

## **TITLE**

### **THE SMOKE FREE WORKPLACE ACT**

## **SUMMARY**

The law proposed by this Initiative Petition declares that because medical studies have conclusively shown that exposure to secondhand smoke from tobacco causes illness and disease, including lung cancer, heart disease, and respiratory illness, smoking in the workplace is a statewide concern and, therefore, it is in the best interests of public health that smoking of tobacco products be prohibited in public places and places of employment and that there be a uniform statewide minimum standard to protect workers and the public from the health hazards associated with exposure to secondhand smoke from tobacco.

In furtherance of this purpose, the petition proposes to enact Chapter 3794 of the Ohio Revised Code to generally prohibit the smoking and burning of tobacco in enclosed areas of public places and enclosed areas of places of employment. An enclosed area is defined as a space with a roof or other overhead covering and walls or other side coverings on all but one side. A public place is an enclosed area to which the public is invited or permitted. A place of employment is an enclosed area under the control of an employer that the employer's employees use for work or any other purpose. An employee is defined as including any person who provides services to an employer with or without compensation. Employer includes both public and private sector employers.

The following places would be exempt from the prohibition: private residences, except during hours of operation as a child care or adult care facility for compensation, as a business operated by a person who does not reside in the residence or as a business when employees of the business, other than employees who reside in the residence or are related to the owner, are present; family owned and operated businesses where all employees are related to the owner and the business meets other conditions; retail tobacco stores that meet certain conditions; designated smoking areas in nursing homes for smoking by residents of the nursing home; sleeping rooms in hotels and other lodging facilities designated as sleeping rooms, except that no more than 20% of sleeping rooms may be so designated; not for profit private clubs that meet specified conditions; outdoor patios which are defined as areas with no roof or a roof and walls or side coverings on no more than two sides; and the burning of incense in a religious ceremony. Employees of nursing homes could not be required to enter a designated smoking area when it is being used by residents for smoking.

The posting of no smoking signs is required in all public places and places of employment where smoking is prohibited. All receptacles for disposing of smoking materials are required to be removed from areas where smoking is prohibited by the Act. It also permits the owner, operator or manager of a facility or outdoor area where smoking is not otherwise prohibited to declare the facility or area nonsmoking. Smoking would be prohibited in such area if the specified no smoking sign is posted.

The proposed law prohibits a proprietor of a public place or place of employment from permitting smoking in areas where it is prohibited by the Act, including in outdoor areas under the control of the proprietor immediately adjacent to places of ingress or egress to the enclosed area; requires a proprietor to ensure that tobacco smoke does not enter enclosed areas through doors, windows, ventilation systems or other means where smoking is prohibited, including from an outdoor patio; prohibits an individual from refusing to immediately stop smoking in an area where smoking is prohibited by the Act when asked to do by the proprietor or an employee of the proprietor; prohibits a person from smoking in any area where the proprietor, operator or other person in charge has posted a no smoking sign; and prohibits any person from taking action against person for exercising any right or performing any obligation under the Act. Lack of intent by a proprietor or individual to violate a provision of the Act is not a defense to the violation.

The proposed law requires the Ohio Department of Health to: implement a program of public education regarding the requirements of the Act; provide proprietors of public places and places of employment with informational material on compliance; establish a process for persons to report violations without requiring that the person reveal their identity; investigate reports of violations; provide an opportunity for proprietors and individuals to submit a response and evidence to contest a report of a violation; make findings whether violations have occurred and assess civil fines for such violations; establish a schedule of fines; and promulgate administrative rules to implement and enforce all provisions of the Act.

For a first time violation of the Act, a warning would be issued to a proprietor or individual. For subsequent violations within a two year period a civil fine could be imposed ranging from \$100 to \$2,500 against a proprietor and up to \$100 against an individual for each violation. Each day of a violation would constitute a separate violation. Fines against a proprietor would be progressive in accordance with a schedule based on the number of prior violations, but factors could also be considered for waiving or decreasing a fine. A proprietor or individual against whom a finding of a violation is made may appeal the decision to the Franklin County Court of Common Pleas. The Ohio Director of Health would be permitted to seek an order from a court against a proprietor or individual who repeatedly violates the statute.

The provisions of the Act must be liberally construed to promote its purposes of protecting the health of the public and employees and would prevail over less restrictive state and local laws and may not be construed to permit smoking where it is restricted by other laws or regulations. If any provision of the Act were to be held invalid by a court, this would not affect the remaining provisions of the Act if they can still be given effect.

## TEXT OF PROPOSED LAW

Be it Enacted by the People of the State of Ohio.

### Section 1.

#### 3794.01 Definitions.

As used in this chapter:

(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.

(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.

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

(D) “Employee” means a person who is employed by an employer, or who contracts with an employer or third person to perform services for an employer, or who otherwise performs services for an employer for compensation or for no compensation.

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

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

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

(H) “Retail tobacco store” means a retail establishment that derives more than eighty percent of its gross revenue from the sale of cigars, cigarettes, pipes, or other smoking devices for burning tobacco and related smoking accessories and in which the sale of other products is merely incidental. “Retail tobacco store” does not include a tobacco department or section of a larger commercial establishment or of any establishment with a liquor permit or of any restaurant.

(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.

### **3794.02 Smoking Prohibitions.**

(A) No proprietor of a public place or place of employment, except as permitted in section 3794.03 of this chapter, shall permit smoking in the public place or place of employment or in the areas directly or indirectly under the control of the proprietor immediately adjacent to locations of ingress or egress to the public place or place of employment.

(B) A proprietor of a public place or place of employment shall ensure that tobacco smoke does not enter any area in which smoking is prohibited under this chapter through entrances, windows, ventilation systems, or other means.

(C) No person or employer shall discharge, refuse to hire, or in any manner retaliate against an individual for exercising any right, including reporting a violation, or performing any obligation under this chapter.

(D) No person shall refuse to immediately discontinue smoking in a public place, place of employment, or establishment, facility or outdoor area declared nonsmoking under section 3794.05 of this chapter when requested to do so by the proprietor or any employee of an employer of the public place, place of employment or establishment, facility or outdoor area.

(E) Lack of intent to violate a provision of this chapter shall not be a defense to a violation.

### **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 of sleeping rooms may be so designated.

(C) Family-owned and operated places 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.

(D) Any nursing home, as defined in section 3721.10(A) of the Revised Code, but only to the extent necessary to comply with 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 shall be required to accompany a resident into a designated indoor smoking area or perform services in such area when being used for smoking.

(E) Retail tobacco stores as defined in section 3794.01(H) of this chapter in operation prior to the effective date of this section. The retail tobacco store shall annually file with the department of health by 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 or any existing retail tobacco store that relocates to another location after the effective date of this section may only qualify for this exemption if located in a freestanding structure occupied solely by the business and smoke from the business does not migrate into an enclosed area where smoking is prohibited under the provisions of this chapter.

(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.

(G) Private clubs as defined in section 4301.01(B)(13) of the Revised Code, provided all of the following apply: the club has no employees; 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.

#### **3794.04 Construction; other applicable laws.**

Because medical studies have conclusively shown that exposure to secondhand smoke from tobacco causes illness and disease, including lung cancer, heart disease, and respiratory illness, smoking in the workplace is a statewide concern and, therefore, it is in the best interests of public health that smoking of tobacco products be prohibited in public places and places of employment and that there be a uniform statewide minimum standard to protect workers and the public from the health hazards associated with exposure to secondhand smoke from tobacco.

The provisions of this chapter shall be liberally construed so as to further its purposes of protecting public health and the health of employees and shall prevail over any less restrictive state or local laws or regulations. Nothing in this chapter shall be construed to permit smoking where it is otherwise restricted by other laws or regulations.

#### **3794.05 Declaration of establishment as nonsmoking.**

Notwithstanding any other provision of this chapter, the owner, manager, operator, or other person in charge or control of an establishment, facility, or outdoor area which does not otherwise qualify as a public place or place of employment may declare such establishment, facility, or outdoor area as a nonsmoking place. Smoking shall be prohibited in any place declared nonsmoking under this section where a sign conforming to the requirements of section 3794.06 is posted.

#### **3794.06 Posting of signs; prohibition of ashtrays; responsibilities of proprietors.**

In addition to the prohibitions contained in section 3794.02 of this chapter, the proprietor of a public place or place of employment shall comply with the following requirements:

(A) "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be conspicuously posted in every public place and place of employment where smoking is prohibited by this chapter, including at each entrance to the public place or place of employment. Signs shall be of sufficient size to be clearly legible to a

person of normal vision throughout the areas they are intended to mark. All signs shall contain a telephone number for reporting violations.

(B) All ashtrays and other receptacles used for disposing of smoking materials shall be removed from any area where smoking is prohibited by this chapter.

#### **3794.07 Duties of the Department of Health.**

This chapter shall be enforced by the department of health and its designees. The director of health shall within six months of the effective date of this section:

(A) Promulgate rules in accordance with Chapter 119 of the Revised Code to implement and enforce all provisions of this chapter;

(B) Promulgate rules in accordance with Chapter 119 of the Revised Code to prescribe a schedule of fines for violations of this chapter designed to foster compliance with the provisions of this chapter. The amount of a fine for a violation of 3794.02 (A) and (B) shall not be less than one hundred dollars and the maximum for a violation shall be twenty five hundred dollars. The amount of a fine for a violation of 3794.02 (D) shall be up to a maximum of one hundred dollars per violation. Each day of a violation shall constitute a separate violation. The schedule of fines that apply to a proprietor shall be progressive based on the number of prior violations by the proprietor. Violations which occurred more than two years prior to a subsequent violation shall not be considered if there has been no finding of a violation in the intervening time period. The fine schedule shall set forth specific factors that may be considered to decrease or waive the amount of a fine that otherwise would apply. Fines shall be doubled for intentional violations;

(C) Promulgate rules in accordance with Chapter 119 of the Revised Code to prescribe a procedure for providing a proprietor or individual written notice of a report of a violation and the opportunity to present in writing any statement or evidence to contest the report, and prescribing procedures for making findings whether a proprietor or individual violated a provision of this chapter and for imposing fines for violations;

(D) Establish a system for receiving reports of violations of the provisions of this chapter from any member of the public, including, but not limited to, by mail and one or more e-mail addresses and toll free telephone numbers exclusively for such purpose. A person shall not be required to disclose his or her identity in order to report a violation;

(E) Inform proprietors of public places and places of employment of the requirements of this chapter and how to comply with its provisions, including, but not limited to, by providing printed and other materials and a toll free telephone number and e-mail address exclusively for such purposes; and

(F) Design and implement a program to educate the public regarding the provisions of this chapter, including, but not limited to, through the establishment of an internet website and how a violation may be reported.

#### **3794.08 Smoke Free Indoor Air Fund.**

There is hereby created in the state treasury the smoke free indoor air fund. All fines collected pursuant to this chapter and any grant, contribution, or other moneys received by the department of health for the purposes of this chapter shall be credited to the smoke free indoor air fund and used solely for the purposes of this chapter.

### **3794.09 Enforcement; Penalties.**

(A) Upon the receipt of a first report that a proprietor of a public place or place of employment or an individual has violated any provision of this chapter, the department of health or its designee shall investigate the report and, if it concludes that there was a violation, issue a warning letter to the proprietor or individual.

(B) Upon a report of a second or subsequent violation of any provision of this chapter by a proprietor of a public place or place of employment or an individual, the department of health or its designee shall investigate the report. If the director of health or director's designee concludes, based on all of the information before him or her, that there was a violation, he or she shall impose a civil fine upon the proprietor or individual in accordance with the schedule of fines required to be promulgated under section 3794.07 of this chapter.

(C) Any proprietor or individual against whom a finding of a violation is made under this chapter may appeal the finding to the Franklin County Court of Common Pleas. Such appeal shall be governed by the provisions of section 119.12 of the Revised Code.

(D) The director of health may institute an action in the court of common pleas seeking an order in equity against a proprietor or individual that has repeatedly violated the provisions of this chapter or fails to comply with its provisions.

### **Section 2. Severability.**

If any provision of this chapter or the application thereof to any person or circumstances shall be held invalid by a court, that invalidity shall not affect the other provisions of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.