

Regulatory Analysis Form

(Completed by Promulgating Agency)

(All Comments submitted on this regulation will appear on IRRC's website)



IRRC

Independent Regulatory Review Commission

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(1) Agency:

Department of State, Bureau of Professional and Occupational Affairs

(2) Agency Number: 16 *A*

Identification Number: 16-46

IRRC Number: *2870*

(3) PA Code Cite: 49 Pa. Code §§ 43b.4, 43b.5, 43b.6, 43b.7, 43b.8 and 43b.9

(4) Short Title:

Schedule of Civil Penalties for Violations of the Clean Indoor Air Act

(5) Agency Contacts (List Telephone Number and Email Address):

Primary Contact: Cynthia Montgomery, Regulatory Counsel, Department of State, P.O. Box 2649, Harrisburg, PA 17105-2649 (phone 717-783-7200) (fax 787-0251) cymontgome@pa.gov.

Secondary Contact: Thomas A. Blackburn, Regulatory Unit Counsel, Department of State, P.O. Box 2649, Harrisburg, PA 17105-2649 (phone 717-783-7200) (fax 787-0251) tblackburn@pa.gov.

(6) Type of Rulemaking (check applicable box):

Proposed Regulation

Final Regulation

Final Omitted Regulation

Emergency Certification Regulation;

Certification by the Governor

Certification by the Attorney General

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The Commissioner is amending the existing schedules of civil penalties for six of the boards/commissions at §§ 43b.4 – 43b.9 to establish civil penalties for the three violations set forth in section 6 of the Clean Indoor Air Act (35 P.S. § 637.6): failure to post a required sign; permitting smoking where smoking is prohibited; and smoking in a public facility regulated by the board/commission where smoking is prohibited by the Clean Indoor Air Act.

(8) State the statutory authority for the regulation. Include specific statutory citation.

The Clean Indoor Air Act, act of June 13, 2008 (P.L. 182, No. 27), 35 P.S. §§ 637.1 – 637.11, which became effective on September 11, 2008, prohibits smoking in public places. The Act of July 2, 1993 (P.L. 345, No. 48) (Act 48) authorizes the Commissioner of Professional and Occupational Affairs, after consultation with the licensing boards and commission, to adopt a schedule of civil penalties for violations of the respective acts or regulations relating to the conduct or operation of a business or facility licensed by such licensing board or commission.

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

The regulation is not mandated by any federal or state law or court order or federal regulation.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The Clean Indoor Air Act prohibits smoking in public places. The proposed rulemaking will allow the efficient enforcement of the provisions of the Clean Indoor Air Act at facilities licensed and inspected by the boards/commissions within the Bureau of Professional and Occupational Affairs. The public would benefit because resources used to prosecute violations of the Clean Indoor Air Act could be used to otherwise promote public health and safety. Licensees would benefit from the use of civil penalty schedules because violations would be resolved more quickly and for less cost (with licensees retaining their right to appeal the imposition of penalties).

(11) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

No scientific data, studies or references are being used to justify this regulation.

(12) Describe who and how many people will be adversely affected by the regulation. How are they affected?

No one will be adversely affected by the regulation. The Clean Indoor Air Act will be enforced with or without these regulations. The proposed regulation will simply make the enforcement more efficient and less costly to both the boards/commissions and the licensed facilities who are found to be in violation of the Clean Indoor Air Act.

(13) List the persons, groups or entities that will be required to comply with the regulation. Approximate the number of people who will be required to comply.

All licensed facilities regulated by the State Board of Barber Examiners, State Board of Cosmetology, State Board of Funeral Directors, State Board of Pharmacy, State Real Estate Commission, and State Board of Vehicle Manufacturers, Dealers and Salespersons will be subject to the provisions of the regulations.

(14) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

The proposed regulation would impose no additional costs on the regulated community, because licensees who violate the Clean Indoor Air Act are already subject to the imposition of administrative civil penalties through the more formal administrative process. The use of civil penalty schedules and the summary citation process allows violations to be prosecuted more efficiently. Therefore, licensees who are charged with a violation of the Clean Indoor Air Act may realize a savings in the form of time and reduced legal fees because of the use of the less formal citation process.

(15) Provide a specific estimate of the costs and/or savings to **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

Not applicable.

(16) Provide a specific estimate of the costs and/or savings to **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

The costs to state government are minimal. The boards/commissions are generally self-funding, with their activities paid for by fees, fines and civil penalties. If the revenue generated by such fees is not sufficient to cover expenditures, the board or commission must increase its fees. Thus, costs associated with enforcing the Clean Indoor Air Act would generally be borne by the relevant boards and commission, and ultimately by the licensees. The Commissioner believes that the civil penalties will cover any increased costs associated with enforcement of the Clean Indoor Air Act, such as those required to revise inspection forms and citation forms used by agents of the Bureau. There are savings associated with utilizing the summary citation process for violations. The Department's Bureau of Finance and Operations estimates the average cost to process a citation to be less than \$200, while costs associated with formal prosecution can be in the thousands of dollars. Since the law was enacted, inspectors have been engaged in a campaign to educate licensees about their responsibilities under the Clean Indoor Air Act. Very few complaints have been received alleging violations of the Clean Indoor Air Act (less than 5) since it was enacted. It is anticipated that most of the citations will result from routine inspections where violations are observed firsthand by regulatory enforcement inspectors. Due to a lack of historical data, it is impossible to estimate the costs and/or savings to the Boards.

(17) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings	N/A	N/A	N/A	N/A	N/A	N/A
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs	N/A	N/A	N/A	N/A	N/A	N/A
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses	N/A	N/A	N/A	N/A	N/A	N/A

(17a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3 2009-2010 actual	FY -2 2010-2011 actual	FY -1 2011-2012 projected	Current FY 2012-2013 budgeted
State Board of Barber Exrs.	\$613,033.68	\$674,412.84	\$530,000.00	\$640,000.00
State Board of Cosmetology	\$3,853,384.45	\$3,941,630.49	\$3,400,000.00	\$3,900,000.00
State Board of Funeral Dirs.	\$926,241.44	\$887,470.48	\$800,000.00	\$1,191,000.00
State Board of Pharmacy	\$1,742,656.21	\$1,695,150.32	\$1,750,000.00	\$2,226,000.00

State Real Estate Commn.	\$3,370,591.08	\$3,487,219.57	\$3,609,000.00	\$3,654,000.00
State Board of Vehicle Manufacturers, Dealers and Salespersons	\$2,141,176.67	\$3,458,694.47	\$2,433,500.00	\$2,600,000.00

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

The minimal costs to state government would be outweighed by the increased efficiency in resolving disciplinary matters through citations rather than full formal disciplinary actions.

(19) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

A representative of the Commissioner presented the proposed rulemaking to each of the six board/commissions at a regularly scheduled public meeting at which interested parties and stakeholders were apprised of the proposal and invited to comment. No other input from the public was solicited prior to the publication of proposed rulemaking on September 11, 2010. No public comments were received.

(20) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

The State Real Estate Commission considered a warning for first offenses, however it was determined that the Clean Indoor Air Act did not appear to authorize anything other than monetary civil penalties. Therefore, to be consistent with the other five boards, the Commission decided to approve the civil penalty schedule as presented. Because the Clean Indoor Air Act provides for a "maximum" penalty of \$250 for first offenses, \$500 for second offenses and \$1,000 for third offenses, smaller civil penalties were considered, but rejected because of the limited deterrent effect of nominal penalties. However, the Bureau has undertaken an initial period of education to apprise licensees of their duties under the Clean Indoor Air Act; followed by compliance efforts during which licensed facilities found to be in violation are issued a warning and order of compliance. Once the final rulemaking is published, all violations will result in citations.

(21) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

There are no applicable federal standards.

(22) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

The civil penalty schedules will not put Pennsylvania at a competitive disadvantage. Licensees who violated the Clean Indoor Air Act would face enforcement proceedings even in the absence of Act 48 citations or civil penalty schedules. Act 48 citations and the civil penalty schedules merely streamline the process by which administrative action is taken. A survey of the surrounding states indicates that Ohio, Maryland, New York, New Jersey and Delaware all prohibit smoking in public places. (In West Virginia, there is no statewide ban on smoking, rather each individual county health department regulates smoking in public places.) In Ohio, the schedule of fines provide for a warning letter for the first violation; \$100 for second violation; \$500 for third violation; \$1,000 for fourth violation and \$2,500 for fifth and subsequent violations. See Ohio Admin. Code § 3701-52-09. In Maryland, the schedule of penalties includes a warning for first violations; \$100 for second violations; \$500 for third violations and \$1,000 for each subsequent violation. See COMAR 10.19.04.10. In New York, the penalty for violation of the Clean Indoor Air Act can be as much as \$2,000. See McKinney's Public Health Law §§ 1399-v. In New Jersey, violations of the Smoke Free Air Act result in a fine of not less than \$250 for the first offense; \$500 for the second offense; and \$1,000 for each subsequent violation. See NJSA 26:3D-62. In Delaware, a violation of the Clean Indoor Air Act results in an administrative penalty of \$100 for a first violation and \$250 for each subsequent violation. See Title 16 of the Delaware Code, § 2907.

(23) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No.

(24) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

The amendments to the civil penalty schedules may lead to the issuance of additional Act 48 citations. This increased citation activity would have to be tracked and reported annually by each board to the General Assembly, as required by Act 48.

(25) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

No particular needs of any affected group have been identified.

(26) Include a schedule for review of the regulation including:

- | | |
|---|-------------------------|
| A. The date by which the agency must receive public comments: | 10/11/2010 |
| B. The date or dates on which public meetings or hearings will be held: | N/A |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | Fall 2012 |
| D. The expected effective date of the final-form regulation: | upon publication |
| E. The date by which compliance with the final-form regulation will be required: | upon publication |
| F. The date by which required permits, licenses or other approvals must be obtained: | N/A |

(27) Provide the schedule for continual review of the regulation.

The boards and commissions continually monitor the effectiveness of the civil penalty schedules on at least an annual basis in the course of their ongoing oversight of disciplinary matters.

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FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

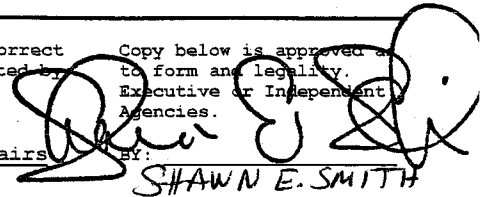
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Department of State
Bureau of Professional and Occupational Affairs
(AGENCY)



BY: _____
(DEPUTY ATTORNEY GENERAL)

DOCUMENT/FISCAL NOTE NO. 16-46

OCT 02 2012

DATE OF ADOPTION: _____

DATE OF APPROVAL

DATE OF APPROVAL

BY: Katie True
Katie True

(Deputy General Counsel
~~Chief Counsel~~
~~Independent Agency~~
Strike inapplicable title)

TITLE: Commissioner
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

- Check if applicable
Copy not approved.
Objections attached.
- Check if applicable. No Attorney
General approval or
objection within 30 day
after submission.

FINAL RULEMAKING
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
49 PA. CODE Chapter 43b.

SCHEDULES OF CIVIL PENALTIES FOR VIOLATIONS OF THE
CLEAN INDOOR AIR ACT

The Commissioner of Professional and Occupational Affairs (Commissioner) hereby amends §§ 43b.4, 43b.5, 43b.6, 43b.7, 43b.8 and 43b.9 to read as set forth in Annex A.

Effective date

The amendments are effective upon publication of final-form rulemaking in the *Pennsylvania Bulletin*.

Statutory authority

The Clean Indoor Air Act (act) (35 P.S. §§ 637.1 – 637.11), which became effective on September 11, 2008, prohibits smoking in public places. Although the Department of Health has primary enforcement authority under the act, section 5(b)(1)(ii) of the act (35 P.S. § 637.5(b)(1)(ii)) provides that if a public place is subject to licensure by another agency, the Department of Health will refer the complaint to the appropriate licensing agency for investigation and enforcement. Six of the boards or commissions under the Bureau of Professional and Occupational Affairs license and routinely inspect “public places” as defined in section 2 of the Clean Indoor Air Act (35 P.S. § 637.2): the State Board of Barber Examiners; the State Board of Cosmetology; the State Board of Funeral Directors; the State Board of Pharmacy; the State Real Estate Commission; and the State Board of Vehicle Manufacturers, Dealers and Salespersons. Therefore, these six boards/ commissions are responsible for the enforcement of the Clean Indoor Air Act in licensed facilities under their jurisdiction.

The act of July 2, 1993 (P.L. 345, No. 48) (Act 48) authorizes the Commissioner, after consultation with the licensing boards and commissions, to adopt a schedule of civil penalties for violations of their respective acts or regulations relating to the conduct or operation of a business or facility licensed by the licensing boards or commissions. Therefore, the Commissioner is proposing to amend the existing schedules of civil penalties to add civil penalties for violations of the provisions of the act. Each of the boards/commissions approved the amendments to the civil penalty schedule at a regularly scheduled public meeting.

Background and purpose

Adoption of a schedule of civil penalties for violations of the Clean Indoor Air Act at licensed facilities will permit duly authorized agents of the Bureau to issue citations for these violations. Citations streamline the disciplinary process by eliminating the need for formal orders to show cause, answers, adjudications and orders, and consent agreements. At the same time, licensees who receive a citation retain their due process right to a hearing prior to the imposition of discipline. Section 6(a) of the act (35 P.S. § 637.6) identifies three violations that are subject to civil penalties: failure to post a sign as required under section 4 of the act (35 P.S. § 637.4); permitting smoking in a public

place where smoking is prohibited; and smoking in a public place where smoking is prohibited. The Commissioner is amending the existing schedules of civil penalties for each of these six boards/commissions at §§ 43b.4 – 43b.9 to establish a civil penalty schedule for the three violations in section 6(a) of the act. Section 6(c) of the act sets forth the administrative penalties for violations of the act: not to exceed \$250 for first violations; not to exceed \$500 for second violations (defined as those occurring within 1 year of the first violation); and not to exceed \$1,000 for third violations (defined as those occurring within 1 year of the second violation). The Commissioner is therefore adopting civil penalties of \$250 for first offenses, \$500 for second offenses and \$1,000 for third offenses. The act is silent as to subsequent violations, however Act 48 limits the maximum civil penalty that may be imposed by citation to \$1,000. Therefore the civil penalty for all subsequent violations will be \$1,000.

Summary of Comments and the Commissioner's Response

Notice of proposed rulemaking was published on September 11, 2010, at 40 Pa.B. 5175), followed by a 30-day public comment period. No comments were received from the public. The House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee did not submit comments on the proposed rulemaking. On November 12, 2010, the Commissioner received a letter from the Independent Regulatory Review Commission indicating that they had no objections, comments or recommendations to offer on the proposed rulemaking. Therefore, the Commissioner is now promulgating the schedules of civil penalties as proposed without amendment.

Fiscal Impact and Paperwork Requirements

The proposed rulemaking would have no adverse fiscal impact on the Commonwealth or its political subdivisions, and would reduce the paperwork requirements of both the Commonwealth and the regulated community by eliminating the need for orders to show cause, answers, consent agreements and adjudications/orders for violations of the Clean Indoor Air Act.

Sunset Date

Professional licensure statutes require each board and commission to be self-supporting; therefore, the Commissioner and the boards and commissions continually monitor the cost effectiveness of regulations affecting their operations. As a result, no sunset date has been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), the Commissioner submitted a copy of the notice of proposed rulemaking, published at 40 Pa.B. 5175, on September 11, 2010, to the Independent Regulatory Review Commission (IRRC), the Senate Consumer Protection and Professional Licensure Committee

(SCP/PLC) and the House Professional Licensure Committee (HPLC) for review and comment. No comments were received.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), this final-form regulation was approved by the HPLC on _____, 2012; and deemed approved by the SCP/PLC on _____, 2012. Under section 5.1(g) of the Regulatory Review Act (71 P.S. § 745.5a(g)), on _____, 2012, the final-form regulation was deemed approved by IRRC.

Contact Person

Further information may be obtained by contacting Cynthia Montgomery, Regulatory Counsel, Department of State, Bureau of Professional and Occupational Affairs, P.O. Box 2649, Harrisburg, PA 17105-2649.

Findings

The Commissioner of Professional and Occupational Affairs finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and no comments were received.

(4) This final-form rulemaking is necessary and appropriate for administering and enforcing the authorizing act identified this Preamble.

Order

The Commissioner, acting under the authority of the act of July 2, 1993 (P.L. 345, No. 48) (Act 48), orders that:

(a) The regulations of the Commissioner, 49 Pa. Code Chapter 43b, §§ 43b.4, 43b.5, 43b.6, 43b.7, 43b.8 and 43b.9, are amended to read as set forth in Annex A.

(b) The Commissioner shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General as required by law.

(c) The Commissioner shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

- (d) This order shall take effect on publication in the *Pennsylvania Bulletin*.

Katie True,
Commissioner

ANNEX A

PENNSYLVANIA ADMINISTRATIVE CODE
TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS
PART I. DEPARTMENT OF STATE
Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS
CHAPTER 43b. COMMISSIONER OF PROFESSIONAL AND OCCUPATIONAL
AFFAIRS

SCHEDULE OF CIVIL PENALTIES, GUIDELINES FOR IMPOSITION OF CIVIL
PENALTIES AND PROCEDURES FOR APPEAL

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§ 43b.4. Schedule of civil penalties – barbers and barber shops.

STATE BOARD OF BARBER EXAMINERS

* * * * *

Violation under 35 P.S.	Title/Description	Civil Penalty
<u>Section 637.6(a)(1)</u>	<u>Failure of licensed barber shop or school to post a sign as required under section 4 of the Clean Indoor Air Act (35 P.S. § 637.4)</u>	<u>1st offense - \$250</u>
		<u>2nd offense (within 1 year of</u>
		<u>1st offense) - \$500</u>
		<u>3rd offense (within 1 year of</u>
		<u>2nd offense) - \$1,000</u>
	<u>Subsequent offenses (within</u>	
	<u>1 year of previous offense) -</u>	
		<u>\$1,000</u>

Section 637.6(a)(2) Barber shop permitting smoking in the barber shop or barber school permitting smoking in the barber school in violation of the Clean Indoor Air Act (35 P.S. §§ 637.1-637.11) 1st offense - \$250
2nd offense (within 1 year of 1st offense) - \$500
3rd offense (within 1 year of 2nd offense) - \$1,000
Subsequent offenses (within 1 year of previous offense) - \$1,000

Section 637.6(a)(3) Licensee of the Board smoking in a barber shop or in a barber school in violation of the Clean Indoor Air Act 1st offense - \$250
2nd offense (within 1 year of 1st offense) - \$500
3rd offense (within 1 year of 2nd offense) - \$1,000
Subsequent offenses (within 1 year of previous offense) - \$1,000

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§ 43b.5. Schedule of civil penalties – cosmetologists, [manicurists, cosmeticians, shops] nail technicians, estheticians, natural hair braiders, salons.

STATE BOARD OF COSMETOLOGY

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Violation under 35 P.S.	Title/Description	Civil Penalty
<u>Section § 637.6(a)(1)</u>	<u>Failure of licensed cosmetology salon, limited practice salon or cosmetology school to post a sign as required under section 4 of the Clean Indoor Air Act (35 P.S. § 637.4)</u>	<u>1st offense - \$250</u> <u>2nd offense (within 1 year of 1st offense) - \$500</u> <u>3rd offense (within 1 year of 2nd offense) - \$1,000</u> <u>Subsequent offenses (within 1 year of previous offense) - \$1,000</u>
<u>Section 637.6(a)(2)</u>	<u>Licensed cosmetology or limited practice salon permitting smoking in the salon or licensed cosmetology school permitting smoking in the school in violation of the Clean Indoor Air Act (35 P.S. §§ 637.1 – 637.11)</u>	<u>1st offense - \$250</u> <u>2nd offense (within 1 year of 1st offense) - \$500</u> <u>3rd offense (within 1 year of 2nd offense) - \$1,000</u> <u>Subsequent offenses (within 1 year of previous offense) - \$1,000</u>

<u>Section 637.6(a)(3)</u>	<u>Licensee of the Board smoking in a cosmetology</u>	<u>1st offense - \$250</u>
	<u>salon, limited practice salon, or cosmetology</u>	<u>2nd offense (within 1 year of</u>
	<u>school in violation of the Clean Indoor Air Act</u>	<u>1st offense) - \$500</u>
		<u>3rd offense (within 1 year of</u>
		<u>2nd offense) - \$1,000</u>
		<u>Subsequent offenses (within</u>
		<u>1 year of previous offense -</u>
		<u>\$1,000</u>

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§ 43b.6. Schedule of civil penalties – funeral directors and funeral establishments.

STATE BOARD OF FUNERAL DIRECTORS

* * * * *

Violation under 35 P.S.	Title/Description	Civil Penalty
<u>Section 637.6(a)(1)</u>	<u>Failure of funeral establishment to post a sign</u>	<u>1st offense - \$250</u>
	<u>as required under section 4 of the Clean Indoor</u>	<u>2nd offense (within 1 year of</u>
	<u>Air Act (35 P.S. § 637.4)</u>	<u>1st offense) - \$500</u>
		<u>3rd offense (within 1 year of</u>
		<u>2nd offense) - \$1,000</u>
		<u>Subsequent offenses (within</u>
		<u>1 year of previous offense) -</u>
		<u>\$1,000</u>

Section 637.6(a)(2) Funeral establishment permitting smoking 1st offense - \$250
in the funeral establishment in violation of 2nd offense (within 1 year of
the Clean Indoor Air Act (35 P.S. §§ 637.1 1st offense) - \$500
– 637.11) 3rd offense (within 1 year of
2nd offense) - \$1,000
Subsequent offenses (within
1 year of previous offense) -
\$1,000

Section 637.6(a)(3) Licensee of the Board smoking in a funeral 1st offense - \$250
establishment in violation of the Clean 2nd offense (within 1 year of
Indoor Air Act 1st offense) - \$500
3rd offense (within 1 year of
2nd offense) - \$1,000
Subsequent offenses (within
1 year of previous offense) -
\$1,000

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§ 43b.7. Schedule of civil penalties – pharmacists and pharmacies.

STATE BOARD OF PHARMACY

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Violation under 35 P.S.	Title/Description	Civil Penalty
<u>Section 637.6(a)(1)</u>	<u>Failure of a pharmacy permit holder to post a sign as required under section 4 of the Clean Indoor Air Act (35 P.S. § 637.4)</u>	<u>1st offense - \$250</u> <u>2nd offense (within 1 year of 1st offense) - \$500</u> <u>3rd offense (within 1 year of 2nd offense) - \$1,000</u> <u>Subsequent offenses (within 1 year of previous offense) - \$1,000</u>
<u>Section 637.6(a)(2)</u>	<u>Pharmacy permit holder permitting smoking in the pharmacy in violation of the Clean Indoor Air Act (35 P.S. §§ 637.1 – 637.11)</u>	<u>1st offense - \$250</u> <u>2nd offense (within 1 year of 1st offense) - \$500</u> <u>3rd offense (within 1 year of 2nd offense) - \$1,000</u> <u>Subsequent offenses (within 1 year of previous offense) - \$1,000</u>

<u>Section 637.6(a)(3)</u>	<u>Licensee of the Board smoking in a pharmacy</u>	<u>1st offense - \$250</u>
	<u>in violation of the Clean Indoor Air Act</u>	<u>2nd offense (within 1 year of</u> <u>1st offense) - \$500</u> <u>3rd offense (within 1 year of</u> <u>2nd offense) - \$1,000</u> <u>Subsequent offenses (within</u> <u>1 year of previous offense) -</u> <u>\$1,000</u>

* * * * *

§ 43b.8. Schedule of civil penalties –real estate and cemetery brokers, real estate schools.

STATE REAL ESTATE COMMISSION

Violation under 35 P.S.	Title/Description	Civil Penalty
<u>Section 637.6(a)(1)</u>	<u>Failure of broker or cemetery broker to post a</u> <u>sign in a real estate office or cemetery office or</u> <u>real estate education provider to post a sign in a</u> <u>real estate school as required under section 4 of</u> <u>the Clean Indoor Air Act (35 P.S. § 637.4)</u>	<u>1st offense - \$250</u> <u>2nd offense (within 1 year of</u> <u>1st offense) - \$500</u> <u>3rd offense (within 1 year of</u> <u>2nd offense) - \$1,000</u> <u>Subsequent offenses (within</u> <u>1 year of previous offense -</u> <u>\$1,000</u>

<u>Section 637.6(a)(2)</u>	<u>Broker or cemetery broker permitting smoking</u>	<u>1st offense - \$250</u>
	<u>in a real estate or cemetery office or real estate</u>	<u>2nd offense (within 1 year of</u>
	<u>education provider permitting smoking in a real</u>	<u>1st offense) - \$500.</u>
	<u>estate school</u>	<u>3rd offense (within 1 year of</u>
	<u>IN VIOLATION OF THE</u>	<u>2nd offense) - \$1,000</u>
	<u>CLEAN INDOOR AIR ACT (35 P.S. §§</u>	
	<u>637.1—637.11)</u>	<u>Subsequent offenses (within</u>
		<u>1 year of previous offense) -</u>
		<u>\$1,000</u>
<u>Section 637.6(a)(3)</u>	<u>Licensee of the Commission smoking in a real</u>	<u>1st offense - \$250</u>
	<u>estate office, cemetery office or real estate</u>	<u>2nd offense (within 1 year of</u>
	<u>school</u>	<u>1st offense) - \$500</u>
	<u>IN VIOLATION OF THE CLEAN</u>	
	<u>INDOOR AIR ACT</u>	<u>3rd offense (within 1 year of</u>
		<u>2nd offense) - \$1,000</u>
		<u>Subsequent offenses (within</u>
		<u>1 year of previous offense) -</u>
		<u>\$1,000</u>

* * * * *

§ 43b.9. Schedule of civil penalties – vehicle manufacturers, dealers and salespersons.

STATE BOARD OF VEHICLE MANUFACTURERS, DEALERS AND SALESPERSONS

Violation under 35 P.S.	Title/Description	Civil Penalty
<u>Section 637.6(a)(1)</u>	<u>Failure of vehicle dealer, branch lot, public or</u>	<u>1st offense - \$250</u>
	<u>retail vehicle auction, or wholesale vehicle</u>	<u>2nd offense (within 1 year of</u>
	<u>auction to post a sign as required under section</u>	<u>1st offense) - \$500</u>
	<u>4 of the Clean Indoor Air Act (35 P.S. § 637.4)</u>	<u>3rd offense (within 1 year of</u>
		<u>2nd offense) - \$1,000</u>
		<u>Subsequent offenses (within</u>
		<u>1 year of previous offense -</u>
		<u>\$1,000</u>
<u>Section § 637.6(a)(2)</u>	<u>Vehicle dealership, branch lot, public or retail</u>	<u>1st offense - \$250</u>
	<u>vehicle auction, or wholesale vehicle auction</u>	<u>2nd offense (within 1 year of</u>
	<u>permitting smoking in an area where smoking</u>	<u>1st offense) - \$500</u>
	<u>is prohibited by the Clean Indoor Air Act (35</u>	<u>3rd offense (within 1 year of</u>
	<u>P.S. §§ 637.1 – 637.11)</u>	<u>2nd offense) - \$1,000</u>
		<u>Subsequent offenses (within</u>
		<u>1 year of previous offense) -</u>
		<u>\$1,000</u>

<u>Section 637.6(a)(3)</u>	<u>Licensee of the smoking in an area of the</u>	<u>1st offense - \$250</u>
	<u>vehicle dealership, branch lot, public or retail</u>	<u>2nd offense (within 1 year of</u>
	<u>vehicle auction or wholesale vehicle auction</u>	<u>1st offense) - \$500</u>
	<u>where smoking is prohibited by the Clean</u>	<u>3rd offense (within 1 year of</u>
	<u>Indoor Air Act</u>	<u>2nd offense) - \$1,000</u>
		<u>Subsequent offenses (within</u>
		<u>1 year of previous offense) -</u>
		<u>\$1,000</u>

* * * * *

**16-46 – SCHEDULES OF CIVIL PENALTIES FOR
VIOLATIONS OF THE CLEAN INDOOR AIR ACT**

THERE WERE NO PUBLIC COMMENTS RECEIVED ON THIS RULEMAKING.



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
Post Office Box 2649
Harrisburg, Pennsylvania 17105-2649
(717) 783-7200

October 11, 2012

The Honorable Silvan B. Lutkewitte, III, Chairman
INDEPENDENT REGULATORY REVIEW COMMISSION
14th Floor, Harristown 2, 333 Market Street
Harrisburg, Pennsylvania 17101

Re: Final Regulation
Bureau of Professional and Occupational Affairs
16-46

Dear Chairman Lutkewitte:

Enclosed is a copy of a final rulemaking package of the Commissioner of Bureau of Professional and Occupational Affairs pertaining to the Schedules of Civil Penalties for Violations of the Clean Indoor Air Act.

The Commissioner will be pleased to provide whatever information the Commission may require during the course of its review of the rulemaking.

Sincerely,

A handwritten signature in cursive script that reads "Katie True".

Katie True
Commissioner
Bureau of Professional and Occupational Affairs

KT/CKM:rs

Enclosure

cc: Katie True, Commissioner
Bureau of Professional and Occupational Affairs,
Rebecca Oyler, Director of Policy, Department of State
Steven V. Turner, Chief Counsel
Department of State
Cynthia Montgomery, Regulatory Counsel
Department of State

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 16-46

SUBJECT: SCHEDULE OF CIVIL PENALTIES FOR VIOLATIONS OF THE CLEAN INDOOR AIR ACT

AGENCY: DEPARTMENT OF STATE - BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

TYPE OF REGULATION

- Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

2012 OCT 11 AM 10:31

RECEIVED
IRRC

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
		HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
10/11/12	<i>Angie Kelly</i>	MAJORITY CHAIRMAN <u>Julie Harhart</u>
		SENATE COMMITTEE ON PROFESSIONAL LICENSURE
10/11/12	<i>Mary Walmer</i>	MAJORITY CHAIRMAN <u>Robt. M. Tomlinson</u>
		INDEPENDENT REGULATORY REVIEW COMMISSION
10/11/12	<i>K. Cooper</i>	ATTORNEY GENERAL (for Final Omitted only)
		LEGISLATIVE REFERENCE BUREAU (for Proposed only)