

## 22 §1542. SMOKING PROHIBITED IN PUBLIC PLACES

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**1. Prohibition.** Smoking is prohibited in all enclosed areas of public places, outdoor eating areas as provided in section 1550 and 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.

[ 2009, c. 140, §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." [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. [1993, c. 342, §1 (NEW); 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. [1993, c. 342, §1 (NEW); 1993, c. 342, §9 (AFF) . ]

D. [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. [1993, c. 342, §1 (NEW); 1993, c. 342, §9 (AFF) . ]

F. [2009, c. 300, §1 (RP) . ]

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

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

I. [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. [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. [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. [2007, c. 180, §2 (AMD).]

M. [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. [2005, c. 362, §1 (AMD).]

[ 2009, c. 300, §§1, 2 (AMD) .]

### 3. Location of designated smoking area.

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

#### SECTION HISTORY

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

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