

Bill No. HB 63-A

Amendment No. \_\_\_\_ Barcode 222792

CHAMBER ACTION

Senate

House

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Senator Diaz de la Portilla moved the following amendment:

**Senate Amendment (with title amendment)**

Delete 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 of the State Constitution by providing a uniform statewide maximum code. It is the intent of the Legislature to not inhibit, or otherwise obstruct,

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1 medical or scientific research or smoking-cessation programs  
2 approved by the Department of Health. This part shall not be  
3 interpreted to require the designation of smoking areas.  
4 ~~However, it is the intent of the Legislature to discourage the~~  
5 ~~designation of any area within a government building as a~~  
6 ~~smoking area.~~

7           Section 3. Section 386.203, Florida Statutes, is  
8 amended to read:

9           386.203 Definitions.--As used in this part:

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

17           (2) "Common area" means a hallway, corridor, lobby,  
18 aisle, water fountain area, restroom, stairwell, entryway, or  
19 conference room in a customs area of an airport terminal under  
20 the authority and control of the Bureau of Customs and Border  
21 Protection of the United States Department of Homeland  
22 Security.

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

24           (4) "Designated smoking guest rooms at public lodging  
25 establishments" means the sleeping rooms and directly  
26 associated private areas, such as bathrooms, living rooms, and  
27 kitchen areas, if any, rented to guests for their exclusive  
28 transient occupancy in public lodging establishments,  
29 including hotels, motels, resort condominiums, transient  
30 apartments, transient lodging establishments, rooming houses,  
31 boarding houses, resort dwellings, bed and breakfast inns, and

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1 the like; and designated by the person or persons having  
2 management authority over such public lodging establishment as  
3 rooms in which smoking may be permitted.

4 (5) "Enclosed indoor workplace" means any place where  
5 one or more persons engages in work, and which place is  
6 predominantly or totally bounded on all sides and above by  
7 physical barriers, regardless of whether such barriers consist  
8 of or include, without limitation, uncovered openings,  
9 screened or otherwise partially covered openings; or open or  
10 closed windows, jalousies, doors, or the like. A place is  
11 "predominantly" bounded by physical barriers during any time  
12 when both of the following conditions exist:

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

15 (b) More than 50 percent of the combined surface area  
16 of its sides is covered by closed physical barriers. In  
17 calculating the percentage of side surface area covered by  
18 closed physical barriers, all solid surfaces that block air  
19 flow, except railings, must be considered as closed physical  
20 barriers. This section applies to all such enclosed indoor  
21 workplaces and enclosed parts thereof without regard to  
22 whether work is occurring at any given time.

23 (c) The term does not include any facility owned or  
24 leased by and used exclusively for noncommercial activities  
25 performed by the members and guests of a membership  
26 association, including social gatherings, meetings, dining,  
27 and dances, if no person or persons are engaged in work as  
28 defined in subsection (12).

29 (6) "Essential services" means those services that are  
30 essential to the maintenance of any enclosed indoor  
31 room, including, but not limited to, janitorial services,

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1 repairs, or renovations.

2 (7) "Physical barrier" includes an uncovered opening,  
3 a screened or otherwise partially covered opening, or an open  
4 or closed window, jalousie, or door.

5 (8) "Retail tobacco shop" means any enclosed indoor  
6 workplace dedicated to or predominantly for the retail sale of  
7 tobacco, tobacco products, and accessories for such products,  
8 in which the sale of other products or services is merely  
9 incidental. Any enclosed indoor workplace of a business that  
10 manufactures, imports, or distributes tobacco products or of a  
11 tobacco leaf dealer is a business dedicated to or  
12 predominantly for the retail sale of tobacco and tobacco  
13 products when, as a necessary and integral part of the process  
14 of making, manufacturing, importing, or distributing a tobacco  
15 product for the eventual retail sale of such tobacco or  
16 tobacco product, tobacco is heated, burned, or smoked or a  
17 lighted tobacco product is tested.

18 (9) "Second-hand smoke," also known as environmental  
19 tobacco smoke (ETS), means smoke emitted from lighted,  
20 smoldering, or burning tobacco when the smoker is not  
21 inhaling; smoke emitted at the mouthpiece during puff drawing;  
22 and smoke exhaled by the smoker.

23 (10)(4) "Smoking" means inhaling, exhaling, burning,  
24 carrying, or possessing any possession of a lighted tobacco  
25 product, including cigarettes, cigars, pipe tobacco, and  
26 cigarette, lighted cigar, lighted pipe, or any other lighted  
27 tobacco product.

28 (11) "Stand-alone bar" means any licensed premises  
29 devoted during any time of operation predominantly or totally  
30 to serving alcoholic beverages, intoxicating beverages, or  
31 intoxicating liquors, or any combination thereof, for

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1 consumption on the licensed premises; in which the serving of  
2 food, if any, is merely incidental to the consumption of any  
3 such beverage; and the licensed premises is not located  
4 within, and does not share any common entryway or common  
5 indoor area with, any other enclosed indoor workplace,  
6 including any business for which the sale of food or any other  
7 product or service is more than an incidental source of gross  
8 revenue. A place of business constitutes a stand-alone bar in  
9 which the service of food is merely incidental in accordance  
10 with this subsection if the licensed premises derives no more  
11 than 10 percent of its gross revenue from the sale of food  
12 consumed on the licensed premises.

13 (12) "Work" means any person's providing any  
14 employment or employment-type service for or at the request of  
15 another individual or individuals or any public or private  
16 entity, whether for compensation or not, whether full or part  
17 time, whether legally or not. "Work" includes, without  
18 limitation, any such service performed by an employee,  
19 independent contractor, agent, partner, proprietor, manager,  
20 officer, director, apprentice, trainee, associate, servant,  
21 volunteer, and the like. The term does not include  
22 noncommercial activities performed by members of a membership  
23 association.

24 (13) "Membership association" means a charitable,  
25 nonprofit, or veterans' organization that holds a current  
26 exemption under s. 501(c)(3), s. 501(c)(4), s. 501(c)(7), s.  
27 501(c)(8), s. 501(c)(10), s. 501(c)(19), or s. 501(d) of the  
28 Internal Revenue Code.

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

31 ~~(a) Government buildings;~~

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

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1 ~~renter or tenant associations unless such meetings are held in~~  
2 ~~a private residence.~~

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

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

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

9 ~~(8) "Division" means the Division of Hotels and~~  
10 ~~Restaurants of the Department of Business and Professional~~  
11 ~~Regulation.~~

12 Section 4. Section 386.204, Florida Statutes, is  
13 amended to read:

14 386.204 Prohibition.--A person may not smoke in an  
15 enclosed indoor workplace, except as otherwise provided in s.  
16 386.2045 a public place or at a public meeting except in  
17 designated smoking areas. These prohibitions do not apply in  
18 cases in which an entire room or hall is used for a private  
19 function and seating arrangements are under the control of the  
20 sponsor of the function and not of the proprietor or person in  
21 charge of the room or hall.

22 Section 5. Section 386.2045, Florida Statutes, is  
23 created to read:

24 386.2045 Enclosed indoor workplaces; specific  
25 exceptions.--Notwithstanding s. 386.204, tobacco smoking may  
26 be permitted in each of the following places:

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

31 (2) RETAIL TOBACCO SHOP.--An enclosed indoor workplace

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1 dedicated to or predominantly for the retail sale of tobacco,  
 2 tobacco products, and accessories for such products, as  
 3 defined in s. 386.203(8).

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

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

11 (5) SMOKING-CESSATION PROGRAM, MEDICAL OR SCIENTIFIC  
 12 RESEARCH.--An enclosed indoor workplace, to the extent that  
 13 tobacco smoking is an integral part of a smoking-cessation  
 14 program approved by the department, or medical or scientific  
 15 research conducted therein. Each room in which tobacco smoking  
 16 is permitted must comply with the signage requirements in s.  
 17 386.206.

18 (6) CUSTOMS SMOKING ROOM.--A customs smoking room in  
 19 an airport in-transit lounge under the authority and control  
 20 of the Bureau of Customs and Border Protection of the United  
 21 States Department of Homeland Security subject to the  
 22 restrictions contained in s. 386.205.

23 Section 6. Section 386.205, Florida Statutes, is  
 24 amended to read:

25 386.205 ~~Customs Designation of smoking rooms areas.--~~

26 (1) ~~A customs smoking room areas~~ may be designated by  
 27 the person in charge of an airport in-transit lounge under the  
 28 authority and control of the Bureau of Customs and Border  
 29 Protection of the United States Department of Homeland  
 30 Security ~~a public place. A customs smoking room may only be~~  
 31 designated in an airport in-transit lounge under the authority



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1 and control of the Bureau of Customs and Border Protection of  
2 the United States Department of Homeland Security. A customs  
3 smoking room may not be designated in an elevator, restroom,  
4 or any common area as defined by s. 386.203. Each customs  
5 smoking room must conform to the following requirements:

6 (a) Work, other than essential services defined in s.  
7 386.203(6), must not be performed in the room at any given  
8 time.

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

11 (c) Each customs smoking room must be enclosed by  
12 physical barriers that are impenetrable by second-hand tobacco  
13 smoke and prevent the escape of second-hand tobacco smoke into  
14 the enclosed indoor workplace.

15 (d) Each customs smoking room must exhaust tobacco  
16 smoke directly to the outside and away from air intake ducts,  
17 and be maintained under negative pressure, with respect to  
18 surrounding spaces, sufficient to contain tobacco smoke within  
19 the room.

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

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1           ~~(2)(a) A smoking area may not be designated in an~~  
2 ~~elevator, school bus, public means of mass transportation~~  
3 ~~subject only to state smoking regulation, restroom, hospital,~~  
4 ~~doctor's or dentist's waiting room, jury deliberation room,~~  
5 ~~county health department, day care center, school or other~~  
6 ~~educational facility, or any common area as defined in s.~~  
7 ~~386.203. However, a patient's room in a hospital, nursing~~  
8 ~~home, or other health care facility may be designated as a~~  
9 ~~smoking area if such designation is ordered by the attending~~  
10 ~~physician and agreed to by all patients assigned to that room.~~

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

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

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

31           ~~(b) The square footage limitation set forth in~~

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1 ~~paragraph (a) shall not apply to any restaurant subject to~~  
2 ~~this part. With respect to such restaurants:~~

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

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

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

11 ~~(6) Each state agency may adopt rules for~~  
12 ~~administering this section which take into consideration the~~  
13 ~~provisions of this part.~~

14 Section 7. Section 386.206, Florida Statutes, is  
15 amended to read:

16 386.206 Posting of signs; requiring policies.--

17 (1) The person in charge of an enclosed indoor  
18 workplace that prior to adoption of s. 20, Art. X of the State  
19 Constitution was required to post signs under the requirements  
20 of this section must continue to a public place shall  
21 conspicuously post, or cause to be posted, in any area  
22 designated as a smoking area signs stating that smoking is not  
23 permitted in the enclosed indoor workplace such area. Each  
24 sign posted pursuant to this section must shall have letters  
25 of reasonable size which can be easily read. The color,  
26 design, and precise place of posting of such signs shall be  
27 left to the discretion of the person in charge of the  
28 premises. ~~In order to increase public awareness, the person in~~  
29 ~~charge of a public place may, at his or her discretion, also~~  
30 ~~post "NO SMOKING EXCEPT IN DESIGNATED AREAS" signs as~~  
31 ~~appropriate.~~

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1           (2) The proprietor or other person in charge of an  
2 enclosed indoor workplace must develop and implement a policy  
3 regarding the smoking prohibitions established in this  
4 part. The policy may include, but is not limited to,  
5 procedures to be taken when the proprietor or other person in  
6 charge witnesses or is made aware of a violation of s. 386.204  
7 in the enclosed indoor workplace and must include a policy  
8 which prohibits an employee from smoking in the enclosed  
9 indoor workplace. In order to increase public awareness, the  
10 person in charge of an enclosed indoor workplace may, at his  
11 or her discretion, post "NO SMOKING" signs as deemed  
12 appropriate.

13           (3) The person in charge of an airport terminal that  
14 includes a designated customs smoking room must conspicuously  
15 post, or cause to be posted, signs stating that no smoking is  
16 permitted except in the designated customs smoking room  
17 located in the customs area of the airport. Each sign posted  
18 pursuant to this section must have letters of reasonable size  
19 that can be easily read. The color, design, and precise  
20 locations at which such signs are posted shall be left to the  
21 discretion of the person in charge of the premises.

22           (4) The proprietor or other person in charge of an  
23 enclosed indoor workplace where a smoking cessation program,  
24 medical research, or scientific research is conducted or  
25 performed must conspicuously post, or cause to be posted,  
26 signs stating that smoking is permitted for such purposes in  
27 designated areas in the enclosed indoor workplace. Each sign  
28 posted pursuant to this section must have letters of  
29 reasonable size which can be easily read. The color, design,  
30 and precise locations at which such signs are posted shall be  
31 left to the discretion of the person in charge of the

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1 premises.

2 (5) The provisions of subsection (1) shall expire on  
 3 July 1, 2005.

4 Section 8. Section 386.207, Florida Statutes, is  
 5 amended to read:

6 386.207 Administration; enforcement; civil penalties;  
 7 ~~exemptions.--~~

8 (1) The department or the Division of Hotels and  
 9 Restaurants or the Division of Alcoholic Beverages and Tobacco  
 10 of the Department of Business and Professional Regulation ~~or~~  
 11 ~~the division~~ shall enforce this part based upon each  
 12 department's specific areas of regulatory authority ~~ss.~~  
 13 ~~386.205 and 386.206~~ and to implement such enforcement shall  
 14 adopt, in consultation with the State Fire Marshal, rules  
 15 specifying procedures to be followed by enforcement personnel  
 16 in investigating complaints and notifying alleged violators,  
 17 ~~rules defining types of cases for which exemptions may be~~  
 18 ~~granted,~~ and rules specifying procedures by which appeals may  
 19 be taken by aggrieved parties.

20 (2) Public agencies responsible for the management and  
 21 maintenance of government buildings shall report observed  
 22 violations to the department ~~or division~~. The State Fire  
 23 Marshal shall report to the department ~~or division~~ observed  
 24 violations of this part ~~ss. 386.205 and 386.206~~ found during  
 25 its periodic inspections conducted under ~~pursuant to~~ its  
 26 regulatory authority.

27 (3) The department or the Division of Hotels and  
 28 Restaurants or the Division of Alcoholic Beverages and Tobacco  
 29 of the Department of Business and Professional Regulation ~~or~~  
 30 ~~the division~~, upon notification of observed violations of this  
 31 part ~~ss. 386.205 and 386.206~~, shall issue to the proprietor or

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1 other person in charge of such enclosed indoor workplace  
2 ~~public place~~ a notice to comply with this part ss. 386.205 and  
3 ~~386.206~~. If the such person fails to comply within 30 days  
4 after receipt of the such notice, the department or the  
5 Division of Hotels and Restaurants or the Division of  
6 Alcoholic Beverages and Tobacco of the Department of Business  
7 and Professional Regulation division shall assess a civil  
8 penalty against the person of not less than \$250 and him or  
9 ~~her~~ not to exceed ~~\$750~~~~\$100~~ for the first violation and not  
10 less than \$500 and not to exceed ~~\$2,000~~~~\$500~~ for each  
11 subsequent violation. The imposition of the such fine must  
12 ~~shall~~ be in accordance with ~~the provisions of~~ chapter 120. If  
13 a person refuses to comply with this part ss. 386.205 and  
14 ~~386.206~~, after having been assessed such penalty, the  
15 department or the Division of Hotels and Restaurants or the  
16 Division of Alcoholic Beverages and Tobacco of the Department  
17 of Business and Professional Regulation division may file a  
18 complaint in the circuit court of the county in which the  
19 enclosed indoor workplace ~~such public place~~ is located to  
20 require compliance.

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

27 ~~(3)(4)~~ All fine moneys collected pursuant to this  
28 section shall be used by the department for children's medical  
29 services programs pursuant to the provisions of part I of  
30 chapter 391.

31 Section 9. Section 386.208, Florida Statutes, is

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1 amended to read:

2           386.208 Penalties.--Any person who violates s. 386.204  
3 commits a noncriminal violation as defined ~~provided for~~ in s.  
4 775.08(3), punishable by a fine of not more than \$100 for the  
5 first violation and not more than \$500 for each subsequent  
6 violation. Jurisdiction shall be with the appropriate county  
7 court.

8           Section 10. Section 386.209, Florida Statutes, is  
9 reenacted to read:

10           386.209 Regulation of smoking preempted to  
11 state.--This part expressly preempts regulation of smoking to  
12 the state and supersedes any municipal or county ordinance on  
13 the subject.

14           Section 11. Section 386.211, Florida Statutes, is  
15 amended to read:

16           386.211 Public announcements in mass transportation  
17 terminals.--Announcements about the Florida Clean Indoor Air  
18 Act shall be made regularly over public address systems in  
19 terminals of public transportation carriers located in  
20 metropolitan statistical areas with populations over 230,000  
21 according to the latest census. These announcements shall be  
22 made at least every 30 minutes and shall be made in  
23 appropriate languages. Each announcement must ~~shall~~ include a  
24 statement to the effect that Florida is a clean indoor air  
25 state and that smoking is not allowed except as provided in  
26 this part only in designated areas.

27           Section 12. Section 386.212, Florida Statutes, is  
28 reenacted and amended to read:

29           386.212 Smoking prohibited near school property;  
30 penalty.--

31           (1) It is unlawful for any person under 18 years of

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1 age to smoke tobacco in, on, or within 1,000 feet of the real  
2 property comprising a public or private elementary, middle, or  
3 secondary school between the hours of 6 a.m. and midnight.  
4 This section does ~~shall~~ not apply to any person occupying a  
5 moving vehicle or within a private residence.

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

- 10 (a) The date and time of issuance.
- 11 (b) The name and address of the person cited.
- 12 (c) The date and time the civil infraction was  
13 committed.
- 14 (d) The statute violated.
- 15 (e) The facts constituting the violation.
- 16 (f) The name and authority of the law enforcement  
17 officer.
- 18 (g) The procedure for the person to follow to pay the  
19 civil penalty, to contest the citation, or to appear in court.
- 20 (h) The applicable civil penalty if the person elects  
21 not to contest the citation.
- 22 (i) The applicable civil penalty if the person elects  
23 to contest the citation.

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

30 (4) Any person who fails to comply with the directions  
31 on the citation shall be deemed to waive his or her right to



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1 | contest the citation and an order to show cause may be issued  
2 | by the court.

3 |           Section 13. Section 386.2125, Florida Statutes, is  
4 | created to read:

5 |           386.2125 Rulemaking.--The department and the  
6 | Department of Business and Professional Regulation, shall, in  
7 | consultation with the State Fire Marshal, have the authority  
8 | to adopt rules pursuant to ss. 120.536(1) and 120.54 to  
9 | implement the provisions of this part within each agency s  
10 | pecific areas of regulatory authority. Whenever assessing a  
11 | smoking cessation program for approval, the department shall  
12 | consider whether the smoking cessation program limits to the  
13 | extent possible the potential for exposure to second-hand  
14 | tobacco smoke, if any, to nonparticipants in the enclosed  
15 | indoor workplace.

16 |           Section 14. Section 561.695, Florida Statutes, is  
17 | created to read:

18 |           561.695 Stand-alone bar enforcement; qualification;  
19 | penalties.--

20 |           (1) The division shall designate as a stand-alone bar  
21 | the licensed premises of a vendor that operates a business  
22 | that meets the definition of a stand-alone bar in s.  
23 | 386.203(11) upon receipt of the vendor's election to permit  
24 | tobacco smoking on the licensed premises.

25 |           (2) Upon this act becoming a law and until the annual  
26 | renewal of a vendor's license, a licensed vendor who makes the  
27 | required election under subsection (1) may permit tobacco  
28 | smoking on the licensed premises and must post a notice of  
29 | such intention at the same location at which the vendor s  
30 | current alcoholic beverage license is posted. The notice  
31 | shall affirm the vendor's intent to comply with the conditions

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1 and qualifications of a stand-alone bar imposed pursuant to  
2 part II of chapter 386 and the Beverage Law.

3 (3) Only the licensed vendor may provide or serve food  
4 on the licensed premises of a stand-alone bar. Other than  
5 customary bar snacks as defined by rule of the division, the  
6 licensed vendor may not provide or serve food to a person on  
7 the licensed premises without requiring the person to pay a  
8 separately stated charge for the food that reasonably  
9 approximates the retail value of the food.

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

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

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

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

28 (c) The licensed vendor conspicuously posts signs at  
29 each entrance to the establishment stating that smoking is  
30 permitted in the establishment.

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1 The division shall establish by rule the format of the  
2 affidavit required by this subsection.

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

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

12 (a) For the first violation, the vendor shall be  
13 subject to a warning;

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

17 (c) For the third or subsequent violation within 2  
18 years after the first violation, the vendor shall receive a  
19 suspension of the right to maintain a stand-alone bar in which  
20 tobacco smoking is permitted, not to exceed 30 days, and shall  
21 be subject to a fine of not less than \$500 or more than  
22 \$2,000; and

23 (d) For the fourth or subsequent violation, the vendor  
24 shall receive a 60-day suspension of the right to maintain a  
25 stand-alone bar in which tobacco smoking is permitted and  
26 shall be subject to a fine of not less than \$500 or more than  
27 \$2,000 or revocation of the right to maintain a stand-alone  
28 bar in which tobacco smoking is permitted.

29 (9) The division shall adopt rules governing the  
30 designation process, criteria for qualification, required  
31 recordkeeping, auditing, and all other rules necessary for the

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1 effective enforcement and administration of this section and  
2 part II of chapter 386. The division is authorized to adopt  
3 emergency rules pursuant to s. 120.54(4) to implement the  
4 provisions of this section.

5       Section 15. If any provision of this act or the  
6 application thereof to any person or circumstance is held  
7 invalid, the invalidity shall not affect other provisions or  
8 applications of the act which can be given effect without the  
9 invalid provision or application, and to this end the  
10 provisions of this act are declared severable.

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

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

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19 ===== T I T L E   A M E N D M E N T =====

20 And the title is amended as follows:

21       Delete everything before the enacting clause

22

23 and insert:

24                               A bill to be entitled  
25       An act relating to the Florida Clean Indoor Air  
26       Act; implementing s. 20, Art. X of the State  
27       Constitution; amending s. 386.201, F.S.,  
28       providing a popular name; amending s. 386.202,  
29       F.S.; providing legislative intent; amending s.  
30       386.203, F.S.; providing definitions; amending  
31       s. 386.204, F.S.; prohibiting smoking in an

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1 enclosed indoor workplace; creating s.  
2 386.2045, F.S.; establishing specific  
3 exceptions to the prohibition against smoking  
4 in an enclosed indoor workplace; amending s.  
5 386.205, F.S.; providing for designated customs  
6 smoking rooms in airport in-transit lounges;  
7 providing requirements with respect thereto;  
8 amending s. 386.206, F.S.; providing for  
9 continuation of requirements with respect to  
10 the posting of signs stating that smoking is  
11 not permitted in an enclosed indoor workplace;  
12 requiring the proprietor or person in charge of  
13 an enclosed indoor workplace to develop and  
14 implement a policy regarding smoking  
15 prohibitions; providing requirements with  
16 respect to posting of signs at an airport  
17 terminal that includes a designated customs  
18 smoking room and an enclosed indoor workplace  
19 where a smoking cessation program or medical or  
20 scientific research is conducted or performed;  
21 providing for expiration of such provisions;  
22 amending s. 386.207, F.S.; providing for  
23 enforcement of the Florida Clean Indoor Act by  
24 the Department of Health, the Division of  
25 Hotels and Restaurants of the Department of  
26 Business and Professional Regulation, and the  
27 Division of Alcoholic Beverages and Tobacco of  
28 the Department of Business and Professional  
29 Regulation; increasing penalties; eliminating  
30 exemptions; amending s. 386.208, F.S.;

31 providing penalties; reenacting s. 386.209,

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1 F.S., which preempts regulation of smoking to  
2 the state; amending s. 386.211, F.S., relating  
3 to public announcements in mass transportation  
4 terminals, to conform; reenacting and amending  
5 s. 386.212, F.S., which prohibits any person  
6 under 18 years of age from smoking tobacco in,  
7 on, or within 1,000 feet of the real property  
8 comprising a public or private elementary,  
9 middle, or secondary school and provides  
10 penalties therefor; creating s. 386.2125, F.S.;  
11 requiring the Department of Health and the  
12 Department of Business and Professional  
13 Regulation to adopt rules; creating s. 561.695,  
14 F.S.; providing for designation of stand-alone  
15 bars by the Division of Alcoholic Beverages and  
16 Tobacco of the Department of Business and  
17 Professional Regulation; providing procedure,  
18 requirements, and restrictions with respect to  
19 such designation; providing for rulemaking;  
20 providing for enforcement; providing penalties;  
21 providing severability; providing for  
22 construction of the act in pari materia with  
23 laws enacted during the 2003 Regular Session of  
24 the Legislature; providing an effective date.

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