

As Introduced

131st General Assembly

Regular Session

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S. B. No. 295

Senators Schiavoni, Seitz

Cosponsors: Senators Yuko, Uecker, Eklund

A BILL

To amend section 3794.03 and to enact section 1
3794.031 of the Revised Code to amend the 2
smoking ban. 3

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

Section 1. That section 3794.03 be amended and section 4
3794.031 of the Revised Code be enacted 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 10
operation as a child care or adult care facility for 11
compensation, during the hours of operation as a business by a 12
person other than a person residing in the private residence, or 13
during the hours of operation as a business, when employees of 14
the business, who are not residents of the private residence or 15
are not related to the 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~~ per cent of sleeping rooms may be 19
so designated. 20

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

(D) Any nursing home, as defined in division (A) of 28
section 3721.10~~(A)~~ of the Revised Code, but only to the extent 29
necessary to comply with division (A) (18) of section 3721.13~~(A)~~
~~(18)~~ of the Revised Code. If indoor smoking area is provided by 31
a nursing home for residents of the nursing home, the designated 32
indoor smoking area shall be separately enclosed and separately 33
ventilated so that tobacco smoke does not enter, through 34
entrances, windows, ventilation systems, or other means, any 35
areas where smoking is otherwise prohibited under this chapter. 36
Only residents of the nursing home may utilize the designated 37
indoor smoking area for smoking. A nursing home may designate 38
specific times when the indoor smoking area may be used for such 39
purpose. No employee of a nursing home shall be required to 40
accompany a resident into a designated indoor smoking area or 41
perform services in such area when being used for smoking. 42

(E) Retail tobacco stores as defined in division (H) of 43
section 3794.01~~(H)~~ ~~of this chapter~~ the Revised Code in operation 44
prior to ~~the effective date of this section~~ December 7, 2006. 45
The retail tobacco store shall annually file with the department 46
of health by the thirty-first day of January ~~thirty first~~ an 47

affidavit stating the percentage of its gross income during the 48
prior calendar year that was derived from the sale of cigars, 49
cigarettes, pipes, or other smoking devices for smoking tobacco 50
and related smoking accessories. Any retail tobacco store that 51
begins operation after ~~the effective date of this section~~ 52
December 7, 2006, or any existing retail tobacco store that 53
relocates to another location after ~~the effective date of this~~ 54
~~section~~ December 7, 2006, may only qualify for this exemption if 55
located in a freestanding structure occupied solely by the 56
business and smoke from the business does not migrate into an 57
enclosed area where smoking is prohibited under the provisions 58
of this chapter. 59

(F) Outdoor patios as defined in ~~Section~~ division (I) of 60
section 3794.01(I) of this chapter the Revised Code. All outdoor 61
patios shall be physically separated from an enclosed area. If 62
windows or doors form any part of the partition between an 63
enclosed area and the outdoor patio, the openings shall be 64
closed to prevent the migration of smoke into the enclosed area. 65
If windows or doors do not prevent the migration of smoke into 66
the enclosed area, the outdoor patio shall be considered an 67
extension of the enclosed area and subject to the prohibitions 68
of this chapter. 69

(G) ~~Private clubs~~ (1) A club as defined in section 70
4301.01 ~~(B) (13)~~ of the Revised Code, provided all of the 71
following apply: ~~the club has no employees; the club is~~ 72
~~organized as a notforprofit entity; only~~ 73

(a) Only members and employees of the club are present in 74
the ~~club's building; no club.~~ 75

(b) No persons under the age of eighteen are present in 76
the ~~club's building; the club is located in a freestanding~~ 77

~~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 club.~~

(c) The club is located in a structure that meets any of the following requirements:

(i) It is a building with only one occupant that does not share space with another occupant.

(ii) It is a building with multiple occupants, provided that each occupant's occupied space contains both ingress and egress directly to the outside of the building.

(iii) It is a building used solely for commercial purposes.

(d) If the club ~~serves alcohol~~ sells beer or any intoxicating liquor, it holds a valid ~~D4~~ D-1, D-2, D-3, D-3a, D-4, D-5, or D-6 liquor permit.

(e) The club pays an annual fee of five hundred dollars to the department of health, which shall be credited to the smoke free indoor air fund, created in section 3794.08 of the Revised Code.

(2) (a) It shall be the responsibility of the club to prevent the migration of smoke through any shared walls or ventilation to any other enclosed area where smoking is prohibited.

(b) Any individual or entity harmed by failure to comply with division (G) (2) (a) of this section has a cause of action against the club to enjoin further smoke migration and to recoup damages.

Sec. 3794.031. If a club claims an exemption under

<u>division (G) of section 3794.03 of the Revised Code and smoke</u>	106
<u>from the club migrates into an enclosed area where smoking is</u>	107
<u>prohibited under this chapter, that migration constitutes a</u>	108
<u>nuisance under section 3767.01 of the Revised Code.</u>	109
Section 2. That existing section 3794.03 of the Revised	110
Code is hereby repealed.	111