

## ***SmokeFree Ohio – A Guide for You & Your Business***

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On December 7, 2006 the newest chapter of the Ohio Revised Code, which makes Ohio's public places smoke free, will take effect. While the Director of the Ohio Department of Health is required to adopt rules within the next six months, we want members of the Dayton Area Chamber of Commerce to be aware that any entity designated a "public place" must be in compliance with the initiated statute on December 7, 2006. Once rules are developed, they will be made available on the Ohio Department of Health's website for review and comment and a public hearing will be held prior to their adoption. The Chamber will continue to monitor developments during the rule-making process and will keep members abreast of any changes through *ChamberWatch* and *The Business Voice*.

### ***Smoking Prohibitions (3794.02)***

- Unless specified as an area exempt from the Ohio Revised Code, the proprietor of a public place or place of employment cannot permit smoking in the public place or place of employment or in the areas directly or indirectly under the control of the proprietor that are immediately adjacent to entrance and exit locations of the public place or place of employment.
- Proprietors are responsible for ensuring that tobacco smoke does not enter any area in which smoking is prohibited through entrances, windows, ventilation systems or other means.
- A person or employer may not discharge, refuse to hire or retaliate against an individual for exercising any right or performing any obligation under this chapter of the Ohio Revised Code, including reporting a violation.
- A person cannot refuse to immediately cease smoking in a public place, place of employment, or establishment, facility or outdoor area declared nonsmoking under section 3794.05 when requested to do so by the proprietor or any employee of the employer of the aforementioned areas.

### ***Areas Exempt from the Ohio Revised Code (3794.03)***

- Certain areas are exempt from the new provision of the Ohio Revised Code and include:
  - Private residences except: (1) during the hours of operation as a child care or adult care facility; (2) during the hours of operation of a business by an individual other than a person residing in the private residence; or (3) during the hours of operation as a business when employees of the business are present and are not residents of the private residence or related to the owner.
  - Sleeping rooms in hotels, motels and other lodging facilities that have been designated as smoking rooms; however no more than twenty percent of sleeping rooms may be designated as smoking rooms.
  - Family-owned and operated places of employment in which all employees are related to the owner, but only if the enclosed space of employment is not open to the public, is in a free-standing facility solely owned by the place of employment, and smoke from the place of employment does not contaminate any enclosed area in which smoking is prohibited under the Ohio Revised Code.
  - Nursing homes, as defined by the Ohio Revised Code within Sections 3721.10 and 3721.13(A)(18). If indoor smoking is permitted for residents of the nursing home within the facility, the designated smoking area must be separately enclosed and ventilated so tobacco smoke does not enter through windows, entrances,

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ventilation systems or any other means into the areas in which smoking is otherwise prohibited. The nursing home may designate specific times during which the indoor smoking area may be used for the purpose of indoor smoking. Employees of a nursing home are not required to accompany a resident into an indoor smoking area or perform services in an indoor smoking area that is actively in use.

- Retail tobacco stores, which derive more than 80 percent of gross revenue from the sale of tobacco products and/or smoking devices for burning tobacco and related accessories, in operation prior to December 7, 2006. Retail tobacco stores must file annually with the Ohio Department of Health by January 31 each year stating the percentage of gross income from the previous calendar year that was derived from the sale of cigars, cigarettes, pipes, or other smoking devices from smoking tobacco and related accessories. Retail tobacco stores that open after the December 7, 2006 date will only qualify as except if they are located in a free-standing structure that is occupied solely by the business and smoke from the retail tobacco store does not migrate into an enclosed area in which smoking is prohibited.
- Outdoor patios that are either enclosed by a roof or other overhead covering with wall or side coverings on no more than two sides *or* have no roof or overhead covering regardless of the number of walls or side coverings. All outdoor patios must be physically separated from an enclosed area. Windows and doors that separate an outdoor patio from an enclosed area must remain shut to prevent smoke from traveling into the enclosed area. If windows and doors do not sufficiently prevent smoke from migrating into an enclosed area, then the outdoor patio will be considered an extension of the enclosed area and subject to the provisions of the Ohio Revised Code.
- Private clubs as established by the Ohio Revised Code. Private clubs are exempt only if the following apply: the club has no employees; is organized as a not for profit entity; only members of the club are present in the club building; no persons under the age of eighteen are present in the club's building; the club is located in a free standing structure occupied solely by the club; smoke from the club does not migrate into an enclosed area in which smoking is prohibited; and holds a valid D4 liquor permit if the club sells alcohol.

### ***Declaring an Establishment Non-Smoking (3794.05)***

- Any establishment, facility or outdoor area that does not qualify as a public place or place of employment may be declared nonsmoking by the owner, manager, operator or other person in charge provided that a sign is posted that meets the requirements from the following section.

### ***Signage, Ashtrays and Proprietor Responsibilities (3794.06)***

- In addition to the requirements listed under the prohibitions on smoking, the proprietor of a public place or place of employment is also required to comply with the following:
  - “No Smoking” signs or the international symbol for “No Smoking” (the pictorial representation of a burning cigarette with the red circle and diagonal red bar across it) must be visibly and conspicuously posted in each public place or place

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of employment. Signs must be large enough to be clearly read throughout the areas they are intended to designate as nonsmoking for a person with normal vision. All signs must contain the telephone number to report violations. The number established by the Ohio Department of Health to report violations is 1-866-559-Ohio.

- Any public place or place of employment in which smoking is prohibited under the Ohio Revised Code must now remove all ashtrays and other receptacles used to dispose of smoking materials.

### ***Enforcement & Penalties (3794.09)***

- The first report of a proprietor of a public place or place of employment *or* an individual that has violated a provision of the portion of the Ohio Revised Code that prohibits smoking in public places will spark an investigation by the Ohio Department of Health or the designated entity. If the Ohio Department of Health or the designated entity determines that a violation has occurred, a warning letter will be issued to the proprietor or individual.
- Following a second report of a proprietor of a public place or place of employment *or* an individual violating the provisions established in the Ohio Revised Code to prohibit smoking in public places, the Ohio Department of Health or its designee will again investigate the report. If, based on all evidence found, the Ohio Department of Health or its designee deems that a violation has occurred; a civil fine will be imposed upon the proprietor or individual in accordance with the schedule of fees established by the Ohio Department of Health.
  - The fee schedule set forth in section 3794.07 (Duties of the Department of Health) indicates that the amount of a fine for a proprietor violating the smoking prohibitions will not be less than \$100 or greater than \$2500.
  - The amount of a fine for an individual refusing to extinguish smoking in a public place, place of employment or establishment, facility or outdoor area when requested to do so by the proprietor will result in a fine of up to \$100 per violation.
  - Each day of a violation will be a separate violation.
  - The schedule of fines will be progressive based on the number of prior violations a proprietor has incurred.
  - Fines will be doubled for intentional violations.
- A proprietor against whom a violation is recorded under this section of the Ohio Revised Code may appeal the finding to the Franklin County Court of Common Pleas.
- The Ohio Department of Health may seek an order through the court of common pleas against proprietors or individuals that repeatedly violate provisions of this chapter of the Ohio Revised Code or fail to comply.