

Smoke Free Workplace

In the election of 2006, Ohio voters passed a law that prohibited smoking in public places. Today, even after the law went into effect on December 7th, there are places, mostly bars, that are still allowing patrons to smoke. The bar owners are getting away with this because when the law was passed the law makers did not have any enforcement rules. This has been making it very difficult for law officers and state officials to enforce the ban. In 2003 a similar ban was passed by City Council of Toledo. Businesses lost revenue and some businesses even closed their doors for good. Now instead of city by city, voters have passed a statewide law affecting even the non-smokers.

Many non-smokers are affected by their employment. For example, the beer delivery person or the liquor sales representative that sell their product to bar establishments may not sell their product because bar business has declined and bar establishments have not needed their products. If the states start passing this law nation wide, unemployment rates will increase and many businesses will close. Smokers will just end up going to other suburbs where it is legal or in the case of a Toledo resident, they can go to a Michigan bar and smoke.

Smokers have been affected in many other ways. The United States is a place of freedom, so our constitution states, unless you smoke? The government is now going dictate another freedom that Americans have. They claim it is for health reasons, that people who do not smoke have the right not to be around smoke. They have taken away

the rights of people who smoke and even people who do not smoke but may enjoy a cigarette when they go out for an evening of drinking. Where are their rights?

Law makers first had to define the language of the smoking ban. Law makers defined the following words in order to make the ban specific: smoking, public place, place of employment, employee, employer, enclosed area, proprietor, retail tobacco store and outdoor patio. After the definitions we made clear they had to come up with a summary of the law. According to the official webpage of SmokeFreeOhio, the law states:

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. (SmokeFreeOhio)

To many Ohioans, this smoking ban was very confusing. People were questioning as to vote yes or no, against or for the law. This has been a similar issue in the past with many other issues on past ballots. This was the defense of the voters that were against the smoking ban going in affect. For voters to understand what they are voting on law makers should be providing clearly written information regarding the ban. Now that the ban is in affect law makers do on have a plan of action to enforce the smoking ban. Law makers did, however, have penalties for the smoking ban.

Now that law makers have a summary of the ban, definitions, and penalties, they thought all was well when the ban passed this passed November. Nothing could be further from the truth. Most establishments have complied with the law; bars, however, have not. They government should be worried about wars and budgets, not what people do of their own free will. Once the repercussions have been defined, the law will go in to affect full force. April of 2007 is when this smoking ban is expected to go into affect. Buying cigarettes is legal, so smoking them should be too.

Works Cited

Filler, Richard "SmokeFreeOhio." Smoke-Free Ohio Law Page. 10 December 2007.

10 February 2007 < <http://smokefreeohio.org/oh/about/documents/SFOlaw.pdf>>.