

As Introduced

**127th General Assembly
Regular Session
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S. B. No. 38

Senator Schuler

Cosponsor: Senator Mumper

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A B I L L

To amend section 3794.03 of the Revised Code to allow 1
smoking by theatrical performers during 2
performances. 3

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

Section 1. That section 3794.03 of the Revised Code be 4
amended to read as follows: 5

**Sec. 3794.03. Areas where smoking is not regulated by this 6
chapter. 7**

The following shall be exempt from the provisions of this 8
chapter: 9

(A) Private residences, except during the hours of operation 10
as a child care or adult care facility for compensation, during 11
the hours of operation as a business by a person other than a 12
person residing in the private residence, or during the hours of 13
operation as a business, when employees of the business, who are 14
not residents of the private residence or are not related to the 15
owner, are present. 16

(B) Rooms for sleeping in hotels, motels and other lodging 17
facilities designated as smoking rooms; provided, however, that 18

not more than twenty percent of sleeping rooms may be so 19
designated. 20

(C) Family-owned and operated places of employment in which 21
all employees are related to the owner, but only if the enclosed 22
areas of the place of employment are not open to the public, are 23
in a free standing structure occupied solely by the place of 24
employment, and smoke from the place of employment does not 25
migrate into an enclosed area where smoking is prohibited under 26
the provisions of this chapter. 27

(D) Any nursing home, as defined in section 3721.10(A) of the 28
Revised Code, but only to the extent necessary to comply with 29
section 3721.13(A)(18) of the Revised Code. If indoor smoking area 30
is provided by a nursing home for residents of the nursing home, 31
the designated indoor smoking area shall be separately enclosed 32
and separately ventilated so that tobacco smoke does not enter, 33
through entrances, windows, ventilation systems, or other means, 34
any areas where smoking is otherwise prohibited under this 35
chapter. Only residents of the nursing home may utilize the 36
designated indoor smoking area for smoking. A nursing home may 37
designate specific times when the indoor smoking area may be used 38
for such purpose. No employee of a nursing shall be required to 39
accompany a resident into a designated indoor smoking area or 40
perform services in such area when being used for smoking. 41

(E) Retail tobacco stores as defined in section 3794.01(H) of 42
this chapter in operation prior to the effective date of this 43
section. The retail tobacco store shall annually file with the 44
department of health by January thirty first an affidavit stating 45
the percentage of its gross income during the prior calendar year 46
that was derived from the sale of cigars, cigarettes, pipes, or 47
other smoking devices for smoking tobacco and related smoking 48
accessories. Any retail tobacco store that begins operation after 49
the effective date of this section or any existing retail tobacco 50

store that relocates to another location after the effective date 51
of this section may only qualify for this exemption if located in 52
a freestanding structure occupied solely by the business and smoke 53
from the business does not migrate into an enclosed area where 54
smoking is prohibited under the provisions of this chapter. 55

(F) Outdoor patios as defined in Section 3794.01(I) of this 56
chapter. All outdoor patios shall be physically separated from an 57
enclosed area. If windows or doors form any part of the partition 58
between an enclosed area and the outdoor patio, the openings shall 59
be closed to prevent the migration of smoke into the enclosed 60
area. If windows or doors do not prevent the migration of smoke 61
into the enclosed area, the outdoor patio shall be considered an 62
extension of the enclosed area and subject to the prohibitions of 63
this chapter. 64

(G) Private clubs as defined in section 4301.01(B)(13) of the 65
Revised Code, provided all of the following apply: the club has no 66
employees; the club is organized as a not for profit entity; only 67
members of the club are present in the club's building; no persons 68
under the age of eighteen are present in the club's building; the 69
club is located in a freestanding structure occupied solely by the 70
club; smoke from the club does not migrate into an enclosed area 71
where smoking is prohibited under the provisions of this chapter; 72
and, if the club serves alcohol, it holds a valid D4 liquor 73
permit. 74

(H) Theaters and other theatrical production sites, but only 75
when a performer smokes while performing in a theatrical 76
production because smoking is integral to, or is directed by the 77
script or other story line of, the performance being given. 78

Section 2. That existing section 3794.03 of the Revised Code 79
is hereby repealed. 80