

CHAPTER 262**SMOKING****§1541. Definitions**

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 1993, c. 342, §1 (NEW); PL 1993, c. 342, §9 (AFF).]

1. Designated smoking area. "Designated smoking area" means an enclosed area designated as a place for smoking. A designated area must be designed to prevent smoke escaping from the designated area into a public place.

[PL 2005, c. 257, §1 (AMD).]

1-A. Electronic smoking device. "Electronic smoking device" means a device used to deliver nicotine or any other substance intended for human consumption that may be used by a person to simulate smoking through inhalation of vapor or aerosol from the device, including, without limitation, a device manufactured, distributed, marketed or sold as an electronic cigarette, electronic cigar, electronic pipe, electronic hookah or so-called vape pen.

[PL 2015, c. 318, §1 (NEW).]

2. Enclosed area. "Enclosed area" means a space between a floor and a ceiling that is demarcated on all sides by walls, windows, shutters, doors or passageways. A partition, partial wall or office divider is a demarcation of an enclosed area if it extends from the floor to within 4 feet of the ceiling or from the ceiling to within 4 feet of the floor.

[PL 2005, c. 257, §1 (AMD).]

3. Private office.

[PL 2005, c. 338, §1 (RP).]

4. Public place. "Public place" means any place not open to the sky into which the public is invited or allowed. Except as provided in section 1542, subsection 2, paragraph J, a private residence is not a public place.

[PL 2003, c. 493, §2 (AMD); PL 2003, c. 493, §14 (AFF).]

5. Restaurant.

[PL 2003, c. 493, §3 (RP); PL 2003, c. 493, §14 (AFF).]

6. Smoking. "Smoking" includes carrying or having in one's possession a lighted or heated cigarette, cigar or pipe or a lighted or heated tobacco or plant product intended for human consumption through inhalation whether natural or synthetic in any manner or in any form. "Smoking" includes the use of an electronic smoking device.

[PL 2015, c. 318, §2 (AMD).]

7. Tobacco specialty store. "Tobacco specialty store" means a retail business under 2,000 square feet in which at least 60% of the business's gross revenue for the last calendar year was derived from the sale of tobacco or tobacco-related products.

[PL 2005, c. 223, §1 (NEW).]

8. Waterpipe or hookah. "Waterpipe" or "hookah" means a device used for smoking tobacco that consists of a tube connected to a container where the smoke is cooled by passing through water.

[PL 2007, c. 180, §1 (NEW).]

SECTION HISTORY

PL 1993, c. 342, §1 (NEW). PL 1993, c. 342, §9 (AFF). PL 1999, c. 54, §§1,2 (AMD). PL 2003, c. 493, §§2,3 (AMD). PL 2003, c. 493, §14 (AFF). PL 2005, c. 223, §1 (AMD). PL 2005, c. 257, §1 (AMD). PL 2005, c. 338, §1 (AMD). PL 2007, c. 180, §1 (AMD). PL 2015, c. 318, §§1, 2 (AMD).

§1542. Smoking prohibited in public places

1. Prohibition. Smoking is prohibited in all enclosed areas of public places, including bus shelters, in outdoor eating areas as provided in section 1550 and in all rest rooms made available to the public. In the case of a child care facility that is not home-based, smoking is also prohibited in a facility-designated motor vehicle within 12 hours before transporting a child who is in the care of the child care facility, and whenever such a child is present in the vehicle. Smoking is also prohibited in outdoor areas of the facility where children may be present.

[PL 2021, c. 57, §1 (AMD).]

2. Limitations. The prohibition in subsection 1 is subject to the following limitations.

A. Smoking is not prohibited in an enclosed area of a public place during a period of time that the facility containing the enclosed area of the public place is not open to the public. During its normal business hours, a public place must be closed for at least one hour to be considered "not open to the public." [PL 2005, c. 257, §3 (AMD).]

B. Smoking is not prohibited in theaters or other enclosed structures used for plays, lectures, recitals or other similar purposes if the smoking is solely by a performer and the smoking is part of the performance. [PL 1993, c. 342, §1 (NEW); PL 1993, c. 342, §9 (AFF).]

C. Smoking is not prohibited in any area where undertaken as part of a religious ceremony or as part of a cultural activity by a defined group. [PL 1993, c. 342, §1 (NEW); PL 1993, c. 342, §9 (AFF).]

D. [PL 1999, c. 54, §3 (RP).]

E. Smoking in places of employment is governed by the provisions of section 1580-A. If public employees' rights provided in collective bargaining agreements are affected by this section, the employees have the right to reopen negotiations for the purpose of bargaining for smoking areas in nonpublic areas of publicly owned buildings. [PL 1993, c. 342, §1 (NEW); PL 1993, c. 342, §9 (AFF).]

F. [PL 2009, c. 300, §1 (RP).]

G. [PL 2003, c. 493, §4 (RP); PL 2003, c. 493, §14 (AFF).]

H. Smoking is not prohibited in motel or hotel rooms that are rented to members of the public. [PL 1993, c. 342, §1 (NEW); PL 1993, c. 342, §9 (AFF).]

I. [PL 2005, c. 338, §2 (RP).]

J. Smoking is not prohibited in a private residence, subject to section 1580-A, unless the private residence is used as a day care or baby-sitting service. If a private residence is used as a day care or baby-sitting service, smoking is prohibited:

(1) In the residence, during the hours of operation as a day care or baby-sitting service;

(2) In outdoor areas on the property of that private residence, wherever a child under care may be present; and

(3) During the facility's hours of operation, in a motor vehicle owned or operated by the facility whenever a child under care is in the vehicle. [PL 2009, c. 300, §2 (AMD).]

K. Smoking is not prohibited in public places when beano or bingo games are being conducted in accordance with the provisions of Title 17, section 314-A. [PL 2003, c. 379, §1 (AMD).]

L. Smoking is not prohibited in a tobacco specialty store. The on-premises service, preparation or consumption of food or drink, if the tobacco specialty store is not licensed for such service or consumption prior to January 1, 2007, is prohibited in such a store. Smoking a waterpipe or hookah is prohibited in a tobacco specialty store that is newly licensed or that requires a new license after January 1, 2007. [PL 2007, c. 180, §2 (AMD).]

M. [PL 2005, c. 257, §5 (RP).]

N. Smoking is not prohibited in designated smoking areas in an off-track betting facility or simulcast racing facility at a commercial track, if that facility is licensed pursuant to Title 8, chapter 11 and in operation on June 30, 2003, is purchased from the owner or purchaser of a facility licensed pursuant to Title 8, chapter 11 and in operation on June 30, 2003 or is moved to another location within the same municipality by the owner or purchaser of a facility licensed pursuant to Title 8, chapter 11 and in operation on June 30, 2003, as long as:

- (1) No sales or services are provided in the designated smoking area, except that television equipment and stand-alone betting terminals or other means of placing wagers may be provided;
- (2) No employees work in or are required to pass through the designated smoking area;
- (3) Members of the public, except for those who choose to be present in the designated smoking area, are not required to utilize or pass through the designated smoking area for any purpose;
- (4) No one under 18 years of age is permitted in the designated smoking area;
- (5) The designated smoking area within the purchased or relocated off-track betting facility or purchased or relocated simulcast racing facility has a floor area no larger than 2,000 square feet, except that any designated smoking area larger than 2,000 square feet and in existence on January 1, 2005 is exempt from this subparagraph;
- (6) No slot machines are located within the off-track betting or simulcast racing facility. For the purposes of this subparagraph, an off-track betting facility or a simulcast racing facility must be in a separately enclosed area, whether stand-alone or within another facility, that is accessible by either an interior or exterior door; and
- (7) The designated smoking area is located entirely within a separately enclosed area of an off-track betting facility or simulcast racing facility and proper signs are mounted to the exterior of the designated smoking area indicating that use of that area is for off-track betting and simulcast racing patrons only. [PL 2005, c. 362, §1 (AMD).]

[PL 2009, c. 300, §§1, 2 (AMD).]

3. Location of designated smoking area.

[PL 2003, c. 493, §6 (RP); PL 2003, c. 493, §14 (AFF).]

SECTION HISTORY

PL 1993, c. 342, §1 (NEW). PL 1993, c. 342, §9 (AFF). PL 1997, c. 150, §1 (AMD). PL 1999, c. 54, §3 (AMD). PL 2003, c. 379, §1 (AMD). PL 2003, c. 493, §§4-6 (AMD). PL 2003, c. 493, §14 (AFF). PL 2005, c. 223, §2 (AMD). PL 2005, c. 257, §§2-5 (AMD). PL 2005, c. 338, §2 (AMD). PL 2005, c. 362, §1 (AMD). PL 2007, c. 180, §2 (AMD). PL 2009, c. 140, §1 (AMD). PL 2009, c. 300, §§1, 2 (AMD). PL 2021, c. 57, §1 (AMD).

§1543. Posting signs

Signs must be posted conspicuously in buildings where smoking is regulated by this chapter. Designated areas must have signs that read "Smoking Permitted" with letters at least one inch in height. Places where smoking is prohibited must have signs that read "No Smoking" with letters at least one

inch in height or the international symbol for no smoking. [PL 1993, c. 342, §1 (NEW); PL 1993, c. 342, §9 (AFF).]

SECTION HISTORY

PL 1993, c. 342, §1 (NEW). PL 1993, c. 342, §9 (AFF).

§1544. Retaliation prohibited

A person may not discharge, refuse to hire, discipline or otherwise retaliate against any person who pursues any remedy available to enforce the requirements of this chapter. [PL 2005, c. 257, §6 (AMD).]

SECTION HISTORY

PL 1993, c. 342, §1 (NEW). PL 1993, c. 342, §9 (AFF). PL 2005, c. 257, §6 (AMD).

§1545. Penalty

A person who violates any provision of this chapter commits a civil violation for which a fine of \$100 may be adjudged, except that a fine of up to \$1,500 may be adjudged for each violation of this chapter in cases when a person engages in a pattern of conduct that demonstrates a lack of good faith in complying with this chapter. [PL 2005, c. 257, §7 (AMD).]

SECTION HISTORY

PL 1993, c. 342, §1 (NEW). PL 1993, c. 342, §9 (AFF). PL 2005, c. 257, §7 (AMD).

§1546. Tobacco Tax Relief Fund

(REPEALED)

SECTION HISTORY

PL 1997, c. 560, §A1 (NEW). PL 1997, c. 560, §A5 (AFF). PL 1997, c. 643, §T2 (RP). PL 1997, c. 643, §T6 (AFF). PL 1997, c. 750, §D1 (AFF).

§1547. Tobacco specialty store; entry prohibited for persons under 18 years of age

A person under 18 years of age is prohibited from entering a business licensed as a tobacco specialty store unless accompanied by a parent or legal guardian, regardless of whether smoking is allowed in that store. [PL 2005, c. 223, §3 (NEW).]

REVISOR'S NOTE: §1547. Enforcement (As enacted by PL 2005, c. 257, §8 is REALLOCATED TO TITLE 22, SECTION 1548)

SECTION HISTORY

RR 2005, c. 1, §5 (RAL). PL 2005, c. 223, §3 (NEW). PL 2005, c. 257, §8 (NEW).

§1548. Enforcement

(REALLOCATED FROM TITLE 22, SECTION 1547)

The Attorney General may bring an action to enforce this chapter in District Court or Superior Court and may seek injunctive relief, including a preliminary or final injunction, and fines, penalties and equitable relief and may seek to prevent or restrain actions in violation of this chapter by a person or any person controlling such person. [RR 2005, c. 1, §5 (RAL).]

SECTION HISTORY

RR 2005, c. 1, §5 (RAL).

§1549. Smoking in vehicles when minor under 16 years of age is present

(REPEALED)

SECTION HISTORY

PL 2007, c. 591, §1 (NEW). PL 2007, c. 591, §2 (AFF). PL 2017, c. 165, §1 (RP).

§1550. Smoking in outdoor eating areas

1. Definition. As used in this section, "outdoor eating area" means a patio, deck or other property that is partially enclosed or open to the sky that is permitted for outdoor eating or drinking under the control of an eating establishment, as defined in section 2491, subsection 7, as long as food or drink is served by the eating establishment to the public for consumption on the premises.

[PL 2009, c. 140, §2 (NEW).]

2. Smoking prohibited. Smoking is prohibited in an outdoor eating area if the outdoor eating area or any portion thereof is open and available for dining and beverage service.

[PL 2009, c. 140, §2 (NEW).]

3. Notification; request for compliance. An eating establishment with an outdoor eating area shall post signs in accordance with section 1543, notify its patrons of the prohibition on smoking in outdoor eating areas and request that all persons within an outdoor eating area comply with this section.

[PL 2009, c. 140, §2 (NEW).]

SECTION HISTORY

PL 2009, c. 140, §2 (NEW).

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