

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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Representatives Prieguez, Kallinger, and Goodlette offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause, and insert:

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 people 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 the Florida health initiative in s. 20, Art. X

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28 of the State Constitution by providing a uniform statewide
29 maximum code. It is the intent of the Legislature to not
30 inhibit, or otherwise obstruct, medical or scientific research
31 or smoking-cessation programs approved by the Department of
32 Health. This part shall not be interpreted to require the
33 designation of smoking areas. However, it is the intent of the
34 Legislature to discourage the designation of any area within a
35 government building as a smoking area.

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

38 386.203 Definitions.--As used in this part:

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

46 (2) "Common area" means a hallway, corridor, lobby, aisle,
47 water fountain area, restroom, stairwell, entryway, or
48 conference room in a customs area of an airport terminal under
49 the authority and control of the Bureau of Customs and Border
50 Protection of the United States Department of Homeland Security.

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

52 (4) "Designated smoking guest rooms at public lodging
53 establishments" means the sleeping rooms and directly associated
54 private areas, such as bathrooms, living rooms, and kitchen
55 areas, if any, rented to guests for their exclusive transient
56 occupancy in public lodging establishments, including hotels,

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57 motels, resort condominiums, transient apartments, transient
58 lodging establishments, rooming houses, boarding houses, resort
59 dwelling, bed and breakfast inns, and the like; and designated
60 by the person or persons having management authority over such
61 public lodging establishment as rooms in which smoking may be
62 permitted.

63 (5) "Enclosed indoor workplace" means any place where one
64 or more persons engages in work, and which place is
65 predominantly or totally bounded on all sides and above by
66 physical barriers, regardless of whether such barriers consist
67 of or include, without limitation, uncovered openings, screened
68 or otherwise partially covered openings; or open or closed
69 windows, jalousies, doors, or the like. A place is
70 "predominantly" bounded by physical barriers during any time
71 when both of the following conditions exist:

72 (a) It is more than 50 percent covered from above by a
73 physical barrier that excludes rain, and

74 (b) More than 50 percent of the combined surface area of
75 its sides is covered by closed physical barriers. In
76 calculating the percentage of side surface area covered by
77 closed physical barriers, all solid surfaces that block air
78 flow, except railings, must be considered as closed physical
79 barriers. This section applies to all such enclosed indoor
80 workplaces and enclosed parts thereof without regard to whether
81 work is occurring at any given time.

82 (c) The term does not include any facility owned or leased
83 by and used exclusively for noncommercial activities performed
84 by the members and guests of a membership association, including

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85 social gatherings, meetings, dining, and dances, if no person or
86 persons are engaged in work as defined in subsection (12).

87 (6) "Essential services" means those services that are
88 essential to the maintenance of any enclosed indoor room,
89 including, but not limited to, janitorial services, repairs, or
90 renovations.

91 (7) "Physical barrier" includes an uncovered opening, a
92 screened or otherwise partially covered opening, or an open or
93 closed window, jalousie, or door.

94 (8) "Retail tobacco shop" means any enclosed indoor
95 workplace dedicated to or predominantly for the retail sale of
96 tobacco, tobacco products, and accessories for such products, in
97 which the sale of other products or services is merely
98 incidental. Any enclosed indoor workplace of a business that
99 manufactures, imports, or distributes tobacco products or of a
100 tobacco leaf dealer is a business dedicated to or predominantly
101 for the retail sale of tobacco and tobacco products when, as a
102 necessary and integral part of the process of making,
103 manufacturing, importing, or distributing a tobacco product for
104 the eventual retail sale of such tobacco or tobacco product,
105 tobacco is heated, burned, or smoked or a lighted tobacco
106 product is tested.

107 (9) "Second-hand smoke," also known as environmental
108 tobacco smoke (ETS), means smoke emitted from lighted,
109 smoldering, or burning tobacco when the smoker is not inhaling;
110 smoke emitted at the mouthpiece during puff drawing; and smoke
111 exhaled by the smoker.

112 (10)(4) "Smoking" means inhaling, exhaling, burning,
113 carrying, or possessing any ~~possession of a~~ lighted tobacco

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114 product, including cigarettes, cigars, pipe tobacco, and
115 cigarette, lighted cigar, lighted pipe, or any other lighted
116 tobacco product.

117 (11) "Stand-alone bar" means any licensed premises devoted
118 during any time of operation predominantly or totally to serving
119 alcoholic beverages, intoxicating beverages, or intoxicating
120 liquors, or any combination thereof, for consumption on the
121 licensed premises; in which the serving of food, if any, is
122 merely incidental to the consumption of any such beverage; and
123 the licensed premises is not located within, and does not share
124 any common entryway or common indoor area with, any other
125 enclosed indoor workplace, including any business for which the
126 sale of food or any other product or service is more than an
127 incidental source of gross revenue. A place of business
128 constitutes a stand-alone bar in which the service of food is
129 merely incidental in accordance with this subsection if the
130 licensed premises derives no more than 10 percent of its gross
131 revenue from the sale of food consumed on the licensed premises.

132 (12) "Work" means any person's providing any employment or
133 employment-type service for or at the request of another
134 individual or individuals or any public or private entity,
135 whether for compensation or not, whether full or part time,
136 whether legally or not. "Work" includes, without limitation, any
137 such service performed by an employee, independent contractor,
138 agent, partner, proprietor, manager, officer, director,
139 apprentice, trainee, associate, servant, volunteer, and the
140 like. The term does not include noncommercial activities
141 performed by members of a membership association.

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142 (13) "Membership association" means a charitable,
143 nonprofit, or veterans' organization that holds a current
144 exemption under s. 501(c)(3), s. 501(c)(4), s. 501(c)(7), s.
145 501(c)(8), s. 501(c)(10), s. 501(c)(19), or s. 501(d) of the
146 Internal Revenue Code.

147 ~~(1) "Public place" means the following enclosed, indoor~~
148 ~~areas used by the general public:~~

149 ~~(a) Government buildings;~~

150 ~~(b) Public means of mass transportation and their~~
151 ~~associated terminals not subject to federal smoking regulation;~~

152 ~~(c) Elevators;~~

153 ~~(d) Hospitals;~~

154 ~~(e) Nursing homes;~~

155 ~~(f) Educational facilities;~~

156 ~~(g) Public school buses;~~

157 ~~(h) Libraries;~~

158 ~~(i) Courtrooms;~~

159 ~~(j) Jury waiting and deliberation rooms;~~

160 ~~(k) Museums;~~

161 ~~(l) Theaters;~~

162 ~~(m) Auditoriums;~~

163 ~~(n) Arenas;~~

164 ~~(o) Recreational facilities;~~

165 ~~(p) Restaurants;~~

166 ~~(q) Retail stores, except a retail store the primary~~
167 ~~business of which is the sale of tobacco or tobacco related~~
168 ~~products;~~

169 ~~(r) Grocery stores;~~

170 ~~(s) Places of employment;~~

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- 171 ~~(t) Health care facilities;~~
172 ~~(u) Day care centers; and~~
173 ~~(v) Common areas of retirement homes and condominiums.~~
174 ~~(2) "Government building" means any building or any~~
175 ~~portion of any building owned by or leased to the state or any~~
176 ~~political subdivision thereof and used for governmental~~
177 ~~purposes.~~
178 ~~(3) "Public meeting" means all meetings open to the~~
179 ~~public, including meetings of homeowner, condominium, or renter~~
180 ~~or tenant associations unless such meetings are held in a~~
181 ~~private residence.~~
182 ~~(5) "Smoking area" means any designated area meeting the~~
183 ~~requirements of ss. 386.205 and 386.206.~~
184 ~~(6) "Common area" means any hallway, corridor, lobby,~~
185 ~~aisle, water fountain area, restroom, stairwell, entryway, or~~
186 ~~conference room in any public place.~~
187 ~~(7) "Department" means the Department of Health.~~
188 ~~(8) "Division" means the Division of Hotels and~~
189 ~~Restaurants of the Department of Business and Professional~~
190 ~~Regulation.~~

191 Section 4. Section 386.204, Florida Statutes, is amended
192 to read:

193 386.204 Prohibition.--A person may not smoke in an
194 enclosed indoor workplace, except as otherwise provided in s.
195 386.2045 ~~a public place or at a public meeting except in~~
196 ~~designated smoking areas. These prohibitions do not apply in~~
197 ~~eases in which an entire room or hall is used for a private~~
198 ~~function and seating arrangements are under the control of the~~

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199 ~~sponsor of the function and not of the proprietor or person in~~
200 ~~charge of the room or hall.~~

201 Section 5. Section 386.2045, Florida Statutes, is created
202 to read:

203 386.2045 Enclosed indoor workplaces; specific
204 exceptions.--Notwithstanding s. 386.204, tobacco smoking may be
205 permitted in each of the following places:

206 (1) PRIVATE RESIDENCE.--A private residence whenever it is
207 not being used commercially to provide child care, adult care,
208 or health care, or any combination thereof as defined in s.
209 386.203(1).

210 (2) RETAIL TOBACCO SHOP.--An enclosed indoor workplace
211 dedicated to or predominantly for the retail sale of tobacco,
212 tobacco products, and accessories for such products, as defined
213 in s. 386.203(8).

214 (3) DESIGNATED SMOKING GUEST ROOM.--A designated smoking
215 guest room at a public lodging establishment as defined in s.
216 386.203(4).

217 (4) STAND-ALONE BAR.--A business that meets the definition
218 of a stand-alone bar as defined in s. 386.203(11) and that
219 otherwise complies with all applicable provisions of the
220 Beverage Law and part II of this chapter.

221 (5) SMOKING-CESSATION PROGRAM, MEDICAL OR SCIENTIFIC
222 RESEARCH.--An enclosed indoor workplace, to the extent that
223 tobacco smoking is an integral part of a smoking-cessation
224 program approved by the department, or medical or scientific
225 research conducted therein. Each room in which tobacco smoking
226 is permitted must comply with the signage requirements in s.
227 386.206.

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228 (6) CUSTOMS SMOKING ROOM.--A customs smoking room in an
229 airport in-transit lounge under the authority and control of the
230 Bureau of Customs and Border Protection of the United States
231 Department of Homeland Security subject to the restrictions
232 contained in s. 386.205.

233 Section 6. Section 386.205, Florida Statutes, is amended
234 to read:

235 386.205 Customs Designation of smoking rooms areas.--

236 (1) A customs smoking room areas may be designated by the
237 person in charge of an airport in-transit lounge under the
238 authority and control of the Bureau of Customs and Border
239 Protection of the United States Department of Homeland Security
240 a public place. A customs smoking room may only be designated in
241 an airport in-transit lounge under the authority and control of
242 the Bureau of Customs and Border Protection of the United States
243 Department of Homeland Security. A customs smoking room may not
244 be designated in an elevator, restroom, or any common area as
245 defined by s. 386.203. Each customs smoking room must conform to
246 the following requirements:

247 (a) Work, other than essential services defined in s.
248 386.203(6), must not be performed in the room at any given time.

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

251 (c) Each customs smoking room must be enclosed by physical
252 barriers that are impenetrable by second-hand tobacco smoke and
253 prevent the escape of second-hand tobacco smoke into the
254 enclosed indoor workplace.

255 (d) Each customs smoking room must exhaust tobacco smoke
256 directly to the outside and away from air intake ducts, and be

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257 maintained under negative pressure, with respect to surrounding
258 spaces, sufficient to contain tobacco smoke within the room.

259 (e) Each customs smoking room must comply with the signage
260 requirements in s. 386.206. If a smoking area is designated,
261 existing physical barriers and ventilation systems shall be used
262 to minimize smoke in adjacent nonsmoking areas. This provision
263 shall not be construed to require fixed structural or other
264 physical modifications in providing these areas or to require
265 operation of any existing heating, ventilating, and air-
266 conditioning system (HVAC system) in any manner which decreases
267 its energy efficiency or increases its electrical demand, or
268 both, nor shall this provision be construed to require
269 installation of new or additional HVAC systems.

270 (2)(a) A smoking area may not be designated in an
271 elevator, school bus, public means of mass transportation
272 subject only to state smoking regulation, restroom, hospital,
273 doctor's or dentist's waiting room, jury deliberation room,
274 county health department, day care center, school or other
275 educational facility, or any common area as defined in s.
276 386.203. However, a patient's room in a hospital, nursing home,
277 or other health care facility may be designated as a smoking
278 area if such designation is ordered by the attending physician
279 and agreed to by all patients assigned to that room.

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

283 (3) In a workplace where there are smokers and nonsmokers,
284 employers shall develop, implement, and post a policy regarding
285 designation of smoking and nonsmoking areas. Such a policy shall

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286 ~~take into consideration the proportion of smokers and~~
287 ~~nonsmokers. Employers who make reasonable efforts to develop,~~
288 ~~implement, and post such a policy shall be deemed in compliance.~~
289 ~~An entire area may be designated as a smoking area if all~~
290 ~~workers routinely assigned to work in that area at the same time~~
291 ~~agree. With respect to the square footage in any public place as~~
292 ~~described in subsection (4), this square footage shall not~~
293 ~~include private office work space which is not a common area as~~
294 ~~defined in s. 386.203(6) and which is ordinarily inaccessible to~~
295 ~~the public.~~

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

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

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

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

309 ~~(5) A smoking area may not contain common areas which are~~
310 ~~expected to be used by the public.~~

311 ~~(6) Each state agency may adopt rules for administering~~
312 ~~this section which take into consideration the provisions of~~
313 ~~this part.~~

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314 Section 7. Section 386.206, Florida Statutes, is amended
315 to read:

316 386.206 Posting of signs; requiring policies.--

317 (1) The person in charge of an enclosed indoor workplace
318 that prior to adoption of s. 20, Art. X of the State
319 Constitution was required to post signs under the requirements
320 of this section must continue to a public place shall
321 conspicuously post, or cause to be posted, in any area
322 designated as a smoking area signs stating that smoking is not
323 permitted in the enclosed indoor workplace such area. Each sign
324 posted pursuant to this section must shall have letters of
325 reasonable size which can be easily read. The color, design, and
326 precise place of posting of such signs shall be left to the
327 discretion of the person in charge of the premises. ~~In order to~~
328 ~~increase public awareness, the person in charge of a public~~
329 ~~place may, at his or her discretion, also post "NO SMOKING~~
330 ~~EXCEPT IN DESIGNATED AREAS" signs as appropriate.~~

331 (2) The proprietor or other person in charge of an
332 enclosed indoor workplace must develop and implement a policy
333 regarding the smoking prohibitions established in this part.
334 The policy may include, but is not limited to, procedures to be
335 taken when the proprietor or other person in charge witnesses or
336 is made aware of a violation of s. 386.204 in the enclosed
337 indoor workplace and must include a policy which prohibits an
338 employee from smoking in the enclosed indoor workplace. In order
339 to increase public awareness, the person in charge of an
340 enclosed indoor workplace may, at his or her discretion, post
341 "NO SMOKING" signs as deemed appropriate.

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342 (3) The person in charge of an airport terminal that
343 includes a designated customs smoking room must conspicuously
344 post, or cause to be posted, signs stating that no smoking is
345 permitted except in the designated customs smoking room located
346 in the customs area of the airport. Each sign posted pursuant to
347 this section must have letters of reasonable size that can be
348 easily read. The color, design, and precise locations at which
349 such signs are posted shall be left to the discretion of the
350 person in charge of the premises.

351 (4) The proprietor or other person in charge of an
352 enclosed indoor workplace where a smoking cessation program,
353 medical research, or scientific research is conducted or
354 performed must conspicuously post, or cause to be posted, signs
355 stating that smoking is permitted for such purposes in
356 designated areas in the enclosed indoor workplace. Each sign
357 posted pursuant to this section must have letters of reasonable
358 size which can be easily read. The color, design, and precise
359 locations at which such signs are posted shall be left to the
360 discretion of the person in charge of the premises.

361 (5) The provisions of subsection (1) shall expire on July
362 1, 2005.

363 Section 8. Section 386.207, Florida Statutes, is amended
364 to read:

365 386.207 Administration; enforcement; civil penalties;
366 ~~exemptions.--~~

367 (1) The department or the Division of Hotels and
368 Restaurants or the Division of Alcoholic Beverages and Tobacco
369 of the Department of Business and Professional Regulation ~~or the~~
370 division shall enforce this part based upon each department's

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371 specific areas of regulatory authority ss. 386.205 and 386.206
372 and to implement such enforcement shall adopt, in consultation
373 with the State Fire Marshal, rules specifying procedures to be
374 followed by enforcement personnel in investigating complaints
375 and notifying alleged violators, ~~rules defining types of cases~~
376 ~~for which exemptions may be granted~~, and rules specifying
377 procedures by which appeals may be taken by aggrieved parties.

378 (2) Public agencies responsible for the management and
379 maintenance of government buildings shall report observed
380 violations to the department ~~or division~~. The State Fire Marshal
381 shall report to the department ~~or division~~ observed violations
382 of this part ss. 386.205 and 386.206 found during its periodic
383 inspections conducted under ~~pursuant to~~ its regulatory
384 authority.

385 (3) The department or the Division of Hotels and
386 Restaurants or the Division of Alcoholic Beverages and Tobacco
387 of the Department of Business and Professional Regulation ~~or the~~
388 ~~division~~, upon notification of observed violations of this part
389 ~~ss. 386.205 and 386.206~~, shall issue to the proprietor or other
390 person in charge of such enclosed indoor workplace ~~public place~~
391 a notice to comply with this part ss. 386.205 and 386.206. If
392 ~~the such~~ person fails to comply within 30 days after receipt of
393 ~~the such~~ notice, the department or the Division of Hotels and
394 Restaurants or the Division of Alcoholic Beverages and Tobacco
395 of the Department of Business and Professional Regulation
396 ~~division~~ shall assess a civil penalty against the person of not
397 less than \$250 and ~~him or her~~ not to exceed \$750 ~~\$100~~ for the
398 first violation and not less than \$500 and not to exceed \$2,000
399 ~~\$500~~ for each subsequent violation. The imposition of the such

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400 fine must ~~shall~~ be in accordance with ~~the provisions of~~ chapter
401 120. If a person refuses to comply with this part ~~ss. 386.205~~
402 ~~and 386.206~~, after having been assessed such penalty, the
403 department or the Division of Hotels and Restaurants or the
404 Division of Alcoholic Beverages and Tobacco of the Department of
405 Business and Professional Regulation ~~division~~ may file a
406 complaint in the circuit court of the county in which the
407 enclosed indoor workplace ~~such public place~~ is located to
408 require compliance.

409 ~~(3) A person may request an exemption from ss. 386.205 and~~
410 ~~386.206 by applying to the department or the division. The~~
411 ~~department or the division may grant exemptions on a case-by-~~
412 ~~case basis where it determines that substantial good faith~~
413 ~~efforts have been made to comply or that emergency or~~
414 ~~extraordinary circumstances exist.~~

415 ~~(3)(4)~~ All fine moneys collected pursuant to this section
416 shall be used by the department for children's medical services
417 programs pursuant to the provisions of part I of chapter 391.

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

420 386.208 Penalties.--Any person who violates s. 386.204
421 commits a noncriminal violation as defined ~~provided for~~ in s.
422 775.08(3), punishable by a fine of not more than \$100 for the
423 first violation and not more than \$500 for each subsequent
424 violation. Jurisdiction shall be with the appropriate county
425 court.

426 Section 10. Section 386.209, Florida Statutes, is
427 reenacted to read:

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428 386.209 Regulation of smoking preempted to state.--This
429 part expressly preempts regulation of smoking to the state and
430 supersedes any municipal or county ordinance on the subject.

431 Section 11. Section 386.211, Florida Statutes, is amended
432 to read:

433 386.211 Public announcements in mass transportation
434 terminals.--Announcements about the Florida Clean Indoor Air Act
435 shall be made regularly over public address systems in terminals
436 of public transportation carriers located in metropolitan
437 statistical areas with populations over 230,000 according to the
438 latest census. These announcements shall be made at least every
439 30 minutes and shall be made in appropriate languages. Each
440 announcement must ~~shall~~ include a statement to the effect that
441 Florida is a clean indoor air state and that smoking is not
442 allowed except as provided in this part ~~only in designated~~
443 ~~areas~~.

444 Section 12. Section 386.212, Florida Statutes, is
445 reenacted and amended to read:

446 386.212 Smoking prohibited near school property;
447 penalty.--

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

454 (2) A law enforcement officer may issue a citation in such
455 form as prescribed by a county or municipality to any person

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456 violating the provisions of this section. Any such citation must
457 contain:

458 (a) The date and time of issuance.

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

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

461 (d) The statute violated.

462 (e) The facts constituting the violation.

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

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

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

468 (i) The applicable civil penalty if the person elects to
469 contest the citation.

470 (3) Any person issued a citation pursuant to this section
471 shall be deemed to be charged with a civil infraction punishable
472 by a maximum civil penalty not to exceed \$25, or 50 hours of
473 community service or, where available, successful completion of
474 a school-approved anti-tobacco "alternative to suspension"
475 program.

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

480 Section 13. Section 386.2125, Florida Statutes, is created
481 to read:

482 386.2125 Rulemaking.--The department and the Department of
483 Business and Professional Regulation, shall, in consultation
484 with the State Fire Marshal, have the authority to adopt rules

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485 pursuant to ss. 120.536(1) and 120.54 to implement the
486 provisions of this part within each agency's specific areas of
487 regulatory authority. Whenever assessing a smoking cessation
488 program for approval, the department shall consider whether the
489 smoking cessation program limits to the extent possible the
490 potential for exposure to second-hand tobacco smoke, if any, to
491 nonparticipants in the enclosed indoor workplace.

492 Section 14. Section 561.695, Florida Statutes, is created
493 to read:

494 561.695 Stand-alone bar enforcement; qualification;
495 penalties.--

496 (1) The division shall designate as a stand-alone bar in
497 which tobacco smoking is permitted the licensed premises of a
498 vendor that operates a business that meets the definition of a
499 stand-alone bar in s. 386.203(11) upon receipt of the vendor's
500 election to permit tobacco smoking on the licensed premises.

501 (2) Upon this act becoming a law and until the annual
502 renewal of a vendor's license, a licensed vendor who makes the
503 required election under subsection (1) may permit tobacco
504 smoking on the licensed premises and must post a notice of such
505 intention at the same location at which the vendor's current
506 alcoholic beverage license is posted. The notice shall affirm
507 the vendor's intent to comply with the conditions and
508 qualifications of a stand-alone bar imposed pursuant to part II
509 of chapter 386 and the Beverage Law. To continue to permit
510 smoking on the licensed premises, the vendor must receive from
511 the division actual notice at the time of license renewal of the
512 business's designation as a stand-alone bar where smoking is
513 permitted.

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514 (3) Only the licensed vendor may provide or serve food on
515 the licensed premises of a stand-alone bar. Other than
516 customary bar snacks as defined by rule of the division, the
517 licensed vendor may not provide or serve food to a person on the
518 licensed premises without requiring the person to pay a
519 separately stated charge for the food that reasonably
520 approximates the retail value of the food.

521 (4) A licensed vendor operating a stand-alone bar must
522 conspicuously post signs at each entrance to the establishment
523 stating that smoking is permitted in the establishment. The
524 color and design of such signs shall be left to the discretion
525 of the person in charge of the premises.

526 (5) After the initial designation, to continue to qualify
527 as a stand-alone bar the licensee must provide to the division
528 annually, on or before the licensee's annual renewal date, an
529 affidavit that certifies, with respect to the preceding 12-month
530 period, the following:

531 (a) No more than 10 percent of the gross revenue of the
532 business is from the sale of food consumed on the licensed
533 premises as defined in s. 386.203(11).

534 (b) Other than customary bar snacks as defined by rule of
535 the division, the licensed vendor does not provide or serve food
536 to a person on the licensed premises without requiring the
537 person to pay a separately stated charge for food that
538 reasonably approximates the retail value of the food.

539 (c) The licensed vendor conspicuously posts signs at each
540 entrance to the establishment stating that smoking is permitted
541 in the establishment.

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543 The division shall establish by rule the format of the affidavit
544 required by this subsection.

545 (6) Every third year after the initial designation, on or
546 before the licensee's annual license renewal, the licensed
547 vendor must additionally provide to the division a certified
548 audit from a certified public accountant that it is in
549 compliance with the percentage requirement of subsection (5)(a)
550 for the preceding 12-month period. Such certified audit shall be
551 admissible in any proceeding pursuant to s. 120.57.

552 (7) The Division of Alcoholic Beverages and Tobacco shall
553 have the power to enforce the provisions of part II of chapter
554 386 and to audit a licensed vendor that operates a business that
555 meets the definition of a stand-alone bar as provided in s.
556 386.203(11) for compliance with this section.

557 (8) Any vendor that operates a business that meets the
558 definition of a stand-alone bar as provided in s. 386.203(11)
559 who violates the provisions of this section or part II of
560 chapter 386 shall be subject to the following penalties:

561 (a) For the first violation, the vendor shall be subject
562 to a warning or a fine of up to \$500, or both;

563 (b) For the second violation within 2 years after the
564 first violation, the vendor shall be subject to a fine of not
565 less than \$500 or more than \$2,000;

566 (c) For the third or subsequent violation within 2 years
567 after the first violation, the vendor shall receive a suspension
568 of the right to maintain a stand-alone bar in which tobacco
569 smoking is permitted, not to exceed 30 days, and shall be
570 subject to a fine of not less than \$500 or more than \$2,000; and

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Amendment No. (for drafter's use only)

571 (d) For the fourth or subsequent violation, the vendor
572 shall receive a 60-day suspension of the right to maintain a
573 stand-alone bar in which tobacco smoking is permitted and shall
574 be subject to a fine of not less than \$500 or more than \$2,000
575 or revocation of the right to maintain a stand-alone bar in
576 which tobacco smoking is permitted.

577 (9) The division shall adopt rules governing the
578 designation process, criteria for qualification, required
579 recordkeeping, auditing, and all other rules necessary for the
580 effective enforcement and administration of this section and
581 part II of chapter 386. The division is authorized to adopt
582 emergency rules pursuant to s. 120.54(4) to implement the
583 provisions of this section.

584 Section 15. If any provision of this act or the
585 application thereof to any person or circumstance is held
586 invalid, the invalidity shall not affect other provisions or
587 applications of the act which can be given effect without the
588 invalid provision or application, and to this end the provisions
589 of this act are declared severable.

590 Section 16. If any law amended by this act was also
591 amended by a law enacted at the 2003 Regular Session of the
592 Legislature, such laws shall be construed as if they had been
593 enacted during the same session of the Legislature, and full
594 effect shall be given to each if possible.

595 Section 17. This act shall take effect July 1, 2003.

596
597 ===== T I T L E A M E N D M E N T =====

598 Remove the entire title, and insert:
599

Amendment No. (for drafter's use only)

600 A bill to be entitled
601 An act relating to the Florida Clean Indoor Air Act;
602 implementing s. 20, Art. X of the State Constitution;
603 amending s. 386.201, F.S., providing a popular name;
604 amending s. 386.202, F.S.; providing legislative intent;
605 amending s. 386.203, F.S.; providing definitions; amending
606 s. 386.204, F.S.; prohibiting smoking in an enclosed
607 indoor workplace; creating s. 386.2045, F.S.; establishing
608 specific exceptions to the prohibition against smoking in
609 an enclosed indoor workplace; amending s. 386.205, F.S.;
610 providing for designated customs smoking rooms in airport
611 in-transit lounges; providing requirements with respect
612 thereto; amending s. 386.206, F.S.; providing for
613 continuation of requirements with respect to the posting
614 of signs stating that smoking is not permitted in an
615 enclosed indoor workplace; requiring the proprietor or
616 person in charge of an enclosed indoor workplace to
617 develop and implement a policy regarding smoking
618 prohibitions; providing requirements with respect to
619 posting of signs at an airport terminal that includes a
620 designated customs smoking room and an enclosed indoor
621 workplace where a smoking cessation program or medical or
622 scientific research is conducted or performed; providing
623 for expiration of such provisions; amending s. 386.207,
624 F.S.; providing for enforcement of the Florida Clean
625 Indoor Act by the Department of Health, the Division of
626 Hotels and Restaurants of the Department of Business and
627 Professional Regulation, and the Division of Alcoholic
628 Beverages and Tobacco of the Department of Business and

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Amendment No. (for drafter's use only)

629 Professional Regulation; increasing penalties; eliminating
630 exemptions; amending s. 386.208, F.S.; providing
631 penalties; reenacting s. 386.209, F.S., which preempts
632 regulation of smoking to the state; amending s. 386.211,
633 F.S., relating to public announcements in mass
634 transportation terminals, to conform; reenacting and
635 amending s. 386.212, F.S., which prohibits any person
636 under 18 years of age from smoking tobacco in, on, or
637 within 1,000 feet of the real property comprising a public
638 or private elementary, middle, or secondary school and
639 provides penalties therefor; creating s. 386.2125, F.S.;
640 requiring the Department of Health and the Department of
641 Business and Professional Regulation to adopt rules;
642 creating s. 561.695, F.S.; providing for designation of
643 stand-alone bars by the Division of Alcoholic Beverages
644 and Tobacco of the Department of Business and Professional
645 Regulation; providing procedure, requirements, and
646 restrictions with respect to such designation; providing
647 for rulemaking; providing for enforcement; providing
648 penalties; providing severability; providing for
649 construction of the act in pari materia with laws enacted
650 during the 2003 Regular Session of the Legislature;
651 providing an effective date.