

By the Committees on Appropriations; Regulated Industries; and
Senator Diaz de la Portilla

309-2451-03

1 A bill to be entitled
2 An act relating to the Florida Clean Indoor Air
3 Act; implementing s. 20, Art. X of the State
4 Constitution; reenacting s. 386.201, F.S.,
5 relating to a short title; amending s. 386.202,
6 F.S.; providing legislative intent and
7 findings; amending s. 386.203, F.S.; providing
8 definitions; amending s. 386.204, F.S.;
9 prohibiting smoking in certain places;
10 requiring the posting of signs; creating s.
11 386.2045, F.S.; establishing specific
12 exceptions where smoking is permitted; amending
13 s. 386.205, F.S.; providing for designated
14 smoking rooms; providing certain exceptions;
15 requiring state agencies to adopt rules;
16 amending s. 386.206, F.S.; providing
17 requirements for the posting of signs in rooms
18 designated as smoking rooms; amending s.
19 386.207, F.S.; providing for enforcement of the
20 act by the Department of Business and
21 Professional Regulation and the Department of
22 Health; providing penalties; providing for the
23 use of moneys collected as fines under the act;
24 amending s. 386.208, F.S.; providing additional
25 penalties; reenacting s. 386.209, F.S.,
26 relating to preemption by the state of the
27 regulation of smoking; amending s. 386.211,
28 F.S.; providing for announcements at certain
29 facilities; amending s. 386.212, F.S.;
30 prohibiting smoking near school property;
31 creating s. 386.2125, F.S.; requiring the

1 Department of Health to adopt rules; creating
2 s. 386.213, F.S.; providing for effect of any
3 invalidity of certain provisions; providing for
4 severability; providing an effective date.
5

6 Be It Enacted by the Legislature of the State of Florida:
7

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

10 386.201 Short title.--This part may be cited as the
11 "Florida Clean Indoor Air Act."

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

14 386.202 Legislative intent.--The purpose of this part
15 is to protect people from the public health hazards of
16 second-hand, comfort, and environment by creating areas in
17 public places and at public meetings that are reasonably free
18 from tobacco smoke and to implement the Florida health
19 initiative in s. 20, Art. X of the State Constitution by
20 providing a uniform statewide maximum code. This part does
21 shall not be interpreted to require the designation of smoking
22 rooms areas. However, it is the intent of the Legislature to
23 discourage the designation of any room located area within a
24 government building as a smoking room area. It is the intent
25 of the Legislature to not inhibit, or otherwise obstruct,
26 smoking cessation programs, medical research, or scientific
27 research in this state. The Legislature finds that tobacco
28 smoking that is integral to a smoking cessation program,
29 medical research, or scientific research does not present a
30 credible public health hazard from second-hand smoke. The
31 Legislature finds that the performance of essential services

1 in an enclosed indoor place, including janitorial services,
2 repairs, renovations, and other services essential to the
3 maintenance of any enclosed indoor place, does not transform a
4 nonworkplace into a workplace.

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

7 386.203 Definitions.--As used in this part, the term:

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

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

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

19 (4) "Designated smoking room" means a room complying
20 with the requirements in ss. 386.205 and 386.206.

21 (5) "Designated smoking guest room" means a sleeping
22 room or directly associated private area, including, but not
23 limited to, a bathroom, living room, or kitchen area, if
24 applicable, which is rented to a guest for his or her
25 exclusive transient occupancy at a public lodging
26 establishment and which is designated by the operator of the
27 public lodging establishment as a room in which smoking may be
28 permitted.

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

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

11 (b) The term does not apply to a workplace in a
12 restaurant that is bounded on all sides and above by physical
13 barriers consisting of no more than 25 percent of the total
14 bounded surface area of the workplace. A restaurant must
15 provide a ventilation system to significantly reduce the
16 accumulation of second-hand tobacco smoke in any unenclosed
17 workplace of the restaurant in which tobacco smoking is
18 permitted.

19 (c) The term also does not include a smoking room
20 designated under s. 386.205.

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

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

28 (9) "Membership organization" means a charitable,
29 nonprofit, or veterans' organization that holds a current
30 exemption from federal taxation under s. 501(c)(3), s.
31 501(c)(4), s. 501(c)(7), s. 501(c)(8), or s. 501(c)(10), s.

1 501(c)(19), or s. 501(d) of the Internal Revenue Code or a
2 religious organization that is not required to apply for
3 recognition of its exemption from federal taxation under s.
4 501(c)(3) of the Internal Revenue Code.

5 (10) "Package store" means a workplace in which
6 alcoholic beverages are sold only for consumption off the
7 premises and which shares an entryway or common indoor area
8 with a stand-alone bar.

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

12 (12) "Public lodging establishment" has the same
13 meaning ascribed in s. 509.013.

14 (13)~~(1)~~ "Public place" means the following enclosed,
15 indoor areas used by the general public:

16 (a) Government buildings;

17 (b) Public means of mass transportation and their
18 associated terminals not subject to federal smoking
19 regulation;

20 (c) Elevators;

21 (d) Hospitals;

22 (e) Nursing homes;

23 (f) Educational facilities;

24 (g) Public school buses;

25 (h) Libraries;

26 (i) Courtrooms;

27 (j) Jury waiting and deliberation rooms;

28 (k) Museums;

29 (l) Theaters;

30 (m) Auditoriums;

31 (n) Arenas;

- 1 (o) Recreational facilities;
- 2 (p) Restaurants;
- 3 (q) Retail stores, ~~except a retail store the primary~~
4 ~~business of which is the sale of tobacco or tobacco-related~~
5 ~~products;~~
- 6 (r) Grocery stores;
- 7 (s) Buildings that contain an enclosed indoor
8 workplace ~~Places of employment;~~
- 9 (t) Health care facilities;
- 10 (u) Day care centers; and
- 11 (v) Common areas of retirement homes and condominiums.
- 12 ~~(2) "Government building" means any building or any~~
13 ~~portion of any building owned by or leased to the state or any~~
14 ~~political subdivision thereof and used for governmental~~
15 ~~purposes.~~
- 16 (14)(3) "Public meeting" means all meetings open to
17 the public, including meetings of homeowner, condominium, or
18 renter or tenant associations unless such meetings are held in
19 a private residence.
- 20 (15) "Second-hand smoke" means smoke emitted from
21 lighted, smoldering, or burning tobacco when the smoker is not
22 inhaling; smoke emitted at the mouthpiece during puff drawing;
23 and smoke exhaled by the smoker.
- 24 (16)(4) "Smoking" means inhaling, exhaling, burning,
25 carrying, or possessing a lighted tobacco product, including
26 cigarettes, cigars, pipe tobacco ~~possession of a lighted~~
27 ~~cigarette, lighted cigar, lighted pipe,~~ or any other lighted
28 tobacco product.
- 29 (17)(5) "Smoking room area" means a ~~any~~ designated
30 room area meeting the requirements of ss. 386.205 and 386.206.
- 31

1 (18) "Work" means performing an employment or
2 employment-type service for, or at the request of, another
3 person or a public or private entity, regardless of whether
4 the employment or employment-type service is performed for
5 compensation or on a full-time or part-time basis, whether
6 legally or not. The term includes employment or
7 employment-type service performed by an employee, independent
8 contractor, agent, partner, proprietor, manager, officer,
9 director, apprentice, trainee, associate, servant, volunteer,
10 or similar person. The term applies to employment or
11 employment-type service performed at any given time. The term
12 does not include noncommercial activities performed by members
13 of a membership organization.

14 (19) "Workplace" means a room where one or more
15 persons perform work. The term does not apply to an entire
16 building, but applies only to those rooms where work is
17 performed. This section applies to all such workplaces without
18 regard to whether work is occurring at any given time. The
19 term does not include:

20 (a) A smoking room designated under s. 386.205.

21 (b) Any facility owned or leased by and used
22 exclusively for noncommercial activities performed by the
23 members and guests of a membership organization, including
24 social gatherings, meetings, dining, and dances, if no person
25 or persons are engaged in work as defined in subsection (18).
26 Each facility in which tobacco smoking is permitted during the
27 activities of a membership organization must comply with the
28 signage requirements for a designated smoking room in s.
29 386.206.

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

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

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

8 Section 4. Section 386.204, Florida Statutes, is
9 amended to read:

10 386.204 Prohibition.--

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

14 (2) PUBLIC PLACES.--A person may not smoke in a public
15 place or at a public meeting except in a ~~designated~~ smoking
16 room designated under s. 386.205 areas. ~~These prohibitions do~~
17 not apply in cases in which an entire room or hall is used for
18 a private function and seating arrangements are under the
19 control of the sponsor of the function and not of the
20 proprietor or person in charge of the room or hall.

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

1 Section 5. Section 386.2045, Florida Statutes, is
2 created to read:

3 386.2045 Enclosed indoor workplaces; specific
4 exceptions.--Notwithstanding s. 386.204(1), tobacco smoking
5 may be permitted in each of the following places:

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

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

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

24 (4) STAND-ALONE BAR.--Any place of business that
25 during all times of operation is devoted predominantly or
26 totally to serving alcoholic beverages, intoxicating
27 beverages, or intoxicating liquors, or any combination
28 thereof, for consumption on the licensed premises; in which
29 the serving of food, if any, is merely incidental to the
30 consumption of any such beverage; and that is not located
31 within, and does not share any common entryway or common

1 indoor area with, any other enclosed indoor workplace,
2 including any business for which the sale of food or any other
3 product or service is more than an incidental source of gross
4 revenue. A stand-alone bar may share an entryway or common
5 indoor area with a package store. A business must not derive
6 more than 25 percent of its gross revenue from the sale of
7 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 for a
14 designated smoking room in s. 386.206.

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

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

27 Section 6. Section 386.205, Florida Statutes, is
28 amended to read:

29 386.205 Designation of smoking rooms ~~areas~~.--
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1 (1) A smoking room ~~areas~~ may be designated by the
2 person in charge of a public place. Each designated smoking
3 room 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 for at least 30 minutes before any essential services are
8 performed in the room.

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

13 (d) Each smoking room must remove second-hand tobacco
14 smoke from the room using a mechanical air purification system
15 that removes no less than 99.97 percent of particles that are
16 .3 microns and larger and must not share a heating,
17 ventilating, or air-conditioning system (HVAC system) with any
18 enclosed indoor workplace.

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

30 (2)(a) A smoking room ~~area~~ may not be designated in an
31 elevator, school bus, public means of mass transportation

1 subject only to state smoking regulation, restroom, hospital,
2 nursing home, doctor's or dentist's waiting room, health care
3 facility, library, courtroom, jury waiting and deliberation
4 room, museum, theater, auditorium, arena, recreational
5 facility, retail store except as provided in s. 385.2045,
6 grocery store, county health department, day care center,
7 school or other educational facility, or any common area as
8 defined in s. 386.203. ~~However, a patient's room in a~~
9 ~~hospital, nursing home, or other health care facility may be~~
10 ~~designated as a smoking area if such designation is ordered by~~
11 ~~the attending physician and agreed to by all patients assigned~~
12 ~~to that room.~~

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

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

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

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

6 ~~1. No more than 50 percent of the seats existing in a~~
7 ~~restaurant's dining room at any time shall be located in an~~
8 ~~area designated as a smoking area.~~

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

12 ~~(3)(5) A smoking room area may not contain common~~
13 ~~areas that ~~which~~ are expected to be used by the public.~~

14 ~~(4)(6) Each state agency may adopt rules for~~
15 ~~administering this section which take into consideration the~~
16 ~~provisions of this part.~~

17 Section 7. Section 386.206, Florida Statutes, is
18 amended to read:

19 386.206 Posting of signs.--The person in charge of a
20 public place shall conspicuously post, or cause to be posted,
21 outside the entryway of and in any room area designated as a
22 smoking room area signs stating that smoking is permitted in
23 that room ~~such~~ area. Each sign posted under ~~pursuant to~~ this
24 section must ~~shall~~ have letters of reasonable size which can
25 be easily read. The color, design, and precise place of
26 posting of these ~~such~~ signs shall be left to the discretion of
27 the person in charge of the premises. In order to increase
28 public awareness, the person in charge of a public place may,
29 at his or her discretion, also post "NO SMOKING EXCEPT IN
30 DESIGNATED SMOKING ROOMS ~~AREAS~~" signs as appropriate.

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1 Section 8. Section 386.207, Florida Statutes, is
2 amended to read:

3 386.207 Administration; enforcement; civil penalties;
4 exceptions ~~exemptions~~.--

5 (1) The department and the Department of Business and
6 Professional Regulation ~~or the division~~ shall enforce this
7 part ~~ss. 386.205 and 386.206~~ and to implement such enforcement
8 shall adopt, in consultation with the Department of
9 Agriculture and Consumer Services and the State Fire Marshal,
10 rules specifying procedures to be followed by enforcement
11 personnel in investigating complaints and notifying alleged
12 violators, rules defining types of cases for which exceptions
13 ~~exemptions~~ may be granted, and rules specifying procedures by
14 which appeals may be taken by aggrieved parties.

15 (2) Public agencies responsible for the management and
16 maintenance of government buildings shall report observed
17 violations to the department and the Department of Business
18 and Professional Regulation ~~or division~~. The State Fire
19 Marshal shall report to the department and the Department of
20 Business and Professional Regulation ~~or division~~ observed
21 violations of this part ~~ss. 386.205 and 386.206~~ found during
22 its periodic inspections conducted under ~~pursuant to~~ its
23 regulatory authority. The department and the Department of
24 Business and Professional Regulation ~~or the division~~, upon
25 notification of observed violations of this part ~~ss. 386.205~~
26 ~~and 386.206~~, shall issue to the proprietor or other person in
27 charge of such public place or enclosed indoor workplace a
28 notice to comply with this part ~~ss. 386.205 and 386.206~~. If
29 the ~~such~~ person fails to comply within 30 days after receipt
30 of the ~~such~~ notice, the department and the Department of
31 Business and Professional Regulation ~~or the division~~ shall

1 assess a civil penalty against him or her not to exceed \$1,000
2 ~~\$100~~ for the first violation and not to exceed \$2,500~~\$500~~ for
3 each subsequent violation. The imposition of the ~~such~~ fine
4 must ~~shall~~ be in accordance with ~~the provisions of~~ chapter
5 120. If a person refuses to comply with this part ~~ss. 386.205~~
6 ~~and 386.206~~, after having been assessed such penalty, the
7 department and the Department of Business and Professional
8 Regulation ~~or the division~~ may file a complaint in the circuit
9 court of the county in which the ~~such~~ public place or enclosed
10 indoor workplace is located to require compliance.

11 ~~(3) A person may request an exemption from ss. 386.205~~
12 ~~and 386.206 by applying to the department or the division.~~
13 ~~The department or the division may grant exemptions on a~~
14 ~~case-by-case basis where it determines that substantial good~~
15 ~~faith efforts have been made to comply or that emergency or~~
16 ~~extraordinary circumstances exist.~~

17 ~~(3)(4)~~ All fine moneys collected pursuant to this
18 section shall be used by the department for children's medical
19 services programs pursuant to the provisions of part I of
20 chapter 391.

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

23 386.208 Penalties.--Any person who violates s. 386.204
24 commits a noncriminal violation as defined ~~provided for~~ in s.
25 775.08(3), punishable by a fine of not more than \$1,000 ~~\$100~~
26 for the first violation and not more than \$2,500~~\$500~~ for each
27 subsequent violation. Jurisdiction shall be with the
28 appropriate county court.

29 Section 10. Section 386.209, Florida Statutes, is
30 reenacted to read:

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1 386.209 Regulation of smoking preempted to
2 state.--This part expressly preempts regulation of smoking to
3 the state and supersedes any municipal or county ordinance on
4 the subject.

5 Section 11. Section 386.211, Florida Statutes, is
6 amended to read:

7 386.211 Public announcements in mass transportation
8 terminals.--Announcements about the Florida Clean Indoor Air
9 Act shall be made regularly over public address systems in
10 terminals of public transportation carriers located in
11 metropolitan statistical areas with populations over 230,000
12 according to the latest census. These announcements shall be
13 made at least every 30 minutes and shall be made in
14 appropriate languages. Each announcement must ~~shall~~ include a
15 statement to the effect that Florida is a clean indoor air
16 state and that smoking is allowed only in designated smoking
17 rooms ~~areas~~.

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

20 386.212 Smoking prohibited near school property;
21 penalty.--

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

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

- 1 (a) The date and time of issuance.
2 (b) The name and address of the person cited.
3 (c) The date and time the civil infraction was
4 committed.
5 (d) The statute violated.
6 (e) The facts constituting the violation.
7 (f) The name and authority of the law enforcement
8 officer.
9 (g) The procedure for the person to follow to pay the
10 civil penalty, to contest the citation, or to appear in court.
11 (h) The applicable civil penalty if the person elects
12 not to contest the citation.
13 (i) The applicable civil penalty if the person elects
14 to contest the citation.
15 (3) Any person issued a citation pursuant to this
16 section shall be deemed to be charged with a civil infraction
17 punishable by a maximum civil penalty not to exceed \$25, or 50
18 hours of community service or, where available, successful
19 completion of a school-approved anti-tobacco "alternative to
20 suspension" program.
21 (4) Any person who fails to comply with the directions
22 on the citation shall be deemed to waive his or her right to
23 contest the citation and an order to show cause may be issued
24 by the court.
25 Section 13. Section 386.2125, Florida Statutes, is
26 created to read:
27 386.2125 Rulemaking.--The department shall, in
28 consultation with the State Fire Marshal, the Department of
29 Agriculture and Consumer Services, and the Department of
30 Business and Professional Regulation, have the authority to
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1 adopt rules pursuant to ss. 120.536(1) and 120.54 to implement
2 the provisions of this part.

3 Section 14. Section 386.213, Florida Statutes, is
4 created to read:

5 386.213 Effect of invalidity; penalties.--If a term
6 defined in s. 386.203 or an exception provided in s. 386.2045
7 is held invalid:

8 (1) The term or exception must be reviewed by the
9 Legislature at the next regular session.

10 (2) The penalties provided in ss. 386.207 and 386.208
11 may not be applied to a place described in the term or
12 exception until the term or exception is repealed and the
13 Legislature reenacts a penalty.

14 Section 15. If any provision of this act or its
15 application to any person or circumstance is held invalid, the
16 invalidity does not affect other provisions or applications of
17 the act that can be given effect without the invalid provision
18 or application, and to this end the provisions of this act are
19 declared severable.

20 Section 16. This act shall take effect July 1, 2003.
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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 CS for SB 742

4 The committee substitute for CS/SB 742 expresses the
5 legislative intent that the act is not intended to inhibit or
6 obstruct smoking cessation programs, medical research or
7 scientific research in this state. It makes a legislative
8 finding that tobacco smoking in such activities does not
9 present a credible public health hazard from second-hand
10 smoke. The bill provides a legislative finding that the
11 performance of essential services does not transform a
12 non-workplace into a workplace.

13 The substitute restricts smoking in restaurant workplaces that
14 are no more than 25 percent bounded. Exceptions for membership
15 organizations and designated smoking rooms are deleted, but
16 the bill clarifies the definition of workplace to exclude
17 these places from the definition. Requirements that would have
18 imposed advertising and notice requirements on restaurants are
19 deleted.

20 A provision provides that a stand-alone bar must maintain at
21 least 25 percent of its gross revenue from the sale of food
22 and requires that designated smoking rooms use an air
23 purification system. Enclosed indoor workplaces of a business
24 that manufactures, imports, or distributes tobacco products or
25 of a tobacco leaf dealer are exempt. Tobacco smoking, to the
26 extent it is an integral part of a smoking cessation program,
27 medical research, and scientific research is exempt. An
28 exception is also provided for expressive speech or activity,
29 including, but not limited to, production by the entertainment
30 industry, and an exhibition of the arts.

31 The bill directs the enforcement of the act by the Department
 of Health and the Department of Business and Professional
 Regulation and provides increases in penalties for violations.