

Bill No. CS for CS for SB 742

Amendment No.      Barcode 623598

CHAMBER ACTION

Senate

House

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Senator Saunders moved the following amendment:

**Senate Amendment (with title amendment)**

On page 2, line 20, through  
page 16, line 17, 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 (c) The term also does not include a smoking room  
4 designated under s. 386.205.

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

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

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

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

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

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

29 (12)~~(1)~~ "Public place" means the following enclosed,  
30 indoor areas used by the general public:

31 (a) Government buildings;

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- 1 (b) Public means of mass transportation and their  
2 associated terminals not subject to federal smoking  
3 regulation;
- 4 (c) Elevators;
- 5 (d) Hospitals;
- 6 (e) Nursing homes;
- 7 (f) Educational facilities;
- 8 (g) Public school buses;
- 9 (h) Libraries;
- 10 (i) Courtrooms;
- 11 (j) Jury waiting and deliberation rooms;
- 12 (k) Museums;
- 13 (l) Theaters;
- 14 (m) Auditoriums;
- 15 (n) Arenas;
- 16 (o) Recreational facilities;
- 17 (p) Restaurants;
- 18 (q) Retail stores, ~~except a retail store the primary~~  
19 ~~business of which is the sale of tobacco or tobacco related~~  
20 ~~products;~~
- 21 (r) Grocery stores;
- 22 (s) Buildings that contain an enclosed indoor  
23 workplace ~~Places of employment;~~
- 24 (t) Health care facilities;
- 25 (u) Day care centers; and
- 26 (v) Common areas of retirement homes and condominiums.
- 27 ~~(2) "Government building" means any building or any~~  
28 ~~portion of any building owned by or leased to the state or any~~  
29 ~~political subdivision thereof and used for governmental~~  
30 ~~purposes.~~
- 31 ~~(13)(3)~~ "Public meeting" means all meetings open to

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1 the public, including meetings of homeowner, condominium, or  
2 renter or tenant associations unless such meetings are held in  
3 a private residence.

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

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

13 (16)(5) "Smoking room area" means a any designated  
14 room area meeting the requirements of ss. 386.205 and 386.206.

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

28 (18) "Workplace" means a room where one or more  
29 persons perform work. This section applies to all such  
30 workplaces without regard to whether work is occurring at any  
31 given time. The term does not include any facility owned or

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

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

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

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

16 Section 4. Section 386.204, Florida Statutes, is  
17 amended to read:

18 386.204 Prohibition.--

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

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

29 (3) OTHER PROHIBITED AREAS.--A person may not smoke  
30 within 10 feet of the entryway to a building that contains an  
31 enclosed indoor workplace or within 10 feet of intake

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1 equipment for a heating, ventilating, or air conditioning  
2 system (HVAC system) for a building that contains an enclosed  
3 indoor workplace. An outdoor entryway to a public  
4 transportation facility, including, but not limited to,  
5 railroad stations, bus stations, ship ports, ferry terminals,  
6 roadside welcome stations, highway service plazas, airports  
7 served by regular passenger service, and highway rest stations  
8 is exempt from the prohibition in this subsection.

9           Section 5. Section 386.2045, Florida Statutes, is  
10 created to read:

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

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

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

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

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

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

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



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1           (7) STATE CORRECTIONAL FACILITIES.--Any state  
2 correctional facility to the extent that tobacco smoking is  
3 not prohibited under s. 944.115.

4           Section 6. Section 386.206, Florida Statutes, is  
5 amended to read:

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

19           Section 7. Section 386.207, Florida Statutes, is  
20 amended to read:

21           386.207 Administration; enforcement; civil penalties;  
22 exceptions ~~exemptions~~.--

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

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1 which appeals may be taken by aggrieved parties.

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

29           ~~(3) A person may request an exemption from ss. 386.205~~  
30 ~~and 386.206 by applying to the department or the division.~~  
31 ~~The department or the division may grant exemptions on a~~

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1 ~~case-by-case basis where it determines that substantial good~~  
 2 ~~faith efforts have been made to comply or that emergency or~~  
 3 ~~extraordinary circumstances exist.~~

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

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

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

16       Section 9. Section 386.209, Florida Statutes, is  
 17 reenacted to read:

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

22       Section 10. Section 386.211, Florida Statutes, is  
 23 amended to read:

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

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1 statement to the effect that Florida is a clean indoor air  
2 state and that smoking is allowed only in designated places  
3 ~~areas~~.

4  
5 (Redesignate subsequent sections.)  
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8 ===== T I T L E A M E N D M E N T =====

9 And the title is amended as follows:

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

11  
12 and insert:

13 exceptions where smoking is permitted; amending  
14 s. 386.206, F.S.; providing requirements for  
15 the posting of signs in places where smoking is  
16 permitted; amending s.

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