

**STORAGE NAME:** h0769s1.cor  
**DATE:** April 11, 1997

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
CORRECTIONS  
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

**BILL #:** CS/HB 769  
**RELATING TO:** Tobacco-free Prisons Act  
**SPONSOR(S):** Representative Brooks  
**STATUTE(S) AFFECTED:**  
**COMPANION BILL(S):** SB 10 (c)

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

- (1) CORRECTIONS YEAS 4 NAYS 1
- (2) CRIMINAL JUSTICE APPROPRIATIONS
- (3)
- (4)
- (5)

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**I. SUMMARY:**

Committee Substitute for House Bill 769 creates the "Tobacco-free Prisons Act," which would prohibit the possession and use of tobacco products by inmates, employees and visitors in state and private correctional facilities. Provisions include:

- Providing that inmates who possess or use tobacco products would commit a disciplinary infraction and would be subject to punishment determined to be appropriate by the disciplinary authority in the facility, which could include forfeiture of gain-time or the right to earn future gain-time;
- Requiring the Department of Corrections and the private vendors operating correctional facilities to provide smoking cessation assistance to inmates;
- Authorizing the department and private vendors operating correctional facilities to adopt policies permitting tobacco use by employees and visitors only outside of the secure perimeter of a facility and not within the presence of any inmate; and
- Providing legislative intent to have a certain percentage of health care cost savings found to be attributable to the removal of tobacco from correctional facilities appropriated for incentive bonuses for correctional and correctional probation officers;

House Bill 769 is intended to significantly reduce inmate health care costs in the future. The extent to which inmate health care costs will be avoided is indeterminant, but potentially significant.

According to the department, there will be some costs associated with providing smoking cessation programs for inmates; however, such costs are likely to be minimal.

This bill will become effective upon becoming law, and its provisions must be fully implemented by July 1, 1998.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

**Current Policy**

The Florida Department of Corrections currently allows inmates to purchase and use tobacco products within state correctional facilities. Rule 33-20.001, Florida Administrative Code, restricts smoking in all indoor areas at state correctional facilities. A superintendent may designate a smoking area where inmates are housed or where inmate activities occur. Inmates are prohibited from smoking in dormitories or housing areas which are designated as non-smoking areas. A superintendent has the discretion to restrict areas where inmates may use tobacco-related products.

Adult inmates may purchase cigarettes from canteens in correctional institutions which generates monies that are deposited in the Inmate Welfare Trust Fund. These monies are used to employ personnel and for expenses (operating and fixed capital) for correctional education programs, libraries, chapels, and visiting areas.

**Inmate Smoking in Private Correctional Facilities**

According to the Correctional Privatization Commission, inmates are permitted to use tobacco products in designated smoking areas inside and outside buildings at South Bay, Moore Haven, and Bay Correctional Institutions. Private correctional facilities operate under a policy which essentially parallels the rule adopted by the Department of Corrections. In states in which inmates are prohibited from smoking, such as Texas, private correctional vendors are required to adhere to the non-smoking policy.

**Tobacco Use and Health Care**

The department estimates that between 65% and 75% of the inmate population smokes cigarettes in prison, a rate about 2.5 times as high as the general male population.

The Department of Corrections acknowledges that smoking contributes to or exacerbates certain health-related conditions such as hypertension, pulmonary disease, and diabetes among inmates. At this time, the department cannot determine the number of inmates who have medical conditions caused solely by the use of tobacco or who are currently receiving treatment for medical conditions which have been exacerbated by the use of tobacco. Some data collected by the department suggests, however, that total yearly costs related to tobacco use have been exceeding \$2 million for some time.

The total annual expenditures for inmate health care have been increasing rapidly over the last several years due to prison health system reforms and the increasing inmate population. Nevertheless, the rate of annual inmate health care costs for the Department of Corrections has remained significantly below the annual health care cost rate for the average Florida citizen.

For FY 1996-97, the Legislature appropriated over \$200 million for inmate health care, which represented approximately 15 percent of every dollar provided to the Department of Corrections.

A recent Office of Program Policy Analysis And Governmental Accountability (OPPAGA) report analyzed inmate health care costs to determine ways to reduce or contain those costs. (Report Number 96-22, November 27, 1996). In its analysis, the researchers reported the following advantages and disadvantages of implementing smoking cessation programs in prisons:

**Advantages:**

- Reduction in long term treatment costs as inmates maintain their health;
- Program(s) act to occupy inmates, reducing idleness;
- Educate and instill inmate responsibility for their health.

**Disadvantages:**

- Additional staff required to develop and implement programs;
- Cost of program implementation;
- Institutional space limitations;
- May not achieve measurable cost savings, or even impact inmate behavior.

**Opinion Surveys of Tobacco Use in Prisons**

In 1996, staff of the Senate Criminal Justice Committee conducted a survey of the superintendents at 54 major correctional institutions in Florida. Twenty-nine (63%) of the superintendents surveyed reported that they did not believe that inmates should be prohibited from using tobacco products. Fourteen (30%) of the superintendents surveyed reported that inmates should be prohibited from using tobacco products.

The reason cited most often by those superintendents who believed that inmates should be prohibited from using tobacco products was health-related, including the reduction in costs of providing health care services to inmates.

Of those superintendents who believed that inmates should be permitted to use tobacco products, the most frequently cited reason was that prohibiting inmates from using tobacco products would increase their anxiety and stress, creating a hostile environment and resulting in security problems.

**States Restricting Tobacco Use in Prisons**

The following chart displays the types of restrictions and prohibitions implemented in selected states. States which are shaded across the columns have prohibited the use of tobacco products by both inmates and staff. States which are only partially shaded in the chart have prohibited the use of tobacco products by inmates only. Many states, however, have restricted, but not eliminated, the use of tobacco products in prison.

**States Surveyed Which Restrict or Prohibit Possession or Use of Tobacco Products In Prisons\***

	Staff Allowed to Smoke Inside	Staff Allowed to Smoke Outside	Inmates Allowed to Smoke Inside	Inmates Allowed to Smoke Outside	Tobacco Products and Use Prohibited for Both	Comments
Alabama	No	Yes	No	Yes	No	
California	No	Yes	No	Yes	No	
Colorado	No	Yes	No	No	No, total prohibition for inmates only effective 7-1-97	Legislation in 1996 failed; later a rule was adopted
Georgia	No	Yes	No	Yes	No	Previous rule to prohibit all tobacco products was repealed on 12-1-95
Kansas	No	Yes	No	Yes	No	
Kentucky	Varies	Varies	Varies	Varies	No	
Maine	Yes	Yes	Yes	Yes	No	
Minnesota	No	No	No	No	Yes	Smoke-free Prison Act in 1996
New Jersey	Yes	Yes	Yes	Yes	No	
New York	Yes	Yes	Yes	Yes	No	
Oregon	Yes	Yes	No	No	No, total prohibition for inmates only effective 4-1-95	
Texas	No	No	No	No	Yes	Tobacco-free Prisons Act in 1995
Utah	No	Yes	No	No	No, total prohibition for inmates only effective in 1994	
Vermont	No	Yes	No	Yes	No	Previous rule to prohibit all tobacco products was repealed in 1994
West Virginia	Yes	Yes	Yes	Yes	No	

\* Committee staff surveyed by telephone and compiled additional documentation for these states originally surveyed in *Corrections Alert*, p. 2, vol. 2, no. 8, December 11, 1995.

**Counties Restricting Tobacco Use in Jails**

In March, 1997, the Committee on Intergovernmental Relations conducted a survey at the request of the House Corrections Committee on the use of tobacco products in county jail facilities. Twenty-eight of the 67 counties surveyed (42%) contacted for this survey responded. Significant survey findings include:

- Only 2 of the 28 counties restrict tobacco use by inmates.
- 10 of the 28 counties restrict tobacco use by staff.
- 26 of the 28 counties prohibit tobacco use by inmates.
- 18 of the 28 counties prohibit tobacco use by staff.
- No counties reported staff losses as a result of tobacco prohibition policies.

- No counties reported significant problems during the “transition period” prior to full implementation of a smoke-free policy.

### Litigation on Smoking in Prisons

The Florida Department of Corrections has designated at least one non-smoking dormitory in each prison in response to the United States Supreme Court case of *Helling v. McKinney*, 509 U.S. 25, 113 S. Ct. 2475, 125 L.Ed. 2d 22 (1993). In *Helling*, the Supreme Court held that prison officials may violate the Eighth Amendment’s prohibition against cruel and unusual punishment by exposing inmates to to an excessive level of environmental tobacco smoke (ETS).

#### B. EFFECT OF PROPOSED CHANGES:

Committee Substitute for House Bill 769 would prohibit inmates within state correctional facilities from possessing or using tobacco products. This prohibition would apply regardless of an inmate’s location in relation to the physical plant of a state correctional facility. Inmates who leave the confines of the facility pursuant to s. 945.091, F.S. (e.g., those inmates who work at paid employment in the community and are within 36 months of their release dates), would be exempt from the prohibition.

For purposes of the bill, “state correctional facilities” would include any state institution (i.e., prison, road camp, prison forestry camp, or other facility in which prisoners are housed, worked or maintained under the custody or jurisdiction of the department), as well as any private correctional facility operated under section 944.105, F.S., or chapter 957, F.S.

Violation of the prohibition against tobacco possession or use by inmates would constitute a disciplinary infraction. Appropriate punishment would be determined by the disciplinary authority in the correctional facility and could include the forfeiture of gain-time or the right to earn gain-time in the future would be forfeited.

Employees and visitors of state correctional facilities would not be allowed to possess or use tobacco products while in these facilities; however, the department and the private vendors operating correctional facilities would be authorized to adopt policies and procedures allowing tobacco possession or use by employees and visitors provided that possession or use occurs outside of the secure perimeter and not in the presence of any inmate. This provision would allow the department and private vendors to ensure that correctional officers and their guests could smoke in staff housing located on the property of a correctional facility or in their vehicles, if inmates are not within sight.

For state correctional facilities that do not have definable secure perimeters, such as community corrections centers, the department would designate the boundaries, for purposes of implementing rules and policies on tobacco possession or use by employees and visitors.

No penalties are specified in the bill for unauthorized tobacco possession or use by employees or visitors. Further, the possession of tobacco products within prisons is not specified as contraband pursuant to s. 944.47; however, in relation to visitors, the department could deny or cancel visitation for violation of this provision. Employees who

violate this provision would be dealt with according to internal disciplinary procedures of the department.

This bill would also require the department and private vendors operating correctional facilities to make smoking cessation assistance available to inmates and to have a program fully implemented by July 1, 1998.

Legislative intent language would direct the department to identify and maintain data that could be used to estimate any health care cost savings directly attributable to the removal of tobacco products from state-operated correctional facilities. Fifty percent of the cost savings identified would be appropriated for each fiscal year, beginning July 1, 1999, for incentive bonuses to be awarded to correctional and correctional probation officers.

Further, the Office of Program Policy Analysis and Governmental Accountability (OPPAGA) would be directed to conduct a study to determine the effectiveness of the prohibition against tobacco use in state correctional facilities. A report, which would include a review of inmate health care costs to determine whether any cost savings can be attributable to removal of tobacco products from correctional facilities, would be due to the Legislature on December 31, 2000.

The bill's provisions would be automatically repealed on July 1, 2001, unless reenacted by the Legislature.

**C. APPLICATION OF PRINCIPLES:**

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

The bill increases the authority of the Department of Corrections and private vendors operating correctional facilities to make rules by authorizing the development of rules and procedures to allow tobacco possession and use by employees and visitors under very limited circumstances.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

This bill increases the responsibilities of the Department of Corrections and private correctional facilities by requiring them to enforce the prohibition against tobacco possession and use for inmates, employees and visitors, to provide smoking cessation assistance to inmates, and to fully implement a program by July 1, 1998.

This bill also provides legislative intent for DOC to begin identifying and maintaining data that could be used to estimate any health care cost savings attributable to removal of tobacco products from prisons.

This bill increases the work responsibilities of the Office of Program Policy Analysis and Governmental Accountability (OPPAGA) by requiring a study and report to the Legislature on the effectiveness of removing tobacco products from correctional facilities.

- (3) any entitlement to a government service or benefit?

Currently, tobacco products are sold through the inmate canteens in prisons. By prohibiting the possession and use of tobacco products, these items would no longer be available for purchase.

- b. If an agency or program is eliminated or reduced:

This bill possibly could reduce the need for health services provided by the state for inmates who experience improved health as a result of not smoking.

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

None.

- (2) what is the cost of such responsibility at the new level/agency?

None.

- (3) how is the new agency accountable to the people governed?

None.

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

The bill may reduce revenues generated from cigarette taxes.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

This bill may reduce the need for health care services provided to inmates by the state if their health improves as a result of not smoking.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

While there may be certain costs associated with implementing the smoking cessation assistance to inmates that the Department of Corrections and private vendors must provide, these costs will be borne by the state or private correctional facilities.

Inmates who need non-emergency health care are assessed medical co-payments. Those inmates who experience better health as a result of not using tobacco products may have less need for health care and may pay fewer costs in medical co-payments.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

This bill decreases the option of inmates, employees and visitors who smoke to use tobacco products within state-operated and privately-operated correctional facilities; however, the nonsmoking inmates, employees and visitors will benefit in that they are not subjected to secondhand smoke.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

This bill will restrict the ability of inmates, employees and visitors to possess and use tobacco products in prisons, an activity which is currently allowed in designated areas.



5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

This bill does not purport to provide services to families or children.

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

This bill does not create or change a program providing services to families or children.

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

(3) government employees/agencies?

N/A

D. SECTION-BY-SECTION RESEARCH:

None.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Although the Department of Corrections can likely provide for the smoking cessation program within existing staff resources, there will be material-related costs involved (i.e., pamphlets, reports, and training aids). The costs of these materials cannot be determined at this time; however, they are likely to be minimal. According to the department, these costs may involve a one-time program or a continuing program.

2. Recurring Effects:

According to the department, there could be recurring material-related costs associated with the smoking cessation program; however, these costs are anticipated to be minimal.

HB 769 will result in the state receiving an indeterminant but most likely **significant loss in revenues from the taxation** of tobacco products sold to state inmates.

HB 769 may result in the Department of Corrections receiving **fewer profits from the inmate canteen due to the loss of tobacco sales**. In 1996, gross sales of tobacco products equaled approximately \$7,592,172.00. It is likely, however, that the sale of other goods, such as gum, candy and smoking cessation products, will offset to some extent the profits lost from tobacco sales.

3. Long Run Effects Other Than Normal Growth:

A significant, but long-term, benefit of this legislation is the potential to **reduce long-term treatment costs** as inmates maintain their health. This financial benefit to be realized by the state over time could be sizable. However, any future health care cost savings to be achieved due to HB 769 are difficult to reasonably predict and quantify.

4. Total Revenues and Expenditures:

See III., A. 1. & 2.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:**

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

1. Direct Private Sector Costs:

The Department of Corrections purchases tobacco products from the private sector to sell at its inmate canteens. Figures were unavailable on how much money is spent annually to purchase tobacco products for resale by the Department of Corrections. However, the Department of Corrections reports that in 1996, gross sales of tobacco products equaled approximately \$7,592,172.00. Consequently, the negative fiscal impact on the tobacco products industry will be significant and will result in an annual loss of sales totaling several million dollars.

According to the Correctional Privatization Commission, passage of this bill may result in decreased sales in the private facilities' canteens which will reduce the funds in the Inmate Welfare Trust Fund; however, the lost tobacco product sales will probably be offset by an increase in sales of other products.

2. Direct Private Sector Benefits:

Although the sale of tobacco products to inmates would be eliminated in this bill, it is likely that the sale of other goods, such as gum, candy and smoking cessation products, will increase, and private sector industries producing such products would financially benefit accordingly.

A significant, but long-term, benefit of this legislation is the potential to reduce long-term treatment costs as inmates maintain their health. This financial benefit could be realized by private health care providers as well as by private prison management companies under contract to either the Department of Corrections or to the Correctional Privatization Commission.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

**D. FISCAL COMMENTS:**

Although the bill contains provisions relating to appropriations for incentive bonuses for correctional and correctional probation officers that are based on identified health care cost savings achieved through the removal of tobacco products from facilities, these provisions reflect legislative intent and are persuasive, not binding, on future Legislatures.

**IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:**

**A. APPLICABILITY OF THE MANDATES PROVISION:**

This bill does not require counties or municipalities to spend funds.

**B. REDUCTION OF REVENUE RAISING AUTHORITY:**

This bill does not reduce the authority of counties or municipalities to raise revenue.

**C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:**

This bill does not reduce the percentage of state tax shared with counties and municipalities.

**V. COMMENTS:**

None.

**VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:**

The committee substitute makes the following changes to House Bill 769:

- Replaces references to the "Correctional Privatization Commission" with "private vendors operating correctional facilities," and deletes a definition of "commission."
- Revises the definition of "employee" and creates a definition of "visitor."
- Provides that the bill's provisions must be fully implemented by July 1, 1998, instead of January 1, 1999.
- Authorizes the department and private vendors operating correctional facilities to adopt rules and policies allowing tobacco possession or use by employees and visitors, provided that it occurs outside of the secure perimeter of a facility and not within the presence of any inmate. The department shall define appropriate boundaries if a correctional facility does not have a secure perimeter.
- Provides that inmates who violate the ban on tobacco possession or use will be subject to punishment designated by the disciplinary authority in the correctional facility, including forfeiture of gain-time or the right to earn gain-time in the future.
- Provides legislative intent that 50% of the health care cost savings attributable to the removal of tobacco products from correctional facilities be appropriated as incentive

bonuses for correctional and correctional probation officers. These bonuses, which are contingent upon available funding, are to be paid beginning on July 1, 1999, and for each fiscal year after that date.

- Requires the Office of Program Policy Analysis and Governmental Accountability (OPPAGA) to conduct a study of the effectiveness of the prohibition against tobacco use in correctional facilities, including a review of the effect of the prohibition on inmate health care costs, and to report its findings to the Legislature by December 31, 2000.
- Provides for a repeal of the act on July 1, 2001, unless saved from repeal through legislative reenactment.

VII. SIGNATURES:

COMMITTEE ON CORRECTIONS:

Prepared by:

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