

Regulatory Analysis Form

(Completed by Promulgating Agency)



IRRC

Independent Regulatory Review Commission

SECTION I: PROFILE

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IRRC

(1) Agency:

Department of State, Bureau of Professional and Occupational Affairs

(2) Agency Number: 16

Identification Number: 46

IRRC Number:

2870

(3) Short Title:

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

(4) PA Code Cite:

49 Pa. Code §§ 43b.4, 43b.5, 43b.6, 43b.7, 43b.8 and 43b.9

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

Primary Contact: Cynthia Montgomery, Regulatory Counsel, Department of State
(717) 783-7220; fax (717) 787-0251; email: cymontgome@state.pa.us

Secondary Contact: Joyce McKeever, Deputy Chief Counsel, Department of State
(717) 783-7200; fax (717) 787-0251; email: jmckeever@state.pa.us

(6) Primary Contact for Public Comments (List Telephone Number, Address, Fax Number and Email Address)

- Complete if different from #5:

(All Comments will appear on IRRC'S website)

(7) 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

Regulatory Analysis Form

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

The Commissioner proposes to amend 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: 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.

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

- A. The date by which the agency must receive public comments: To be determined once a delivery date has been established. (30 days after publication in the Pennsylvania Bulletin)
- B. The date or dates on which public meetings or hearings will be held: Each board/commission will consider any comments received during a regularly scheduled public meeting. The boards/commissions public meeting schedules are available on the Bureau's website at www.dos.state.pa.us/bpoa.
- C. The expected date of promulgation of the proposed regulation as a final-form regulation: Anticipated Spring of 2011
- D. The expected effective date of the final-form regulation: Upon publication of the final form rulemaking in the Pennsylvania Bulletin – Anticipated Spring of 2011
- E. The date by which compliance with the final-form regulation will be required: Upon publication of the final form rulemaking in the Pennsylvania Bulletin – Anticipated Spring of 2011
- F. The date by which required permits, licenses or other approvals must be obtained: Not applicable.

(10) 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.

SECTION II: STATEMENT OF NEED

(11) 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. Six of the boards and commissions under the Bureau of Professional and Occupational Affairs license and routinely inspect “public places” as defined in the Clean Indoor Air Act: 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 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.

(12) 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.

(13) 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/commission within the Bureau of Professional and Occupational Affairs.

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(14) If scientific data, studies, references are used to justify this regulation, please submit material with the regulatory package. Please provide full citation and/or links to internet source.

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

(15) Describe who and how many 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.

(16) 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 required to comply with the provisions of the regulations.

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SECTION III: COST AND IMPACT ANALYSIS

(17) 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.

(18) 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.

(19) 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 or savings 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 or savings associated with the use of Act 48 civil penalty schedules would generally be borne by the relevant boards and commission, and ultimately by the licensees. The Commissioner believes that the proposed 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.

Regulatory Analysis Form

(20) 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 08-09	FY +1 09-10	FY +2 10-11	FY +3 11-12	FY +4 12-13	FY +5 13-14
SAVINGS:	N/A	N/A	N/A	N/A	N/A	N/A
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:	N/A	N/A	N/A	N/A	N/A	N/A
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:	N/A	N/A	N/A	N/A	N/A	N/A
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(20a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -06-07	FY -07-08	FY -08-09	Current FY - 09-10
State Board of Barber Exrs.	\$499,007.49	\$637,222.75	\$648,000.00	\$702,500.00
State Board of Cosmetology	\$2,918,305.81	\$3,383,337.00	\$3,617,000.00	\$4,021,500.00
State Board of Funeral Dirs.	\$841,473.98	\$1,009,967.15	\$928,000.00	\$1,086,000.00
State Board of Pharmacy	\$1,783,728.91	\$1,824,500.75	\$1,889,000.00	\$1,946,000.00
State Real Estate Commn.	\$2,654,819.51	\$2,803,605.90	\$3,150,494.59	\$3,541,000.00
State Board of Vehicle Manufac- turers, Dealers and Salespersons	\$1,957,245.00	\$2,215,930.00	\$1,889,000.00	\$1,946,000.00

Regulatory Analysis Form

(21) 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.

(22) 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.

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.

(23) 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 to be consistent with the other five boards, decided to adopt the civil penalty schedule as presented. However, the Bureau has committed to an initial period of education and compliance efforts during which licensed facilities found to be in violation will be issued a warning and order of compliance. Once the civil penalty schedules are published, all violations will result in citations.

(24) 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.

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(25) 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.

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

No.

(27) 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.

(28) 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.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

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IRRC

(Pursuant to Commonwealth Documents Law)

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DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality. Attorney General

BY: Angela M. Elliott
(DEPUTY ATTORNEY GENERAL)

AUG 19 2010

DATE OF APPROVAL

Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:

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

DOCUMENT/FISCAL NOTE NO. 16-46

DATE OF ADOPTION:

BY: x Basil L. Merenda
Basil L. Merenda

TITLE: Commissioner
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

Copy below is approved as to form and legality. Executive or Independent Agencies

BY: Andrew C. Clark

JUL 21 2010

DATE OF APPROVAL

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

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

PROPOSED 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) proposes to amend §§ 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 will be effective upon publication of final-form rulemaking in the *Pennsylvania Bulletin*.

Statutory authority

The Clean Indoor Air Act, Act of June 13, 2008 (P.L. 182, No. 27) (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 (DOH) has primary enforcement authority under the act, section 5(b)(1)(ii), 35 P.S. § 637.5(b)(1)(ii), provides that if a public place is subject to licensure by another agency, the DOH 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 the Clean Indoor Air Act: 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 of Professional and Occupational Affairs, 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 such 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 proposed 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 by 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.

Since the passage of the act, inspectors for these six boards and commissions have been notifying licensees about their responsibilities under the act. The inspectors have been provided a supply of the signs required under section 4 of the act and have been providing them to licensed facilities upon inspection. It was determined that because many licensees would not expect inspectors for the boards and commissions to be enforcing the provisions of the act, all initial violations discovered during this educational effort would result in a warning and a compliance order. Once the civil penalty schedules have been promulgated, all violations will result in the issuance of a citation as set forth in the relevant civil penalty schedule.

Description of the proposed amendments

The Commissioner proposes to amend 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 set forth in section 6 of the act: failure to post a required sign, permitting smoking where smoking is prohibited, and smoking in a public place where smoking is prohibited. 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 proposing 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 Commissioner is proposing a civil penalty of \$1,000 for all subsequent violations, that is, those that occur within 1 year of the previous violation.

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, 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)), on August 27, 2010, the Commissioner submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Commissioner, the General Assembly, and the Governor of comments, recommendations or objections raised.

Public Comment

Interested persons are invited to submit written comments, suggestions, or objections regarding this proposed rulemaking to Regulatory Counsel Cynthia Montgomery, P.O. Box 2649, Harrisburg, PA 17105-2649, within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

Basil L. Merenda,
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

* * * * *

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

STATE BOARD OF BARBER EXAMINERS

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

<u>35 P.S. § 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.</u>	<u>First offense - \$250</u> <u>Second offense (within 1 year of first offense) - \$500</u> <u>Third offense (within 1 year of second offense) - \$1,000</u> <u>Subsequent offenses (within 1 year of previous offense) - \$1,000</u>
<u>35 P.S. § 637.6(a)(3) Licensee of the State Board of Barber Examiners smoking in a barber shop or in a barber school in violation of the Clean Indoor Air Act.</u>	<u>First offense - \$250</u> <u>Second offense (within 1 year of first offense) - \$500</u> <u>Third offense (within 1 year of second offense) - \$1,000</u> <u>Subsequent offenses (within 1 year of previous offense) - \$1,000</u>

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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

Violation under	Title/Description	Civil Penalty
<u>35 P.S. § 637.6(a)(1)</u>	<u>Failure of licensed cosmetology salon, limited practice salon or cosmetology school to post a sign as required by section 4 of the Clean Indoor Air Act.</u>	<u>First offense - \$250</u> <u>Second offense (within 1 year of first offense) - \$500</u> <u>Third offense (within 1 year of second offense) - \$1,000</u> <u>Subsequent offenses (within 1 year of previous offense) - \$1,000</u>
<u>35 P.S. § 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.</u>	<u>First offense - \$250</u> <u>Second offense (within 1 year of first offense) - \$500</u> <u>Third offense (within 1 year of second offense) - \$1,000</u> <u>Subsequent offenses (within 1 year of previous offense) - \$1,000</u>

<u>35 P.S. § 637.6(a)(3) Licensee of the State Board of Cosmetology</u>	<u>First offense - \$250</u>
<u>smoking in a cosmetology salon, limited</u>	<u>Second offense (within 1</u>
<u>practice salon, or cosmetology school in</u>	<u>year of first offense) - \$500</u>
<u>violation of the Clean Indoor Air Act.</u>	<u>Third offense (within 1 year</u>
	<u>of second 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	Title/Description	Civil Penalty
<u>35 P.S. § 637.6(a)(1)</u>	<u>Failure of funeral establishment to post a sign as required by section 4 of the Clean Indoor Air Act.</u>	<u>First offense - \$250</u> <u>Second offense (within 1 year of first offense) - \$500</u> <u>Third offense (within 1 year of second offense) - \$1,000</u> <u>Subsequent offenses (within 1 year of previous offense) - \$1,000</u>
<u>35 P.S. § 637.6(a)(2)</u>	<u>Funeral establishment permitting smoking in the funeral establishment in violation of the Clean Indoor Air Act.</u>	<u>First offense - \$250</u> <u>Second offense (within 1 year of first offense) - \$500</u> <u>Third offense (within 1 year of second offense) - \$1,000</u> <u>Subsequent offenses (within 1 year of previous offense) - \$1,000</u>

<u>35 P.S. § 637.6(a)(3) Licensee of the State Board of Funeral</u>	<u>First offense - \$250</u>
<u>Directors smoking in a funeral establishment in violation of the Clean Indoor Air Act.</u>	<u>Second offense (within 1 year of first offense) - \$500</u>
	<u>Third offense (within 1 year of second offense) - \$1,000</u>
	<u>Subsequent offenses (within 1 year of previous offense) - \$1,000</u>

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

STATE BOARD OF PHARMACY

Violation under	Title/Description	Civil Penalty
<u>35 P.S. § 637.6(a)(1)</u>	<u>Failure of a pharmacy permit holder to post a sign as required by section 4 of the Clean Indoor Air Act.</u>	<u>First offense - \$250</u> <u>Second offense (within 1 year of first offense) - \$500</u> <u>Third offense (within 1 year of second offense) - \$1,000</u> <u>Subsequent offenses (within 1 year of previous offense) - \$1,000</u>
<u>35 P.S. § 637.6(a)(2)</u>	<u>Pharmacy permit holder permitting smoking in the pharmacy in violation of the Clean Indoor Air Act.</u>	<u>First offense - \$250</u> <u>Second offense (within 1 year of first offense) - \$500</u> <u>Third offense (within 1 year of second offense) - \$1,000</u> <u>Subsequent offenses (within 1 year of previous offense) - \$1,000</u>

<u>35 P.S. § 637.6(a)(3) Licensee of the State Board of Pharmacy</u>	<u>First offense - \$250</u>
<u>smoking in a pharmacy in violation of the</u>	<u>Second offense (within 1</u>
<u>Clean Indoor Air Act.</u>	<u>year of first offense) - \$500</u>
	<u>Third offense (within 1 year</u>
	<u>of second 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.8. Schedule of civil penalties –real estate and cemetery brokers, real estate schools.

STATE REAL ESTATE COMMISSION

Violation under	Title/Description	Civil Penalty
<u>35 P.S. § 637.6(a)(1)</u>	<u>Failure of broker or cemetery broker to post a sign in a real estate office or cemetery office, or real estate education provider to post a sign in a real estate school, as required by section 4 of the Clean Indoor Air Act.</u>	<u>First offense - \$250</u> <u>Second offense (within 1 year of first offense) - \$500</u> <u>Third offense (within 1 year of second offense) - \$1,000</u> <u>Subsequent offenses (within 1 year of previous offense) - \$1,000</u>
<u>35 P.S. § 637.6(a)(2)</u>	<u>Broker or cemetery broker permitting smoking in a real estate or cemetery office, or real estate education provider permitting smoking in a real estate school.</u>	<u>First offense - \$250</u> <u>Second offense (within 1 year of first offense) - \$500</u> <u>Third offense (within 1 year of second offense) - \$1,000</u> <u>Subsequent offenses (within 1 year of previous offense) - \$1,000</u>

<u>35 P.S. § 637.6(a)(3) Licensee of the State Real Estate Commission</u>	<u>First offense - \$250</u>
<u>smoking in a real estate office, cemetery office</u>	<u>Second offense (within 1</u>
<u>or real estate school.</u>	<u>year of first offense) - \$500</u>
	<u>Third offense (within 1 year</u>
	<u>of second 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.9. Schedule of civil penalties – vehicle manufacturers, dealers and salespersons.

STATE BOARD OF VEHICLE MANUFACTURERS, DEALERS AND
SALESPERSONS

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

<u>35 P.S. § 637.6(a)(3) Licensee of the State Board of Vehicle</u>	<u>First offense - \$250</u>
<u>Manufacturers, Dealers and Salespersons</u>	<u>Second offense (within 1</u>
<u>smoking in an area of the vehicle dealership,</u>	<u>year of first offense) - \$500</u>
<u>branch lot, public or retail vehicle auction or</u>	<u>Third offense (within 1 year</u>
<u>wholesale vehicle auction where smoking is</u>	<u>of second offense) - \$1,000</u>
<u>prohibited by the Clean Indoor Air Act.</u>	<u>Subsequent offenses (within</u>
	<u>1 year of previous offense) -</u>
	<u>\$1,000</u>

* * * * *

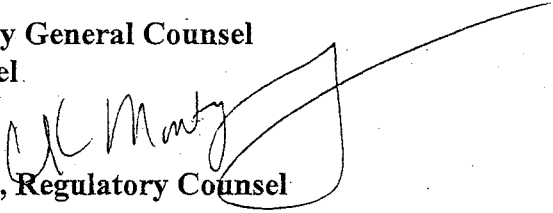
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE

DATE: June 17, 2010

SUBJECT: Proposed Rulemaking:
Bureau of Professional and Occupational Affairs
16-46 – Schedules of Civil Penalties for Violations of the Clean Indoor Air Act

TO: Andrew C. Clark, Deputy General Counsel
Office of General Counsel

FROM: Cynthia K. Montgomery, Regulatory Counsel
Department of State

A handwritten signature in black ink, appearing to read 'C.K. Montgomery', is written over the printed name of the sender. The signature is fluid and cursive, with a large loop at the end.

Accompanying this memorandum is the above-noted regulation package from the Commissioner of Professional and Occupational Affairs which proposes to implement Act 48 civil penalty schedules for violations of the Clean Indoor Air Act. Each of the six boards has approved the applicable civil penalty schedule at a public meeting of the board held last fall.

I certify that I have reviewed this regulation for form and legality, that I have discussed any legal and policy issues with the administrative officers responsible for the program, and that all information contained in the Preamble and Annex is correct and accurate.

CKM



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
Post Office Box 2649
Harrisburg, Pennsylvania 17105-2649
(717) 783-7192

August 27, 2010

The Honorable Arthur Coccodrilli, Chairman
INDEPENDENT REGULATORY REVIEW COMMISSION
14th Floor, Harestown 2, 333 Market Street
Harrisburg, Pennsylvania 17101

Re: Proposed Regulation
Bureau of Professional and Occupational Affairs
16-46 - Schedule of Civil Penalties for Violations of the Clean Indoor Air Act

Dear Chairman Coccodrilli:

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

The Board 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 black ink that reads "Basil L. Merenda".

Basil L. Merenda
Commissioner
Bureau of Professional and Occupational Affairs

BLM/CKM:pah

Enclosure

cc: Basil L. Merenda, Commissioner
Bureau of Professional and Occupational Affairs
Steven V. Turner, Chief Counsel
Department of State
Joyce McKeever, Deputy Chief Counsel
Department of State
Cynthia Montgomery, Regulatory Counsel
Department of State
Barber Examiners Board
Cosmetology Board
Funeral Directors Board
Pharmacy Board
Real Estate Commission
Vehicle Manufacturers, Dealers and Salespersons Board

**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

- X 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

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FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
		HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
8/27	<i>K. Pule</i>	MAJORITY CHAIRMAN <u>Michael McGeehan</u>
		SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
8/27	<i>M. Armstrong</i>	MAJORITY CHAIRMAN <u>Robert Tomlinson</u>
8/27/10	<i>K. Cooper</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
8/27	<i>n. Lott</i>	LEGISLATIVE REFERENCE BUREAU (for Proposed only)