

As Introduced

**127th General Assembly
Regular Session
2007-2008**

H. B. No. 592

Representative Fessler

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To amend sections 3794.01 and 3794.03 of the Revised Code to exempt stand-alone bars from the smoking ban. 1
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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 3794.01 and 3794.03 of the Revised Code be amended to read as follows: 4
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Sec. 3794.01. Definitions. 6

As used in this chapter: 7

(A) "Smoking" means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or other lighted smoking device for burning tobacco or any other plant. "Smoking" does not include the burning of incense in a religious ceremony. 8
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(B) "Public place" means an enclosed area to which the public is invited or in which the public is permitted and that is not a private residence. 12
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(C) "Place of employment" means an enclosed area under the direct or indirect control of an employer that the employer's employees use for work or any other purpose, including but not limited to, offices, meeting rooms, sales, production and storage 15
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areas, restrooms, stairways, hallways, warehouses, garages, and 19
vehicles. An enclosed area as described herein is a place of 20
employment without regard to the time of day or the presence of 21
employees. 22

(D) "Employee" means a person who is employed by an employer, 23
or who contracts with an employer or third person to perform 24
services for an employer, or who otherwise performs services for 25
an employer for compensation or for no compensation. 26

(E) "Employer" means the state or any individual, business, 27
association, political subdivision, or other public or private 28
entity, including a nonprofit entity, that employs or contracts 29
for or accepts the provision of services from one or more 30
employees. 31

(F) "Enclosed Area" means an area with a roof or other 32
overhead covering of any kind and walls or side coverings of any 33
kind, regardless of the presence of openings for ingress and 34
egress, on all sides or on all sides but one. 35

(G) "Proprietor" means an employer, owner, manager, operator, 36
liquor permit holder, or person in charge or control of a public 37
place or place of employment. 38

(H) "Retail tobacco store" means a retail establishment that 39
derives more than eighty ~~percent~~ per cent of its gross revenue 40
from the sale of cigars, cigarettes, pipes, or other smoking 41
devices for burning tobacco and related smoking accessories and in 42
which the sale of other products is merely incidental. "Retail 43
tobacco store" does not include a tobacco department or section of 44
a larger commercial establishment or of any establishment with a 45
liquor permit or of any restaurant. 46

(I) "Outdoor patio" means an area that is either: enclosed by 47
a roof or other overhead covering and walls or side coverings on 48
not more than two sides; or has no roof or other overhead covering 49

regardless of the number of walls or other side coverings. 50

(J) "Stand-alone bar" means a business that meets all of the 51
following requirements: 52

(1) Holds a permit issued under Chapter 4303. of the Revised 53
Code to serve intoxicating liquor or beer for consumption on the 54
premises of the business; 55

(2) If food is served, not more than ten per cent of the 56
gross revenue of the business is from the sale of food to be 57
consumed on the premises; 58

(3) Is not located within, and does not share any common 59
entrance or exit with, an enclosed area where smoking is 60
prohibited under this chapter. 61

**Sec. 3794.03. Areas where smoking is not regulated by this 62
chapter. 63**

The following shall be exempt from the provisions of this 64
chapter: 65

(A) Private residences, except during the hours of operation 66
as a child care or adult care facility for compensation, during 67
the hours of operation as a business by a person other than a 68
person residing in the private residence, or during the hours of 69
operation as a business, when employees of the business, who are 70
not residents of the private residence or are not related to the 71
owner, are present. 72

(B) Rooms for sleeping in hotels, motels and other lodging 73
facilities designated as smoking rooms; provided, however, that 74
not more than twenty ~~percent~~ per cent of sleeping rooms may be so 75
designated. 76

(C) Family-owned and operated places of employment in which 77
all employees are related to the owner, but only if the enclosed 78

areas of the place of employment are not open to the public, are 79
in a ~~free-standing~~ freestanding structure occupied solely by the 80
place of employment, and smoke from the place of employment does 81
not migrate into an enclosed area where smoking is prohibited 82
under the provisions of this chapter. 83

(D) Any nursing home, as defined in division (A) of section 84
3721.10~~(A)~~ of the Revised Code, but only to the extent necessary 85
to comply with division (A)(18) of section 3721.13~~(A)(18)~~ of the 86
Revised Code. If indoor smoking area is provided by a nursing home 87
for residents of the nursing home, the designated indoor smoking 88
area shall be separately enclosed and separately ventilated so 89
that tobacco smoke does not enter, through entrances, windows, 90
ventilation systems, or other means, any areas where smoking is 91
otherwise prohibited under this chapter. Only residents of the 92
nursing home may utilize the designated indoor smoking area for 93
smoking. A nursing home may designate specific times when the 94
indoor smoking area may be used for such purpose. No employee of a 95
nursing home shall be required to accompany a resident into a 96
designated indoor smoking area or perform services in such area 97
when being used for smoking. 98

(E) Retail tobacco stores as defined in division (H) of 99
section 3794.01~~(H)~~ of ~~this chapter~~ the Revised Code in operation 100
prior to ~~the effective date of this section~~ December 7, 2006. The 101
retail tobacco store shall annually file with the department of 102
health by the thirty-first day of January ~~thirty-first~~ an 103
affidavit stating the percentage of its gross income during the 104
prior calendar year that was derived from the sale of cigars, 105
cigarettes, pipes, or other smoking devices for smoking tobacco 106
and related smoking accessories. Any retail tobacco store that 107
begins operation after ~~the effective date of this section~~ December 108
7, 2006, or any existing retail tobacco store that relocates to 109
another location after ~~the effective date of this section~~ December 110

7, 2006, may only qualify for this exemption if located in a 111
freestanding structure occupied solely by the business and smoke 112
from the business does not migrate into an enclosed area where 113
smoking is prohibited under the provisions of this chapter. 114

(F) Outdoor patios as defined in ~~Section~~ division (I) of 115
section 3794.01(~~I~~) of ~~this chapter~~ the Revised Code. All outdoor 116
patios shall be physically separated from an enclosed area. If 117
windows or doors form any part of the partition between an 118
enclosed area and the outdoor patio, the openings shall be closed 119
to prevent the migration of smoke into the enclosed area. If 120
windows or doors do not prevent the migration of smoke into the 121
enclosed area, the outdoor patio shall be considered an extension 122
of the enclosed area and subject to the prohibitions of this 123
chapter. 124

(G) Private clubs as defined in division (B)(13) of section 125
4301.01(~~B~~)(~~13~~) of the Revised Code, provided all of the following 126
apply: the club has no employees; the club is organized as a 127
not_for_profit entity; only members of the club are present in the 128
club's building; no persons under the age of eighteen are present 129
in the club's building; the club is located in a freestanding 130
structure occupied solely by the club; smoke from the club does 131
not migrate into an enclosed area where smoking is prohibited 132
under the provisions of this chapter; and, if the club serves 133
alcohol, it holds a valid D4 liquor permit. 134

(H) Stand-alone bars. 135

Section 2. That existing sections 3794.01 and 3794.03 of the 136
Revised Code are hereby repealed. 137