

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2020

A N A C T

RELATING TO BUSINESSES AND PROFESSIONS -- LOCAL TOBACCO CONTROL ACT

Introduced By: Senators Crowley, Quezada, Metts, Sheehan, and Miller

Date Introduced: February 04, 2020

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 5 of the General Laws entitled "BUSINESSES AND PROFESSIONS"
2 is hereby amended by adding thereto the following chapter:

3 CHAPTER 90

4 LOCAL TOBACCO CONTROL ACT

5 **5-90-1. Short title.**

6 This chapter shall be known and may be cited as the "Local Tobacco Control Act".

7 **5-90-2. Definitions.**

8 As used in this chapter:

9 (1) "Applicant" means any person who has applied for permission to engage in any act or
10 activity that is regulated pursuant to the provisions of this chapter.

11 (2) "License" means any license required by this chapter.

12 (3) "License fee" means any monies required by law to be paid for the issuance or
13 renewal of any license required by this chapter.

14 (4) "Local licensing authority" means the town councils or license boards of the several
15 towns, the mayor and city council or license bureau of a city.

16 (5) "Person" means any natural person, partnership, firm, joint stock company,
17 corporation, or employee thereof, or other legal entity.

18 (6) "Sale" means any transfer of goods for money, trade, barter, or other consideration.

19 (7) "Tobacco product" means any product containing tobacco or nicotine, and related

1 devices, including, but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco,
2 dipping tobacco, bidis, snus, dissolvable tobacco products, electronic nicotine-delivery systems as
3 defined in § 11-9-13.4 and any liquids for use in electronic nicotine-delivery systems; provided,
4 however, that such term shall not include any product that has been approved by the United States
5 Food and Drug Administration, pursuant to its authority over drugs.

6 **5-90-3. Applicant license qualifications.**

7 In order to be eligible for a license, an applicant must:

8 (1) Be a citizen of the United States or a resident alien;

9 (2) Not have been convicted, in any jurisdiction, of violating state or federal tobacco
10 control laws;

11 (3) Not have been declared by any court of competent jurisdiction incompetent by reason
12 of mental defect or disease unless the court has subsequently determined that his or her
13 competency has been restored;

14 (4) Comply with any other requirements set by local ordinance.

15 (5) Submit a complete application, by the terms of the local licensing authority's
16 ordinance, including a license fee.

17 **5-90-4. Investigation and action on application.**

18 After an examination of the application's contents, receipt of a license fee, and any further
19 inquiry and investigation that is deemed proper and necessary as to the good character,
20 competency, and integrity of the applicant and the persons named in the application, the local
21 licensing authority shall, as soon as practicable, issue a license in a form prescribed by it to the
22 applicant or notify the applicant of a denial of the license application. Persons shall file
23 applications with the local licensing authority where his or her business is located.

24 **5-90-5. Grounds for denial of application for license or renewal of license.**

25 The local licensing authority shall deny the application for or renewal of license if it finds
26 that the applicant:

27 (1) Has violated any provision of chapter 9 of title 11, this chapter, or rules and local
28 ordinances promulgated consistent with this chapter;

29 (2) Committed any act that would disqualify the applicant under § 5-90-8 or the applicant
30 has failed to meet the qualifications in § 5-90-3;

31 (3) Practices fraud, deceit, or misrepresentation;

32 (4) Makes a material misstatement in the application for issuance or renewal of a license;

33 or

34 (5) Demonstrates incompetence or untrustworthiness in actions affecting the conduct of

1 the business, required to be licensed under this chapter.

2 **5-90-6. Procedure for approval or denial of application - Hearings.**

3 The local licensing authority, in approving or denying an application for a license or
4 renewal of a license, shall proceed as follows:

5 (1) If the application is approved, the local licensing authority shall issue a license in the
6 form provided in this chapter and local ordinances promulgated consistent with this chapter;

7 (2) If the application is denied, the local licensing authority shall notify the applicant or
8 licensee, in writing, of the denial and state the reasons for its action;

9 (3) Within fifteen (15) days from the receipt of notice, the applicant or licensee may
10 request a hearing in writing;

11 (4) If a request for a hearing is received in a timely manner, the local licensing authority
12 shall set a date for a hearing and notify the parties of the time and place of the hearing;

13 (5) All hearings shall be held in accordance with the provisions of chapter 35 of title 42.

14 **5-90-7. Renewal of licenses.**

15 Each license shall expire one year after its date of issuance. Subject to the power of the
16 local licensing authority to deny, revoke, or suspend a license, and set any additional
17 requirements on licensees by ordinance, any license shall be renewable by the local licensing
18 authority for the next one-year period upon proper application for renewal including payment of
19 license fees. An application for renewal of a license must be received by the local licensing
20 authority on a form provided by the authority not less than thirty (30) days prior to the expiration
21 date of the license, and the authority shall notify the licensee of its intent to refuse to renew the
22 license as soon as practicable. The licensee may, within fifteen (15) days after receipt of the
23 notice of intent to refuse to renew a license, request a hearing on the refusal in the manner
24 prescribed by this chapter. A licensee is permitted to continue to engage in business while its
25 renewal application is pending. Upon renewal of any license the local licensing authority shall
26 issue a renewed license.

27 **5-90-8. Grounds for suspension and revocation of licenses.**

28 (a) A license may be suspended or revoked if the licensee:

29 (1) Violates any provisions of federal tobacco control law, chapter 9 of title 11, or other
30 Rhode Island tobacco control law, including this chapter, and any rules and local ordinances
31 promulgated consistent with this chapter;

32 (2) Practices fraud, deceit or misrepresentation;

33 (3) Makes a material misstatement in the application for or renewal of the license;

34 (b) While pursuing an appeal at the local licensing authority, or if the licensee does not

1 seek a hearing, the licensee shall immediately cease to conduct business subject to licensing for
2 the time period provided in the order of suspension or permanently in the case of revocation and
3 shall post a notification, visible to customers and containing lettering a minimum of three-eighths
4 inch (3/8") high, that it is not licensed to sell or distribute tobacco products.

5 **5-90-9. Change in status of licensee.**

6 The licensee shall notify the local licensing authority, in writing, within five (5) days of
7 any material change in the information previously furnished or required to be furnished to the
8 local licensing authority or any occurrence that could reasonably be expected to affect the
9 licensee's privilege to a license under this chapter or local ordinances promulgated consistent with
10 this chapter.

11 **5-90-10. Prohibited activities.**

12 It is unlawful for any person to knowingly commit any of the following:

13 (1) Sell any tobacco product to a person in Rhode Island or provide any service under this
14 chapter to a Rhode Island person without possessing a valid license;

15 (2) Employ any individual to sell any tobacco product or provide any service or required
16 to be licensed under this chapter without possessing a valid license;

17 (3) Sell or furnish any tobacco product to any person under the age of eighteen (18), or a
18 higher age set by local ordinance for sales of tobacco products; or

19 (4) Violate federal tobacco control law, the prohibitions of chapter 9 of title 11, or other
20 Rhode Island tobacco control law including any applicable local ordinance adopted consistent
21 with this chapter or prohibitions on sales contained in this chapter.

22 **5-90-11. Licensee business procedures.**

23 Any licensee shall, after notice from the local licensing authority, discontinue any
24 advertising or the use of any advertisement, which in the opinion of the local licensing authority
25 tends to mislead the public. Misleading advertising includes advertising or displaying tobacco
26 products while the licensee's license to sell such products is suspended. Failure to comply with
27 such order of the local licensing authority shall be cause for revocation of the license.

28 **5-90-12. Judicial review.**

29 (a) Any person aggrieved by a final decision or order of the local licensing authority
30 made after a hearing or rehearing whether or not a petition for a hearing was filed, may obtain
31 judicial review of the decision by appeal to the superior court in accordance with chapter 35 of
32 title 42.

33 (b) Filing of an appeal does not stay enforcement of the decision or order of the local
34 licensing authority unless the stay is obtained from the court upon application in accordance with

1 the rules of court or from the local licensing authority upon any terms and conditions that it
2 deems proper.

3 **5-90-13. Engaging in business without a license - Penalties.**

4 Any person who, without a license, engages in the general business of tobacco retailer or
5 holds himself or herself out as a tobacco retailer, shall be punished by a fine of not less than two
6 hundred dollars (\$200) nor more than five thousand dollars (\$5000), or imprisonment in the adult
7 correctional institutions not exceeding six (6) months, or by both fine and imprisonment.

8 **5-90-14. License fees and fines not a tax.**

9 (a) License fees shall be set to cover all costs of administration and enforcement of this
10 chapter by the local licensing authority. Such fees are due upon application, and license fees are
11 only refundable at the discretion of a local licensing authority, even in the case of denial of the
12 application. Such fees are not a tax.

13 (b) Local licensing authorities shall have the power to set fines appropriately to protect
14 public health and encourage licensed retailer compliance with Rhode Island tobacco control law
15 including this chapter and ordinances consistent with this chapter. Such fines are not a tax.

16 **5-90-15. Severability.**

17 If any provision of this chapter or the application of it to any person or circumstance is
18 held invalid, that invalidity shall not affect other provisions or applications of this chapter, which
19 can be given effect without the invalid provision or application, and to this end the provisions of
20 this chapter are declared to be severable.

21 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO BUSINESSES AND PROFESSIONS -- LOCAL TOBACCO CONTROL ACT

- 1 This act would create a comprehensive resolution scheme for cities and towns to follow
- 2 concerning the sale and control of tobacco in their communities.
- 3 This act would take effect upon passage.

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