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DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED RULES

- 1) Heading of the Part: Smoke Free Illinois Code
- 2) Code Citation: 77 Ill. Adm. Code 949
- 3) 

<u>Section Numbers:</u>	<u>Proposed Action:</u>
975.10	New Section
975.20	New Section
975.30	New Section
975.40	New Section
975.50	New Section
- 4) Statutory Authority: Implementing and authorized by the Smoke Free Illinois Act [410 ILCS 82]
- 5) A Complete Description of the Subjects and Issues Involved: These rules implement the Smoke Free Illinois Act, Public Act 95-0017, which authorizes the Illinois Department of Public Health to enforce the provisions of the Act and to assess fines for violation of the Act. This rulemaking focuses specifically on clarification that smoking is prohibited in a restaurant, bar and any area where food, beverages, or both, are prepared or served by employees, including outdoor areas such as patios, beer gardens, decks, or rooftops or concession areas. Additionally, the proposed rule includes provisions regarding filing of complaints and enforcement provisions.

The economic effect of this proposed rulemaking is unknown. Therefore, the Department requests any information that would assist in calculating this effect.

The Department anticipates adoption of this rulemaking approximately six to nine months after publication of the Notice in the *Illinois Register*.

- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? No

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- 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., 5<sup>th</sup> floor  
Springfield, Illinois 62761

(217) 782-2043  
e-mail: [dph.rules@illinois.gov](mailto:dph.rules@illinois.gov)

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: 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.
- B) Reporting, bookkeeping or other procedures required for compliance: None
- C) Types of professional skills necessary for compliance: None
- 14) Regulatory Agenda on which this rulemaking was summarized:

This rulemaking was not contemplated by the Department at the time that the Regulatory Agenda was prepared.

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

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

PART 949  
SMOKE-FREE ILLINOIS CODE

Section

- 975.10 Definitions
- 975.20 Referenced Materials
- 975.30 Smoking Prohibited
- 975.40 Complaints
- 975.50 Enforcement

AUTHORITY: Implementing and authorized by Smoke Free Illinois Act [410 ILCS 82]

SOURCE: Adopted at 38 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

**Section 975.10 Definitions**

“Act” means the Smoke Free Illinois Act.

“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, sports bars, adult entertainment facilities, and cabarets. (Section 10 of the Act)

“Clear and conspicuous” means that signage is designed so that letters, numbers and symbols are of sufficient size to be clearly legible and visible to an individual who is not visually impaired from a distance of 10 feet.

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

“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.

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*“Employee” means a person who is employed by an employer in consideration for direct or indirect monetary wages or profits, including but not limited to, an independent contractor, 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)*

*“Enforcing agency” means State-certified local public health departments, and local law enforcement agencies.*

*“Local law enforcement agency” means the police department of a city, town, village or other incorporated area, any sheriff’s department, county states’ attorney or officer for special jurisdictions that provide police services for defined entities or areas, including, but not limited to, parks, universities, schools, or transportation resources such as airports, and subways.*

*“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 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, self-service outdoor area, 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)*

*“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 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*

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*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, places of worship, 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)

“Self-Service Outdoor Area” means an area or location where no employees are present and customers may serve themselves food or beverages or both and clean up the area after consuming their food and beverages. This area is not a place of employment because employees do not prepare or serve food or beverages in this area, and are not required to enter, leave, or pass through this area during the course of employment.

“State-certified local public health department” means a local health department that is certified under the Certified Local Health Department Code.

*“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)

**Section 975.20 Referenced Materials**

- a) The following State and federal laws are referenced in this Part:
  - 1) Smoke Free Illinois Act [410 ILCS 82]

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- 2) Freedom of Information Act [5 ILCS 140]
- 3) Illinois Administrative Procedures Act [5 ILCS 100]
- b) The following administrative rules are referenced in this Part:
  - 1) Freedom of Information Code (2 Ill. Adm. Code 1127)
  - 2) Certified Local Health Department Code (77 Ill. Adm. Code 600)
  - 3) Rules of Practice and Procedure in Administrative Hearings (77 Ill. Adm. Code 100)

**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.* (Section 15 of the Act)
  - 1) Smoking is prohibited in a restaurant, bar and any area where food, beverages, or both, are prepared or served by employees, including outdoor areas such as patios, beer gardens, decks, or rooftops or concession areas.
    - A) Smoking may be permitted in a self-service outdoor area where employees do not prepare or serve food or beverages, and are not required to enter, leave, or pass through during the course of employment. The self-service outdoor area shall be at least 15 feet away from entrances, exits, windows or ventilation and shall be designated as a “self-service outdoor area where smoking is permitted” using clear and conspicuous signage.
    - B) Smoke shall not be allowed to drift-through entrances, windows, ventilation systems or by other means into indoor and outdoor areas where smoking is prohibited. The employer shall ensure compliance with Section 15 of the Act and this Part.
  - 2) Smoking is prohibited in all vehicles that serve as a place of employment as defined in the Act.

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- 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)*
- c) *An owner or employer shall reasonably assure that smoking is prohibited in indoor public places, places of employment, and workplaces unless specifically exempted by Section 35 of the Act (Section 15 of the Act)*
- d) *No person may smoke in any vehicle owned, leased, or operated by the State or a political subdivision of the State. (Section 15 of the Act)*

**Section 975.40 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: 1-866-973-4646 or by registering a complaint or downloading a complaint form from the Department's website [www.idph.state.il.us](http://www.idph.state.il.us). 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) The Department will protect the confidentiality of the complainant and will not disclose the complainant's name, including pursuant to any Freedom of Information Act request, unless he or she consents to the disclosure.
- c) Information about the complaint, including the date and time of the complaint, the

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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, 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 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 department, or local law enforcement agency shall consider, but not be limited to, the following:
  - 1) The presence of a used ashtray or container with ashes or cigarette butts in an area where smoking is prohibited;
  - 2) The lack of a sign that is required under 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; and
  - 7) The presence of employees in self-service outdoor areas.
- f) Information concerning complaints can be requested pursuant to the Freedom of Information Act and the Department's Freedom of Information Code.

**Section 975.50 Enforcement**



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- 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 fines may be assessed pursuant to Section 45 of the Act and this Part.
- b) Any employer, owner, manager, operator or employee of any public place or place of employment shall immediately 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.
- c) Upon observing or being notified of any violation of the Act or this Part, an employer, owner, manager, operator or employee shall immediately ask persons to cease smoking in prohibited areas. If smoking does not immediately cease, the employer, owner, manager, operator or employee shall immediately notify local law enforcement.
- d) In accordance with Section 40(c) of the Act, any person or entity receiving a citation or a notice of violation of the Act may request an administrative hearing, provided that the request is in writing and is delivered to the enforcing agency identified on the citation or notice of violation within 30 days after the person or entity receives the citation or notice of violation. *Upon receipt of a request for hearing to contest the imposition of a fine imposed by a citation, the enforcing agency shall immediately forward a copy of the citation and notice of the request for hearing to the Department for initiation of a hearing conducted in accordance with the Illinois Administrative Procedure Act and Practice and Procedure in Administrative Hearings except that in case of a conflict between the Illinois Administrative Procedure Act and the Act, the provisions of the Act shall control. Parties to the hearing shall be the enforcing agency and the violator.* (Section 40(d) of the Act)