

Bill No. HB 1757

Amendment No. Barcode 052286

CHAMBER ACTION

Senate

House

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Senators Diaz de la Portilla, Geller and Smith moved the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. Section 386.201, Florida Statutes, is reenacted to read:

386.201 Short title.--This part may be cited as the "Florida Clean Indoor Air Act."

Section 2. Section 386.202, Florida Statutes, is amended to read:

386.202 Legislative intent.--The purpose of this part is to protect people from the public health hazards of second-hand, comfort, and environment by creating areas in public places and at public meetings that are reasonably free from tobacco smoke and to implement the Florida health initiative in s. 20, Art. X of the State Constitution by providing a uniform statewide maximum code. This part shall not be interpreted to require the designation of smoking

Bill No. HB 1757

Amendment No. Barcode 052286

1 ~~areas. However, it is the intent of the Legislature to~~
2 ~~discourage the designation of any area within a government~~
3 ~~building as a smoking area. It is the intent of the~~
4 ~~Legislature to not inhibit, or otherwise obstruct, smoking~~
5 ~~cessation programs, medical research, or scientific research~~
6 ~~in this state. The Legislature finds that tobacco smoking that~~
7 ~~is integral to a smoking cessation program, medical research,~~
8 ~~or scientific research does not present a credible public~~
9 ~~health hazard from second-hand smoke.~~

10 Section 3. Section 386.203, Florida Statutes, is
11 amended to read:

12 386.203 Definitions.--As used in this part, the term:

13 (1) "Commercial use of a private residence" means any
14 time during which the owner, lessee, or other person occupying
15 or controlling the use of a private residence is furnishing in
16 the private residence, or causing or allowing to be furnished
17 in the private residence, child care, adult care, or health
18 care, or any combination thereof, and receiving or expecting
19 to receive compensation therefor.

20 (2) "Common area" means a hallway, corridor, lobby,
21 aisle, water fountain area, restroom, stairwell, entryway, or
22 conference room in a public place.

23 (3) "Department" means the Department of Health.

24 (4) "Designated smoking guest rooms at public lodging
25 establishments" means the sleeping rooms and directly
26 associated private areas, such as bathrooms, living rooms, and
27 kitchen areas, if any, rented to guests for their exclusive
28 transient occupancy in public lodging establishments including
29 hotels, motels, resort condominiums, transient apartments,
30 transient lodging establishments, rooming houses, boarding
31 houses, resort dwellings, bed and breakfast inns, and the

Bill No. HB 1757

Amendment No. Barcode 052286

1 like; and designated by the person or persons having
2 management authority over such public lodging establishment as
3 rooms in which smoking may be permitted.

4 (5) "Enclosed indoor workplace" means a workplace that
5 is predominantly or totally bounded on all sides and above by
6 physical barriers.

7 (a) Except as provided in paragraph (b), the term does
8 not include a workplace that does not have physical barriers
9 of any kind from above, a workplace that is totally bounded
10 from above but of which at least 25 percent of contiguous
11 surface area of the sides is without a physical barrier of any
12 kind separating the workplace from the exterior of the
13 building within which the workplace is located, or a workplace
14 that is bounded on all sides and above by physical barriers
15 consisting of no more than 50 percent of the total bounded
16 surface area of the workplace.

17 (b) The term does not apply to a workplace in a
18 restaurant that is bounded on all sides and above by physical
19 barriers consisting of no more than 25 percent of the total
20 bounded surface area of the workplace, provided that if such a
21 workplace is totally or predominantly bounded from above it
22 must use a ventilation system to significantly reduce the
23 accumulation of second-hand tobacco smoke.

24 (6) "Essential services" means those services that are
25 essential to the maintenance of any enclosed indoor room,
26 regardless of whether the room is a workplace, including, but
27 not limited to, janitorial services, repairs, or renovations.

28 (7) "Government building" means a building or portion
29 of a building owned by or leased to the state or a political
30 subdivision of the state and used for governmental purposes.

31 (8) "Physical barrier" includes an uncovered opening,

Bill No. HB 1757

Amendment No. ____ Barcode 052286

1 a screened or otherwise partially covered opening, or an open
2 or closed window, jalousie, or door.

3 (9)(1) "Public place" means the following enclosed,
4 indoor areas used by the general public:

5 (a) Government buildings;

6 (b) Public means of mass transportation and their
7 associated terminals not subject to federal smoking
8 regulation;

9 (c) Elevators;

10 (d) Hospitals;

11 (e) Nursing homes;

12 (f) Educational facilities;

13 (g) Public school buses;

14 (h) Libraries;

15 (i) Courtrooms;

16 (j) Jury waiting and deliberation rooms;

17 (k) Museums;

18 (l) Theaters;

19 (m) Auditoriums;

20 (n) Arenas;

21 (o) Recreational facilities;

22 (p) Restaurants;

23 (q) Retail stores, ~~except a retail store the primary~~
24 ~~business of which is the sale of tobacco or tobacco related~~
25 ~~products;~~

26 (r) Grocery stores;

27 (s) Buildings that contain an enclosed indoor
28 workplace ~~Places of employment;~~

29 (t) Health care facilities;

30 (u) Day care centers; and

31 (v) Common areas of retirement homes and condominiums.

Bill No. HB 1757

Amendment No. Barcode 052286

1 ~~(2) "Government building" means any building or any~~
 2 ~~portion of any building owned by or leased to the state or any~~
 3 ~~political subdivision thereof and used for governmental~~
 4 ~~purposes.~~

5 ~~(10)(3)~~ "Public meeting" means all meetings open to
 6 the public, including meetings of homeowner, condominium, or
 7 renter or tenant associations unless such meetings are held in
 8 a private residence.

9 (11) "Second-hand smoke" means smoke emitted from
 10 lighted, smoldering, or burning tobacco when the smoker is not
 11 inhaling; smoke emitted at the mouthpiece during puff drawing;
 12 and smoke exhaled by the smoker.

13 ~~(12)(4)~~ "Smoking" means inhaling, exhaling, burning,
 14 carrying, or possessing a lighted tobacco product, including
 15 cigarettes, cigars, pipe tobacco possession of a lighted
 16 cigarette, lighted cigar, lighted pipe, or any other lighted
 17 tobacco product.

18 ~~(5)>~~ ~~"Smoking area" means any designated area meeting~~
 19 ~~the requirements of ss. 386.205 and 386.206.~~

20 (13) "Work" means performing an employment or
 21 employment-type service for, or at the request of, another
 22 person or a public or private entity, regardless of whether
 23 the employment or employment-type service is performed for
 24 compensation or on a full-time or part-time basis, whether
 25 legally or not. The term includes employment or
 26 employment-type service performed by an employee, independent
 27 contractor, agent, partner, proprietor, manager, officer,
 28 director, apprentice, trainee, associate, servant, volunteer,
 29 or similar person.

30 (14) "Workplace" means a room where one or more
 31 persons perform work. This section applies to all such

Bill No. HB 1757

Amendment No. Barcode 052286

1 workplaces without regard to whether work is occurring at any
2 given time.

3 ~~(6) "Common area" means any hallway, corridor, lobby,~~
4 ~~aisle, water fountain area, restroom, stairwell, entryway, or~~
5 ~~conference room in any public place.~~

6 ~~(7) "Department" means the Department of Health.~~

7 ~~(8) "Division" means the Division of Hotels and~~
8 ~~Restaurants of the Department of Business and Professional~~
9 ~~Regulation.~~

10 Section 4. Section 386.204, Florida Statutes, is
11 amended to read:

12 386.204 Prohibition.--

13 (1) ENCLOSED INDOOR WORKPLACES.--A person may not
14 smoke in an enclosed indoor workplace, except as otherwise
15 provided in s. 386.2045.

16 (2) PUBLIC PLACES.--A person may not smoke in a public
17 place or at a public meeting except as provided in this part
18 in designated smoking areas. These prohibitions do not apply
19 in cases in which an entire room or hall is used for a private
20 function and seating arrangements are under the control of the
21 sponsor of the function and not of the proprietor or person in
22 charge of the room or hall.

23 (3) OTHER PROHIBITED AREAS.--A person may not smoke
24 within 10 feet of the entryway to a building that contains an
25 enclosed indoor workplace or within 10 feet of intake
26 equipment for a heating, ventilating, or air conditioning
27 system (HVAC system) for a building that contains an enclosed
28 indoor workplace. An outdoor entryway to a public
29 transportation facility, including, but not limited to,
30 railroad stations, bus stations, ship ports, ferry terminals,
31 roadside welcome stations, highway service plazas, airports

Bill No. HB 1757

Amendment No. Barcode 052286

1 served by regular passenger service, and highway rest stations
2 is exempt from the prohibition in this subsection.

3 Section 5. Section 386.2045, Florida Statutes, is
4 created to read:

5 386.2045 Enclosed indoor workplaces; specific
6 exceptions.--Notwithstanding s. 386.204(1), tobacco smoking
7 may be permitted in each of the following places:

8 (1) PRIVATE RESIDENCE.--A private residence whenever
9 it is not being used commercially to provide child care, adult
10 care, or health care, or any combination thereof.

11 (2) RETAIL TOBACCO SHOP.--Any enclosed indoor
12 workplace dedicated to or predominantly for the retail sale of
13 tobacco, tobacco products, and accessories for such products,
14 in which the sale of other products or services is merely
15 incidental. Any enclosed indoor workplace of a business that
16 manufactures, imports, or distributes tobacco products or of a
17 tobacco leaf dealer is a business dedicated to or
18 predominantly for the retail sale of tobacco and tobacco
19 products when, as a necessary and integral part of the process
20 of making, manufacturing, importing, or distributing a tobacco
21 product for the eventual retail sale of such tobacco or
22 tobacco product, tobacco is heated, burned, or smoked or a
23 lighted tobacco product is tested.

24 (3) DESIGNATED SMOKING GUEST ROOM.--A designated
25 smoking guest room at a public lodging establishment.

26 (4) STAND-ALONE BAR.--Any place of business that
27 during all times of operation is devoted predominantly or
28 totally to serving alcoholic beverages, intoxicating
29 beverages, or intoxicating liquors, or any combination
30 thereof, for consumption on the licensed premises; in which
31 the serving of food, if any, is merely incidental to the

Bill No. HB 1757

Amendment No. ____ Barcode 052286

1 consumption of any such beverage; and the licensed premises is
2 not located within, and does not share any common entryway or
3 common indoor area with, any other enclosed indoor workplace,
4 including any business for which the sale of food or any other
5 product or service is more than an incidental source of gross
6 revenue. A business must not derive more than 18 percent of
7 its gross revenue from the sale of food.

8 (5) SMOKING-CESSATION PROGRAM, MEDICAL RESEARCH, OR
9 SCIENTIFIC RESEARCH.--Any enclosed indoor workplace or public
10 place, to the extent that tobacco smoking is an integral part
11 of a smoking-cessation program, medical research, or
12 scientific research. Each room in which tobacco smoking is
13 permitted must comply with the signage requirements in s.
14 386.206.

15 (6) ENTERTAINMENT INDUSTRY.--Any enclosed indoor
16 workplace or public place, to the extent that tobacco smoking
17 is an part of a theatrical, commercial advertising, music
18 video, television, or motion picture performance. Each room
19 in which tobacco smoking is permitted as part of a performance
20 must comply with the signage requirements in s. 386.206.

21 Section 6. Section 386.205, Florida Statutes, is
22 amended to read:

23 386.205 Designation of smoking ~~rooms~~ ~~areas~~.--

24 (1) A smoking ~~room~~ ~~areas~~ may be designated by the
25 person in charge of an airport in-transit lounge under the
26 authority and control of the Bureau of Customs and Border
27 Protection of the United States Department of Homeland
28 Security ~~a public place. A smoking room may only be designated~~
29 in an airport in-transit lounge under the authority and
30 control of the Bureau of Customs and Border Protection of the
31 United States Department of Homeland Security. A smoking room

Bill No. HB 1757

Amendment No. Barcode 052286

1 may not be designated in an elevator, restroom, or any common
2 area as defined in s. 386.203. Each designated smoking room
3 must conform to the following requirements:

4 (a) Work, other than essential services defined in s.
5 386.203, must not be performed in the room at any given time.

6 (b) Tobacco smoking must not be permitted in the room
7 while any essential services are being performed in the room.

8 (c) Each smoking room must be enclosed by physical
9 barriers that are impenetrable by second-hand tobacco smoke
10 and prevent the escape of second-hand tobacco smoke into a
11 common area or an enclosed indoor workplace.

12 (d) Each designated smoking room must exhaust tobacco
13 smoke directly to the outside and away from air intake ducts,
14 and be maintained under negative pressure, with respect to
15 surrounding spaces, sufficient to contain tobacco smoke within
16 the designated room.

17 (e) Each smoking room must comply with the signage
18 requirements in s. 386.206. If a smoking area is designated,
19 existing physical barriers and ventilation systems shall be
20 used to minimize smoke in adjacent nonsmoking areas. This
21 provision shall not be construed to require fixed structural
22 or other physical modifications in providing these areas or to
23 require operation of any existing heating, ventilating, and
24 air-conditioning system (HVAC system) in any manner which
25 decreases its energy efficiency or increases its electrical
26 demand, or both, nor shall this provision be construed to
27 require installation of new or additional HVAC systems.

28 ~~(2)(a) A smoking area may not be designated in an~~
29 ~~elevator, school bus, public means of mass transportation~~
30 ~~subject only to state smoking regulation, restroom, hospital,~~
31 ~~doctor's or dentist's waiting room, jury, deliberation room,~~

Bill No. HB 1757

Amendment No. ____ Barcode 052286

1 ~~county health department, day care center, school or other~~
 2 ~~educational facility, or any common area as defined in s.~~
 3 ~~386.203. However, a patient's room in a hospital, nursing~~
 4 ~~home, or other health care facility may be designated as a~~
 5 ~~smoking area if such designation is ordered by the attending~~
 6 ~~physician and agreed to by all patients assigned to that room.~~

7 ~~(b) Notwithstanding anything in this part to the~~
 8 ~~contrary, no more than one-half of the rooms in any health~~
 9 ~~care facility may be designated as smoking areas.~~

10 ~~(3) In a workplace where there are smokers and~~
 11 ~~nonsmokers, employers shall develop, implement, and post a~~
 12 ~~policy regarding designation of smoking and nonsmoking areas.~~
 13 ~~Such a policy shall take into consideration the proportion of~~
 14 ~~smokers and nonsmokers. Employers who make reasonable efforts~~
 15 ~~to develop, implement, and post such a policy shall be deemed~~
 16 ~~in compliance. An entire area may be designated as a smoking~~
 17 ~~area if all workers routinely assigned to work in that area at~~
 18 ~~the same time agree. With respect to the square footage in any~~
 19 ~~public place as described in subsection (4), this square~~
 20 ~~footage shall not include private office work space which is~~
 21 ~~not a common area as defined in s. 386.203(6) and which is~~
 22 ~~ordinarily inaccessible to the public.~~

23 ~~(4)(a) No more than one-half of the total square~~
 24 ~~footage in any public place within a single enclosed indoor~~
 25 ~~area used for a common purpose shall be reserved and~~
 26 ~~designated as a smoking area.~~

27 ~~(b) The square footage limitation set forth in~~
 28 ~~paragraph (a) shall not apply to any restaurant subject to~~
 29 ~~this part. With respect to such restaurants:~~

30 ~~1. No more than 50 percent of the seats existing in a~~
 31 ~~restaurant's dining room at any time shall be located in an~~

Bill No. HB 1757

Amendment No. Barcode 052286

1 ~~area designated as a smoking area.~~

2 ~~2. Effective October 1, 2001, no more than 35 percent~~
 3 ~~of the seats existing in a restaurant's dining room at any~~
 4 ~~time shall be located in an area designated as a smoking area.~~

5 ~~(3)(5)~~ A smoking room ~~area~~ may not contain common
 6 areas ~~that~~ which are expected to be used by the public.

7 ~~(4)(6)~~ Each state agency may adopt rules for
 8 administering this section which take into consideration the
 9 provisions of this part.

10 Section 7. Section 386.206, Florida Statutes, is
 11 amended to read:

12 386.206 Posting of signs.--The person in charge of a
 13 public place shall conspicuously post, or cause to be posted,
 14 in any public place ~~area designated as a smoking area~~ signs
 15 stating that smoking is not permitted in the public place ~~such~~
 16 ~~area~~. Each sign posted under ~~pursuant to~~ this section must
 17 ~~shall~~ have letters of reasonable size which can be easily
 18 read. The color, design, and precise place of posting of
 19 these ~~such~~ signs shall be left to the discretion of the person
 20 in charge of the premises. ~~In order to increase public~~
 21 ~~awareness, the person in charge of a public place may, at his~~
 22 ~~or her discretion, also post "NO SMOKING EXCEPT IN DESIGNATED~~
 23 ~~AREAS" signs as appropriate.~~

24 Section 8. Section 386.207, Florida Statutes, is
 25 amended to read:

26 386.207 Administration; enforcement; civil penalties;
 27 exceptions ~~exemptions~~.--

28 (1) The department and the Department of Business and
 29 Professional Regulation ~~or the division~~ shall enforce this
 30 part ~~ss. 386.205 and 386.206~~ and to implement such enforcement
 31 shall adopt, in consultation with the Department of

Bill No. HB 1757

Amendment No. ____ Barcode 052286

1 Agriculture and Consumer Services and the State Fire Marshal,
 2 rules specifying procedures to be followed by enforcement
 3 personnel in investigating complaints and notifying alleged
 4 violators, rules defining types of cases for which exceptions
 5 ~~exemptions~~ may be granted, and rules specifying procedures by
 6 which appeals may be taken by aggrieved parties.

7 (2) Public agencies responsible for the management and
 8 maintenance of government buildings shall report observed
 9 violations to the department and the Department of Business
 10 and Professional Regulation ~~or division~~. The State Fire
 11 Marshal shall report to the department and the Department of
 12 Business and Professional Regulation ~~or division~~ observed
 13 violations of this part ss. 386.205 and 386.206 found during
 14 its periodic inspections conducted under ~~pursuant to~~ its
 15 regulatory authority. The department and the Department of
 16 Business and Professional Regulation ~~or the division~~, upon
 17 notification of observed violations of this part ss. 386.205
 18 ~~and 386.206~~, shall issue to the proprietor or other person in
 19 charge of such public place or enclosed indoor workplace a
 20 notice to comply with this part ss. 386.205 and 386.206. If
 21 the such person fails to comply within 30 days after receipt
 22 of the such notice, the department and the Department of
 23 Business and Professional Regulation ~~or the division~~ shall
 24 assess a civil penalty against the person of not less than
 25 \$500 and him or her not to exceed \$1,000 ~~\$100~~ for the first
 26 violation and not less than \$1000 and not to exceed \$2,500
 27 ~~\$500~~ for each subsequent violation. The imposition of the such
 28 fine must ~~shall~~ be in accordance with ~~the provisions of~~
 29 chapter 120. If a person refuses to comply with this part ss.
 30 ~~386.205 and 386.206~~, after having been assessed such penalty,
 31 the department and the Department of Business and Professional

Bill No. HB 1757

Amendment No. Barcode 052286

1 ~~Regulation or the division~~ may file a complaint in the circuit
 2 court of the county in which ~~the such~~ public place ~~or enclosed~~
 3 ~~indoor workplace~~ is located to require compliance.

4 ~~(3) A person may request an exemption from ss. 386.205~~
 5 ~~and 386.206 by applying to the department or the division.~~
 6 ~~The department or the division may grant exemptions on a~~
 7 ~~case-by-case basis where it determines that substantial good~~
 8 ~~faith efforts have been made to comply or that emergency or~~
 9 ~~extraordinary circumstances exist.~~

10 ~~(3)(4)~~ All fine moneys collected pursuant to this
 11 section shall be used by the department for children's medical
 12 services programs pursuant to the provisions of part I of
 13 chapter 391.

14 Section 9. Section 386.208, Florida Statutes, is
 15 amended to read:

16 386.208 Penalties.--Any person who violates s. 386.204
 17 commits a noncriminal violation as defined ~~provided for~~ in s.
 18 775.08(3), punishable by a fine of not less than \$500 and not
 19 ~~more than \$1,000~~ \$100 for the first violation and not less
 20 ~~than \$1000 and~~ not more than \$2,500 \$500 for each subsequent
 21 violation. Jurisdiction shall be with the appropriate county
 22 court.

23 Section 10. Section 386.209, Florida Statutes, is
 24 reenacted to read:

25 386.209 Regulation of smoking preempted to
 26 state.--This part expressly preempts regulation of smoking to
 27 the state and supersedes any municipal or county ordinance on
 28 the subject.

29 Section 11. Section 386.211, Florida Statutes, is
 30 amended to read:

31 386.211 Public announcements in mass transportation

Bill No. HB 1757

Amendment No. ____ Barcode 052286

1 terminals.--Announcements about the Florida Clean Indoor Air
 2 Act shall be made regularly over public address systems in
 3 terminals of public transportation carriers located in
 4 metropolitan statistical areas with populations over 230,000
 5 according to the latest census. These announcements shall be
 6 made at least every 30 minutes and shall be made in
 7 appropriate languages. Each announcement must ~~shall~~ include a
 8 statement to the effect that Florida is a clean indoor air
 9 state and that smoking is not allowed except as provided in
 10 this part ~~only in designated areas~~.

11 Section 12. Section 386.212, Florida Statutes, is
 12 amended to read:

13 386.212 Smoking prohibited near school property;
 14 penalty.--

15 (1) It is unlawful for any person under 18 years of
 16 age to smoke tobacco in, on, or within 1,000 feet of the real
 17 property comprising a public or private elementary, middle, or
 18 secondary school between the hours of 6 a.m. and midnight.
 19 This section does ~~shall~~ not apply to any person occupying a
 20 moving vehicle or within a private residence.

21 (2) A law enforcement officer may issue a citation in
 22 such form as prescribed by a county or municipality to any
 23 person violating the provisions of this section. Any such
 24 citation must contain:

- 25 (a) The date and time of issuance.
- 26 (b) The name and address of the person cited.
- 27 (c) The date and time the civil infraction was
 28 committed.
- 29 (d) The statute violated.
- 30 (e) The facts constituting the violation.
- 31 (f) The name and authority of the law enforcement

Bill No. HB 1757

Amendment No. ____ Barcode 052286

1 officer.

2 (g) The procedure for the person to follow to pay the
3 civil penalty, to contest the citation, or to appear in court.4 (h) The applicable civil penalty if the person elects
5 not to contest the citation.6 (i) The applicable civil penalty if the person elects
7 to contest the citation.8 (3) Any person issued a citation pursuant to this
9 section shall be deemed to be charged with a civil infraction
10 punishable by a maximum civil penalty not to exceed \$25, or 50
11 hours of community service or, where available, successful
12 completion of a school-approved anti-tobacco "alternative to
13 suspension" program.14 (4) Any person who fails to comply with the directions
15 on the citation shall be deemed to waive his or her right to
16 contest the citation and an order to show cause may be issued
17 by the court.18 Section 13. Section 386.2125, Florida Statutes, is
19 created to read:20 386.2125 Rulemaking.--The department shall, in
21 consultation with the State Fire Marshal, the Department of
22 Agriculture and Consumer Services, and the Department of
23 Business and Professional Regulation, have the authority to
24 adopt rules pursuant to ss. 120.536(1) and 120.54 to implement
25 the provisions of this part.26 Section 14. If any provision of this act or its
27 application to any person or circumstance is held invalid, the
28 invalidity does not affect other provisions or applications of
29 the act that can be given effect without the invalid provision
30 or application, and to this end the provisions of this act are
31 declared severable.

Bill No. HB 1757

Amendment No. ____ Barcode 052286

1 Section 15. This act shall take effect July 1, 2003.

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4 ===== T I T L E A M E N D M E N T =====

5 And the title is amended as follows:

6 Delete everything before the en acting clause delete

7

8 and insert:

9

A bill to be entitled

10 An act relating to the Florida Clean Indoor Air

11 Act; implementing s. 20, Art. X of the State

12 Constitution; reenacting s. 386.201, F.S.,

13 relating to a short title; amending s. 386.202,

14 F.S.; providing legislative intent and

15 findings; amending s. 386.203, F.S.; providing

16 definitions; amending s. 386.204, F.S.;

17 prohibiting smoking in certain places;

18 requiring the posting of signs; creating s.

19 386.2045, F.S.; establishing specific

20 exceptions where smoking is permitted; amending

21 s. 386.205, F.S.; providing for designated

22 smoking rooms; providing certain exceptions;

23 requiring state agencies to adopt rules;

24 amending s. 386.206, F.S.; providing

25 requirements for the posting of signs in rooms

26 designated as smoking rooms; amending s.

27 386.207, F.S.; providing for enforcement of the

28 act by the Department of Business and

29 Professional Regulation and the Department of

30 Health; providing penalties; providing for the

31 use of moneys collected as fines under the act;

Bill No. HB 1757

Amendment No. ____ Barcode 052286

1 amending s. 386.208, F.S.; providing additional
2 penalties; reenacting s. 386.209, F.S.,
3 relating to preemption by the state of the
4 regulation of smoking; amending s. 386.211,
5 F.S.; providing for announcements at certain
6 facilities; amending s. 386.212, F.S.;
7 prohibiting smoking near school property;
8 creating s. 386.2125, F.S.; requiring the
9 Department of Health to adopt rules; providing
10 for severability; providing an effective date.

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