

LC03133

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2004

A N A C T

RELATING TO WORKPLACE SAFETY

Introduced By: Representatives Fox, Lima, Dennigan, Almeida, and Reilly

Date Introduced: April 01, 2004

Referred To: House Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapters 23-20.6, 23-20.7 and 23-20.7.1 of the General Laws entitled  
2 "Smoking in Public Places" are hereby repealed in its entirety.

3 ~~CHAPTER 23-20.6~~

4 ~~Smoking in Public Places~~

5 ~~**23-20.6-1. Legislative intent.** -- The use of tobacco for smoking purposes is being found  
6 to be increasingly dangerous, not only to the person smoking, but also to the non-smoking person  
7 who is required to breathe the contaminated air. The most pervasive intrusion of the non-smoker's  
8 right to unpolluted air space is the uncontrolled smoking in public places. The legislature intends,  
9 by the enactment of this chapter, to protect the health and atmospheric environment of the non-  
10 smoker by regulating smoking in certain public areas.~~

11 ~~**23-20.6-2. Smoking prohibited in certain public areas -- Smoking sections in eating**  
12 **facilities.** -- (a) Smoking tobacco in any form is a public nuisance and dangerous to public health  
13 and shall not be permitted in any of the following places used by or open to the public: the state  
14 house, elevators, indoor movie theaters, libraries, art galleries, museums, concert halls,  
15 auditoriums, buses, primary, secondary or post-secondary school buildings, colleges and  
16 universities (including dormitories), and public hallways in court buildings, hallways of elderly  
17 housing complexes, supermarkets, medical offices, public laundries as defined in chapter 16 of  
18 title 5 and hospitals and other health care and assisted living facilities.~~

19 ~~(b) The proprietor or other person in charge of a public area listed in subsection (a) shall~~

1 ~~make reasonable efforts to prevent smoking and shall post no smoking and warning signs~~  
2 ~~conspicuously in these areas.~~

3 ~~-(c) Any person who violates this chapter shall be deemed to be contributing to the~~  
4 ~~maintenance of a public nuisance in a public place and shall be subject to a fine of not less than~~  
5 ~~fifty dollars (\$50.00), nor more than five hundred dollars (\$500), which shall be assessed and~~  
6 ~~recovered in a civil action brought by the attorney general in any court of competent jurisdiction.~~  
7 ~~Each day the violation is committed or permitted to continue shall constitute a separate offense~~  
8 ~~and shall be punishable as such. Any penalty assessed and recovered in an action brought under~~  
9 ~~this subsection shall be paid to the general treasurer and added to the general fund.~~

10 ~~-(d) This section does not prohibit smoking in the areas listed in subsection (a) if the~~  
11 ~~smoking is confined to areas separated from those used by the general public and identified by~~  
12 ~~signs as smoking areas.~~

13 ~~-(e) (1) Eating facilities with a seating capacity of fifty (50) or more persons shall have~~  
14 ~~separate seating for nonsmokers and smokers. For purposes of this section, an "eating facility"~~  
15 ~~means any building, structure, room or area maintained as, or held out to the public as, an~~  
16 ~~enclosure where meals are served for consideration of payment; excluded, however, are bars,~~  
17 ~~nightclubs, lounges, dance clubs, and privately sponsored social affairs. Appropriate~~  
18 ~~arrangements shall be made to ask patrons their preference for the non smoking or smoking~~  
19 ~~section prior to being seated.~~

20 ~~-(2) The proprietor or person in charge of the eating facility shall post signs as follows:~~

21 ~~-(A) At the entry stating that the establishment is required by law to have a no smoking~~  
22 ~~section; and~~

23 ~~-(B) In the smoking sections identifying the area.~~

24 ~~-(3) The department of health is authorized to adopt rules and regulations necessary for~~  
25 ~~the implementation and enforcement of this subsection.~~

26 ~~**23-20.6-3. Severability.** --- If any section, subsection, sentence, clause, phrase, or portion~~  
27 ~~of this chapter is for any reason held invalid or unconstitutional by any court of competent~~  
28 ~~jurisdiction, that portion shall be deemed a separate, distinct, and independent provision and this~~  
29 ~~holding shall not affect the validity of the remaining portions of this chapter.~~

30 ~~**23-20.6-4. Signs.** --- Signs required by this chapter may be provided by the state~~  
31 ~~department of health at cost.~~

32 **CHAPTER 23-20.7**

33 **Workplace Smoking Pollution Control Act**

34 ~~**23-20.7-1. Legislative intent.** --- The use of tobacco for smoking purposes is being found~~

1 ~~to be increasingly dangerous, not only to the person smoking but also to the nonsmoking person~~  
2 ~~who is required to breathe the contaminated air. The most pervasive intrusion of the nonsmoker's~~  
3 ~~right to unpolluted air space is the uncontrolled smoking in the workplace. The legislature~~  
4 ~~intends, by the enactment of this chapter, to protect the health and atmospheric environment of~~  
5 ~~the nonsmoker by regulating smoking in the workplace.~~

6 ~~**23-20.7-2. Short title.** --- This chapter shall be known as the "Rhode Island Workplace~~  
7 ~~Smoking Pollution Control Act".~~

8 ~~**23-20.7-3. Purpose.** --- (a) Because the smoking of tobacco or any other weed or plant is~~  
9 ~~a danger to health and is a cause of material annoyance and discomfort to those who are present~~  
10 ~~in confined places, the legislature declares that the purposes of this chapter are:~~

11 ~~-(1) To protect the public health and welfare by regulating smoking in the workplace; and~~

12 ~~-(2) To minimize the toxic effects of smoking in the workplace by requiring an employer~~  
13 ~~to adopt a policy that will accommodate, insofar as possible, the preferences of nonsmokers and~~  
14 ~~smokers.~~

15 ~~-(b) This chapter is not intended to create any right to sue or to impair or alter an~~  
16 ~~employer's prerogative to prohibit smoking in the workplace. If an employer allows employees to~~  
17 ~~smoke in the workplace, this chapter requires:~~

18 ~~-(1) That the employer make reasonable accommodations for the preferences of both~~  
19 ~~nonsmoking and smoking employees, particularly those employees who, as a result of physical~~  
20 ~~condition, are unduly sensitive to tobacco smoke;~~

21 ~~-(2) All nonsmoking areas shall be designated and conspicuously marked with signs;~~

22 ~~-(3) Employers are prohibited from terminating, without due cause, or discriminating~~  
23 ~~against an employee solely because the employee exercised his or her right under this chapter.~~

24 ~~**23-20.7-4. Definitions.** --- As used in this chapter:~~

25 ~~-(1) "Employee" means any person who is employed by any employer in consideration~~  
26 ~~for direct or indirect monetary wage or profit;~~

27 ~~-(2) "Employer" means any person who employs the service of an individual person;~~

28 ~~-(3) "Enclosed" means closed in by a roof and four walls with appropriate openings for~~  
29 ~~ingress and egress and is not intended to mean areas commonly described as public lobbies;~~

30 ~~-(4) "Legislature" means the general assembly of the state of Rhode Island;~~

31 ~~-(5) "Person" means any individual person, firm, partnership, association, corporation,~~  
32 ~~company, organization, or legal entity of any kind;~~

33 ~~-(6) "Smoking" or "to smoke" or "smoke" means and includes the inhaling, exhaling,~~  
34 ~~burning, or carrying of any lighted smoking equipment or paraphernalia for tobacco or any other~~

1 ~~weed or plant; and~~

2 ~~-(7) "Workplace" means any enclosed area of a structure or portion of the structure~~  
3 ~~intended for occupancy by business entities which will provide primarily, but not exclusively,~~  
4 ~~clerical, professional, or business services of the business entity, or which will provide primarily,~~  
5 ~~but not exclusively, clerical, professional, or business services to other business entities or to the~~  
6 ~~public, at that location. The workplace includes, but is not limited to, office spaces in office~~  
7 ~~buildings, office spaces in all state and municipal office buildings, office spaces in all federal~~  
8 ~~office buildings where other than federal employees are present, medical office waiting rooms, all~~  
9 ~~factory or manufacturing plant areas, libraries, museums, hospitals, nursing homes, other medical~~  
10 ~~treatment facilities, and in all the mentioned places.~~

11 ~~**23-20.7-5. Regulation of smoking in the workplace.**~~ ~~--- (a) Each employer who operates~~  
12 ~~a workplace in this state shall within three (3) months of adoption of this chapter adopt,~~  
13 ~~implement, and maintain a written smoking policy which will contain, at a minimum, a policy~~  
14 ~~which is designed to protect the health and atmospheric environment of the nonsmoker and to~~  
15 ~~ensure a comfortable environment for all employees, and the requirement that any nonsmoking~~  
16 ~~employee may object to his or her employer about the smoke hazard or discomfort in his or her~~  
17 ~~workplace. Using existing means of ventilation or separation or partition of the work space:~~

18 ~~-(1) The employer shall attempt to reach a reasonable accommodation to protect the~~  
19 ~~health and atmospheric environment of the nonsmoking employees and to ensure a comfortable~~  
20 ~~environment for all employees.~~

21 ~~-(2) The employer shall either make accommodations or completely prohibit smoking in~~  
22 ~~those areas of the workplace where nonsmoking employees may reasonably be expected to be~~  
23 ~~adversely affected by passive cigarette smoke.~~

24 ~~-(b) The employer's smoking policy shall be announced within three (3) weeks of~~  
25 ~~adoption to all employees working in workplaces in this state and posted conspicuously in all~~  
26 ~~workplaces under the employer's jurisdiction.~~

27 ~~-(c) The director of the department of health shall promulgate rules and regulations to~~  
28 ~~enforce the provisions of this chapter.~~

29 ~~**23-20.7-6. Where smoking not regulated.**~~ ~~--- This chapter is not intended to regulate~~  
30 ~~smoking in the following places and under the following conditions within the state:~~

31 ~~-(1) A private home which may serve as a workplace;~~

32 ~~-(2) Any office space leased or rented by a sole independent contractor for his or her own~~  
33 ~~use;~~

34 ~~-(3) A private enclosed workplace occupied exclusively by smokers, even though this~~

1 ~~workplace is visited by nonsmokers, excepting places in which smoking is prohibited by the fire~~  
2 ~~marshal or by other law, ordinance, or regulation.~~

3 ~~**23-20.7-7. Penalties and enforcement.**~~ (a) ~~The department of health, having received~~  
4 ~~a written and signed letter of complaint from an employee citing a violation of this chapter, shall~~  
5 ~~enforce this entire chapter against violations by either of the following actions:~~

6 ~~(1) Serving written notice to comply to an employer, with a copy of the notice to the~~  
7 ~~complaining employee, requiring the employer to correct within ten (10) days any violation of a~~  
8 ~~section of this chapter.~~

9 ~~(2) Upon receiving a second complaint at the department of health for the same or~~  
10 ~~continued violation by the same employer, the complaint shall be resolved by calling upon the~~  
11 ~~attorney general to maintain, without delay, an action for injunction to enforce the provisions of~~  
12 ~~this chapter, to cause the correction of this violation, and for assessment and recovery of a civil~~  
13 ~~penalty for this violation.~~

14 ~~(b) An employer who violates this chapter shall be liable for a civil penalty, not to be~~  
15 ~~less than fifty dollars (\$50.00) nor to exceed five hundred dollars (\$500) which shall be assessed~~  
16 ~~and recovered in a civil action brought by the attorney general in any court of competent~~  
17 ~~jurisdiction. Each day the violation is committed or permitted to continue shall constitute a~~  
18 ~~separate offense and shall be punishable as a separate offense. Any penalty assessed and~~  
19 ~~recovered in an action brought pursuant to this subsection shall be paid to the general treasurer~~  
20 ~~and added to the general fund.~~

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

25 CHAPTER 23-20.7.1

26 Off-Duty Rights to Privacy by Employees

27 ~~**23-20.7.1-1. Prohibited condition of employment – Smoking by employees outside**~~  
28 ~~**course of employment.**~~ (a) ~~No employer or agent of any employer shall require, as a condition~~  
29 ~~of employment, that any employee or prospective employee refrain from smoking or using~~  
30 ~~tobacco products outside the course of his or her employment, or otherwise discriminate against~~  
31 ~~any individual with respect to his or her compensation, terms, conditions, or privileges of~~  
32 ~~employment for smoking or using tobacco products outside the course of his or her employment.~~  
33 ~~Provided, however, that the following employers shall be exempt from the provisions of this~~  
34 ~~chapter: Any employer which is a nonprofit organization which as one of its primary purposes or~~

1 ~~objectives discourages the use of tobacco products by the general public.~~

2 ~~(b) In any civil action alleging a violation of this chapter the court may:~~

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

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

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

8 ~~(c) Nothing contained in this chapter shall be construed to affect the provisions of~~  
9 ~~chapter 20.7 of this title.~~

10 SECTION 2. Title 23 of the General Laws entitled "Health and Safety" is hereby  
11 amended by adding thereto the following chapter:

12 CHAPTER 20.10

13 PUBLIC HEALTH AND WORKPLACE SAFETY ACT

14 **23-20.10-1. Short title.** – This chapter shall be known as the “Public Health and  
15 Workplace Safety Act”.

16 **23-20.10-2. Definitions.** – The following words and phrases, whenever used in this  
17 chapter, shall be construed as defined in this section:

18 (1) “Assisted living residence” means a residence that provides personal assistance, and  
19 meals to adults in accordance with chapter 23-17.4 of the general laws.

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

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

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

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

34 (6) “Enclosed area” means all space between a floor and ceiling that is enclosed on all

1 sides by solid walls or windows (exclusive of doorways), which extend from the floor to the  
2 ceiling.

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

10 (8) "Place of employment" means an area under the control of a public or private  
11 employer that employees normally frequent during the course of employment, including, but not  
12 limited to, work areas, employees lounges, restrooms, conference rooms, meeting rooms,  
13 classrooms, employee cafeterias, and hallways. Vehicles owned by a public or private employer  
14 are covered under this definition provided that the vehicle is used by more than one (1) person. A  
15 private residence is not a "place of employment" unless it is used as a child care, adult day care or  
16 health care facility.

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

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

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

33 (12) "Service line" means an indoor line in which one (1) or more persons are waiting for  
34 or receiving service of any kind, whether or not the service involves the exchange of money.

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

3           (14) "Smoking" means inhaling, exhaling, burning or carrying any lighted cigar,  
4 cigarette, pipe, weed, plant, or other combustible substance in any manner or in any form.

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

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

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

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

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

23           **23-20.10-3. Prohibition of smoking in public places.** – Smoking shall be prohibited in  
24 all enclosed public places within the state of Rhode Island, including, but not limited to, the  
25 following places:

26           (1) Aquariums, galleries, libraries and museums;

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

30           (3) Bars;

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

32           (5) Convention facilities;

33           (6) Elevators;

34           (7) Facilities primarily used for exhibiting a motion picture, stage, drama, lecture,

- 1 musical, recital or other similar performance;
- 2 (8) Health care facilities;
- 3 (9) Licensed child care and adult day care facilities;
- 4 (10) Lobbies, hallways and other common areas in apartment buildings, condominiums,  
5 trailer parks, retirement facilities, nursing homes and other multiple unit residential facilities with  
6 more than four (4) units;
- 7 (11) Polling places;
- 8 (12) Public transportation facilities, including buses and taxicabs, under the authority of  
9 the state of Rhode Island, and ticket, boarding and waiting areas of public transit depots;
- 10 (13) Restaurants;
- 11 (14) Restrooms, lobbies, reception areas, hallways and other common use areas;
- 12 (15) Retail stores;
- 13 (16) Rooms, chambers, places of meeting or public assembly, including school buildings,  
14 under the control of an agency, board, commission, committee or council of the state of Rhode  
15 Island or a political subdivision of the state when a public meeting is in progress, to the extent the  
16 place is subject to the jurisdiction of the state of Rhode Island;
- 17 (17) Schools; including, primary, secondary and post-secondary education facilities;
- 18 (18) Service lines;
- 19 (19) Shopping malls;
- 20 (20) Sports arenas, including outdoor arenas.

21 **23-20.10-4. Prohibition of smoking in places of employment.** – Smoking shall be  
22 prohibited in all enclosed facilities within places of employment without exception. This includes  
23 common work areas, auditoriums, classrooms, conference and meeting rooms, private offices,  
24 elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles,  
25 and all other enclosed facilities.

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

29 **23-20.10-5. Outdoor smoking space.** – Nothing in this chapter shall prohibit an  
30 employer from providing an outdoor smoking space for their employees. Provided, however, that  
31 any employer who provides an outdoor area for its employees to smoke must provide an area  
32 which is physically separated from the enclosed workplace so as to prevent the migration of  
33 smoke into the workplace.

34 **23-20.10-6. Where smoking not regulated.** – (a) Notwithstanding any other provision

1 of this chapter to the contrary, the following areas shall be exempt from the provisions of this  
2 chapter.

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

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

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

10 (4) Private and semi-private rooms or designated areas in assisted living residences and  
11 nursing facilities as allowed by regulation of the department of health under chapters 23-17.4 and  
12 23-17 of the general laws;

13 (5) Outdoor areas of places of employment, except those covered by the provisions of  
14 section 23-20.10-5

15 (6) Any smoking bar as defined in section 23-20.10-2(15).

16 (7) Any pari mutual facility established under chapters 3.1 and 7 of title 41.

17 (8) Any facility operated under a class D liquor license provided the class D liquor  
18 license is held by a nonprofit charitable corporation with a defined membership, is not ordinarily  
19 a place of public accommodation but is distinctly private, and employs not more than ten (10)  
20 employees.

21 (9) Any facility operated exclusively under a class C liquor license and employs not more  
22 than ten (10) employees.

23 (b) Exemptions (7) – (9) above shall remain in effect until October 1, 2006.

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

26 **23-20.10-7. Posting of signs.** – (a) "No smoking" signs or the international "No  
27 smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red  
28 circle with a red bar across it) shall be clearly and conspicuously posted in every public place and  
29 place of employment where smoking is prohibited by this chapter, by the owner, operator,  
30 manager or other person in control of that place. Signs required by this chapter may be provided  
31 by the state department of health at cost.

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

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

4           **23-20.10-8. Nonretaliation.** – No person or employer shall discharge, refuse to hire or in  
5 any manner retaliate against an employee, applicant for employment or customer because that  
6 employee, applicant or customer exercises any rights afforded by this chapter or reports or  
7 attempts to prosecute a violation of this chapter.

8           **23-20.10-9. Enforcement.** – (a) The director of health shall promulgate such rules and  
9 regulations including the complaint forms, as are necessary to carry out the mandates of this  
10 chapter within one hundred eighty (180) days of passage.

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

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

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

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

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

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

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

32           (g) In addition to the remedies provided by the provisions of this section, the department  
33 of health, aggrieved by the failure of the owner, operator, manager or other person in control of a  
34 public place or place of employment to comply with the provisions of this chapter, may apply for

1 injunctive relief to enforce those provisions in any court of competent jurisdiction.

2 **23-20.10-10. Violations and penalties.** – (a) An employer who violates this chapter shall  
3 be liable for a civil penalty as follows:

4 (1) A penalty of two hundred fifty dollars (\$250) for the first violation;

5 (2) A penalty of five hundred dollars (\$500) for the second violation;

6 (3) A penalty of one thousand dollars (\$1,000) for the third and subsequent violations;

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

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

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

20 **23-20.10-11. Public education.** – The department of health shall engage in a continuing  
21 program to explain and clarify the purposes and requirements of this chapter to citizens affected  
22 by it, and to guide owners, operators and managers in their compliance with it. The program may  
23 include publication of a brochure for affected businesses and individuals explaining the  
24 provisions of this ordinance.

25 **23-20.10-12. Governmental agency cooperation.** – The state of Rhode Island and its  
26 designees shall annually request other governmental and educational agencies having facilities  
27 within the state to establish local operating procedures in cooperation and compliance of this  
28 chapter. This includes urging all federal, state, municipal and school district agencies to update  
29 their existing smoking control regulations to be consistent with the current health findings  
30 regarding secondhand smoke.

31 **23-20.10-13. Other applicable laws.** – This chapter shall not be interpreted or construed  
32 to permit smoking where it is otherwise restricted by other applicable laws.

33 **23-20.10-14. Prohibited condition of employment – Smoking by employees outside**  
34 **course of employment.** – (a) No employer or agent of any employer shall require, as a condition

1 of employment, that any employee or prospective employee refrain from smoking or using  
2 tobacco products outside the course of his or her employment, or otherwise discriminate against  
3 any individual with respect to his or her compensation, terms, conditions or privileges of  
4 employment for smoking or using tobacco products outside the course of his or her employment.  
5 Provided, however, that the following employers shall be exempt from the provisions of this  
6 section: Any employer that is a nonprofit organization which as one of its primary purposes or  
7 objectives discourages the use of tobacco products by the general public.

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

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

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

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

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

16 **23-20.10-15. Statewide Uniformity (Effective until October 1, 2006).** – (a) It is the  
17 declared policy of this state that there be uniformity in the application and enforcement of  
18 smoking prohibitions as defined in this chapter. Any enactment relating to prohibitions in an area  
19 defined in this chapter shall be by statute as enacted by the general assembly; provided, however,  
20 that the general assembly may by statute delegate such authority to the cities and towns.

21 **23-20.10-16. Severability.** – If any section, subsection, sentence, clause, phrase or  
22 portion of this chapter is for any reason held invalid or unconstitutional by any court of competent  
23 jurisdiction, that portion shall be deemed a separate, distinct and independent provision and this  
24 holding shall not affect the validity of the remaining portions of this chapter.

25 SECTION 3. This act shall take effect on March 1, 2005.

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LC03133  
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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO WORKPLACE SAFETY

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- 1 This act would create the “Public Health and Workplace Safety Act.”
- 2 This act would take effect on March 1, 2005.

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LC03133  
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