

**RULES AND REGULATIONS PERTAINING TO
SMOKE-FREE PUBLIC PLACES AND WORKPLACES**

[R23-20.10-SMOKE]

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DEPARTMENT OF HEALTH

DECEMBER 2004

INTRODUCTION

These rules and regulations are promulgated under the authority contained in Chapters 23-20.10 and 42-35 of the General Laws of Rhode Island, as amended, and are established for the purpose of adopting requirements for the implementation of the “Public Health and Workplace Safety Act” enacted by the Rhode Island General Assembly on June 29, 2004.

Pursuant to the provisions of Section 42-35-3(c) of the General Laws of Rhode Island, as amended, consideration was given to: (1) alternative approaches to the regulations; (2) duplication or overlap with other state regulations; and (3) significant economic impact placed on small business as defined in Chapter 42-35 of the General Laws as a result of the amended regulations. No alternative approach, overlap or duplication nor any significant economic impact was identified, consequently the regulations are adopted in the best interest of the health, safety, and welfare of the public.

These rules and regulations shall supersede all previous *Rules and Regulations Relating to the Requirements for Smoking and Non-Smoking Sections in Eating Facilities (R23-20.6-NS)* and the *Rules and Regulations Pertaining to Workplace Smoking (R23-20.7-WS)* promulgated by the Rhode Island Department of Health and filed with the Secretary of State.

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Section 1.0 *Definitions*

Whenever used in these rules and regulations, the following terms shall be construed as follows:

- 1.1 “**Act**” means Chapter 23-20.10 of the Rhode Island General Laws, as amended, entitled “Public Health and Workplace Safety Act.”
- 1.2 “**Assisted living residence**” means a residence that provides personal assistance, and meals to adults in accordance with Chapter 23-17.4 of the Rhode Island General Laws, as amended.
- 1.3 “**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.
- 1.4 “**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, medical, dental, engineering, architectural or other professional services are delivered.
- 1.5 “**Department**” means the Rhode Island Department of Health.
- 1.6 “**Designated smoking area**” means any enclosed area in which smoking is permitted by the persons who owns or operates the enclosed area in conformance with the General Laws of Rhode Island.
- 1.7 “**Director**” means the Director of the Rhode Island Department of Health.
- 1.8 “**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.
- 1.9 “**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.
- 1.10 “**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.
- 1.11 “**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.
- 1.12 “**Person**” means any individual, trust or estate, partnership, corporation (including associations, joint stock companies), limited liability company, state, or political subdivisions or instrumentality of a state.
- 1.13 “**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 (1) 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.

- 1.14 “**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.
- 1.15 “**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.
- 1.16 “**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.
- 1.17 “**Service line**” means an indoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money.
- 1.18 “**Shopping mall**” means an enclosed public walkway or hall area that serves to connect retail or professional establishments.
- 1.19 “**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.
- 1.20 “**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.
- 1.21 “**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.
- 1.22 “**These Regulations**” mean all sections of Rhode Island *Rules and Regulations Pertaining to Smoke-Free Public Places and Workplaces*.
- 1.23 “**Workplace**” means any enclosed area of a structure or portion thereof intended for occupancy by business entities which will provide primarily, but not exclusively, clerical, professional, or business services of the business entity, or which will provide primarily, but not exclusively, clerical, professional, or business services to other business entities or to the public, at that location. The workplace includes, but is not limited to, office spaces in office buildings, office spaces in all state and municipal office buildings, office spaces in all federal office buildings where other than federal employees are present, medical office waiting rooms, all factory or manufacturing plant areas, libraries, museums, hospitals, nursing homes, other medical treatment facilities, and in all the aforementioned.

Section 2.0 **General Requirements**

2.1 **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:

- (a) Aquariums, galleries, libraries and museums;
- (b) 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.
- (c) Bars;
- (d) Bingo facilities when a bingo game is in progress;
- (e) Convention facilities;
- (f) Elevators;
- (g) Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical, recital or other similar performance;
- (h) Health care facilities;
- (i) Licensed child care and adult day care facilities;
- (j) 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;
- (k) Polling places;
- (l) 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;
- (m) Restaurants;
- (n) Restrooms, lobbies, reception areas, hallways and other common use areas;
- (o) Retail stores;
- (p) 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;
- (q) Schools; including, primary, secondary and post-secondary education facilities;
- (r) Service lines;
- (s) Shopping malls; including connecting walkways, enclosed parking areas and partially enclosed parking areas;
- (t) Sports arenas, including outdoor arenas.

2.2 **Smoking Bars**

- (a) A smoking bar 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. The establishment shall 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.¹.

¹ The Division of Taxation in the Department of Administration is responsible for determining compliance with this requirement and will promulgate any rules or forms necessary for the implementation.

- (b) A smoking bar is required to provide a proper ventilation system which will prevent the migration of smoke into the street or areas where smoking is prohibited under the provisions of the Act or these Regulations.
- (c) Compliance with Section 2.2(b) above shall be determined in accordance with ANSI/ASHRAE Standard 62-2001 Ventilation for Acceptable Indoor Air Quality^{2,3}

2.3 ***Prohibition of Smoking in Places of Employment***

- (a) 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.
- (b) This prohibition on smoking shall be communicated to all existing employees by March 1, 2005 and to all prospective employees upon their application for employment.

2.4 ***Outdoor Smoking Space.*** Nothing in the Act or these Regulations 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 or areas where smoking is prohibited under the provisions of the Act or these Regulations.

2.5 ***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 the Act or these Regulations, by the owner, operator, manager or other person in control of that place.
- (b) Every public place and place of employment where smoking is prohibited by the Act or these Regulations shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.
- (c) All signs necessary to comply with these Regulations shall be attached at eye level⁴ and shall contain the following words **"IT IS ILLEGAL TO SMOKE IN THIS ESTABLISHMENT. To report a violation call Rhode Island Department of Health: 401-222-3293 ."**
- (d) Signs required by these Regulations may be obtained from the Department at cost (see sample sign in Appendix A).

2.6 ***Other Applicable Laws*** The Act and these Regulations shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

² Obtainable from American Society of Heating, Refrigeration and Air-Conditioning Engineers, Inc., 1791 Tullie Circle, NE, Atlanta, GA 30329.

³ Environmental Tobacco Smoke (ETS) is a known carcinogen with no established minimum concentration. Therefore, ASHRAE Standard 62-2001 can neither determine nor prescribe a minimum ventilation rate. While a ventilation rate only slightly higher than the rate prescribed in Standard 62-2001-Table 2 for no-smoking spaces would technically result in compliance, the preponderance of scientific and medical evidence indicates that acceptable indoor air quality may not be achieved.

⁴ For the purpose of these regulations, "eye level" shall be interpreted as placing the top of the sign approximately 68 inches above the floor/ground level immediately adjacent to where the sign is posted.

Section 3.0 *Exemptions*

- 3.1 ***Where Smoking Not Regulated.*** Notwithstanding any other provision of the Act or these Regulations to the contrary, the following areas shall be exempt from the provisions of the Act and these Regulations:
- (a) Private residences, except when used as a licensed child care, adult day care or health care facility;
 - (b) 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;
 - (c) Retail tobacco stores, as defined by these Regulations⁵, provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of the Act or these Regulations;
 - (d) Private and semi-private rooms or designated areas in assisted living residences and nursing facilities as allowed by regulation of the Department under Chapters 23-17.4 and 23-17 of the General Laws of Rhode Island, as amended;
 - (e) Outdoor areas of places of employment, except those covered by the provisions of Section 2.4 of these regulations;
 - (f) Any smoking bar as defined in these Regulations;
 - (g) Any facility operated under a Class D liquor license provided the Class D liquor license is held by a nonprofit or charitable corporation with a defined membership, is not ordinarily a place of public accommodation but is distinctly private, and employs not more than ten (10) employees. This exemption shall remain in effect until October 1, 2006.
 - (h) Any facility operated exclusively under a Class C liquor license and employs not more than ten (10) employees. This exemption shall remain in effect until October 1, 2006.
- 3.2 The provisions of the Act and these Regulations shall not apply to any stage performance provided that smoking is part of a theatrical production.

Section 4.0 *Pari Mutual Facilities*

- 4.1 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.
- 4.2 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.
- 4.3 Except as provided for in Section 4.4 of these Regulations, 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.
- 4.4 The prohibitions of the Act or these Regulations shall not apply to any bar which was in existence before 1 March 2005, located in, and not physically separated from a designated smoking area.

⁵ The Division of Taxation in the Department of Administration is responsible for the determination if an establishment meets this definition and will promulgate any rules or forms necessary for the implementation

- 4.5 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 no later than March 1, 2005.
- 4.6 (a) 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 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 as determined by the Director) shall certify the monitoring process and results. The results of the monitoring process shall be included in the annual report.
- (b) Compliance with Section 4.6(a) above shall be determined in accordance with ANSI/ASHRAE Standard 62-2001 Ventilation for Acceptable Indoor Air Quality.^{6,7}

Section 5.0 *Workplace Issues*

- 5.1 ***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 the Act or these Regulations, or reports or attempts to prosecute a violation of the Act or these Regulations.
- 5.2 ***Prohibited Condition of Employment: Smoking by Employees Outside Course of Employment.*** 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 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, shall be exempt from the provisions of this section.

Section 6.0 *Enforcement, Complaints and Violations*

6.1 *Enforcement.*

- (a) The Department, local fire department, or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with the Act and these Regulations, and shall notify the Department in writing of any violations therein.
- (b) An owner, manager, operator, or employee of an establishment regulated by the Act or these Regulations shall inform persons violating the Act or these Regulations of the appropriate provisions thereof.

⁶ Obtained from American Society of Heating, Refrigeration and Air-Conditioning Engineers, Inc., 1791 Tullie Circle, NE, Atlanta, GA 30329.

⁷ Environmental Tobacco Smoke (ETS) is a known carcinogen with no established minimum concentration. Therefore, ASHRAE Standard 62-2001 can neither determine nor prescribe a minimum ventilation rate. While a ventilation rate only slightly higher than the rate prescribed in Standard 62-2001-Table 2 for no-smoking spaces would technically result in compliance, the preponderance of scientific and medical evidence indicates that acceptable indoor air quality may not be achieved.

6.2 **Complaints.** Any person who desires to register a complaint citing a violation of the Act or these Regulations shall submit a written and signed letter of complaint to the Department. All complaints shall be directed to:

Rhode Island Department of Health
Office of Environmental Health Risk Assessment
3 Capitol Hill – Room 201
Providence, RI 02908-5097
Phone: (401) 222-3424

6.3 The Department, having received a written and signed letter of complaint citing a violation of the Act or these Regulations, shall take one of the following enforcement actions:

- (a) Serve a written notice to comply to an employer or person responsible for administration of a facility subject to the Act and these Regulations, with a copy of the notice to the complaining individual, requiring the employer or person responsible for administration of a facility subject to the Act or these Regulations to correct immediately any violation or section of the Act or these Regulations.
- (b) Upon receiving a second complaint at the Department for the same or continued violation by the same employer or person responsible for administration of a facility subject to the Act or these Regulations, 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 the Act, to cause the correction of such violation or section, and for assessment and recovery of a civil penalty for such violation.

6.4 In addition to the remedies provided by the provisions of this section, the Department, 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 the Act or these Regulations, may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

6.5 **Violations and Penalties.** An employer who violates the Act or these Regulations shall be liable for a civil penalty as follows:

- (a) A penalty of two hundred fifty dollars (\$250) for the first violation;
- (b) A penalty of five hundred dollars (\$500) for the second violation;
- (c) 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.
- (d) In any civil action alleging a violation of Section 23-20.10-14 of the Act or Section 5.0 of these Regulations, 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 the Act or these Regulations.

6.6 Any fines owed under the Act or these Regulations 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.

Section 7.0 ***Severability***

7.1 If any section, subsection, sentence, clause, phrase or portion of the Act or these Regulations 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 the Act or these Regulations.

7.2 Nothing contained in the Act or these Regulations shall be construed to affect any other provisions of Title 23 of the Rhode Island General Laws, as amended.

Tuesday, November 30, 2004
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REFERENCES

1. “Public Health and Workplace Safety Act”, Chapter 23-20.10 of the Rhode Island General Laws, as amended. Available online:
<http://www.rilin.state.ri.us/PublicLaws/law04/law04198.htm>
2. ANSI/ASHRAE Standard 62-2001 *Ventilation for Acceptable Indoor Air Quality*, American Society of Heating, Refrigeration and Air-Conditioning Engineers, Inc., 1791 Tullie Circle, NE, Atlanta, GA 30329.

Appendix A

**IT IS ILLEGAL TO SMOKE
IN THIS ESTABLISHMENT**



PURSUANT TO R.I. GEN. LAWS § 23-20.10-7

**To report a violation call
Rhode Island Department of Health: 401-222-3293**



Rhode Island Department of Health

ESTA PROHIBIDO FUMAR EN ESTE ESTABLECIMIENTO



**DE ACUERDO CON LAS LEYES GENERALES DEL
ESTADO DE RHODE ISLAND § 23-20.10-7**

**Para denunciar cualquier violación llame al
Departamento de Salud de Rhode Island al: 401-222-3293**



Departamento de Salud de Rhode Island