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A bill to be entitled

An act relating to the Florida Clean Indoor Air Act; revising various provisions of pt. II of ch. 386, F.S., the Florida Clean Indoor Air Act, for the purpose of implementing s. 20, Art. X of the State Constitution; amending s. 386.201, F.S.; providing a popular name; amending s. 386.202, F.S.; revising legislative intent; amending s. 386.203, F.S.; providing definitions; amending s. 386.204, F.S.; revising exceptions to the prohibition on smoking in an enclosed indoor workplace; amending s. 386.206, F.S.; providing for continuation of requirements with respect to the posting of signs stating that smoking is not permitted in an indoor workplace; providing for expiration of such provisions; requiring the proprietor or person in charge of an enclosed indoor workplace to develop and implement a policy regarding smoking prohibitions; amending s. 386.207, F.S., relating to administration, enforcement, and civil penalties; removing a cross reference, to conform; eliminating exemptions; amending s. 386.208, F.S.; clarifying language; reenacting s. 386.209, F.S., which preempts regulation of smoking to the state; amending s. 386.211, F.S., relating to public announcements in mass transportation terminals, to conform; reenacting s. 386.212, F.S., which prohibits any person under 18 years of age from smoking tobacco in, on, or within 1,000 feet of the real property comprising a public or private elementary, middle, or secondary school and provides penalties therefor; repealing s. 386.205, F.S., relating to designation of smoking areas; providing severability; providing an effective date.



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Be It Enacted by the Legislature of the State of Florida:

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

386.201 Popular name ~~Short title.~~--This part may be cited by the popular name 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 individuals 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 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 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:

(1)(4) "Smoking" means inhaling, exhaling, burning, carrying, or possessing any ~~possession of a~~ lighted tobacco product, including cigarettes, cigars, pipe tobacco, and ~~eigarette, lighted cigar, lighted pipe, or~~ any other lighted tobacco product.

(2) "Second-hand smoke," also known as environmental tobacco smoke [ETS], means smoke emitted from lighted, smoldering, or burning tobacco when the smoker is not inhaling;



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61 smoke emitted at the mouthpiece during puff drawing; and smoke  
62 exhaled by the smoker.

63 (3) "Work" means any person's providing any employment or  
64 employment-type service for or at the request of another  
65 individual or individuals or any public or private entity,  
66 whether for compensation or not, whether full or part time,  
67 whether legally or not. "Work" includes, without limitation, any  
68 such service performed by an employee, independent contractor,  
69 agent, partner, proprietor, manager, officer, director,  
70 apprentice, trainee, associate, servant, volunteer, and the  
71 like.

72 (4) "Enclosed indoor workplace" means any place where one  
73 or more persons engages in work, and which place is  
74 predominantly or totally bounded on all sides and above by  
75 physical barriers, regardless of whether such barriers consist  
76 of or include uncovered openings, screened or otherwise  
77 partially covered openings; or open or closed windows,  
78 jalousies, doors, or the like. This section applies to all such  
79 enclosed indoor workplaces without regard to whether work is  
80 occurring at any given time.

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

88 (6) "Retail tobacco shop" means any enclosed indoor  
89 workplace dedicated to or predominantly for the retail sale of  
90 tobacco, tobacco products, and accessories for such products, in



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91 which the sale of other products or services is merely  
 92 incidental. Any enclosed indoor workplace of a business that  
 93 manufactures, imports, or distributes tobacco products or of a  
 94 tobacco leaf dealer is a business dedicated to or predominantly  
 95 for the retail sale of tobacco and tobacco products when, as a  
 96 necessary and integral part of the process of making,  
 97 manufacturing, importing, or distributing a tobacco product for  
 98 the eventual retail sale of such tobacco or tobacco product,  
 99 tobacco is heated, burned or smoked or a lighted tobacco product  
 100 is tested.

101 (7) "Designated smoking guest rooms at public lodging  
 102 establishments" means the sleeping rooms and directly associated  
 103 private areas, such as bathrooms, living rooms, and kitchen  
 104 areas, if any, rented to guests for their exclusive transient  
 105 occupancy in public lodging establishments, including hotels,  
 106 motels, resort condominiums, transient apartments, transient  
 107 lodging establishments, rooming houses, boarding houses, resort  
 108 dwelling, bed and breakfast inns, and the like; and designated  
 109 by the person or persons having management authority over such  
 110 public lodging establishment as rooms in which smoking may be  
 111 permitted.

- 112 ~~(1) "Public place" means the following enclosed, indoor~~  
 113 ~~areas used by the general public:~~
- 114 ~~(a) Government buildings;~~
  - 115 ~~(b) Public means of mass transportation and their~~  
 116 ~~associated terminals not subject to federal smoking regulation;~~
  - 117 ~~(c) Elevators;~~
  - 118 ~~(d) Hospitals;~~
  - 119 ~~(e) Nursing homes;~~
  - 120 ~~(f) Educational facilities;~~



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- 121 ~~(g) Public school buses;~~
- 122 ~~(h) Libraries;~~
- 123 ~~(i) Courtrooms;~~
- 124 ~~(j) Jury waiting and deliberation rooms;~~
- 125 ~~(k) Museums;~~
- 126 ~~(l) Theaters;~~
- 127 ~~(m) Auditoriums;~~
- 128 ~~(n) Arenas;~~
- 129 ~~(o) Recreational facilities;~~
- 130 ~~(p) Restaurants;~~
- 131 ~~(q) Retail stores, except a retail store the primary~~
- 132 ~~business of which is the sale of tobacco or tobacco related~~
- 133 ~~products;~~
- 134 ~~(r) Grocery stores;~~
- 135 ~~(s) Places of employment;~~
- 136 ~~(t) Health care facilities;~~
- 137 ~~(u) Day care centers; and~~
- 138 ~~(v) Common areas of retirement homes and condominiums.~~
- 139 ~~(2) "Government building" means any building or any~~
- 140 ~~portion of any building owned by or leased to the state or any~~
- 141 ~~political subdivision thereof and used for governmental~~
- 142 ~~purposes.~~
- 143 ~~(3) "Public meeting" means all meetings open to the~~
- 144 ~~public, including meetings of homeowner, condominium, or renter~~
- 145 ~~or tenant associations unless such meetings are held in a~~
- 146 ~~private residence.~~
- 147 ~~(5) "Smoking area" means any designated area meeting the~~
- 148 ~~requirements of ss. 386.205 and 386.206.~~



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

152 ~~(8)(7)~~ "Department" means the Department of Health.

153 ~~(9)(8)~~ "Division" means the Division of Hotels and  
 154 Restaurants of the Department of Business and Professional  
 155 Regulation.

156 Section 4. Section 386.204, Florida Statutes, is amended  
 157 to read:

158 386.204 Prohibition; exceptions.--A person may not smoke  
 159 in an enclosed indoor workplace, except that smoking may be  
 160 permitted in: a public place or at a public meeting except in  
 161 designated smoking areas. These prohibitions do not apply in  
 162 eases in which an entire room or hall is used for a private  
 163 function and seating arrangements are under the control of the  
 164 sponsor of the function and not of the proprietor or person in  
 165 charge of the room or hall.

166 (1) Private residences when not being used for commercial  
 167 purposes as defined in s. 386.203(5).

168 (2) Retail tobacco shops as defined in s. 386.203(6).

169 (3) Designated smoking guest rooms at public lodging  
 170 establishments as defined in s. 386.203(7).

171 Section 5. Section 386.206, Florida Statutes, is amended  
 172 to read:

173 386.206 Posting of signs; requiring policies.--

174 (1) The person in charge of an enclosed indoor workplace  
 175 that prior to adoption of s. 20, Art. X of the State  
 176 Constitution was required to post signs under the requirements  
 177 of this section must continue to a public place shall  
 178 conspicuously post, or cause to be posted, in any area



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179 ~~designated as a smoking area~~ signs stating that smoking is not  
 180 permitted in the indoor workplace ~~such area~~. Each sign posted  
 181 pursuant to this section must ~~shall~~ have letters of reasonable  
 182 size which can be easily read. The color, design, and precise  
 183 place of posting of such signs shall be left to the discretion  
 184 of the person in charge of the premises. ~~In order to increase~~  
 185 ~~public awareness, the person in charge of a public place may, at~~  
 186 ~~his or her discretion, also post "NO SMOKING EXCEPT IN~~  
 187 ~~DESIGNATED AREAS" signs as appropriate.~~

188 (2) The proprietor or other person in charge of an  
 189 enclosed indoor workplace must develop and implement a policy  
 190 regarding the smoking prohibitions established in this part.  
 191 The policy may include, but is not limited to, procedures to be  
 192 taken when the proprietor or other person in charge witnesses or  
 193 is made aware of a violation of s. 386.204 in the enclosed  
 194 indoor workplace and must include a policy which prohibits an  
 195 employee from smoking in the enclosed indoor workplace.

196 (3) The provisions of subsection (1) shall expire on July  
 197 1, 2005.

198 Section 6. Section 386.207, Florida Statutes, is amended  
 199 to read:

200 386.207 Administration; enforcement; civil penalties;  
 201 exemptions.--

202 (1) The department or the division shall enforce s. ss.  
 203 ~~386.205 and 386.206~~ and to implement such enforcement shall  
 204 adopt, in consultation with the State Fire Marshal, rules  
 205 specifying procedures to be followed by enforcement personnel in  
 206 investigating complaints and notifying alleged violators, ~~rules~~  
 207 ~~defining types of cases for which exemptions may be granted, and~~



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208 rules specifying procedures by which appeals may be taken by  
209 aggrieved parties.

210 (2) Public agencies responsible for the management and  
211 maintenance of government buildings shall report observed  
212 violations to the department or division. The State Fire Marshal  
213 shall report to the department or division observed violations  
214 of s. ss. 386.205 and 386.206 found during its periodic  
215 inspections of enclosed indoor workplaces conducted pursuant to  
216 its regulatory authority. The department or the division, upon  
217 notification of observed violations of s. ss. 386.205 and  
218 386.206, shall issue to the proprietor or other person in charge  
219 of such enclosed indoor workplace ~~public place~~ a notice to  
220 comply with s. ss. 386.205 and 386.206. If such person fails to  
221 comply within 30 days after receipt of such notice, the  
222 department or the division shall assess a civil penalty against  
223 him or her not to exceed \$100 for the first violation and not to  
224 exceed \$500 for each subsequent violation. The imposition of  
225 such fine shall be in accordance with the provisions of chapter  
226 120. If a person refuses to comply with s. ss. 386.205 and  
227 386.206, after having been assessed such penalty, the department  
228 or the division may file a complaint in the circuit court of the  
229 county in which such public place is located to require  
230 compliance.

231 ~~(3) A person may request an exemption from ss. 386.205 and~~  
232 ~~386.206 by applying to the department or the division. The~~  
233 ~~department or the division may grant exemptions on a case-by-~~  
234 ~~case basis where it determines that substantial good faith~~  
235 ~~efforts have been made to comply or that emergency or~~  
236 ~~extraordinary circumstances exist.~~





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237        (3)~~(4)~~ All fine moneys collected pursuant to this section  
 238 shall be used by the department for children's medical services  
 239 programs pursuant to the provisions of part I of chapter 391.

240            Section 7. Section 386.208, Florida Statutes, is amended  
 241 to read:

242            386.208 Penalties.--Any person who violates s. 386.204  
 243 commits a noncriminal violation as defined ~~provided for~~ in s.  
 244 775.08(3), punishable by a fine of not more than \$100 for the  
 245 first violation and not more than \$500 for each subsequent  
 246 violation. Jurisdiction shall be with the appropriate county  
 247 court.

248            Section 8. Section 386.209, Florida Statutes, is reenacted  
 249 to read:

250            386.209 Regulation of smoking preempted to state.--This  
 251 part expressly preempts regulation of smoking to the state and  
 252 supersedes any municipal or county ordinance on the subject.

253            Section 9. Section 386.211, Florida Statutes, is amended  
 254 to read:

255            386.211 Public announcements in mass transportation  
 256 terminals.--Announcements about the Florida Clean Indoor Air Act  
 257 shall be made regularly over public address systems in terminals  
 258 of public transportation carriers located in metropolitan  
 259 statistical areas with populations over 230,000 according to the  
 260 latest census. These announcements shall be made at least every  
 261 30 minutes and shall be made in appropriate languages. Each  
 262 announcement shall include a statement to the effect that  
 263 Florida is a clean indoor air state and that smoking is  
 264 prohibited in enclosed indoor workplaces ~~allowed only in~~  
 265 ~~designated areas~~.



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266 Section 10. Section 386.212, Florida Statutes, is  
267 reenacted to read:

268 386.212 Smoking prohibited near school property;  
269 penalty.--

270 (1) It is unlawful for any person under 18 years of age to  
271 smoke tobacco in, on, or within 1,000 feet of the real property  
272 comprising a public or private elementary, middle, or secondary  
273 school between the hours of 6 a.m. and midnight. This section  
274 shall not apply to any person occupying a moving vehicle or  
275 within a private residence.

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

- 280 (a) The date and time of issuance.
- 281 (b) The name and address of the person cited.
- 282 (c) The date and time the civil infraction was committed.
- 283 (d) The statute violated.
- 284 (e) The facts constituting the violation.
- 285 (f) The name and authority of the law enforcement officer.
- 286 (g) The procedure for the person to follow to pay the  
287 civil penalty, to contest the citation, or to appear in court.
- 288 (h) The applicable civil penalty if the person elects not  
289 to contest the citation.

290 (i) The applicable civil penalty if the person elects to  
291 contest the citation.

292 (3) Any person issued a citation pursuant to this section  
293 shall be deemed to be charged with a civil infraction punishable  
294 by a maximum civil penalty not to exceed \$25, or 50 hours of  
295 community service or, where available, successful completion of



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296 a school-approved anti-tobacco "alternative to suspension"  
297 program.

298 (4) Any person who fails to comply with the directions on  
299 the citation shall be deemed to waive his or her right to  
300 contest the citation and an order to show cause may be issued by  
301 the court.

302 Section 11. Section 386.205, Florida Statutes, is  
303 repealed.

304 Section 12. If any provision of this act or the  
305 application thereof to any person or circumstance is held  
306 invalid, the invalidity shall not affect other provisions or  
307 applications of the act which can be given effect without the  
308 invalid provision or application, and to this end the provisions  
309 of this act are declared severable.

310 Section 13. This act shall take effect July 1, 2003.