care facilities; and hotel and motel sleeping rooms with no more than 25 percent of rooms where smoking is allowed. The complaint and enforcement of violations processes, including the establishment of the fine structure, are defined. Provisions for injunctive relief and discrimination are included.

ILLINOIS REGISTER

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED RULES

- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking:
1. The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General (2006) U.S. Department of Health and Human Services
 2. Morbidity and Mortality Weekly Report Vol. 56 No. 20 (2007) Centers for Disease Control and Prevention
 3. Illinois Public Act 086-1018 Clean Indoor Air Act (1986) Illinois General Assembly
 4. Illinois Public Act 094-0517 Preemption Repeal Amendment (1994) Illinois General Assembly
 5. Illinois Public Act 094-0770 Clean Indoor Air Dormitory Amendment (1994) Illinois General Assembly
 6. Illinois Public Act 094-0917 Clean Indoor Air Act Amendment (1994) Illinois General Assembly
 7. Behavioral Risk Factors Surveillance Survey (2005) Illinois Department of Public Health
 8. Adult Tobacco Survey (2005) Illinois Department of Public Health
 9. Youth Tobacco Survey (2006) Illinois Department of Public Health
 10. Americans for Nonsmokers Rights UPDATE - multiple publications
 11. American Journal of Public Health - multiple publications
- 7) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No

ILLINOIS REGISTER

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED RULES

- 9) Does this rulemaking contain incorporations by reference No
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: The Smoke Free Illinois Act includes an exemption from the State Mandates Act.
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking:

Interested persons may present their comments concerning this rulemaking within 45 days after the publication of this issue of the *Illinois Register* to:

Susan Meister
Division of Legal Services
Illinois Department of Public Health
535 W. Jefferson St., 5th floor
Springfield, Illinois 62761
217/782-2043
e-mail: IDPH.RULES@illinois.gov

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: Small businesses in the gaming, food and beverage industries, such as casinos, bars, taverns, and restaurants, will be affected. Other small businesses where the public is invited to conduct business will also be affected. Small municipalities are covered under Section 65 of the Act. Not for Profit organizations will be held to the same standard to maintain a smoke free work environment for their employees and the public. The rules protect customers who are non-smokers or smokers, and persons employed by the establishments, from secondhand tobacco smoke.
- B) Reporting, bookkeeping or other procedures required for compliance: The Act and the rules require retail tobacco stores to file an annual affidavit with the Department, by January 31 of each year, stating the percentage of gross income during the prior calendar year that was derived from the sale of loose tobacco, plants or herbs and cigars, cigarettes, pipes or other smoking devices for smoking tobacco and related smoking accessories.

ILLINOIS REGISTER

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED RULES

C) Types of professional skills necessary for compliance: None

14) Regulatory Agenda on which this rulemaking was summarized:

This rule was not included on either of the two most recent Regulatory Agendas because:
The legislation had not been signed when the Regulatory Agendas were developed.

The full text of the Proposed Rules begins on the next page:

ILLINOIS REGISTER

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED RULES

TITLE 77: PUBLIC HEALTH
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH
SUBCHAPTER u: MISCELLANEOUS PROGRAMS AND SERVICES

PART 975
SMOKE FREE ILLINOIS CODE

Section

- 975.10 Definitions
- 975.20 Referenced Materials
- 975.30 Smoking Prohibited
- 975.40 Responsibilities
- 975.50 Posting of Signs and Removal of Ashtrays
- 975.60 Smoking Prohibited in Student Dormitories
- 975.70 Designation of Other Non-Smoking Areas
- 975.80 Outdoor Patios
- 975.90 Exemptions
- 975.10 Complaints
- 975.110 Enforcement
- 975.120 Violations and Fines
- 975.130 Injunctions
- 975.140 Discrimination Prohibited
- 975.150 Home Rule and Other Regulation

AUTHORITY: Smoke Free Illinois Act [30 ILCS 805/8.31].

SOURCE: Adopted at 31 Ill. Reg. _____, effective _____.

Section 975.10 Definitions

“Act” means the Smoke Free Illinois Act (Public Act 95-0017).

“Adult day care” means a day program that provides, for adults aged 60 and over, direct care and supervision and personal attention and promotes social, physical, and emotional well-being in a structured, community-based setting.

“Alzheimer’s disease management center” means a facility licensed as an Alzheimer’s disease management center under the Alternative Health Care Delivery Act [210 ILCS 3].

ILLINOIS REGISTER

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED RULES

“Ambulatory Surgical Treatment Center or ASTC” means a facility that is licensed under the Ambulatory Surgical Treatment Center Act [210 ILCS 5].

“Ashtray” means any receptacle that is designed for disposing of the debris from smoking materials, such as ash, cigarette butts or filters, or cigar stubs.

"Assisted living establishment or facility" means an establishment that is licensed as an assisted living establishment under the Assisted Living and Shared Housing Act [210 ILCS 9].

“Bar” means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and that derives no more than 10% of its gross revenue from the sale of food consumed on the premises. “Bar” includes, but is not limited to, taverns, nightclubs, cocktail lounges, brew pubs, saloons, microbreweries, adult entertainment facilities, and cabarets.
(Section 10 of the Act)

“Birth center means a facility that is licensed as a birth center under the Alternative Health Care Delivery Act [210 ILCS 3].

“Blood bank” means a facility as defined in Section 2-124 of the Illinois Clinical Laboratory and Blood Bank Act [210 ILCS 25/2-124].

“Children’s community-based health care center” means a facility licensed as a children’s community-based health care center under the Alternative Health Care Delivery Act [210 ILCS 3].

“Clearly and conspicuously” means that signage is designed so that letters, numbers and symbols are of sufficient size to be clearly legible and visible to an individual of normal vision from a distance of 5 feet.

“Community-based residential rehabilitation center” means a facility licensed as a community-based residential rehabilitation center under the Alternative Health Care Delivery Act [210 ILCS 3].

“Community-integrated living arrangement” means a facility licensed by the Department of Human Services under the Community-Integrated Living Arrangement Licensure and Certification Act [210 ILCS 135].

ILLINOIS REGISTER

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED RULES

"Community Living Facility" means a facility licensed under the Community Living Facilities Licensing Act [210 ILCS 3].

"Complainant" means a person who registers a complaint with the Department, a State-certified local public health department, or a local law enforcement agency to report an alleged violation of the Act or this Part.

"Complaint" means a written or oral report of an alleged violation of the Act or this Part.

"Conspicuously" (see "Clearly and conspicuously").

"Contiguous area" means a place that:

Is physically attached to a public place or non-vehicle place of employment; or

Is separated from the public place or non-vehicle place of employment only by other places controlled by the proprietor of the public place or non-vehicle place of employment.

"Controlled" means under the authority and responsibility of a proprietor.

"Department" means the Department of Public Health. (Section 10 of the Act)

"Drift" means the physical movement of smoke, regardless of cause, into any area where smoking is prohibited.

"Employee" means a person who is employed by an employer in consideration for direct or indirect monetary wages or profits or a person who volunteers his or her services for a non-profit entity. (Section 10 of the Act)

"Employer" means a person, business, partnership, association, or corporation, including a municipal corporation, trust, or non-profit entity, that employs the services of one or more individual persons. (Section 10 of the Act)

"Enclosed area" means all space between a floor and a ceiling that is enclosed or partially enclosed with solid walls or windows, exclusive of doorways, or solid walls with partitions and no windows, exclusive of doorways, that extend from the floor to the ceiling, including, without limitation, lobbies and corridors. (Section

ILLINOIS REGISTER

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED RULES

10 of the Act)

“Enclosed or partially enclosed sports arena” means any sports pavilion, stadium, gymnasium, health spa, boxing arena, swimming pool, roller rink, ice rink, bowling alley, or other similar place where members of the general public assemble to engage in physical exercise or participate in athletic competitions or recreational activities or to witness sports, cultural, recreational, or other events. (Section 10 of the Act)

“End stage renal disease facility” means a facility licensed under the End Stage Renal Disease Facility Act [210 ILCS 62].

"Enforcing agency" means the Illinois Department of Public Health or a unit of local government delegated to administer and enforce the Act and this Part.

“Entering” means the act, by an individual or group of individuals, of going into a building or facility.

“Entrance” means any doorway in a building or facility that is used by an individual for ingress from the outdoors or egress to the outdoors.

“Foster care” means care provided in a foster family home that is licensed by the Department of Children and Family Services under the Child Care Act of 1969 [225 ILCS 10] to children who are placed in the home by the Department of Children and Family Services.

“Freestanding emergency center” means a facility that is licensed under Section 32.5 of the Emergency Medical Services (EMS) Systems Act [210 ILCS 50/32.5].

“Gaming equipment or supplies” means gaming equipment/supplies as defined in the Illinois Gaming Board Rules titled Riverboat Gambling (86 Ill. Adm. Code 3000). (Section 10 of the Act)

“Healthcare facility” means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including, but not limited to, hospitals, rehabilitation hospitals, subacute care hospitals, weight control clinics, nursing homes and long-term care facilities, homes for the aging or chronically ill, laboratories and blood banks, freestanding emergency centers, ambulatory surgical treatment centers, end stage renal disease facilities, community living

ILLINOIS REGISTER

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED RULES

facilities, hospice residences, assisted living and shared housing establishments, supportive residences, children's community-based health care centers, post-surgical recovery care centers, community-based residential rehabilitation centers, Alzheimer's disease management centers, birth centers, State-operated facilities for persons with mental illness or developmental disabilities, supportive living facilities, community-integrated living arrangements, *and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these professions. "Healthcare facility" includes all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.* (Section 10 of the Act)

"Health spa" means an establishment having members who pay a fee to use health and/or fitness facilities and/or equipment.

"Hospice residence" means a residence that is licensed under the Hospice Program Licensing Act [210 ILCS 60].

"Hospital" or "rehabilitation hospital" means a facility licensed under the Hospital Licensing Act [210 ILCS 85].

"Hotel" means any building or buildings in which the public may, for a consideration, obtain living quarters, sleeping or housekeeping accommodations. The term includes inns, motels, tourist homes or courts, lodging houses, and rooming houses. (Section 2(1) of the Hotel Operators Occupation Tax Act [225 ILCS 10]).

"Infiltrate" means the transit or movement of smoke from one enclosed area to another regardless of cause, including, but not limited to, movement of smoke induced or caused by changes in air flow.

"Laboratory" means a facility licensed under the Illinois Clinical Laboratory and Blood Bank Act [210 ILCS 25].

"Licensed child care center" means child care provided in a home or facility licensed by the Department of Children and Family Services under the Child Care Act of 1969 [225 ILCS 10].

"Long Term Care Facility" means a facility licensed under the Nursing Home Care Act [210 ILCS 45], the Assisted Living and Shared Housing

ILLINOIS REGISTER

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED RULES

Act [210 ILCS 9] , the Supportive Residences Licensing Act [210 ILCS 65], the Alternative Health Care Delivery Act [210 ILCS 3], the Mental Health and Developmental Disabilities Code [405 ILCS 5], the Community-Integrated Living Arrangements Licensure and Certification Act [210 ILCS 135], the Community Living Facilities Licensing Act [210 ILCS 35], or the Hospice Licensing Act [210 ILCS 60].

“Local law enforcement agency” means the police of a city, town, village or other incorporated area or the sheriff’s department or any sworn officer of the Illinois State Police.

“Non-enclosed area” means all space between a floor and a ceiling that is not enclosed or partially enclosed, as defined in the Act and this Part.

“Non-profit entity” means a corporation, partnership or organization created for non-commercial purposes and to provide financial support, services, and/or raise awareness on a specific issue for the public good. A non-profit entity will also meet the requirements of being tax exempt under section 501(c)(3) of the Internal Revenue Service Code 26 [26 USC 501].

“Nursing home” means a facility that is licensed under the Nursing Home Care Act [210 ILCS 45].

“Outdoor patio” means an area that is either: enclosed by a roof or other overhead covering and walls or side coverings on not more than two sides; or has no roof or other overhead coverings regardless of the number of walls, fence or other side coverings. This includes, but is not limited to, beer gardens or other outdoor seating.

“Outdoor patio patron” means an individual who is occupying an outdoor patio.

“Permeable” means permitting smoke to pass through.

“Place of employment” means any area under the control of a public or private employer that employees are required to enter, leave, or pass through during the course of employment, including, but not limited to entrances and exits to places of employment including a minimum distance, as set forth in Section 70 of the Act, of 15 feet from entrances, exits, windows that open, and ventilation intakes

ILLINOIS REGISTER

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED RULES

that service an enclosed area where smoking is prohibited; offices and work areas; restrooms; conference and classrooms; break rooms and cafeterias; and other common areas. A private residence or home-based business, unless used to provide licensed child care, foster care, adult day care, or other similar social services care on the premises, is not a “place of employment.” (Section 10 of the Act)

“Postsurgical recovery care center” means a facility licensed as a postsurgical recovery care center under the Alternative Health Care Delivery Act [210 ILCS 3].

“Private club” means a not-for profit association that has been in active and continuous existence for at least 3 years prior to January 1, 2008, whether incorporated or not, is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain, and only sells alcoholic beverages incidental to its operation. For the purposes of this definition, “private club” means an organization that is managed by a board of directors, executive committee, or similar body chosen by the members at an annual meeting, has established bylaws, a constitution, or both to govern its activities, and has been granted an exemption from the federal income tax as a club under 26 U.S.C. 501. (Section 10 of the Act)

“Private residence” means the part of a structure used as a dwelling, including, without limitation, a private home, townhouse, condominium, apartment, mobile home, vacation home, cabin, or cottage. For the purposes of this definition, a hotel, motel, inn, resort, lodge, bed and breakfast or other similar public accommodation, hospital, nursing home, long-term care facility, or assisted living or shared housing facility, or student dormitory shall not be considered a private residence. (Section 10 of the Act)

“Proprietor” means an owner, operator, manager, occupant, lessee, or other individual in control of a public place or a place of employment.

“Public place” means that portion of any building or vehicle used by and open to the public, regardless of whether the building or vehicle is owned in whole or in part by private persons or entities, the State of Illinois, or any other public entity and regardless of whether a fee is charged for admission, including a minimum

ILLINOIS REGISTER

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED RULES

distance, as set forth in Section 70 of the Act, of 15 feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where smoking is prohibited. A “public place” does not include a private residence unless the private residence is used to provide licensed child care, foster care, or other similar social service care on the premises. A “public place” includes, but is not limited to, hospitals, restaurants, retail stores, offices, commercial establishments, elevators, indoor theatres, libraries, museums, concert halls, public conveyances, educational facilities, nursing homes, auditoriums, enclosed or partially enclosed sports arenas, meeting rooms, schools, exhibition halls, convention facilities, polling places, private clubs, gaming facilities, all government owned vehicles and facilities, including buildings and vehicles owned, leased, or operated by the State or State subcontract, healthcare facilities or clinics, enclosed shopping centers, retail service establishments, financial institutions, educational facilities, ticket areas, public hearing facilities, public restrooms, waiting areas, lobbies, bars, taverns, bowling alleys, skating rinks, reception areas, churches, and no less than 75% of the sleeping quarters within a hotel, motel, resort, inn, lodge, bed and breakfast, or other similar public accommodation that are rented to guests, but excludes private residences. (Section 10 of the Act)

“Restaurant” means an eating establishment, including, but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, that gives or offers for sale food to the public guests, or employees, and a kitchen or catering facility in which food is prepared on the premises for serving elsewhere. “Restaurant” includes a bar area within the restaurant. (Section 10 of the Act)

“Retail tobacco store” means a retail establishment that derives more than 80% of its gross revenue from the sale of loose tobacco, plants, or herbs and cigars, cigarettes, pipes, and other smoking devices for burning tobacco and related smoking accessories and in which the sale of other products is merely incidental. “Retail tobacco store” does not include a tobacco department or section of a larger commercial establishment or any establishment with any type of liquor, food, or restaurant license. (Section 10 of the Act)

"Shall" means that the stated provision is mandatory.

“Shared Housing Establishment” means a facility that is licensed as a shared housing establishment under the Assisted Living and Shared Housing Act [210 ILCS 9].

ILLINOIS REGISTER

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED RULES

“Smoke” or “smoking” means the carrying, smoking, burning, inhaling or exhaling of any kind of lighted pipe, cigar, cigarette, hookah, weed, herbs, or any other lighted smoking equipment. (Section 10 of the Act)

“Smoking products and accessories means:

Smoking materials such as cigars, cigarettes, or pipe tobacco; and

Smoking-related materials such as ashtrays, lighters, humidors, pipes or cigarette cases.

“State-certified local public health department” means a local health department that is certified under the Certified Local Health Department Code (77 Ill. Adm. Code 600).

“Subacute care hospital” means a facility that is licensed as a subacute care hospital under the Alternative Health Care Delivery Act [210 ILCS 3].

“Supportive living facility” means a facility established by the Department of Human Services under Section 5-5.01a of the Public Aid Code [305 ILCS 5/5-501a].

“Supportive residence” means a facility that is licensed under the Supportive Residences Licensing Act [210 ILCS 65].

“Unit of local government” has the meaning ascribed to it in Section 1 of Article VII of the Illinois Constitution of 1970. (Section 10 of the Act)

“Weight Control Clinic” means any facility that provides services described in the Dietetic and Nutrition Services Practice Act [225 ILCS 30].

Section 975.20 Referenced Materials

- a) The following State and federal laws are referenced in this Part:
 - 1) Freedom of Information Act [5 ILCS 140]
 - 2) Hotel Operators Occupation Tax Act [35 ILCS 101]

ILLINOIS REGISTER

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED RULES

- 3) Alternative Health Care Delivery Act [210 ILCS 3]
 - 4) Ambulatory Surgical Treatment Center Act [210 ILCS 5]
 - 5) Assisted Living and Shared Housing Act [210 ILCS 9]
 - 6) Illinois Clinical Laboratory and Blood Bank Act [210 ILCS 25]
 - 7) Community Living Facilities Licensing Act [210 ILCS 35]
 - 8) Nursing Home Care Act [210 ILCS 45]
 - 9) Emergency Medical Services (EMS) Systems Act [210 ILCS 50]
 - 10) Hospice Program Licensing Act [210 ILCS 60]
 - 11) End Stage Renal Disease Facility Act [210 ILCS 62]
 - 12) Supportive Residences Licensing Act [210 ILCS 65]
 - 13) Hospital Licensing Act [210 ILCS 85]
 - 14) Community-Integrated Living Arrangement Licensure and Certification Act [210 ILCS 135]
 - 15) Child Care Act of 1969 [225 ILCS 10]
 - 16) Dietetic and Nutrition Services Practice Act [225 ILCS 30]
 - 17) Public Aid Code [305 ILCS 5]
 - 18) Mental Health and Developmental Disabilities Code [405 ILCS 5]
 - 19) Internal Revenue Code [26 USC 501]
- b) The following administrative rules are referenced in this Part:
- 1) Freedom of Information Code (2 Ill. Adm. Code 1126)

ILLINOIS REGISTER

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED RULES

- 2) Certified Local Health Department Code (77 Ill. Adm. Code 600)
- 3) Riverboat Gambling (86 Ill. Adm. Code 3000)

Section 975.30 Smoking Prohibited

- a) *No person shall smoke in a public place or in any place of employment or within 15 feet of any entrance to a public or place of employment. No person may smoke in any vehicle owned, leased, or operated by the State or a political subdivision of the State. Smoking is prohibited in indoor public places and workplaces unless specifically exempted by Section 35 of the Act and Section 975.90 of this Part. (Section 15 of the Act)*
- b) *Smoking is prohibited within a minimum distance of 15 feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where smoking is prohibited under the Act so as to ensure that tobacco smoke does not enter the area through entrances, exits, open windows, or other means. (Section 70 of the Act)*

Section 975.40 Responsibilities

- a) Individual Responsibilities
 - 1) An individual shall not smoke in an area of a public place or place of employment where smoking is prohibited by the Act and this Part.
 - 2) An individual in an area of a public place or place of employment where smoking is prohibited shall stop smoking immediately when requested to stop smoking by the proprietor of the public place or place of employment.
- b) Proprietor Responsibilities
 - 1) A proprietor shall:
 - A) Not permit smoking in a public place, a place of employment or within the distance required in Section 15 of the Act, except according to this Act and the exceptions listed in Section 35 of the

ILLINOIS REGISTER

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED RULES

Act and Section 975.90 of this Part;

- B) Not permit smoke to drift/infiltrate into a building or facility through an entrance, a window, a ventilation system, or other means;
 - C) Post signs according to Section 20 of the Act and Section 975.50 of this Part;
 - D) Remove all ashtrays from all areas where smoking is prohibited; and
 - E) Communicate that smoking is prohibited in a place of employment to:
 - i) All existing employees, and
 - ii) An applicant for employment, at the time of the application for employment.
- 2) If a building or facility that is controlled by a proprietor contains several places of employment or public places that are controlled by other proprietors:
- A) The proprietor of the entire building or facility shall comply with the requirements of subsection (b)(1) for the area controlled by the proprietor of the place of employment or public place.
 - B) The proprietor of each place of employment or public place shall comply with the requirements in subsection (b)(1) for the area controlled by the proprietor of the place of employment or public place.
- 3) If an individual in an area controlled by a proprietor is smoking in violation of the Act and this Part, the proprietor shall:
- A) Inform the individual that he or she is in violation of the Act and this Part, and

ILLINOIS REGISTER

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED RULES

- B) Request that the individual stop smoking immediately.
- c) No person shall discharge, refuse to hire, or in any manner retaliate against any individual for exercising any right, including reporting a violation, or performing any obligation under the Act and this Part.

Section 975.50 Posting of Signs and Removal of Ashtrays

- a) *“No Smoking” signs or the international “No Smoking” symbol, consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it, shall be clearly and conspicuously posted in each public place and place of employment where smoking is prohibited by the Act and this Part, by the owner, operator, manager, or other person in control of that place. (Section 20(a) of the Act)*
- b) To meet the requirements of subsection (a), a proprietor of a public place or place of employment shall post signs that:
 - 1) Are no smaller than 5 inches by 7 inches; and
 - 2) Contain the international “no smoking” symbol or the words “No Smoking”; the telephone number designated by the Department for registering complaints; the Department’s website for obtaining the complaint form; and letters, numbers and symbols of sufficient size to be clearly legible to an individual of normal vision from a distance of 5 feet.
- c) *Each public place and place of employment where smoking is prohibited by the Act and this Part shall have posted at every entrance, a conspicuous sign, in compliance with subsection (b), clearly stating that smoking is prohibited. (Section 20(b) of the Act)*
- d) *All ashtrays shall be removed from any area where smoking is prohibited by the Act by the owner, operator, manager, or other person having control of the area. (Section 20(c) of the Act) A proprietor may store ashtrays and other receptacles used for disposing of smoking materials in a location within an area where smoking is prohibited if the location has no public access and the location is used primarily for storage purposes.*

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED RULES

Section 975.60 Smoking Prohibited in Student Dormitories

Smoking is prohibited in any portion of the living quarters, including, but not limited to, sleeping rooms, dining areas, restrooms, laundry areas, lobbies, and hallways, of a building used in whole or in part as a student dormitory that is owned and operated or otherwise utilized by a public or private institution of higher education. (Section 25 of the Act) “No smoking” signs are required to be posted according to Section 975.40 of this Part.

Section 975.70 Designation of Other Non-Smoking Areas

- a) *Any employer, owner, occupant, proprietor, lessee, operator, manager, or other person in control of any public place or place of employment may designate a non-enclosed area of a public place or place of employment, including outdoor areas, as an area where smoking is also prohibited provided that such employer, owner, lessee or occupant shall conspicuously post signs prohibiting smoking in the manner described in Section 975.40 of this Part. (Section 30 of the Act)*
- b) *Smoking is prohibited within 15 feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where smoking is prohibited. (Section 70 of the Act)*

Section 975.80 Outdoor Patios

- a) A proprietor may designate an area as an outdoor patio where smoking is permitted only if the area:
 - 1) *Is 15 feet or more from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where smoking is prohibited. (Section 70 of the Act)*
 - 2) *Is a contiguous area of a place of employment or public place;*
 - 3) *Is controlled by the proprietor of the place of employment or public place;*
 - 4) *Has:*
 - A) *At least one side that consists of open space;*

ILLINOIS REGISTER

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED RULES

- B) Permeable material;
 - C) A combination of open space and permeable material; or
 - D) A combination of open space, permeable material, and a non-permeable wall;
- 5) If this area has four non-permeable walls, it shall have either no overhead covering or an overhead covering that consists of:
- A) Permeable material; or
 - B) A combination of open space and permeable material.
- b) If an outdoor patio where smoking is permitted has a doorway that provides access from the indoor/enclosed area to the patio for outdoor patio patrons and does not have a wall that prevents individuals from entering the outdoor patio, the proprietor shall:
- 1) Inform individuals that the doorway:
 - A) Is not an entrance to the indoor/enclosed area, and
 - B) Is a doorway for outdoor patio patrons; and
 - 2) Direct individuals who are not outdoor patio patrons to an entrance to the indoor/enclosed area.
- c) A proprietor may designate smoking and non-smoking sections of an outdoor patio only if the smoking section is clearly and conspicuously separated from the non-smoking section and if the smoking area is at least 15 feet away from the entrance, exit, windows that open, and ventilation intakes.
- d) If a proprietor designates an area where smoking is permitted, the proprietor shall not permit tobacco smoke to drift into areas where smoking is prohibited through entrances, windows, ventilation systems, or other means.
- e) A proprietor may designate an area where smoking is prohibited.

ILLINOIS REGISTER

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED RULES

Section 975.90 Exemptions

Smoking is allowed in the following areas:

- a) *Private residences or dwelling places, except when used as a child care, adult day care, or healthcare facility or any other home-based business open to the public. (Section 35(1) of the Act)*
- b) *Retail tobacco stores in operation prior to January 1, 2008. The retail tobacco store shall annually file with the Department by January 31st an affidavit stating the percentage of its gross income during the prior calendar year that was derived from the sale of loose tobacco, plants, or herbs and cigars, cigarettes, pipes, or other smoking devices for smoking tobacco and related smoking accessories. Any retail tobacco store that begins operation after January 1, 2008 may only qualify for an exemption if located in a freestanding structure occupied solely by the business and smoke from the business does not migrate into an enclosed area where smoking is prohibited. (Section 35(2) of the Act)*
- c) *Private and semi-private rooms in nursing homes and long-term care facilities that are occupied by one or more persons, all of whom are smokers and have requested in writing to be placed or to remain in a room where smoking is permitted and the smoke shall not infiltrate other areas of the nursing home. (Section 35(3) of the Act) In exercising this exemption, the nursing home or long-term care facility shall ensure that any rooms designated for smoking also comply with the statute and administrative rules under which the facility is licensed and the fire protection and life safety codes incorporated by reference in those rules. Nothing in this Part shall require a nursing home or long-term care facility that is smoke free to designate a smoking area within the facility.*
- d) *Hotel and motel sleeping rooms that are rented to guests and are designated as smoking rooms, provided that all smoking rooms on the same floor must be contiguous and smoke from these rooms must not infiltrate into nonsmoking rooms or other areas where smoking is prohibited. Not more than 25% of the rooms designated for use to guests in a hotel or motel may be designated as rooms where smoking is allowed. The status of rooms as smoking or nonsmoking may not be changed, except to permanently add additional nonsmoking rooms. (Section 35(4) of the Act)*

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED RULES

Section 975.100 Complaints

- a) *Any person may register a complaint with the Department, a State-certified local public health department, or a local law enforcement agency for a violation of the Act or this Part. (Section 40(b) of the Act) Complaints shall be registered with the Department by calling the following toll-free telephone number: 1-800-NO-SMOKE (Proposed) or by registering a complaint on the Department's Web site (in development) or downloading a complaint form (in development), and mailing it to the Department. A complaint registered with the Department, a State-certified local public health department, or a local law enforcement agency shall include:*
- 1) The name and address of the public place or place of employment that is the subject of the complaint (if available) and the name and address of the business owner (if available);
 - 2) The date and approximate time of the occurrence that prompted the complaint;
 - 3) A description of the occurrence that prompted the complaint; and
 - 4) Any other information relevant to the occurrence that prompted the complaint.
- b) A person who registers a complaint will be asked to provide his or her name. The Department will protect the confidentiality of the complainant and will not disclose the complainant's name unless he or she consents to the disclosure.
- c) Information about the complaint, including the date and time of the complaint, the complainant's name, the name of the public place or place of employment, and the specific allegations registered, is maintained by the Department.
- d) After the receipt of a complaint, the Department, a State-certified local public health department, or a local law enforcement agency shall investigate the complaint by:
- 1) Notifying the proprietor at the public place or place of employment of the complaint; and
 - 2) Conducting an inspection of the public place or place of employment for

ILLINOIS REGISTER

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED RULES

compliance with the Act and this Part.

- e) In determining whether a violation of the Act or this Part has occurred, the Department, State-certified local public-health agency, or local law enforcement agency shall consider, but not be limited to, the following:
 - 1) The presence of a used ashtray in an area where smoking is prohibited;
 - 2) The lack of a sign that is required under the Act and this Part or the presence of a sign that does not meet the requirements of the Act and this Part;
 - 3) The presence of smoking;
 - 4) The presence of ashes, cigarette butts or filters, or cigar stubs in an area where smoking is prohibited;
 - 5) The presence of smoke that drifts into a place of employment or public place through entrances, windows, ventilation systems, or other means; and
 - 6) The presence of smoke within 15 feet from entrances, open windows, or ventilation systems.
- f) A State-certified local public health department or local law enforcement agency shall report the results of a complaint investigation to the Department after completing the investigation.
- g) Information concerning complaints can be requested pursuant to the Freedom of Information Act [5 ILCS 140] and the Department's Freedom of Information Code (2 Ill. Adm. Code 1126).

Section 975.110 Enforcement

- a) The Department, State-certified local public health departments, and local law enforcement agencies shall enforce the provisions of the Act and this Part and may assess fines pursuant to Section 45 of the Act and Section 975.110 of this Part.

ILLINOIS REGISTER

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED RULES

- b) Any owner, manager, operator or employee of any public place or place of employment shall inform persons who are violating the Act and this Part of the requirements of the Act and this Part that are applicable to the public place or place of employment.

Section 975.120 Violations and Fines

- a) If the Department, a State-certified local public health department, or a local law enforcement agency determines that a violation of the Act or this Part has occurred, the enforcing agency will issue a notice of violation to the proprietor at the place of employment or public place. The notice of violation shall include:
 - 1) The date and time that the violation occurred;
 - 2) The duration of the violation;
 - 3) The previous violations of the Act at the place of employment or public place, including:
 - A) The type and severity of any previous violations;
 - B) The total number of previous violations; and
 - C) The length of time from the previous violation to the current violation.
- b) *A person, corporation, partnership, association or other entity who violates Section 15 of the Act and this Part shall be fined pursuant to this Section. Each day that a violation occurs is a separate violation. (Section 45 of the Act)*
- c) *A person who smokes in an area where smoking is prohibited under the Act and this Part shall be fined in an amount that is not less than \$100 and not more than \$250. (Section 45 of the Act) In determining the amount of the fine, the enforcing agency will consider the type(s) of violation committed, past violations documented, and whether payment was received from past violations, if applicable.*
- d) *A person who owns, operates, or otherwise controls a public place or place of employment that violates the Act and this Part shall be fined not less than \$250 for the first violation, not less than \$500 for the second violation within one year after the first violation, and not less than \$2,500 for each additional*

ILLINOIS REGISTER

DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED RULES

violation within one year after the first violation. (Section 45 of the Act) In determining the amount of the fine, the Department will consider the type(s) of violation(s) committed, past violations documented, and whether payment was received from previous violations, if applicable.

- e) *A fine imposed under this Section shall be allocated as follows:*
 - 1) *One half of the fine shall be distributed to the Department; and*
 - 2) *One half of the fine shall be distributed to the enforcing agency.* (Section 45 of the Act)

Section 975.130 Injunctions

The Department, a State-certified local public health department, a local law enforcement agency, or any individual personally affected by repeated violations may institute, in a circuit court, an action to enjoin violations of the Act. (Section 50 of the Act)

Section 975.140 Discrimination Prohibited

No individual may be discriminated against in any manner because of the exercise of any rights afforded by the Act. (Section 55 of the Act) No person or employer shall discharge, refuse to hire or in any manner retaliate against an employee, applicant for employment or customer because that employee, applicant or customer exercises any rights afforded by the Act or reports or attempts to prosecute a violation of the Act or this Part.

Section 975.150 Home Rule and Other Regulation

- a) *Any home rule unit of local government, any non-home rule municipality, or any non-home rule county within the unincorporated territory of the county may regulate smoking in public places, but that regulation must be no less restrictive than the Act and this Part.*
- b) *In addition to any regulation authorized under subsection (a) or authorized under home rule powers, any home rule unit of local government, any non-home rule municipality, or any non-home rule county within the unincorporated territory of the county may regulate smoking in any enclosed indoor area used by the public or serving as a place of work if the area does not fall within the definition of a “public place” under the Act and this Part.* (Section 65 of the Act)