

As Introduced

**128th General Assembly
Regular Session
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S. B. No. 120

Senator Schuler

Cosponsors: Senators Cates, Grendell, Schaffer, Seitz

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A B I L L

To amend sections 3794.01 and 3794.03 of the Revised Code regarding exemptions 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: 3
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Sec. 3794.01. Definitions. 5

As used in this chapter: 6

(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. 7
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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. 11
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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 14
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areas, restrooms, stairways, hallways, warehouses, garages, and 18
vehicles. An enclosed area as described herein is a place of 19
employment without regard to the time of day or the presence of 20
employees. 21

(D) "Employee" means a person who is employed by an employer, 22
or who contracts with an employer or third person to perform 23
services for an employer, or who otherwise performs services for 24
an employer for compensation or for no compensation. 25

(E) "Employer" means the state or any individual, business, 26
association, political subdivision, or other public or private 27
entity, including a nonprofit entity, that employs or contracts 28
for or accepts the provision of services from one or more 29
employees. 30

(F) "Enclosed Area" means an area with a roof or other 31
overhead covering of any kind and walls or side coverings of any 32
kind, regardless of the presence of openings for ingress and 33
egress, on all sides or on all sides but one. 34

(G) "Proprietor" means an employer, owner, manager, operator, 35
liquor permit holder, or person in charge or control of a public 36
place or place of employment. 37

(H) "Retail tobacco store" means a retail establishment that 38
derives more than eighty ~~percent~~ per cent of its gross revenue 39
from the sale of cigars, cigarettes, pipes, or other smoking 40
devices for burning tobacco and related smoking accessories and in 41
which the sale of other products is merely incidental. "Retail 42
tobacco store" ~~does not include a tobacco department or section of~~ 43
~~a larger commercial establishment or of any establishment with a~~ 44
~~liquor permit or of any restaurant~~ includes a cigar bar. 45

(I) "Cigar bar" means a retail establishment that contains 46
all of the following: 47

(1) A walk-in humidor with a minimum volume of three hundred 48

<u>cubic feet;</u>	49
<u>(2) A HEPA filtration system;</u>	50
<u>(3) Carbon filtration;</u>	51
<u>(4) Carbon dioxide filtration;</u>	52
<u>(5) Smoke eaters;</u>	53
<u>(6) Ozone machines.</u>	54
<u>(J) "HEPA" has the same meaning as in section 3742.01 of the Revised Code.</u>	55 56
<u>(K) "Family-owned and operated place of employment" means a business or corporate structure to which all of the following apply:</u>	57 58 59
<u>(1) The business or corporate structure is not publicly owned or traded.</u>	60 61
<u>(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.</u>	62 63 64
<u>(3) The business or corporate structure is located in a freestanding structure or is separated from any other business by a firewall.</u>	65 66 67
<u>(4) The business or corporate structure holds a liquor permit issued under Chapter 4303. of the Revised Code.</u>	68 69
<u>(L) "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 <u>any area not enclosed with permanent walls, that does not function as a parking lot, and is attached or immediately adjacent to the permanent structure of a building, except that in the case of a community-based correctional facility developed pursuant to</u></u>	70 71 72 73 74 75 76 77

Chapter 2301. of the Revised Code or a facility licensed under 78
section 2967.14 of the Revised Code, "outdoor patio" includes an 79
area that is immediately adjacent to the permanent structure of 80
the facility, has at least one side of the enclosure consisting of 81
one wall of the facility, and is otherwise enclosed with a fence 82
or other material used for security purposes. 83

Sec. 3794.03. Areas where smoking is not regulated by this 84
chapter. 85

The following shall be exempt from the provisions of this 86
chapter: 87

(A) Private residences, except during the hours of operation 88
as a child care or adult care facility for compensation, during 89
the hours of operation as a business by a person other than a 90
person residing in the private residence, or during the hours of 91
operation as a business, when employees of the business, who are 92
not residents of the private residence or are not related to the 93
owner, are present. 94

(B) Rooms for sleeping in hotels, motels and other lodging 95
facilities designated as smoking rooms; provided, however, that 96
not more than twenty ~~percent~~ per cent of sleeping rooms may be so 97
designated. 98

(C) ~~Family-owned~~ A family-owned and operated ~~places~~ place of 99
employment ~~in which all employees are related to the owner, but~~ 100
~~only if the enclosed areas of the place of employment are not open~~ 101
~~to the public, are in a free standing structure occupied solely by~~ 102
~~the place of employment, and smoke from the place of employment~~ 103
~~does not migrate into an enclosed area where smoking is prohibited~~ 104
~~under the provisions of this chapter.~~ 105

(D) Any nursing home, as defined in division (A) of section 106
~~3721.10(A)~~ of the Revised Code, but only to the extent necessary 107

to comply with division (A)(18) of section 3721.13(A)(18) of the 108
Revised Code. If indoor smoking area is provided by a nursing home 109
for residents of the nursing home, the designated indoor smoking 110
area shall be separately enclosed and separately ventilated so 111
that tobacco smoke does not enter, through entrances, windows, 112
ventilation systems, or other means, any areas where smoking is 113
otherwise prohibited under this chapter. Only residents of the 114
nursing home may utilize the designated indoor smoking area for 115
smoking. A nursing home may designate specific times when the 116
indoor smoking area may be used for such purpose. No employee of a 117
nursing home shall be required to accompany a resident into a 118
designated indoor smoking area or perform services in such area 119
when being used for smoking. 120

(E)(1) Retail tobacco stores as defined in division (H) of 121
section 3794.01(H) of ~~this chapter in operation prior to the~~ 122
~~effective date of this section~~ the Revised Code. The 123

(2) Except as provided in division (E)(3) of this section, a 124
retail tobacco store shall annually file with the department of 125
health by the thirty-first day of January ~~thirty first~~ an 126
affidavit stating the percentage of its gross income during the 127
prior calendar year that was derived from the sale of cigars, 128
cigarettes, pipes, or other smoking devices for smoking tobacco 129
and related smoking accessories. ~~Any retail tobacco store that~~ 130
~~begins operation after the effective date of this section or any~~ 131
~~existing retail tobacco store that relocates to another location~~ 132
~~after the effective date of this section may only qualify for this~~ 133
~~exemption if located in a freestanding structure occupied solely~~ 134
~~by the business and smoke from the business does not migrate into~~ 135
~~an enclosed area where smoking is prohibited under the provisions~~ 136
~~of this chapter.~~ 137

(3) A cigar bar is not required to file an affidavit pursuant 138
to division (E)(2) of this section. 139

~~(F) Outdoor patios as defined in Section 3794.01(I) of this chapter. All outdoor patios shall be physically separated from an enclosed area. If windows or doors form any part of the partition between an enclosed area and the outdoor patio, the openings shall be closed to prevent the migration of smoke into the enclosed area. If windows or doors do not prevent the migration of smoke into the enclosed area, the outdoor patio shall be considered an extension of the enclosed area and subject to the prohibitions of this chapter An outdoor patio.~~ 140
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~~(G) Private clubs as defined in division (B)(13) of section 4301.01(B)(13) of the Revised Code, provided all of the following apply: the club has no employees; that the club is organized as a not_for_profit entity; only members of the club are present in the club's building; no persons under the age of eighteen are present in the club's building; the club is located in a freestanding structure occupied solely by the club; smoke from the club does not migrate into an enclosed area where smoking is prohibited under the provisions of this chapter; and, if the club serves alcohol, it holds a valid D4 liquor permit.~~ 149
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Section 2. That existing sections 3794.01 and 3794.03 of the Revised Code are hereby repealed. 159
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