

**RHODE ISLAND**  
**TITLE 23. HEALTH AND SAFETY**  
**CHAPTER 20.10. PUBLIC HEALTH AND WORKPLACE SAFETY ACT**

**§ 23-20.10-1. Short title**

This chapter shall be known as the "Public Health and Workplace Safety Act."

**§ 23-20.10-2. Definitions**

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section:

(1) "Assisted living residence" means a residence that provides personal assistance, and meals to adults in accordance with chapter 17.4 of this title.

(2) "Bar" means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including, but not limited to, taverns, nightclubs, cocktail lounges and cabarets.

(3) "Business" means a sole proprietorship, partnership, joint venture, corporation, or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medial, dental, engineering, architectural or other professional services are delivered.

(4) "Employee" means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers his or her services for a nonprofit entity.

(5) "Employer" means a person, business, partnership, association, corporation, including a municipal corporation, trust or nonprofit entity that employs the services of one or more individual persons.

(6) "Enclosed area" means all space between a floor and ceiling that is enclosed on all sides by solid walls or windows (exclusive of doorways), which extend from the floor to the ceiling.

(7) "Health care facility" means an office or institution providing care or treatment of diseases, whether physical, mental, emotional, or other medical, physiological or psychological conditions, including, but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semi-private rooms and wards within health care facilities.

(8) "Place of employment" means an area under the control of a public or private employer that employees normally frequent during the course of employment, including, but not limited to, work areas, employees lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, and hallways. Vehicles owned by a public or private employer are covered under this definition provided that the vehicle is used by more than one person. A private residence is not a "place

of employment" unless it is used as a child care, adult day care or health care facility.

(9) "Public place" means an enclosed area to which the public is invited or in which the public is permitted, including, but not limited to, banks, bars, educational facilities, health care facilities, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, the state house, theaters and waiting rooms. A private residence is not a "public place" unless it is used as a child care, adult day care or health care facility.

(10) "Restaurant" means an eating establishment, including, but not limited to, coffee shops, cafeterias, and private and public school cafeterias, which gives or offers for sale food to the public, guests or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term "restaurant" shall include a bar area within the restaurant.

(11) "Retail tobacco store" means a retail store utilized primarily for the sale of tobacco products and accessories in which the total annual revenues generated by the sale of other products are no greater than twenty-five percent (25%) of the total revenue for the establishment. The division of taxation shall be responsible for the determination under this section and shall promulgate any rules or forms necessary for the implementation of this section.

(12) "Service line" means an indoor line in which one or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money.

(13) "Shopping mall" means an enclosed public walkway or hall area that serves to connect retail or professional establishments.

(14) "Smoking" means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, weed, plant, or other combustible substance in any manner or in any form; provided, however, that smoking shall not include burning during a religious ceremony.

(15) (a) "Smoking bar" means an establishment whose business is primarily devoted to the serving of tobacco products for consumption on the premises, in which the annual revenues generated by tobacco sales are greater than fifty percent (50%) of the total revenue for the establishment and the serving of food or alcohol is only incidental to the consumption of such tobacco products. The establishment must annually demonstrate that revenue generated from the serving of tobacco products is greater than the total combined revenue generated by the serving of beverages and food. The division of taxation in the department of administration shall be responsible for the determination under this section and shall promulgate any rules or forms necessary for the implementation of this section.

(b) Smoking bars shall only allow consumption of food and beverages sold by the establishment on the premises and the establishment shall have public access only from the street.

(c) Any smoking bar as defined herein, is required to provide a proper ventilation system which will prevent the migration of smoke into the street.

(16) "Sports arena" means sports pavilions, stadiums, (indoor or outdoor) organized sports fields, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition or witness sports or other events.

(17) "Legislature" means the general assembly of the state of Rhode Island.

**§ 23-20.10-3. Prohibition of smoking in public places**

Smoking shall be prohibited in all enclosed public places within the state of Rhode Island, including, but not limited to, the following places:

(1) Aquariums, galleries, libraries and museums;

(2) Areas available to and customarily used by the general public in businesses and nonprofit entities patronized by the public, including, but not limited to, professional offices, banks, laundromats, hotels and motels.

(3) Bars;

(4) Bingo facilities when a bingo game is in progress;

(5) Convention facilities;

(6) Elevators;

(7) Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical, recital or other similar performance;

(8) Health care facilities;

(9) Licensed child care and adult day care facilities;

(10) Lobbies, hallways and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes and other multiple unit residential facilities with more than four (4) units;

(11) Polling places;

(12) Public transportation facilities, including buses and taxicabs, under the authority of the state of Rhode Island, and ticket, boarding and waiting areas of public transit depots;

(13) Restaurants;

(14) Restrooms, lobbies, reception areas, hallways and other common use areas;

(15) Retail stores;

(16) Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of the state of Rhode Island or a political subdivision of the state when a public

meeting is in progress, to the extent the place is subject to the jurisdiction of the state of Rhode Island;

(17) Schools; including, primary, secondary and post-secondary education facilities;

(18) Service lines;

(19) Shopping malls;

(20) Sports arenas, including outdoor arenas.

#### **§ 23-20.10-4. Prohibition of smoking in places of employment**

Smoking shall be prohibited in all enclosed facilities within places of employment without exception. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.

This prohibition on smoking shall be communicated to all existing employees by the effective date of this chapter and to all prospective employees upon their application for employment.

#### **§ 23-20.10-5. Outdoor smoking space**

Nothing in this chapter shall prohibit an employer from providing an outdoor smoking space for their employees. Provided, however, that any employer who provides an outdoor area for its employees to smoke must provide an area which is physically separated from the enclosed workplace so as to prevent the migration of smoke into the workplace.

#### **§ 23-20.10-6. Where smoking not regulated**

(a) Notwithstanding any other provision of this chapter to the contrary, the following areas shall be exempt from the provisions of this chapter.

(1) Private residences, except when used as a licensed child care, adult day care or health care facility;

(2) Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than fifty percent (50%) of rooms rented to guests in a hotel or motel may be so designated;

(3) Retail tobacco stores; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this chapter;

(4) Private and semi-private rooms or designated areas in assisted living residences and nursing facilities as allowed by regulation of the department of health under chapters 17.4 and 17 of this title;

(5) Outdoor areas of places of employment, except those covered by the provisions of § 23-20.10-5;

(6) Any smoking bar as defined in § 23-20.10-2(15);

(b) The provisions of this chapter shall not apply to any stage performance provided that smoking is part of a theatrical production.

#### **§ 23-20.10-6.1. Pari mutual facilities**

(a) Any pari mutual facility established under chapter 3.1 or 7 of title 41 or any pari mutual licensee under chapter 61.2 of title 42 shall provide designated smoking and nonsmoking gaming areas in their facilities.

(b) The designated nonsmoking gaming area shall be physically separated from any smoking area and shall be required to have separate and distinct ventilation systems so as to prohibit the migration of smoke into the nonsmoking area.

(c) Except as provided for in paragraph (d), any bar or restaurant located in a pari mutual facility shall be nonsmoking and be physically separate from any smoking area and shall have a separate ventilation system so as to prohibit the migration of smoke into the restaurant.

(d) The prohibitions of this chapter shall not apply to any bar which is presently in existence, located in, and not physically separated from a designated smoking area.

(e) Any licensee of a pari mutual facility shall promulgate rules and regulations to allow their employees the right to work in a smoke free environment. These rules shall include, but not be limited to, provisions on the right to opt out of working in a smoking area and a provision that no adverse impact or action could take place against the employee if they request to opt out of a smoking area. The rules promulgated by the licensee shall be filed with the lottery commission with copies to the general assembly and the department of health no later than March 1, 2005.

(f) Commencing January 1, 2005, any pari mutual licensee shall file an annual report with the lottery commission with copies to the general assembly and department of health detailing smoke mitigation efforts undertaken by the licensee during the previous year and plans for the upcoming year. The licensee shall be required to monitor air quality with current appropriate technology. A professional HVAC engineer (or other appropriate professional) shall certify the monitoring process and results. The results of the monitoring process shall be included in the annual report.

(g) Any enactment relating to the provisions of this section on pari mutual facilities or licensees shall be by statute as enacted by the general assembly, provided however that the general assembly may by statute delegate such authority to the cities and towns.

#### **§ 23-20.10-7. Posting of signs**

(a) "No smoking" signs or the international "No smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly and conspicuously posted in every public place and place of employment where smoking is prohibited by this chapter, by the owner, operator, manager or other person in control of that place. Signs required by this chapter may be provided by the state department of health at cost.

(b) Every public place and place of employment where smoking is prohibited by this chapter shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.

(c) All signs necessary to comply with this section shall be attached at eye level and shall contain the following words "IT IS ILLEGAL TO SMOKE IN THIS ESTABLISHMENT". To report a violation call "."

**§ 23-20.10-8. Nonretaliation**

No person or employer shall discharge, refuse to hire or in any manner retaliate against an employee, applicant for employment or customer because that employee, applicant or customer exercises any rights afforded by this chapter or reports or attempts to prosecute a violation of this chapter.

**§ 23-20.10-9. Enforcement**

(a) The director of health shall promulgate such rules and regulations including the complaint forms, as are necessary to carry out the mandates of this chapter within one hundred eighty (180) days of passage.

(b) Notice of the provisions of this chapter shall be given to all applicants for a business license in the state of Rhode Island, to all law enforcement agencies, and to any business required to be registered with the secretary of state's office.

(c) Any citizen who desires to register a complaint under this chapter may initiate such a complaint with the department of health.

(d) The department of health, having received a written and signed letter of complaint citing a violation of this chapter, shall enforce this entire chapter against violations by either of the following actions:

(1) Serving written notice to comply to an employer, with a copy of the notice to the complaining individual, requiring the employer to correct immediately any violation or section of this chapter.

(2) Upon receiving a second complaint at the department of health for the same or continued violation by the same employer, the complaint shall be resolved by notifying the city or town solicitor, having jurisdiction over the licensed holder, to initiate, without delay, an action for injunction to enforce the provisions of this chapter, to cause the correction of such violation or section, and for assessment and recovery of a civil penalty for such violation.

(e) The department of health, local fire department, or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this chapter.

(f) An owner, manager, operator, or employee of an establishment regulated by this chapter shall inform persons violating this chapter of the appropriate provisions thereof.

(g) In addition to the remedies provided by the provisions of this section, the department of health, aggrieved by the failure of the owner, operator, manager or other person in control of a public place or place of employment to comply with the provisions of this chapter, may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

**§ 23-20.10-10. Violations and penalties**

(a) An employer who violates this chapter shall be liable for a civil penalty as

follows:

- (1) A penalty of two hundred fifty dollars (\$ 250) for the first violation;
- (2) A penalty of five hundred dollars (\$ 500) for the second violation;
- (3) A penalty of one thousand dollars (\$ 1,000) for the third and subsequent violations;

which shall be assessed and recovered in a civil action brought by the city or town solicitor, having jurisdiction over the licensed holder, in the city or town municipal court or any court of competent jurisdiction. Each day the violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as a separate offense. One-half ( 1/2) of any penalty assessed and recovered in an action brought pursuant to this subsection shall be transferred to the municipality in which the civil action originated and the other one-half ( 1/2) of any penalty assessed and recovered shall be transferred to the general fund.

(b) Any fines owed under this chapter shall be paid within thirty (30) days of judgment entered. Failure to pay within thirty (30) days will result in the doubling of the penalty.

(c) In undertaking the enforcement of this chapter, the state is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that this breach proximately caused injury.

#### **§ 23-20.10-11. Public education**

The department of health shall engage in a continuing program to explain and clarify the purposes and requirements of this chapter to citizens affected by it, and to guide owners, operators and managers in their compliance with it. The program may include publication of a brochure for affected businesses and individuals explaining the provisions of this ordinance.

#### **§ 23-20.10-12. Governmental agency cooperation**

The state of Rhode Island and its designees shall annually request other governmental and educational agencies having facilities within the state to establish local operating procedures in cooperation and compliance of this chapter. This includes urging all federal, state, municipal and school district agencies to update their existing smoking control regulations to be consistent with the current health findings regarding secondhand smoke.

#### **§ 23-20.10-13. Other applicable laws**

This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

#### **§ 23-20.10-14. Prohibited condition of employment -- Smoking by employees outside course of employment**

(a) No employer or agent of any employer shall require, as a condition of employment, that any employee or prospective employee refrain from smoking or using tobacco products outside the course of his or her employment, or otherwise discriminate against any individual with respect to his or her compensation, terms,

conditions or privileges of employment for smoking or using tobacco products outside the course of his or her employment. Provided, however, that the following employers shall be exempt from the provisions of this section: Any employer that is a nonprofit organization which as one of its primary purposes or objectives discourages the use of tobacco products by the general public.

(b) In any civil action alleging a violation of this section, the court may:

(1) Award up to three (3) times the actual damages to a prevailing employee or prospective employee;

(2) Award court costs to a prevailing employee or prospective employee;

(3) Afford injunctive relief against any employer who commits or proposes to commit a violation of this chapter.

(c) Nothing contained in this chapter shall be construed to affect any other provisions of this title.

**§ 23-20.10-15. Statewide uniformity. [Effective until October 1, 2006.]**

It is the declared policy of this state that there be uniformity in the application and enforcement of smoking prohibitions as defined in this chapter. Any enactment relating to prohibitions in an area defined in this chapter shall be by statute as enacted by the general assembly; provided, however, that the general assembly may by statute delegate such authority to the cities and towns.

**§ 23-20.10-16. Severability**

If any section, subsection, sentence, clause, phrase or portion of this chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, that portion shall be deemed a separate, distinct and independent provision and this holding shall not affect the validity of the remaining portions of this chapter.