

## **OHIO'S NEW SMOKE-FREE LAW**

By Bob Dunlevey

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Are you ready for Ohio's new smoke-free law? There is a lot more to this than meets the eye! No longer can employees smoke in company vehicles and inside their workplace. Gone are the days that an employee can take a smoke-break standing outside of the front door of the company.

Ohio's new law is effective December 7, 2006 as a result of Ohio's voters approving Issue 5. Ohio joins approximately twenty-one (21) other states regulating smoking in public places and places of employment.

In summary, no proprietor of a public place or place of employment may permit smoking in a public place or place of employment or in areas directly or indirectly under the control of the proprietor immediately adjacent to locations of ingress and egress. "Immediately adjacent" is not yet defined. Moreover, a proprietor must not permit smoke to enter through entrances, ventilation systems or other openings. While there are exceptions to this sweeping law, the unregulated areas such as outdoor patios, family businesses, private residences, and private clubs are so narrowly defined that very few proprietors can come within these exceptions. For example, while smoking is permitted in a family business facility, it must be owned and exclusively operated by the family (no other employees), the public may not be permitted inside the enclosed

areas of the business and the structure must be free-standing and solely occupied by the family business facility. Private clubs must be not-for-profit, have no employees, volunteers, or independent contractors and must not permit guests or children in the structure. Yes, there is an exception for religious ceremonies where incense is burned, but this shows just how narrow the exceptions really are.

A place of employment is defined as an enclosed area under the direct or indirect control of an employer where the employees go for any purpose. This includes meeting rooms, production and storage areas, restrooms, stairways, hallways, warehouses, garages, vehicles, and even “port-a-johns”. In the construction industry, a partially constructed building may be an enclosed restricted area.

As of December 7, each proprietor must post a prescribed “No Smoking” sign inside and at the entrances where smoking is forbidden. A phone number for reporting violations must be displayed. This poster can be found at [www.odh.state.oh.us/alerts/ohiosmokingban.aspx](http://www.odh.state.oh.us/alerts/ohiosmokingban.aspx) . In addition, all smoking receptacles must be removed from regulated areas including company vehicles and at doorways.

Of course, there is a schedule of Civil fines ranging from \$100.00 to \$2,500.00 for each violation by a proprietor. A smoker violating the law can be fined between zero (0) and \$100.00 for each offense. Intentional violations call for double fines. Each day of a violation represents a separate violation so the money can mount rapidly.

To cautiously implement this law, you need to read and understand it, designate a compliance person in your organization, establish a compliance approach, including the scope of prohibitions and designated areas, post notices, remove receptacles, amend handbooks/rules, conduct employee orientation and supervisory training, assess the risk of smoke infiltration into restricted areas and notify temporary agencies, independent contractors, and sub-contractors of your restricted areas as well.

By June 2007, the regulations will be developed by the Ohio Department of Health. For more information about this and the new Ohio Minimum Wage law, visit the library website at Dunlevey, Mahan & Furry, [www.dmfdayton.com](http://www.dmfdayton.com) or contact Bob Dunlevey through your legal services plan.

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# BACKGROUND...

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- **1972 SURGEON GENERAL**

- **ISSUE 5**

- **O.R.C. 3794**

- **STATE LAWS**

- ARIZONA, CALIFORNIA, COLORADO, CONNECTICUT, DELAWARE, FLORIDA, HAWAII, IDAHO, MAINE, MASSACHUSETTS, MONTANA, NEVADA, NEW JERSEY, NEW YORK, NORTH DAKOTA, OHIO, RHODE ISLAND, SOUTH DAKOTA, UTAH, VERMONT, WASHINGTON, DISTRICT OF COLUMBIA

- **LOCAL LAWS**

- **OTHER COUNTRIES**

- ENGLAND, IRELAND, ITALY, NORWAY, SCOTLAND, SWEDEN, NEW ZEALAND, URUGUAY, BERMUDA

- **FINANCIAL IMPACT**

- **RELATED ISSUES**

- EMPLOYMENT, INSURANCE, WORKERS' COMPENSATION, OSHA, NLRA, NUISANCE LAW, CONSTITUTIONAL RIGHTS



# PROHIBITIONS...

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- “NO PROPRIETOR OF A PUBLIC PLACE OR PLACE OF EMPLOYMENT...SHALL PERMIT SMOKING IN THE PUBLIC PLACE OR PLACE OF EMPLOYMENT **OR** IN AREAS DIRECTLY OR INDIRECTLY UNDER THE CONTROL OF THE PROPRIETOR IMMEDIATELY ADJACENT TO LOCATIONS OF INGRESS OR EGRESS...”
- PERMITTING SMOKE TO ENTER THROUGH ENTRANCES, VENTILATION SYSTEM, ETC.
- RETALIATION
- REFUSING TO QUIT WHEN ORDERED BY PROPRIETOR OR ANY EMPLOYEE
- OTHER DECLARED AREAS NOT COVERED

**12-7-06**

REGULATIONS BY JUNE 07

[www.odh.state.oh.us/alerts/ohiosmokingban.aspx](http://www.odh.state.oh.us/alerts/ohiosmokingban.aspx)



# GONE ARE...

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- SMOKING ROOMS
- DESIGNATED SMOKING AREAS IN FACILITIES
- PARKING GARAGE SMOKING
- COMPANY VEHICLE SMOKING
- RESTAURANT/BAR SMOKING
- APARTMENT/CONDO PUBLIC AREA SMOKING
- ASHTRAYS/RECEPTACLES (INCLUDING OUTSIDE ENTRANCES AND VEHICLES)
- INCENSE – NON-RELIGIOUS



# UNREGULATED AREAS...

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- **OUTDOOR PATIOS**

- OVERHEAD COVERING PLUS 2 SIDES OR NO COVERING
- PHYSICALLY SEPARATED
- DOORS/WINDOWS CLOSED – IF STILL INFILTRATES  
ENCLOSED AREA – NO SMOKING

- **FAMILY BUSINESS**

- OWNED + EXCLUSIVELY OPERATED BY FAMILY
- NO PUBLIC IN ENCLOSED AREA
- FREE STANDING STRUCTURE
  - \*SOLELY OCCUPIED
- NO SMOKE INFILTRATION



# UNREGULATED AREAS...

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- **RESIDENCE**
  - PRIVATE / NON-COMMERCIAL USE TIME
- **SLEEPING ROOMS**
  - DESIGNED FOR SMOKING
  - 20%
  - NO SMOKE INFILTRATION



# UNREGULATED AREAS...

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- **PRIVATE CLUBS**
  - NOT FOR PROFIT
  - NO EMPLOYEES OR VOLUNTEERS OR INDEPENDENT CONTRACTORS
  - NO GUESTS OR CHILDREN IN BUILDING
  - D4 IF ALCOHOL
  - SOLELY OCCUPIED FREE STANDING
  - NO SMOKE INFILTRATION



# UNREGULATED AREAS...

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- **RETAIL TOBACCO STORES**
  - 80% GROSS REVENUES
  - NOT A DEPARTMENT/SECTION
  - NOT A LIQUOR/RESTAURANT ESTABLISHMENT
- **NURSING HOMES**
  - DESIGNATED AREAS, SEPARATELY ENCLOSED AND VENTILATED FOR RESIDENTS
  - EMPLOYEE MAY NOT ACCOMPANY OR PERFORM SERVICES AT SMOKING TIMES



# DEFINITIONS...

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- **SMOKING**

...EXHALING, BURNING, CARRYING...LIGHTED TOBACCO OR...PLANT

- **PUBLIC PLACE**

...ENCLOSED AREA...WHERE PUBLIC IS PERMITTED OR INVITED

- **ENCLOSED AREA**

...AREA WITH...OVERHEAD COVERING OF ANY KIND AND WALLS OR SIDE COVERINGS OF ANY KIND (REGARDLESS OF OPENINGS)...ON ALL SIDES OR ALL BUT ONE



# DEFINITIONS...

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- **EMPLOYER**

PUBLIC OR PRIVATE PERSON OR ENTITY THAT EMPLOYS, CONTRACTS OR ACCEPTS SERVICES FROM EMPLOYEE

- **EMPLOYEE**

PERSON WHO IS EMPLOYED BY, CONTRACTS WITH EMPLOYER OR THIRD PERSON TO PERFORM SERVICES OR WHO OTHERWISE DOES SO WITH OR WITHOUT COMPENSATION



# DEFINITIONS...

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- **PLACE OF EMPLOYMENT**
  - ENCLOSED AREAS
  - UNDER DIRECT OR INDIRECT CONTROL
  - EMPLOYEES USE FOR ANY PURPOSE AT ANY TIME
  - EMPLOYEES NEED NOT BE PRESENT

## EXAMPLES:

MEETING ROOMS, PRODUCTION & STORAGE AREAS, RESTROOMS, STAIRWAYS, HALLWAYS, WAREHOUSES, GARAGES, VEHICLES



# DEFINITIONS...

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- **PROPRIETOR**

EMPLOYER, OWNER, MANAGER, OPERATOR,  
LIQUOR PERMIT HOLDER, PERSON IN  
CONTROL OF PUBLIC PLACE OR  
EMPLOYMENT PLACE



# POSTING / RECEPTACLES...

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## POSTING

- SYMBOL IN RED
- INSIDE AND AT ENTRANCES
- REPORTING PHONE NUMBER

## RECEPTACLES

- REMOVED FROM AREAS

# **NO SMOKING**



To report violations call  
**866-559-OHIO (6446)**  
in accordance with Chapter 3794  
of the Ohio Revised Code.



# PENALTIES...

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- **WARNING LETTER FIRST**
- **SCHEDULE OF CIVIL FINES**
  - \$100 - \$2,500 FOR PROPRIETOR
  - \$0 - \$100 FOR SMOKER
  - EACH DAY = SEPARATE VIOLATION
  - INTENTIONAL VIOLATIONS = 2X
  - PROGRESSIVE FINES FOR PROPRIETOR
  - 2 YEAR SAVING PERIOD
- **WRITTEN NOTICE OF CONTEST**



# ENFORCEMENT...

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- OHIO DEPT. OF HEALTH OR DESIGNEES
- ANONYMOUS COMPLAINTS
- INJUNCTIONS
- APPEALS TO FRANKLIN COUNTY COURT

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## SMOKE FREE INDOOR AIR FUND



# IMPLEMENTATION...

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- READ LAW
- DESIGNATE COMPLIANCE PERSON
- ESTABLISH COMPLIANCE APPROACH
  - SCOPE OF PROHIBITIONS
  - SCOPE OF DESIGNATED AREAS



# IMPLEMENTATION...

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- POST NOTICES
  - SYMBOLS AT ENTRANCES AND AREAS (INCLUDING ABUSE AREAS) WITH PHONE NUMBER
- AMEND HANDBOOKS / RULES
  - DESCRIBE AREAS
  - DEFINE PENALTIES
  - ESTABLISH BREAKS (?)



# IMPLEMENTATION...

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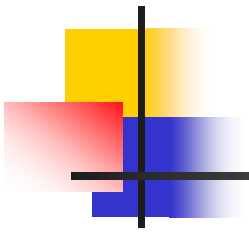
- EMPLOYEE ORIENTATION
  - MEETINGS
  - PUBLICATIONS
- SUPERVISORY TRAINING
  - “PERSON IN CONTROL”
  - RETALIATION



# IMPLEMENTATION...

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- NOTIFY TEMP AGENCIES/ INDEPENDENT CONTRACTORS/ SUBCONTRACTORS
- NOTIFY UNION
- ASSESS/PREVENT SMOKE INFILTRATION
- WATCH FOR REGULATIONS



# Q&A



# VISIT OUR WEBSITE FOR MORE EMPLOYMENT LAW INFORMATION

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[www.dmfdayton.com](http://www.dmfdayton.com)

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