

(H.B. 2073)

(No. 66)

(Approved March 2, 2006)

AN ACT

To amend Sections 2, 3, 5, 6, 9 and 11 of Act No. 40 of August 3, 1993, as amended, known as the “Act to Regulate Smoking in Certain Public Places,” in order to include a total prohibition on smoking in specific areas.

STATEMENT OF MOTIVES

The purpose of Act No. 40 of August 3, 1993, as amended, known as the “Act to Regulate Smoking in Certain Public and Private Places”, is to protect our citizens and employees from the so-called second hand smoke.

This Act seeks to protect those who are known as “passive smokers.” As a general rule, we spend most of our time in enclosed environments (the home, at work, in government agencies, theaters, etc.) It is highly disquieting to think that cigarette smoke agents, which cause pulmonary disease and cancer, are polluting the environments in which we live. This happens every time someone lights a cigarette in said environments.

Concerning the harmful effects to which passive smokers are exposed, we may mention that tobacco smoke is undoubtedly the most important pollutant of enclosed environments of our times. Tobacco smoke contains over 4,000 chemical substances, of which more than 43 cause cancer (carcinogens) in humans and which have been classified by the U.S.

Environmental Protection Agency as “type A carcinogens,” referring to those to which there is no safe level of exposure.

The Environmental Tobacco Smoke (ETS) refers to the smoke produced by cigarettes, pipes or cigars, besides the smoke exhaled from the lungs of smokers. Exposure to said smoke is known as involuntary or passive smoking.

Passive smoking is a major risk factor for contracting disease and causing death. It is the third most preventable cause of death after active smoking and alcoholism. At present, tobacco consumption is one of the main preventable causes of disease, disability and premature death in Puerto Rico. Every year, over 3,600 persons die on our Island due to this practice and half loses a median of twenty (20) years of life. However, it must be pointed out that according to the study Trends in Chronic Conditions 1966-1996 of the Department of Health, 25.3% of the population suffers from chronic respiratory conditions and 27.2% suffers from chronic circulatory conditions. Both conditions are greatly affected by exposure to Environmental Tobacco Smoke.

This bill intends to broaden the regulations contained in the aforementioned Act No. 40 so as to extend additional protection to the so-called passive smokers. The amendments proposed include the total prohibition on smoking in specific places where the risk is greater for passive smokers and in high risk places for the safety of those persons who frequent the same.

This type of measure has been approved in other jurisdictions and it has not affected business practices, has not propitiated the closing of businesses, nor diminished tourism as a consequence of the same even when diverse organizations that benefit from the sale of tobacco products have

promoted such false claims. On the contrary, approval of this measure is necessary for guaranteeing the health of nonsmokers and discouraging our children and teenagers from following such a detestable practice while at the same time creating new recreational spaces for those segments of the population that find themselves deprived of going to places where smoking was permitted.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.—Section 2 of Act No. 40 of August 3, 1993, as amended, is hereby amended to read as follows:

“Section 2.—...

- (a) ...
- (b) ...
- (c) ...
- (d) ...
- (e) ...
- (f) ...
- (g)
- (h) ...
- (i) ...
- (j) Restaurants, cafeterias, coffee shops, establishments where food is sold – means a business devoted to the sale of food to be consumed in enclosed premises, including those that offer their facilities for celebrating children’s birthday parties and other children’s activities.
- (k) ...
- (l) ...
- (m) ...

- (n) Health services centers, child care centers, mental health centers and institutions and for the elderly – means all those public or private institutions, as well as private residences with licenses issued by the Commonwealth of Puerto Rico devoted to providing health and child care services and services for the elderly, or facilities used to provide health care during the time they are being operated or when employees are at work there.
- (o) Bars, pubs, discotheques, and liquor stores – businesses devoted to the sale of alcoholic beverages or liquor and the sale of food to be consumed in enclosed premises, regardless of any other activities conducted in said premises, places or businesses.
- (p) Convention centers – property used by persons or entities for the following purposes and events: congresses, conventions, conferences, product fairs, exhibits, meetings and other business and entertainment events and public, social, cultural, historic and scientific meetings. The term convention center shall include all facilities, furnishings, installations and equipment needed for or incidental to the same, including but not limited to meeting rooms, dining areas, kitchens, banquet halls, reception and registration areas, show rooms, truck cargo areas (including access to such areas), access areas, common areas, lobbies, offices, storage rooms, restaurants and other facilities for the sale of food, beverages, publications, souvenirs, novelties, office supplies and other convenience items, as well as those areas and facilities related thereto.
- (q) Shopping centers and businesses – private commercial properties with parking areas, cargo and delivery service areas

where a group of commercial establishments or offices are located devoted to the sale of merchandise, foodstuffs, products, goods, valuables, services and entertainment frequented by a high volume of visitors, consumers, suppliers, employers and tenants.

- (r) Work setting – any interior, exterior or underground premise and the rural or urban land belonging to the latter, including any common multiple housing areas, residential buildings or other structures where any industry, trade, service or business is temporarily or permanently conducted or any process or operation directly or indirectly related to any industry, trade, service or business is carried out and where any person derives any direct or indirect earnings or benefit, but not to include the lots of private residences or dwellings where persons are employed in domestic service, nor to include those places where the work is done solely by the owner or tenant of the property without the help of employees.
- (s) Residence – private place where a person has an expectancy of privacy.”

Section 2.—Section 3 of Act No. 40 of August 3, 1993, as amended, is hereby amended to read as follows:

“Section 3.—Smoking is prohibited at all times in the following places:

- (a) Public buildings, departments, agencies, public instrumentalities and public corporations of the Commonwealth of Puerto Rico,
- (b) ...

- (c) Elevators for public use for the transportation of passengers and cargo in public and private buildings,
- (d) ...
- (e) ...
- (f) Public transportation vehicles, official vehicles and public or private ambulances,
- (g) Restaurants, cafeterias, coffee shops, bakeries, establishments devoted to the sale of food and fast food establishments,
- (h) ...
- (i) ...
- (j) ...
- (k) ...
- (l) ...
- (m) Public or private child care centers,
- (n) ...
- (o) Elderly care centers,
- (p) Bars, pubs, discotheques, and liquor stores,
- (q) Casinos,
- (r) Business establishments and convention centers,
- (s) Shopping centers,
- (t) Any work setting in where there are one (1) or more employees. This prohibition shall not prevent employees or other persons from being able to smoke outdoors and outside the work space,
- (u) Private transportation vehicles when there is a minor in a car seat present or when there is a child under the age of thirteen (13).”

Section 3.—Section 5 of Act No. 40 of August 3, 1993, as amended, is hereby amended to read as follows:

“Section 5.—

The prohibitions established herein shall not apply to those business establishments exclusively engaged in the sale of tobacco and its by-products, nor to theater or film productions and presentations in which actors smoke as part of their character. Likewise, the prohibitions established in this Act shall not apply in people’s homes, places in which each person shall be free to use tobacco or its by-products without being subject to this Act, except for the provisions of Section 2, subsection (r) of this Act; in the case of hotel rooms, the Tourism Company shall establish regulations to determine which rules shall apply to rooms set aside for smokers.”

Section 4.—Section 6 of Act No. 40 of August 3, 1993, is hereby amended to read as follows:

“Section 6.—Penal Institutions and Others.—

The authorities in control of any penal institution or addiction treatment center shall adopt an institutional policy to regulate smoking in its facilities, in order for the health of nonsmoking inmates not to be affected.”

Section 5.—Section 7 of Act No. 40 of August 3, 1993, is hereby amended to read as follows:

“Section 7.—The Secretary of Health shall, within ninety (90) days following the date of approval of this Act, adopt the necessary rules and regulations in order to meet the purposes of this Chapter, including the regulation of no smoking signs. Likewise, he/she shall periodically review said rules and regulations, in order for these to conform to any amendment made to this Act.”

Section 6.—Section 9 of Act No. 40 of August 3, 1993, is hereby amended to read as follows:

“Section 9.—In case of a violation of the provisions of this Act and its regulations, the Secretary of Health may impose administrative fines to the directing authorities of up to the sum of two hundred fifty (250) dollars. These penalties shall apply to both the persons smoking in said areas and the owners or operators of the same. In the case of subsequent violations, he/she may impose fines of up to five hundred (500) dollars for a second violation and of up to two thousand (2,000) dollars for subsequent violations. The administrative fines shall be paid by certified check or money order payable to the Secretary of the Treasury. The amounts collected hereby shall be deposited into the Tobacco Prevention and Control Program, attached to the Department of Health, so that it may have the resources needed to provide citizens with effective smoking prevention and quitting services.

Any person who violates subsections (k) and (l) of Section 3 of this Act shall be guilty of a misdemeanor and sanctioned pursuant to the provisions of the Penal Code.

The Puerto Rico Police is hereby empowered to intervene with persons who violate this Act.”

Section 7.—Section 11 of Act No. 40 of August 3, 1993, is hereby amended to read as follows:

“Section 11.—None of the provisions of this Act shall restrict, impair, limit or affect the application of other applicable legal provisions in effect. The provisions of this Act shall not prevent municipalities and other public or private entities from adopting in their jurisdictions and properties stricter measures than those provided herein.”

Section 8.—If any clause, paragraph, section, or portion of this Act were to be found null or unconstitutional by a court with competent jurisdiction, such a ruling or resolution delivered to that effect shall not invalidate the remaining provisions of this Act.

Section 9.—This Act shall take effect one (1) year from its date of approval, and within said term, the Tourism Company and the Corrections Administration shall approve Regulations on penal institutions and hotel rooms, respectively.

CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 66 (H.B. 2073) of the 3rd Session of the 15th Legislature of Puerto Rico:

AN ACT to amend Sections 2, 3, 5, 6, 9 and 11 of Act No. 40 of August 3, 1993, as amended, known as the “Act to Regulate Smoking in Certain Public Places,” in order to include a total prohibition on smoking in specific areas,

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, today 12th of April of 2006.

Francisco J. Domenech
Director