

Bill No. HB 1757

Amendment No. Barcode 234900

CHAMBER ACTION

Senate

House

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Senator Saunders moved the following amendment:

Senate Amendment (with title amendment)

On page 1, line 29, through
page 15, line 18, delete those lines

and insert: ~~providing a uniform statewide maximum code. This part shall not be interpreted to require the designation of smoking areas. However, it is the intent of the Legislature to discourage the designation of any area within a government building as a smoking area.~~

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

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

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

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

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

5 (4) "Designated smoking guest room" means a sleeping
6 room or directly associated private area, including, but not
7 limited to, a bathroom, living room, or kitchen area, if
8 applicable, which is rented to a guest for his or her
9 exclusive transient occupancy at a public lodging
10 establishment and which is designated by the operator of the
11 public lodging establishment as a room in which smoking may be
12 permitted.

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

16 (a) Except as provided in paragraph (b), the term does
17 not include a workplace that does not have physical barriers
18 of any kind from above, a workplace that is totally bounded
19 from above but of which at least 25 percent of contiguous
20 surface area of the sides is without a physical barrier of any
21 kind separating the workplace from the exterior of the
22 building within which the workplace is located, or a workplace
23 that is bounded on all sides and above by physical barriers
24 consisting of no more than 50 percent of the total bounded
25 surface area of the workplace.

26 (b) The term does not apply to a workplace in a
27 restaurant that is bounded on all sides and above by physical
28 barriers consisting of no more than 25 percent of the total
29 bounded surface area of the workplace. A restaurant must
30 provide a ventilation system to significantly reduce the
31 accumulation of second-hand tobacco smoke in any unenclosed

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1 workplace of the restaurant in which tobacco smoking is
2 permitted.

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

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

10 (8) "Membership organization" means a charitable,
11 nonprofit, or veterans' organization that holds a current
12 exemption from federal taxation under s. 501(c)(3), s.
13 501(c)(4), s. 501(c)(7), s. 501(c)(8), or s. 501(c)(10), s.
14 501(c)(19), or s. 501(d) of the Internal Revenue Code or a
15 religious organization that is not required to apply for
16 recognition of its exemption from federal taxation under s.
17 501(c)(3) of the Internal Revenue Code.

18 (9) "Package store" means a workplace in which
19 alcoholic beverages are sold only for consumption off the
20 premises and which shares an entryway or common indoor area
21 with a stand-alone bar.

22 (10) "Physical barrier" includes an uncovered opening,
23 a screened or otherwise partially covered opening, or an open
24 or closed window, jalousie, or door.

25 (11) "Public lodging establishment" has the same
26 meaning ascribed in s. 509.013.

27 (12)(1) "Public place" means the following enclosed,
28 indoor areas used by the general public:

29 (a) Government buildings;

30 (b) Public means of mass transportation and their

31 associated terminals not subject to federal smoking

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1 regulation;

2 (c) Elevators;

3 (d) Hospitals;

4 (e) Nursing homes;

5 (f) Educational facilities;

6 (g) Public school buses;

7 (h) Libraries;

8 (i) Courtrooms;

9 (j) Jury waiting and deliberation rooms;

10 (k) Museums;

11 (l) Theaters;

12 (m) Auditoriums;

13 (n) Arenas;

14 (o) Recreational facilities;

15 (p) Restaurants;

16 (q) Retail stores, ~~except a retail store the primary~~

17 ~~business of which is the sale of tobacco or tobacco related~~

18 ~~products;~~

19 (r) Grocery stores;

20 (s) Buildings that contain an enclosed indoor

21 workplace ~~Places of employment;~~

22 (t) Health care facilities;

23 (u) Day care centers; and

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

25 ~~(2) "Government building" means any building or any~~

26 ~~portion of any building owned by or leased to the state or any~~

27 ~~political subdivision thereof and used for governmental~~

28 ~~purposes.~~

29 (13)(3) "Public meeting" means all meetings open to

30 the public, including meetings of homeowner, condominium, or

31 renter or tenant associations unless such meetings are held in

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1 a private residence.

2 (14) "Second-hand smoke" means smoke emitted from
3 lighted, smoldering, or burning tobacco when the smoker is not
4 inhaling; smoke emitted at the mouthpiece during puff drawing;
5 and smoke exhaled by the smoker.

6 (15)(4) "Smoking" means inhaling, exhaling, burning,
7 carrying, or possessing a lighted tobacco product, including
8 cigarettes, cigars, pipe tobacco possession of a lighted
9 cigarette, lighted cigar, lighted pipe, or any other lighted
10 tobacco product.

11 (16)(5) "Smoking area" means any designated area
12 meeting the requirements of ss. 386.205 and 386.206.

13 (17) "Work" means performing an employment or
14 employment-type service for, or at the request of, another
15 person or a public or private entity, regardless of whether
16 the employment or employment-type service is performed for
17 compensation or on a full-time or part-time basis, whether
18 legally or not. The term includes employment or
19 employment-type service performed by an employee, independent
20 contractor, agent, partner, proprietor, manager, officer,
21 director, apprentice, trainee, associate, servant, volunteer,
22 or similar person. The term applies to employment or
23 employment-type service performed at any given time. The term
24 does not include noncommercial activities performed by members
25 of a membership organization.

26 (18) "Workplace" means a room where one or more
27 persons perform work. This section applies to all such
28 workplaces without regard to whether work is occurring at any
29 given time. The term does not include any facility owned or
30 leased by and used exclusively for noncommercial activities
31 performed by the members and guests of a membership

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1 organization, including social gatherings, meetings, dining,
2 and dances, if no person or persons are engaged in work as
3 defined in subsection (17). Each facility in which tobacco
4 smoking is permitted during the activities of a membership
5 organization must comply with the signage requirements for a
6 designated smoking room in s. 386.206.

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

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

11 ~~(8) "Division" means the Division of Hotels and~~
12 ~~Restaurants of the Department of Business and Professional~~
13 ~~Regulation.~~

14 Section 4. Section 386.204, Florida Statutes, is
15 amended to read:

16 386.204 Prohibition.--

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

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

27 (3) OTHER PROHIBITED AREAS.--A person may not smoke
28 within 10 feet of the entryway to a building that contains an
29 enclosed indoor workplace or within 10 feet of intake
30 equipment for a heating, ventilating, or air conditioning
31 system (HVAC system) for a building that contains an enclosed

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1 indoor workplace. An outdoor entryway to a public
2 transportation facility, including, but not limited to,
3 railroad stations, bus stations, ship ports, ferry terminals,
4 roadside welcome stations, highway service plazas, airports
5 served by regular passenger service, and highway rest stations
6 is exempt from the prohibition in this subsection.

7 Section 5. Section 386.2045, Florida Statutes, is
8 created to read:

9 386.2045 Enclosed indoor workplaces; specific
10 exceptions.--Notwithstanding s. 386.204(1), tobacco smoking
11 may be permitted in each of the following places:

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

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

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

30 (4) STAND-ALONE BAR.--Any place of business that
31 during all times of operation is devoted predominantly or

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1 totally to serving alcoholic beverages, intoxicating
 2 beverages, or intoxicating liquors, or any combination
 3 thereof, for consumption on the licensed premises; in which
 4 the serving of food, if any, is merely incidental to the
 5 consumption of any such beverage; and that is not located
 6 within, and does not share any common entryway or common
 7 indoor area with, any other enclosed indoor workplace,
 8 including any business for which the sale of food or any other
 9 product or service is more than an incidental source of gross
 10 revenue. A stand-alone bar may share an entryway or common
 11 indoor area with a package store. A business must not derive
 12 more than 25 percent of its gross revenue from the sale of
 13 food.

14 (5) SMOKING-CESSATION PROGRAM, MEDICAL RESEARCH, OR
 15 SCIENTIFIC RESEARCH.--Any enclosed indoor workplace or public
 16 place, to the extent that tobacco smoking is an integral part
 17 of a smoking-cessation program, medical research, or
 18 scientific research. Each room in which tobacco smoking is
 19 permitted must comply with the signage requirements for a
 20 designated smoking room in s. 386.206.

21 (6) EXPRESSIVE ACTIVITY.--Any enclosed indoor
 22 workplace or public place, to the extent that tobacco smoking
 23 is an integral part of expressive speech or activity,
 24 including, but not limited to, a production by the
 25 entertainment industry as defined in s. 288.125, and an
 26 exhibition of the arts as defined in s. 265.283. Each room in
 27 which tobacco smoking is permitted as part of an expressive
 28 speech or activity must comply with the signage requirements
 29 for a designated smoking room in s. 386.206.

30 (7) STATE CORRECTIONAL FACILITIES.--Any state
 31 correctional facility to the extent that tobacco smoking is

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1 not prohibited under s. 944.115.

2 Section 6. Section 386.206, Florida Statutes, is
3 amended to read:

4 386.206 Posting of signs.--The person in charge of a
5 public place shall conspicuously post, or cause to be posted,
6 outside the entryway of and in any place where smoking is
7 permitted under this part ~~area designated as a smoking area~~
8 signs stating that smoking is permitted in that place ~~such~~
9 ~~area~~. Each sign posted under ~~pursuant to~~ this section must
10 ~~shall~~ have letters of reasonable size which can be easily
11 read. The color, design, and precise place of posting of
12 these ~~such~~ signs shall be left to the discretion of the person
13 in charge of the premises. ~~In order to increase public~~
14 ~~awareness, the person in charge of a public place may, at his~~
15 ~~or her discretion, also post "NO SMOKING EXCEPT IN DESIGNATED~~
16 ~~AREAS" signs as appropriate.~~

17 Section 7. Section 386.207, Florida Statutes, is
18 amended to read:

19 386.207 Administration; enforcement; civil penalties;
20 exceptions ~~exemptions~~.--

21 (1) The department and the Department of Business and
22 Professional Regulation ~~or the division~~ shall enforce this
23 part ~~ss. 386.205 and 386.206~~ and to implement such enforcement
24 shall adopt, in consultation with the Department of
25 Agriculture and Consumer Services and the State Fire Marshal,
26 rules specifying procedures to be followed by enforcement
27 personnel in investigating complaints and notifying alleged
28 violators, rules defining types of cases for which exceptions
29 ~~exemptions~~ may be granted, and rules specifying procedures by
30 which appeals may be taken by aggrieved parties.

31 (2) Public agencies responsible for the management and

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

27 (3) ~~A person may request an exemption from ss. 386.205~~
 28 ~~and 386.206 by applying to the department or the division.~~
 29 ~~The department or the division may grant exemptions on a~~
 30 ~~case-by-case basis where it determines that substantial good~~
 31 ~~faith efforts have been made to comply or that emergency or~~

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1 ~~extraordinary circumstances exist.~~

2 (3)(4) All fine moneys collected pursuant to this
3 section shall be used by the department for children's medical
4 services programs pursuant to the provisions of part I of
5 chapter 391.

6 Section 8. Section 386.208, Florida Statutes, is
7 amended to read:

8 386.208 Penalties.--Any person who violates s. 386.204
9 commits a noncriminal violation as defined ~~provided for~~ in s.
10 775.08(3), punishable by a fine of not more than \$1,000 ~~\$100~~
11 for the first violation and not more than \$2,500 ~~\$500~~ for each
12 subsequent violation. Jurisdiction shall be with the
13 appropriate county court.

14 Section 9. Section 386.209, Florida Statutes, is
15 reenacted to read:

16 386.209 Regulation of smoking preempted to
17 state.--This part expressly preempts regulation of smoking to
18 the state and supersedes any municipal or county ordinance on
19 the subject.

20 Section 10. Section 386.211, Florida Statutes, is
21 amended to read:

22 386.211 Public announcements in mass transportation
23 terminals.--Announcements about the Florida Clean Indoor Air
24 Act shall be made regularly over public address systems in
25 terminals of public transportation carriers located in
26 metropolitan statistical areas with populations over 230,000
27 according to the latest census. These announcements shall be
28 made at least every 30 minutes and shall be made in
29 appropriate languages. Each announcement must ~~shall~~ include a
30 statement to the effect that Florida is a clean indoor air
31 state and that smoking is allowed only in designated places

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1 areas.

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3 (Redesignate subsequent sections.)

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

7 And the title is amended as follows:

8 On page 1, lines 12-18, delete those lines

9

10 and insert:

11 exceptions where smoking is permitted; amending

12 s. 386.206, F.S.; providing requirements for

13 the posting of signs in places where smoking is

14 permitted; amending s.

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