

As Introduced

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S. B. No. 346

Senator Schuler

**Cosponsors: Senators Buehrer, Cafaro, Cates, Grendell, Mumper, Niehaus,
Padgett, Roberts, Schaffer, Seitz, Smith, Spada**

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A B I L L

To amend sections 3794.01 and 3794.03 of the Revised 1
Code regarding smoking ban exemptions involving 2
family-owned businesses, outdoor patios, and 3
private clubs. 4

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 3794.01 and 3794.03 of the Revised 5
Code be amended to read as follows: 6

Sec. 3794.01. Definitions. 7

As used in this chapter: 8

(A) "Smoking" means inhaling, exhaling, burning, or carrying 9
any lighted cigar, cigarette, pipe, or other lighted smoking 10
device for burning tobacco or any other plant. "Smoking" does not 11
include the burning of incense in a religious ceremony. 12

(B) "Public place" means an enclosed area to which the public 13
is invited or in which the public is permitted and that is not a 14
private residence. 15

(C) "Place of employment" means an enclosed area under the 16

direct or indirect control of an employer that the employer's 17
employees use for work or any other purpose, including but not 18
limited to, offices, meeting rooms, sales, production and storage 19
areas, restrooms, stairways, hallways, warehouses, garages, and 20
vehicles. An enclosed area as described herein is a place of 21
employment without regard to the time of day or the presence of 22
employees. 23

(D) "Employee" means a person who is employed by an employer, 24
or who contracts with an employer or third person to perform 25
services for an employer, or who otherwise performs services for 26
an employer for compensation or for no compensation. 27

(E) "Employer" means the state or any individual, business, 28
association, political subdivision, or other public or private 29
entity, including a nonprofit entity, that employs or contracts 30
for or accepts the provision of services from one or more 31
employees. 32

(F) "Enclosed Area" means an area with a roof or other 33
overhead covering of any kind and walls or side coverings of any 34
kind, regardless of the presence of openings for ingress and 35
egress, on all sides or on all sides but one. 36

(G) "Proprietor" means an employer, owner, manager, operator, 37
liquor permit holder, or person in charge or control of a public 38
place or place of employment. 39

(H) "Retail tobacco store" means a retail establishment that 40
derives more than eighty ~~percent~~ per cent of its gross revenue 41
from the sale of cigars, cigarettes, pipes, or other smoking 42
devices for burning tobacco and related smoking accessories and in 43
which the sale of other products is merely incidental. "Retail 44
tobacco store" does not include a tobacco department or section of 45
a larger commercial establishment or of any establishment with a 46
liquor permit or of any restaurant. 47

~~(I) "Outdoor patio" means an area that is either: enclosed by a roof or other overhead covering and walls or side coverings on not more than two sides; or has no roof or other overhead covering regardless of the number of walls or other side coverings.~~

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

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

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

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

~~(C) Family-owned~~ A family-owned and operated ~~places~~ place of employment ~~in which all employees are related to the owner, but only if the enclosed areas of the place of employment are not open to the public, are in a free standing structure occupied solely by the place of employment, and smoke from the place of employment does not migrate into an enclosed area where smoking is prohibited under the provisions of this chapter.~~

As used in this division, "family-owned and operated place of employment" means a business or corporate structure to which all of the following apply:

(1) The business or corporate structure is not publicly owned

or traded. 78

(2) The business or corporate structure has a president or chief operating officer who comes from a family having controlling interest in the business or corporate structure. 79
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(3) The business or corporate structure is located in a freestanding structure or is separated from any other business by a firewall. 82
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(D) Any nursing home, as defined in division (A) of section 3721.10(A) of the Revised Code, but only to the extent necessary to comply with division (A)(18) of section 3721.13(A)(18) of the Revised Code. If indoor smoking area is provided by a nursing home for residents of the nursing home, the designated indoor smoking area shall be separately enclosed and separately ventilated so that tobacco smoke does not enter, through entrances, windows, ventilation systems, or other means, any areas where smoking is otherwise prohibited under this chapter. Only residents of the nursing home may utilize the designated indoor smoking area for smoking. A nursing home may designate specific times when the indoor smoking area may be used for such purpose. No employee of a nursing home shall be required to accompany a resident into a designated indoor smoking area or perform services in such area when being used for smoking. 85
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(E) Retail tobacco stores as defined in division (H) of section 3794.01(H) of ~~this chapter~~ the Revised Code in operation prior to ~~the effective date of this section~~ December 7, 2006. The retail tobacco store shall annually file with the department of health by the thirty-first day of January ~~thirty-first~~ an affidavit stating the percentage of its gross income during the prior calendar year that was derived from the sale of 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 this section~~ December 100
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7, 2006, or any existing retail tobacco store that relocates to 110
another location after ~~the effective date of this section~~ December 111
7, 2006, may only qualify for this exemption if located in a 112
freestanding structure occupied solely by the business and smoke 113
from the business does not migrate into an enclosed area where 114
smoking is prohibited under the provisions of this chapter. 115

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

As used in this division, "outdoor patio" means any area not 125
enclosed with permanent walls, that does not function as a parking 126
lot, and is attached or immediately adjacent to the permanent 127
structure of a building, except that in the case of a 128
community-based correctional facility developed pursuant to 129
Chapter 2301. of the Revised Code or a facility licensed under 130
section 2967.14 of the Revised Code, "outdoor patio" includes an 131
area that is immediately adjacent to the permanent structure of 132
the facility, has at least one side of the enclosure consisting of 133
one wall of the facility, and is otherwise enclosed with a fence 134
or other material used for security purposes. 135

~~(G) Private clubs as defined in division (B)(13) of section~~ 136
~~4301.01(B)(13) of the Revised Code, provided all of the following~~ 137
~~apply: the club has no employees; that the club is organized as a~~ 138
~~not_for_profit entity; only members of the club are present in the~~ 139
~~club's building; no persons under the age of eighteen are present~~ 140
~~in the club's building; the club is located in a freestanding~~ 141

~~structure occupied solely by the club; smoke from the club does~~ 142
~~not migrate into an enclosed area where smoking is prohibited~~ 143
~~under the provisions of this chapter;~~ and, if the club serves 144
alcohol, it holds a valid D4 liquor permit. 145

Section 2. That existing sections 3794.01 and 3794.03 of the 146
Revised Code are hereby repealed. 147