

As Introduced

135th General Assembly

Regular Session

2023-2024

H. B. No. 530

Representatives Dell'Aquila, Mathews

A BILL

To amend sections 3794.01 and 3794.03 of the 1
Revised Code to provide an exemption from the 2
smoking ban for cigar bars. 3

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

Section 1. That sections 3794.01 and 3794.03 of the 4
Revised Code be amended to read as follows: 5

Sec. 3794.01. Definitions. 6

As used in this chapter: 7

(A) "Smoking" means inhaling, exhaling, burning, or 8
carrying any lighted or heated tobacco product or plant product 9
intended for inhalation in any manner or in any form. "Smoking" 10
includes the use of an electronic smoking device and a vapor 11
product. "Smoking" does not include the burning of incense in a 12
religious ceremony. 13

(B) "Public place" means an enclosed area to which the 14
public is invited or in which the public is permitted and that 15
is not a private residence. 16

(C) "Place of employment" means an enclosed area under the 17
direct or indirect control of an employer that the employer's 18

employees use for work or any other purpose, including but not 19
limited to, offices, meeting rooms, sales, production and 20
storage areas, restrooms, stairways, hallways, warehouses, 21
garages, and vehicles. An enclosed area as described herein is a 22
place of employment without regard to the time of day or the 23
presence of employees. 24

(D) "Employee" means a person who is employed by an 25
employer, or who contracts with an employer or third person to 26
perform services for an employer, or who otherwise performs 27
services for an employer for compensation or for no 28
compensation. 29

(E) "Employer" means the state or any individual, 30
business, association, political subdivision, or other public or 31
private entity, including a nonprofit entity, that employs or 32
contracts for or accepts the provision of services from one or 33
more employees. 34

(F) "Enclosed Area" means an area with a roof or other 35
overhead covering of any kind and walls or side coverings of any 36
kind, regardless of the presence of openings for ingress and 37
egress, on all sides or on all sides but one. 38

(G) "Proprietor" means an employer, owner, manager, 39
operator, liquor permit holder, or person in charge or control 40
of a public place or place of employment. 41

(H) "Retail tobacco store" means a retail establishment 42
that derives more than eighty per cent of its gross revenue from 43
the sale of lighted or heated tobacco products and related 44
smoking accessories and in which the sale of other products is 45
merely incidental. "Retail tobacco store" does not include a 46
tobacco department or section of a larger commercial 47

establishment or of any establishment with a liquor permit or of 48
any restaurant. 49

(I) "Retail vapor store" means a retail establishment that 50
derives more than eighty per cent of its gross revenue from the 51
sale of vapor products, electronic smoking devices, or other 52
electronic smoking product accessories and for which the sale of 53
other products is merely incidental. "Retail vapor store" does 54
not include a section of a larger commercial establishment or of 55
an establishment with a liquor license or that is a restaurant. 56

(J) "Outdoor patio" means an area that is either: enclosed 57
by a roof or other overhead covering and walls or side coverings 58
on not more than two sides; or has no roof or other overhead 59
covering regardless of the number of walls or other side 60
coverings. 61

(K) "Vapor product" and "electronic smoking device" have 62
the same meanings as in section 2927.02 of the Revised Code. 63

(L) "Cigar" means a cylinder of tobacco rolled in tobacco 64
leaves for smoking. 65

(M) (1) "Cigar bar" means an establishment that meets both 66
of the following: 67

(a) The establishment derives more than fifteen per cent 68
of its gross revenue from the sale of cigar products, 69
accessories, and fixtures, including the renting of humidors to 70
customers; 71

(b) The establishment is located in a freestanding 72
structure, occupied solely by the establishment, where smoke 73
from the establishment cannot migrate into an enclosed area 74
where smoking is prohibited under this chapter. 75

(2) "Cigar bar" may include an establishment that has been 76
issued a liquor permit under Chapter 4303. of the Revised Code 77
so long as it meets the requirements prescribed by division (M) 78
(1) of this section. 79

Sec. 3794.03. Areas where smoking is not regulated by this 80
chapter. 81

The following shall be exempt from the provisions of this 82
chapter: 83

(A) Private residences, except during the hours of 84
operation as a child care or adult care facility for 85
compensation, during the hours of operation as a business by a 86
person other than a person residing in the private residence, or 87
during the hours of operation as a business, when employees of 88
the business, who are not residents of the private residence or 89
are not related to the owner, are present. 90

(B) Rooms for sleeping in hotels, motels and other lodging 91
facilities designated as smoking rooms; provided, however, that 92
not more than twenty per cent of sleeping rooms may be so 93
designated. 94

(C) Family-owned and operated places of employment in 95
which all employees are related to the owner, but only if the 96
enclosed areas of the place of employment are not open to the 97
public, are in a freestanding structure occupied solely by the 98
place of employment, and smoke from the place of employment does 99
not migrate into an enclosed area where smoking is prohibited 100
under the provisions of this chapter. 101

(D) Any nursing home, as defined in division (A) of 102
section 3721.10 of the Revised Code, but only to the extent 103
necessary to comply with division (A)(18) of section 3721.13 of 104

the Revised Code. If indoor smoking area is provided by a 105
nursing home for residents of the nursing home, the designated 106
indoor smoking area shall be separately enclosed and separately 107
ventilated so that tobacco smoke does not enter, through 108
entrances, windows, ventilation systems, or other means, any 109
areas where smoking is otherwise prohibited under this chapter. 110
Only residents of the nursing home may utilize the designated 111
indoor smoking area for smoking. A nursing home may designate 112
specific times when the indoor smoking area may be used for such 113
purpose. No employee of a nursing home shall be required to 114
accompany a resident into a designated indoor smoking area or 115
perform services in such area when being used for smoking. 116

(E) (1) Retail tobacco stores in operation prior to 117
December 7, 2006. The retail tobacco store shall annually file 118
with the department of health by the thirty-first day of January 119
an affidavit stating the percentage of its gross income during 120
the prior calendar year that was derived from the sale of 121
cigars, cigarettes, pipes, or other smoking devices for smoking 122
tobacco and related smoking accessories. 123

(2) Any retail tobacco store that begins operation after 124
December 7, 2006, or any existing retail tobacco store that 125
relocates to another location after December 7, 2006, may only 126
qualify for the exemption authorized by division (E) of this 127
section if located in a freestanding structure occupied solely 128
by the business and smoke from the business does not migrate 129
into an enclosed area where smoking is prohibited under the 130
provisions of this chapter. 131

(3) A change of ownership of a retail tobacco store in 132
operation prior to December 7, 2006, does not, in itself, 133
constitute the beginning of a new operation or the relocation of 134

an existing operation for the purposes of division (E) (2) of 135
this section and does not, in itself, necessitate that the 136
retail tobacco store relocate to a freestanding structure, as 137
described in that division, in order to retain an exemption from 138
the provisions of this chapter. 139

(F) Outdoor patios. All outdoor patios shall be physically 140
separated from an enclosed area. If windows or doors form any 141
part of the partition between an enclosed area and the outdoor 142
patio, the openings shall be closed to prevent the migration of 143
smoke into the enclosed area. If windows or doors do not prevent 144
the migration of smoke into the enclosed area, the outdoor patio 145
shall be considered an extension of the enclosed area and 146
subject to the prohibitions of this chapter. 147

(G) Private clubs as defined in division (B) (13) of 148
section 4301.01 of the Revised Code, provided all of the 149
following apply: the club has no employees; the club is 150
organized as a not-for-profit entity; only members of the club 151
are present in the club's building; no persons under the age of 152
eighteen are present in the club's building; the club is located 153
in a freestanding structure occupied solely by the club; smoke 154
from the club does not migrate into an enclosed area where 155
smoking is prohibited under the provisions of this chapter; and, 156
if the club serves alcohol, it holds a valid D4 liquor permit. 157

(H) An enclosed space in a laboratory facility at an 158
accredited college or university, when used solely and 159
exclusively for clinical research activities by a person, 160
organization, or other entity conducting institutional review 161
board-approved scientific or medical research related to the 162
health effects of smoking or the use of tobacco products. The 163
enclosed space shall not be open to the public and shall be 164

designed to minimize exposure of nonsmokers to smoke. The 165
program administrator shall annually file a notice of new 166
research with the department of health on a form prescribed by 167
the department. 168

(I) A retail vapor store, insofar as the provisions of 169
this chapter apply to smoking via vapor products and electronic 170
smoking devices. The provisions of this chapter apply to retail 171
vapor stores with regard to all other forms of smoking. The 172
retail vapor store shall annually file with the department of 173
health by the thirty-first day of January an affidavit stating 174
the percentage of its gross income during the prior calendar 175
year that was derived from the sale of vapor products, 176
electronic smoking devices, or other electronic smoking product 177
accessories. 178

(J) (1) A cigar bar, insofar as the provisions of this 179
chapter apply to smoking via cigars. The provisions of this 180
chapter apply to cigar bars with regard to all other forms of 181
smoking; 182

(2) A cigar bar shall annually file with the department of 183
health by the thirty-first day of January an affidavit stating 184
the percentage of its gross income during the prior calendar 185
year that was derived from the sale of cigars, cigar 186
accessories, and fixtures, such as humidors rented to customers. 187

Section 2. That existing sections 3794.01 and 3794.03 of 188
the Revised Code are hereby repealed. 189