



# Bricker & Eckler Bulletin



*Keeping clients and friends informed of breaking legal developments*

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## Ohio's Smoke Free Workplace Act: What Businesses Need to Know

*The Ohio Department of Health is in the process of adopting regulations to implement the Ohio SmokeFree Workplace Act within the next six months. The following bulletin does not reflect these regulations.*

**O**n November 7, 2006, Ohio voters enacted a law to ban smoking in public places by approving the SmokeFree Workplace Act. The measure establishes a statewide smoking ban that applies to almost every public place with a few exceptions for places such as family owned and operated businesses, retail tobacco stores, outdoor patios, private homes and cars, among others.

The SmokeFree Workplace Act went into effect on December 7, 2006. Although rules detailing the ban and enforcement of it will be issued by the Ohio Department of Health within six months, Ohio businesses should implement the new law on December 7, 2006. This bulletin provides some basic information about the new law and answers some of the most frequently asked questions.

### Where will smoking be banned?

The statewide ban prohibits a proprietor of a public place or place of employment from permitting smoking in enclosed areas directly or indirectly under the control of the proprietor and areas immediately adjacent to locations of ingress or egress to the public place or place of employment.

The term "enclosed area" is defined as "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." This includes outdoor areas of a public place or place of employment, excluding an outdoor patio.

A "public place" is an enclosed area to which the public is invited or permitted.

The term "places of employment" is defined as "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."

### Are there any exceptions?

Exceptions include:

- private residences, except during hours of operation as a child care or adult care facility for compensation;
- designated rooms in hotels and motels, except that no more than 20% of sleeping rooms may be designated as smoking rooms;
- separately enclosed areas within nursing homes;
- retail tobacco stores under certain conditions;
- physically separated outdoor patios;
- certain not-for-profit, private clubs under specific circumstances;
- the burning of incense in a religious ceremony;
- family-owned and operated businesses.

## **Can I have a separate smoking room within my building?**

No. The SmokeFree Workplace Act bans smoking in all enclosed areas of a public place or place of employment, except for specified exempted areas.

## **Does the new law require me to allow smoking in the unenclosed areas on my property?**

No. The new law permits, but does not require, the owner to allow smoking in unenclosed areas on the property. In other words, the new law would allow smoking in an unenclosed parking lot, for example. However, the owner can prohibit smoking anywhere on his property, even in the parking lot or other unenclosed areas of the property by posting a “No Smoking” sign.

## **Do I need to ban smoking in my company-owned vehicles?**

Yes. Smoking is prohibited in all “places of employment,” defined as “an enclosed area under the direct or indirect control of an employer.” The examples listed in that definition specifically include an employer-owned vehicle.

## **What is a family owned business?**

The SmokeFree Workplace Act permits smoking in family-owned and operated places of employment, which is defined as a business in which “all employees are related to the owner.” However, smoking is only permitted in such facilities if (1) the enclosed area of the place of employment is not open to the public, (2) is in a free standing structure occupied solely by the place of employment, and (3) smoke from the place of employment does not migrate into an enclosed area where smoking is prohibited.

## **What will Ohio businesses need to do to comply with the SmokeFree Workplace laws?**

Ohio places of employment and public places will need to prohibit smoking as outlined above. In addition, they must:

- Post “No Smoking” signs in public areas and places of employment;
- Remove all ashtrays from any area where smoking is prohibited;
- Take steps to ensure that tobacco smoke does not enter enclosed areas through doors, windows, ventilation systems or other means.

## **What are the penalties for violating the SmokeFree Workplace Act?**

The first violation of the smoking ban would draw a warning letter. Subsequent violations within a two-year period could draw a fine ranging from \$100 to \$2,500 against a proprietor and up to \$100 against an individual for each violation. Each day of violation is a separate offence. There are no criminal penalties.

## **How are alleged violations of the statewide smoking ban enforced?**

The Ohio Department of Health (ODH) is responsible for establishing a system for receiving reports about violations, defining its investigatory duties, and beginning to enforce civil penalties for violations of the smoking ban. ODH has six months after December 7, 2006 to develop regulatory provisions to help proprietors and individuals comply with the statewide smoking ban.

Every proprietor or individual is entitled an opportunity to present in writing any statement or evidence or request a hearing pursuant to Chapter 119 of the Ohio Revised Code to contest a report of violating the statewide smoking ban. Any proprietor or individual against whom a finding of a violation is made may appeal the finding to a court of proper jurisdiction.

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*For more information regarding the new law, and how it could help your business, please contact Betsy A. Swift at 614.227.8850 or [bswift@bricker.com](mailto:bswift@bricker.com), Jim Petrie at 614.227.2373 or [jpetrie@bricker.com](mailto:jpetrie@bricker.com), Maria J. Armstrong at 614.227.8821 or [marmstrong@bricker.com](mailto:marmstrong@bricker.com), or Oyango A. Snell at 614.227.2349 or at [osnell@bricker.com](mailto:osnell@bricker.com).*

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