

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

315-2649-03

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; creating
10 s. 386.2045, F.S.; establishing specific
11 exceptions where smoking is permitted; amending
12 s. 386.205, F.S.; providing for designated
13 smoking rooms; providing certain exceptions;
14 requiring state agencies to adopt rules;
15 amending s. 386.206, F.S.; providing
16 requirements for the posting of signs in rooms
17 designated as smoking rooms; amending s.
18 386.207, F.S.; providing for enforcement of the
19 act by the Department of Business and
20 Professional Regulation and the Department of
21 Health; providing penalties; providing for the
22 use of moneys collected as fines under the act;
23 amending s. 386.208, F.S.; providing penalties;
24 reenacting s. 386.209, F.S., relating to
25 preemption by the state of the regulation of
26 smoking; amending s. 386.211, F.S.; providing
27 for announcements at certain facilities;
28 amending s. 386.212, F.S.; prohibiting smoking
29 near school property; creating s. 386.2125,
30 F.S.; requiring the Department of Health and
31 the Department of Business and Professional

1 Regulation to adopt rules; providing for
2 construction of the act in pari materia with
3 laws enacted during the Regular Session of the
4 Legislature; providing for severability;
5 providing an effective date.
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7 Be It Enacted by the Legislature of the State of Florida:
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9 Section 1. Section 386.201, Florida Statutes, is
10 reenacted to read:

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

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

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

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

3 386.203 Definitions.--As used in this part, the term:

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

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

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

15 (4) "Designated smoking guest rooms at public lodging
16 establishments" means the sleeping rooms and directly
17 associated private areas, such as bathrooms, living rooms, and
18 kitchen areas, if any, rented to guests for their exclusive
19 transient occupancy in public lodging establishments,
20 including hotels, motels, resort condominiums, transient
21 apartments, transient lodging establishments, rooming houses,
22 boarding houses, resort dwellings, bed and breakfast inns, and
23 the like and designated by the person or persons having
24 management authority over such public lodging establishment as
25 rooms in which smoking may be permitted.

26 (5) "Enclosed indoor workplace" means a workplace that
27 is predominantly or totally bounded on all sides and above by
28 physical barriers. The term does not include a workplace
29 without physical barriers of any kind from above; a workplace
30 that is totally or partially bounded from above with at least
31 25 percent of the contiguous surface area of the sides without

1 a physical barrier; or a workplace that is bounded on all
2 sides and above by physical barriers consisting of no more
3 than 50 percent of the total bounded surface area of the
4 workplace.

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) "Physical barrier" includes an uncovered opening,
13 a screened or otherwise partially covered opening, or an open
14 or closed window, jalousie, or door.

15 (9)~~(1)~~ "Public place" means the following enclosed,
16 indoor areas used by the general public:

17 (a) Government buildings;

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

21 (c) Elevators;

22 (d) Hospitals;

23 (e) Nursing homes;

24 (f) Educational facilities;

25 (g) Public school buses;

26 (h) Libraries;

27 (i) Courtrooms;

28 (j) Jury waiting and deliberation rooms;

29 (k) Museums;

30 (l) Theaters;

31 (m) Auditoriums;

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

1 person or a public or private entity, regardless of whether
2 the employment or employment-type service is performed for
3 compensation or on a full-time or part-time basis, whether
4 legally or not. The term includes employment or
5 employment-type service performed by an employee, independent
6 contractor, agent, partner, proprietor, manager, officer,
7 director, apprentice, trainee, associate, servant, volunteer,
8 or similar person. The term does not include noncommercial
9 activities performed by members of a membership association.

10 (14) "Workplace" means a room where one or more
11 persons perform work. This section applies to all such
12 workplaces without regard to whether work is occurring at any
13 given time. The term does not include any facility owned or
14 leased by and used exclusively for noncommercial activities
15 performed by the members and guests of a membership
16 association, including social gatherings, meetings, dining,
17 and dances, if no person or persons are engaged in work as
18 defined in subsection (13). Each facility in which tobacco
19 smoking is permitted during the activities of a membership
20 association must conspicuously post, or cause to be posted, in
21 the facility signs stating that smoking is permitted.

22 (15) "Membership association" means a charitable,
23 nonprofit, or veterans' organization that holds a current
24 exemption under s. 501(c)(3), s. 501(c)(4), s. 501(c)(7), s.
25 501(c)(8), s. 501(c)(10), s. 501(c)(19), or s. 501(d) of the
26 Internal Revenue Code.

27 ~~(5) "Smoking area" means any designated area meeting~~
28 ~~the requirements of ss. 386.205 and 386.206.~~

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

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

2 ~~(8) "Division" means the Division of Hotels and~~
3 ~~Restaurants of the Department of Business and Professional~~
4 ~~Regulation.~~

5 Section 4. Section 386.204, Florida Statutes, is
6 amended to read:

7 386.204 Prohibition.--

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

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

18 Section 5. Section 386.2045, Florida Statutes, is
19 created to read:

20 386.2045 Enclosed indoor workplaces; specific
21 exceptions.--Notwithstanding s. 386.204(1), tobacco smoking
22 may be permitted in each of the following places:

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

26 (2) RETAIL TOBACCO SHOP.--Any enclosed indoor
27 workplace dedicated to or predominantly for the retail sale of
28 tobacco, tobacco products, and accessories for such products,
29 in which the sale of other products or services is merely
30 incidental. Any enclosed indoor workplace of a business that
31 manufactures, imports, or distributes tobacco products or of a

1 tobacco leaf dealer is a business dedicated to or
2 predominantly for the retail sale of tobacco and tobacco
3 products when, as a necessary and integral part of the process
4 of making, manufacturing, importing, or distributing a tobacco
5 product for the eventual retail sale of such tobacco or
6 tobacco product, tobacco is heated, burned, or smoked or a
7 lighted tobacco product is tested.

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

10 (4) STAND-ALONE BAR.--Any place of business that
11 during all times of operation is devoted predominantly or
12 totally to serving alcoholic beverages, intoxicating
13 beverages, or intoxicating liquors, or any combination
14 thereof, for consumption on the licensed premises; in which
15 the serving of food, if any, is merely incidental to the
16 consumption of any such beverage; and the licensed premises is
17 not located within, and does not share any common entryway or
18 common indoor area with, any other enclosed indoor workplace,
19 including any business for which the sale of food or any other
20 product or service is more than an incidental source of gross
21 revenue. A business must not derive more than 10 percent of
22 its gross revenue from the sale of food for consumption on the
23 licensed premises.

24 (5) SMOKING-CESSATION PROGRAM, MEDICAL RESEARCH, OR
25 SCIENTIFIC RESEARCH.--Any enclosed indoor workplace or public
26 place, to the extent that tobacco smoking is an integral part
27 of a smoking-cessation program, medical research, or
28 scientific research. Each room in which tobacco smoking is
29 permitted must post, or conspicuously cause to be posted, a
30 sign stating that tobacco smoking is permitted as part of a
31

1 smoking-cessation program, medical research, or scientific
2 research.

3 (6) ENTERTAINMENT INDUSTRY.--Any enclosed indoor
4 workplace or public place, to the extent that tobacco smoking
5 is a part of a theatrical, commercial advertising, music
6 video, television, or motion picture performance. Each room in
7 which tobacco smoking is permitted as part of a performance
8 must post or conspicuously cause to be posted, a sign stating
9 that tobacco smoking is permitted as part of a performance.

10 Section 6. Section 386.205, Florida Statutes, is
11 amended to read:

12 386.205 Designation of smoking rooms ~~areas~~--

13 (1) A smoking room ~~areas~~ may be designated by the
14 person in charge of an airport in-transit lounge under the
15 authority and control of the Bureau of Customs and Border
16 Protection of the United States Department of Homeland
17 Security ~~a public place~~. A smoking room may be designated in
18 an airport in-transit lounge under the authority and control
19 of the Bureau of Customs and Border Protection of the United
20 States Department of Homeland Security. A smoking room may not
21 be designated in an elevator, restroom, or any common area as
22 defined in s. 386.203. Each designated smoking room must
23 conform to the following requirements:

24 (a) Work, other than essential services defined in s.
25 386.203, must not be performed in the room at any given time.

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

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

1 (d) Each designated smoking room must exhaust tobacco
2 smoke directly to the outside and away from air intake ducts,
3 and be maintained under negative pressure, with respect to
4 surrounding spaces, sufficient to contain tobacco smoke within
5 the designated room.

6 (e) Each smoking room must conspicuously post, or
7 cause to be posted, in the room and at the entrance to the
8 room signs stating that smoking is permitted.~~If a smoking~~
9 ~~area is designated, existing physical barriers and ventilation~~
10 ~~systems shall be used to minimize smoke in adjacent nonsmoking~~
11 ~~areas. This provision shall not be construed to require fixed~~
12 ~~structural or other physical modifications in providing these~~
13 ~~areas or to require operation of any existing heating,~~
14 ~~ventilating, and air-conditioning system (HVAC system) in any~~
15 ~~manner which decreases its energy efficiency or increases its~~
16 ~~electrical demand, or both, nor shall this provision be~~
17 ~~construed to require installation of new or additional HVAC~~
18 ~~systems.~~

19 ~~(2)(a) A smoking area may not be designated in an~~
20 ~~elevator, school bus, public means of mass transportation~~
21 ~~subject only to state smoking regulation, restroom, hospital,~~
22 ~~doctor's or dentist's waiting room, jury, deliberation room,~~
23 ~~county health department, day care center, school or other~~
24 ~~educational facility, or any common area as defined in s.~~
25 ~~386.203. However, a patient's room in a hospital, nursing~~
26 ~~home, or other health care facility may be designated as a~~
27 ~~smoking area if such designation is ordered by the attending~~
28 ~~physician and agreed to by all patients assigned to that room.~~

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

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

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

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

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

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

27 ~~(3)(5)~~ A smoking room area may not contain common
28 areas that ~~which~~ are expected to be used by the public.

29 ~~(4)(6)~~ Each state agency may adopt rules for
30 administering this section which take into consideration the
31 provisions of this part.

1 Section 7. Section 386.206, Florida Statutes, is
2 amended to read:

3 386.206 Posting of signs.--The person in charge of a
4 public place shall conspicuously post, or cause to be posted,
5 in any public place ~~area designated as a smoking area~~ signs
6 stating that smoking is not permitted in the public place ~~such~~
7 ~~area~~. Each sign posted under ~~pursuant to~~ this section must
8 ~~shall~~ have letters of reasonable size which can be easily
9 read. The color, design, and precise place of posting of
10 these ~~such~~ signs shall be left to the discretion of the person
11 in charge of the premises. ~~In order to increase public~~
12 ~~awareness, the person in charge of a public place may, at his~~
13 ~~or her discretion, also post "NO SMOKING EXCEPT IN DESIGNATED~~
14 ~~AREAS" signs as appropriate.~~

15 Section 8. Section 386.207, Florida Statutes, is
16 amended to read:

17 386.207 Administration; enforcement; civil penalties;
18 exceptions ~~exemptions~~.--

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

29 (2) Public agencies responsible for the management and
30 maintenance of government buildings shall report observed
31 violations to the department and the Department of Business

1 and Professional Regulation ~~or division~~. The State Fire
2 Marshal shall report to the department and the Department of
3 Business and Professional Regulation ~~or division~~ observed
4 violations of this part ~~ss. 386.205 and 386.206~~ found during
5 its periodic inspections conducted under ~~pursuant to~~ its
6 regulatory authority. The department and the Department of
7 Business and Professional Regulation ~~or the division~~, upon
8 notification of observed violations of this part ~~ss. 386.205~~
9 ~~and 386.206~~, shall issue to the proprietor or other person in
10 charge of such public place or enclosed indoor workplace a
11 notice to comply with this part ~~ss. 386.205 and 386.206~~. If
12 ~~the~~ such person fails to comply within 30 days after receipt
13 of ~~the~~ such notice, the department and the Department of
14 Business and Professional Regulation ~~or the division~~ shall
15 assess a civil penalty against the person of not less than
16 \$250 and ~~him or her~~ not to exceed \$750 ~~\$100~~ for the first
17 violation and not less than \$500 and not to exceed \$2,000 ~~\$500~~
18 for each subsequent violation. The imposition of ~~the~~ such fine
19 ~~must~~ shall be in accordance with ~~the provisions of~~ chapter
20 120. If a person refuses to comply with this part ~~ss. 386.205~~
21 ~~and 386.206~~, after having been assessed such penalty, the
22 department and the Department of Business and Professional
23 Regulation ~~or the division~~ may file a complaint in the circuit
24 court of the county in which ~~the~~ such public place or enclosed
25 indoor workplace is located to require compliance.

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

1 (3)(4) All fine moneys collected pursuant to this
2 section shall be used by the department for children's medical
3 services programs pursuant to the provisions of part I of
4 chapter 391.

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

7 386.208 Penalties.--Any person who violates s. 386.204
8 commits a noncriminal violation as defined ~~provided for~~ in s.
9 775.08(3), punishable by a fine of not more than \$100 for the
10 first violation and not more than \$500 for each subsequent
11 violation. Jurisdiction shall be with the appropriate county
12 court.

13 Section 10. Section 386.209, Florida Statutes, is
14 reenacted to read:

15 386.209 Regulation of smoking preempted to
16 state.--This part expressly preempts regulation of smoking to
17 the state and supersedes any municipal or county ordinance on
18 the subject.

19 Section 11. Section 386.211, Florida Statutes, is
20 amended to read:

21 386.211 Public announcements in mass transportation
22 terminals.--Announcements about the Florida Clean Indoor Air
23 Act shall be made regularly over public address systems in
24 terminals of public transportation carriers located in
25 metropolitan statistical areas with populations over 230,000
26 according to the latest census. These announcements shall be
27 made at least every 30 minutes and shall be made in
28 appropriate languages. Each announcement must ~~shall~~ include a
29 statement to the effect that Florida is a clean indoor air
30 state and that smoking is not allowed except as provided in
31 this part ~~only in designated areas.~~

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

3 386.212 Smoking prohibited near school property;
4 penalty.--

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

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

15 (a) The date and time of issuance.

16 (b) The name and address of the person cited.

17 (c) The date and time the civil infraction was
18 committed.

19 (d) The statute violated.

20 (e) The facts constituting the violation.

21 (f) The name and authority of the law enforcement
22 officer.

23 (g) The procedure for the person to follow to pay the
24 civil penalty, to contest the citation, or to appear in court.

25 (h) The applicable civil penalty if the person elects
26 not to contest the citation.

27 (i) The applicable civil penalty if the person elects
28 to contest the citation.

29 (3) Any person issued a citation pursuant to this
30 section shall be deemed to be charged with a civil infraction
31 punishable by a maximum civil penalty not to exceed \$25, or 50

1 hours of community service or, where available, successful
2 completion of a school-approved anti-tobacco "alternative to
3 suspension" program.

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

8 Section 13. Section 386.2125, Florida Statutes, is
9 created to read:

10 386.2125 Rulemaking.--The department and the
11 Department of Business and Professional Regulation shall, in
12 consultation with the State Fire Marshal and the Department of
13 Agriculture and Consumer Services, have the authority to adopt
14 rules pursuant to ss. 120.536(1) and 120.54 to implement the
15 provisions of this part.

16 Section 14. If any law that is amended by this act was
17 also amended by a law enacted at the 2003 Regular Session of
18 the Legislature, such laws shall be construed as if they had
19 been enacted during the same session of the Legislature, and
20 full effect should be given to each if that is possible.

21 Section 15. If any provision of this act or its
22 application to any person or circumstance is held invalid, the
23 invalidity does not affect other provisions or applications of
24 the act that can be given effect without the invalid provision
25 or application, and to this end the provisions of this act are
26 declared severable.

27 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 SB 44-A
4 Eliminates the provisions regarding restaurant patios and the
5 ventilation system requirements.
6 Eliminates the provisions regarding entryways and intakes.
7 Provides incidental sale of food in stand-alone bars of up to
8 10%.
9 Modifies the penalty provisions for violations of the act by
10 proprietors.
11 Maintains the current penalties under the Clean Indoor Air Act
12 for persons who violate the act.
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