



H.B. 283

126th General Assembly
(As Introduced)

Reps. **Chandler, Miller, Skindell, Brown, Sykes, Healy, Ujvagi, Perry, Otterman, Wolpert**

BILL SUMMARY

- Permits counties and townships to regulate smoking in public places and places of employment located in unincorporated areas.

CONTENT AND OPERATION

Current law

State law currently requires a designated no smoking area in specified "places of public assembly" to separate persons who smoke from persons who do not smoke for the comfort and health of the persons not smoking and makes it a minor misdemeanor for a person to smoke in these designated areas (R.C. 3791.031(B), (D), and (E)). These places of public assembly *include* (among others) enclosed theatres (except the lobby), auditoriums, classrooms, elevators, hospital rooms, residential care facility rooms, buildings owned by the state and its political subdivisions, vehicles used in public transportation, and portions of other buildings having a seating capacity of 50 or more persons that are available to the public. However, a portion of a publicly owned building used primarily as a food service establishment does *not* have to provide a no smoking area under state law. In addition, this state requirement does *not* apply to restaurants, food service establishments, dining rooms, cafes, cafeterias, or other areas used primarily for the service of food, bowling alleys, and places licensed by the Division of Liquor Control for on-premises consumption of alcohol. (R.C. 3791.031(A).)

State law also has specific no smoking requirements for some types of businesses:

- For fireworks plants (manufacturers), state law prohibits smoking on the premises except, if the manufacturer so chooses, in specified lunchrooms or restrooms in buildings in which no manufacturing,

handling, sales, or storage of fireworks takes place (R.C. 3743.06(C) and 3743.60(I));

- For fireworks wholesalers, state law generally prohibits smoking on a wholesaler's premises, but a wholesaler may permit smoking in specified lunchrooms or restrooms in buildings in which no sales, handling, or storage of fireworks takes place (R.C. 3743.19(D) and 3743.61(I));
- For child day-care centers type A family day-care homes, and certified type B family day-care homes, no smoking generally is permitted in any indoor or outdoor space that is part of the center or home. But, in a type A family day-care home or certified type B family day-care home, smoking may be permitted during hours other than the hours the home is in operation if notice is provided to those receiving child care in the home. And, those family day-care homes as well as child day-care centers may allow smoking at the home or center if persons smoking cannot be seen smoking by the children being cared for and if the person smokes in an indoor area that is separately ventilated from the rest of the home or center or in an outdoor area that is so far removed from the children being cared for that they cannot inhale any smoke. (R.C. 5104.015.)

At the local level, a municipal corporation using its constitutional "home rule" powers may regulate smoking within the municipal corporation (Article XVIII of the Ohio Constitution). Many municipal corporations have enacted various smoking regulations. And, it is not clear whether, but it may be possible for, a limited home rule township to regulate smoking within the township; it is clear that, if there is a conflict between such a township's resolution and a municipal ordinance, the municipal ordinance prevails (R.C. 504.04(A)(1) and (D)).

Changes made by the bill

New statutes

The bill permits counties and townships, by resolution, to regulate smoking in "public places" or "places of employment" within the unincorporated area of the county or township. If both county and township regulations are adopted for a township, the township--not the county--regulations will prevail in that township; it makes no difference whether the township regulations are adopted before or after the county regulations. (R.C. 307.205(B) and 505.83(B).)

A "public place" is any indoor area to which the public is permitted or customarily uses. Common areas in multiple dwelling units and business facilities

are considered public places. However, a private residence is not a public place unless it is used as a childcare, adult day care, or health care facility. (R.C. 307.205(A)(1) and (4) and 505.83(A)(1) and (4).)

A "place of employment" is an enclosed area under the control of a public or private employer that employees normally frequent during the course of employment; for this purpose, "enclosed area" means all space closed in by a roof or other overhead covering of any kind and walls or other side coverings of any kind on at least three sides with appropriate openings for ingress and egress. These places of employment *include* (among others) private offices, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, employee gymnasiums, storage, file, and mail rooms, employee medical facilities, elevators, stairways, hallways, factories, warehouses, taxis, limousines, and company-owned vehicles used for business purposes. Private residences are included as these places *only if* they (1) are used as a childcare, adult day care, or health care facility, or (2) are used in any way that otherwise qualifies a person as an employer with respect to the use of the private residence, except that a private residence is not included as a place of employment simply because a person provides housecleaning, home maintenance, or personal care services in the residence. If an enclosed area is a "place of employment," it retains that character without regard to time of day or the *actual presence* of employees. (R.C. 307.205(A)(1), (2), and (3) and 505.83(A)(1), (2), and (3).)

Amended statutes

The bill also amends current state law to make it clear (1) that county or township smoking regulations prohibiting smoking apply to certain businesses specifically regulated under that law and (2) that county or township smoking regulations apply (a) to places required by state law to only designate no smoking areas and (b) to child day-care centers, type A family day-care homes, and certified type B family homes if there is any conflict between the county or township smoking regulations and state law. (R.C. 3743.06(C), 3743.19(D), 3743.60(I), 3743.61(I), 3791.031(B) and (F), and 5104.015(E).)

HISTORY

| ACTION | DATE | JOURNAL ENTRY |
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| Introduced | 06-01-05 | p. 888 |

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