

## TITLE XIII

### GENERAL OFFENSES

#### CHAPTER 132: REGULATING SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT

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#### § 132.01 DEFINITIONS

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**BAR means** an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and that derives no more than 10% of its gross revenue from the sale of food consumed on the premises. **BAR** includes, but is not limited to, taverns, nightclubs, cocktail lounges, adult entertainment facilities, and cabarets.

**DEPARTMENT** means the Department of Public Health.

**EMPLOYEE** means a person who is employed by an employer in consideration for direct or indirect monetary wages or profits or a person who volunteers his or her services for a non-profit entity.

**EMPLOYER** means a person, business, partnership, association, or corporation, including a municipal corporation, trust, or non-profit entity that employs the services of one or more individual persons.

**ENCLOSED AREA** means all space between a floor and a ceiling that is enclosed or partially enclosed with (i) solid walls or windows, exclusive of doorways, or (ii) solid walls with partitions and no windows, exclusive of doorways, that extend from the floor to the ceiling, including, without limitation, lobbies and corridors.

**ENCLOSED OR PARTIALLY ENCLOSED SPORTS ARENA** means any sports pavilion, stadium, gymnasium, health spa, boxing arena, swimming pool, roller rink, ice rink, bowling alley, or other similar place where members of the general public assemble to engage in physical exercise or participate in athletic competitions or recreational activities or to witness sports, cultural, recreational, or other events.

**GAMING EQUIPMENT OR SUPPLIES** means gaming equipment/supplies as defined in the Illinois Gaming Board Rules of the Illinois Administrative Code.

**GAMING FACILITY** means an establishment utilized primarily for the purposes of gaming and where gaming equipment or supplies are operated for the purposes of accruing business revenue.

**HEALTHCARE FACILITY** means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including, but not limited to, hospitals, rehabilitation hospitals, 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. **HEALTHCARE FACILITY** includes all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within healthcare facilities.

**PLACE OF EMPLOYMENT** means any area under the control of a public or private employer that employees are required to enter, leave, or pass through during the course of employment, including, but not limited to entrances and exits to places of employment, including a minimum distance, as set forth in § 132.11 of this chapter, of 15 feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where smoking is prohibited; offices and work areas; restrooms; conference and classrooms; break rooms and cafeterias; and other common areas. A private residence or home-based business, unless used to provide licensed child care, foster care, adult care, or other similar social service care on the premises, is not a **PLACE OF EMPLOYMENT**.

**PRIVATE CLUB** means a not-for-profit association that:

- (1) Has been in active and continuous existence for at least 3 years prior to the effective date of the amendatory Act of the 95th General Assembly, whether incorporated or not,
- (2) Is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times,
- (3) Is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain, and
- (4) Only sells alcoholic beverages incidental to its operation.

For purposes of this definition, **PRIVATE CLUB** means an organization that is managed by a board of directors, executive committee, or similar body chosen by the members at an annual meeting, has established bylaws, a constitution, or both to govern its activities, and has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. 501.

**PRIVATE RESIDENCE** means the part of a structure used as a dwelling, including, without limitation: a private home, townhouse, condominium, apartment, mobile home, vacation home, cabin, or cottage. For the purposes of this definition, a hotel, motel, inn, resort, lodge, bed and breakfast or other similar public accommodation, hospital, nursing home, or assisted living facility shall not be considered a private residence.

**PUBLIC PLACE** means that portion of any building or vehicle used by and open to the public, regardless of whether the building or vehicle is owned in whole or in part by private persons or entities, the State of Illinois, or any other public entity and regardless of whether a fee is charged for admission, including a minimum distance, as set forth in § 132.11 of this chapter, of 15 feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where smoking is prohibited. A **PUBLIC PLACE** does not include a private residence unless the private residence is used to provide licensed child care, foster care, or other similar social service care on the premises. A **PUBLIC PLACE** includes, but is not limited to, hospitals, restaurants, retail stores, offices, commercial establishments, elevators, indoor theaters, libraries, museums, concert halls, public conveyances, educational facilities, nursing homes, auditoriums, enclosed or partially enclosed sports arenas, meeting rooms, schools, exhibition halls, convention facilities, polling places, private clubs, gaming facilities, all government owned vehicles and facilities, including buildings and vehicles owned, leased, or operated by the State or State subcontract, healthcare facilities or clinics, enclosed shopping centers, retail service establishments, financial institutions, educational facilities, ticket areas, public hearing facilities, public restrooms, waiting areas, lobbies, bars, taverns, bowling alleys, skating rinks, reception areas, and no less than 75% of the sleeping quarters within a hotel, motel, resort, inn, lodge, bed and breakfast, or other similar public accommodation that are rented to guests, but excludes private residences.

**RESTAURANT** means (i) an eating establishment, including, but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, that gives or offers for sale food to the public, guests, or employees, and (ii) a kitchen or catering facility in which food is prepared on the premises for serving elsewhere. **RESTAURANT** includes a bar area within the restaurant.

**RETAIL TOBACCO STORE** means a retail establishment that derives more than 80% of its gross revenue from the sale of loose tobacco, plants, or herbs and cigars, cigarettes, pipes, and other smoking devices for burning tobacco and related smoking accessories and in which the sale of other products is merely incidental. **RETAIL TOBACCO STORE** does not include a tobacco department or section of a larger commercial establishment or any establishment with any type of liquor, food, or restaurant license.

**SMOKE** or **SMOKING** means the carrying, smoking, burning, inhaling, or exhaling of any kind of lighted pipe, cigar, cigarette, hookah, weed, herbs, or any other lighted smoking equipment.

**STATE AGENCY** has the meaning formerly ascribed to it in subsection (a) of Section 3 of the Illinois Purchasing Act (now repealed).

**UNIT OF LOCAL GOVERNMENT** has the meaning ascribed to it in Section 1 of Article VII of the Illinois Constitution of 1970.

## § 132.02 PROHIBITION

(A) Smoking in public places, places of employment, and governmental vehicles prohibited. No person shall smoke in a public place or in any place of employment or within 15 feet of any entrance to a public place or place of employment. No person may smoke in any vehicle owned, leased, or operated by the State or a political subdivision of the State. Smoking is prohibited in indoor public places and workplaces unless specifically exempted by § 132.04 of this chapter.

(B) Smoking prohibited in student dormitories. Notwithstanding any other provision of this chapter, smoking is prohibited in any portion of the living quarters, including, but not limited to, sleeping rooms, dining areas, restrooms, laundry areas, lobbies, and hallways, of a building used in whole or in part as a student dormitory that is owned and operated or otherwise utilized by a public or private institution of higher education.

## § 132.03 POSTING OF SIGNS

(A) Posting of signs; removal of ashtrays.

1. 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 each 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.
2. Each 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.
3. All ashtrays shall be removed from any area where smoking is prohibited by this chapter by the owner, operator, manager, or other person having control of the area.

(B) Designation of other nonsmoking areas. Notwithstanding any other provision of this chapter, any employer, owner, occupant, lessee, operator, manager, or other person in control of any public place or place of employment may designate a non-enclosed area of a public place or place of employment, including outdoor areas, as an area where smoking is also

prohibited provided that such employer, owner, lessee or occupant shall conspicuously post signs prohibiting smoking in the manner described in subsections (a) and (b) of §132.03 of this chapter.

## **§ 132.04 EXEMPTIONS**

Notwithstanding any other provision, smoking is allowed in the following areas:

1. Private residences or dwelling places, except when used as a child care, adult day care, or healthcare facility or any other home-based business open to the public.
2. Retail tobacco stores as defined in § 132.01 of this chapter in operation prior to the effective date of the amendatory Act of the 95th General Assembly. The retail tobacco store shall annually file with the Department by January 31<sup>st</sup> an affidavit stating the percentage of its gross income during the prior calendar year that was derived from the sale of loose tobacco, plants, or herbs and cigars, cigarettes, pipes, or other smoking devices for smoking tobacco and related smoking accessories. Any retail tobacco store that begins operation after the effective date of the amendatory Act may only qualify for an exemption if located in a freestanding structure occupied solely by the business and smoke from the business does not migrate into an enclosed area where smoking is prohibited.
3. Private and semi-private rooms in nursing homes and long-term care facilities that are occupied by one or more persons, all of whom are smokers and have requested in writing to be placed or to remain in a room where smoking is permitted and the smoke shall not infiltrate other areas of the nursing home.
4. Hotel and motel sleeping rooms that are rented to guests and are designated as smoking rooms, provided that all smoking rooms on the same floor must be contiguous and smoke from these rooms must not infiltrate into nonsmoking rooms or other areas where smoking is prohibited. Not more than 25% of the rooms rented to guests in a hotel or motel may be designated as rooms where smoking is allowed. The status of rooms as smoking or nonsmoking may not be changed, except to permanently add additional nonsmoking rooms.

## **§ 132.05 ENFORCEMENT**

Enforcement; complaints.

1. The Department, State-certified local public health departments, and local law enforcement agencies shall enforce the provisions of this chapter and may assess fines pursuant to § 132.06 of this chapter.
2. Any person may register a complaint with the Department, a State-certified local public health department, or a local law enforcement agency for a violation of

this chapter. The Department shall establish a telephone number that a person may call to register a complaint under this subsection (2).

## **§ 132.06 VIOLATIONS**

(A) A person, corporation, partnership, association or other entity who violates § 132.02 of this chapter shall be fined pursuant to this chapter. Each day that a violation occurs is a separate violation.

(B) A person who smokes in an area where smoking is prohibited under § 132.02 of this chapter shall be fined in an amount that is not less than \$100 and not more than \$250. A person who owns, operates, or otherwise controls a public place or place of employment that violates § 132.02 of this chapter shall be fined:

- i. not less than \$250 for the first violation,
- ii. not less than \$500 for the second violation within one year after the first violation, and
- iii. not less than \$2,500 for each additional violation within one year after the first violation.

(C) A fine imposed under this chapter shall be allocated as follows:

1. The fine shall be distributed to the enforcing agency.

## **§ 132.07 INJUNCTIONS**

The Department, a State-certified location public health department, local law enforcement agency, or any individual personally affected by repeated violations may institute, in a circuit court, an action to enjoin violations of this chapter.

## **§ 132.08 DISCRIMINATION PROHIBITED**

No individual may be discriminated against in any manner because of the exercise of any rights afforded by this chapter.

## **§ 132.09 SEVERABILITY**

If any provision, clause or paragraph of this chapter shall be held invalid by a court of competent jurisdiction, such validity shall not affect the other provisions of this chapter.

## **§ 132.10 HOME RULE AND OTHER LOCAL REGULATION**

(A) Any home rule unit of local government, any non-home rule municipality, or any non-home rule county within the unincorporated territory of the county may regulate smoking in public places, but that regulation must be no less restrictive than this chapter. This subsection (A) is a limitation on the concurrent exercise of home rule power under subsection (i) of Section 6 of Article VII of the Illinois Constitution.

(B) In addition to any regulation authorized under subsection (a) or authorized under home rule powers, any home rule unit of local government, any non-home rule municipality, or any non-home rule county within the unincorporated territory of the county may regulate smoking in any enclosed indoor area used by the public or serving as a place of work if the area does not fall within the definition of a "public place" under this Act.

### **§ 132.11 VENTILATION INTAKES**

Entrances, exits, windows and ventilation intakes. Smoking is prohibited within a minimum distance of 15 feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where smoking is prohibited under this chapter so as to ensure that tobacco smoke does not enter the area through entrances, exits, open windows, or other means.