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1 A bill to be entitled

2 An act relating to the Florida Clean Indoor Air Act;
3 revising various provisions of pt. II of ch. 386, F.S.,
4 the Florida Clean Indoor Air Act, for the purpose of
5 implementing s. 20, Art. X of the State Constitution;
6 amending s. 386.201, F.S.; providing a popular name;
7 amending s. 386.202, F.S.; revising legislative intent;
8 amending s. 386.203, F.S.; providing definitions; amending
9 s. 386.204, F.S.; revising exceptions to the prohibition
10 on smoking in an enclosed indoor workplace; amending s.
11 386.206, F.S.; providing for continuation of requirements
12 with respect to the posting of signs stating that smoking
13 is not permitted in an indoor workplace; providing for
14 expiration of such provisions; requiring the proprietor or
15 person in charge of an enclosed indoor workplace to
16 develop and implement a policy regarding smoking
17 prohibitions; amending s. 386.207, F.S., relating to
18 administration, enforcement, and civil penalties; removing
19 a cross reference, to conform; eliminating exemptions;
20 amending s. 386.208, F.S.; clarifying language; reenacting
21 s. 386.209, F.S., which preempts regulation of smoking to
22 the state; amending s. 386.211, F.S., relating to public
23 announcements in mass transportation terminals, to
24 conform; reenacting s. 386.212, F.S., which prohibits any
25 person under 18 years of age from smoking tobacco in, on,
26 or within 1,000 feet of the real property comprising a
27 public or private elementary, middle, or secondary school
28 and provides penalties therefor; repealing s. 386.205,
29 F.S., relating to designation of smoking areas; providing
30 severability; providing for construction of the act in



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31 pari materia with laws enacted during the Regular Session
 32 of the Legislature;providing an effective date.

34 Be It Enacted by the Legislature of the State of Florida:

36 Section 1. Section 386.201, Florida Statutes, is amended
 37 to read:

38 386.201 Popular name ~~Short title~~.--This part may be cited
 39 by the popular name ~~as~~ the "Florida Clean Indoor Air Act."

40 Section 2. Section 386.202, Florida Statutes, is amended
 41 to read:

42 386.202 Legislative intent.--The purpose of this part is
 43 to protect individuals from the public health hazards of second-
 44 hand ~~, comfort, and environment by creating areas in public~~
 45 ~~places and at public meetings that are reasonably free from~~
 46 tobacco smoke and to implement s. 20, Art. X of the State
 47 Constitution ~~by providing a uniform statewide maximum code. This~~
 48 ~~part shall not be interpreted to require the designation of~~
 49 ~~smoking areas. However, it is the intent of the Legislature to~~
 50 ~~discourage the designation of any area within a government~~
 51 ~~building as a smoking area.~~

52 Section 3. Section 386.203, Florida Statutes, is amended
 53 to read:

54 386.203 Definitions.--As used in this part:

55 (1)~~(4)~~ "Smoking" means inhaling, exhaling, burning,
 56 carrying, or possessing any possession of a lighted tobacco
 57 product, including cigarettes, cigars, pipe tobacco, and
 58 ~~eigarette, lighted cigar, lighted pipe, or any other lighted~~
 59 tobacco product.



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60 (2) "Second-hand smoke," also known as environmental
61 tobacco smoke [ETS], means smoke emitted from lighted,
62 smoldering, or burning tobacco when the smoker is not inhaling;
63 smoke emitted at the mouthpiece during puff drawing; and smoke
64 exhaled by the smoker.

65 (3) "Work" means any person's providing any employment or
66 employment-type service for or at the request of another
67 individual or individuals or any public or private entity,
68 whether for compensation or not, whether full or part time,
69 whether legally or not. "Work" includes, without limitation, any
70 such service performed by an employee, independent contractor,
71 agent, partner, proprietor, manager, officer, director,
72 apprentice, trainee, associate, servant, volunteer, and the
73 like.

74 (4) "Enclosed indoor workplace" means any place where one
75 or more persons engages in work, and which place is
76 predominantly or totally bounded on all sides and above by
77 physical barriers, regardless of whether such barriers consist
78 of or include uncovered openings, screened or otherwise
79 partially covered openings; or open or closed windows,
80 jalousies, doors, or the like. This section applies to all such
81 enclosed indoor workplaces without regard to whether work is
82 occurring at any given time.

83 (5) "Commercial" use of a private residence means any time
84 during which the owner, lessee, or other person occupying or
85 controlling the use of the private residence is furnishing in
86 the private residence, or causing or allowing to be furnished in
87 the private residence, child care, adult care, or health care,
88 or any combination thereof, and receiving or expecting to
89 receive compensation therefor.



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

103 (7) "Designated smoking guest rooms at public lodging
104 establishments" means the sleeping rooms and directly associated
105 private areas, such as bathrooms, living rooms, and kitchen
106 areas, if any, rented to guests for their exclusive transient
107 occupancy in public lodging establishments, including hotels,
108 motels, resort condominiums, transient apartments, transient
109 lodging establishments, rooming houses, boarding houses, resort
110 dwelling, bed and breakfast inns, and the like; and designated
111 by the person or persons having management authority over such
112 public lodging establishment as rooms in which smoking may be
113 permitted.

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

116 ~~(a) Government buildings;~~

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

119 ~~(c) Elevators;~~



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- 120 ~~(d) Hospitals;~~
- 121 ~~(e) Nursing homes;~~
- 122 ~~(f) Educational facilities;~~
- 123 ~~(g) Public school buses;~~
- 124 ~~(h) Libraries;~~
- 125 ~~(i) Courtrooms;~~
- 126 ~~(j) Jury waiting and deliberation rooms;~~
- 127 ~~(k) Museums;~~
- 128 ~~(l) Theaters;~~
- 129 ~~(m) Auditoriums;~~
- 130 ~~(n) Arenas;~~
- 131 ~~(o) Recreational facilities;~~
- 132 ~~(p) Restaurants;~~
- 133 ~~(q) Retail stores, except a retail store the primary~~
- 134 ~~business of which is the sale of tobacco or tobacco related~~
- 135 ~~products;~~
- 136 ~~(r) Grocery stores;~~
- 137 ~~(s) Places of employment;~~
- 138 ~~(t) Health care facilities;~~
- 139 ~~(u) Day care centers; and~~
- 140 ~~(v) Common areas of retirement homes and condominiums.~~
- 141 ~~(2) "Government building" means any building or any~~
- 142 ~~portion of any building owned by or leased to the state or any~~
- 143 ~~political subdivision thereof and used for governmental~~
- 144 ~~purposes.~~
- 145 ~~(3) "Public meeting" means all meetings open to the~~
- 146 ~~public, including meetings of homeowner, condominium, or renter~~
- 147 ~~or tenant associations unless such meetings are held in a~~
- 148 ~~private residence.~~



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

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

154 (8)(7) "Department" means the Department of Health.

155 (9)(8) "Division" means the Division of Hotels and
 156 Restaurants of the Department of Business and Professional
 157 Regulation.

158 Section 4. Section 386.204, Florida Statutes, is amended
 159 to read:

160 386.204 Prohibition; exceptions.--A person may not smoke
 161 in an enclosed indoor workplace, except that smoking may be
 162 permitted in: ~~a public place or at a public meeting except in~~
 163 ~~designated smoking areas. These prohibitions do not apply in~~
 164 ~~cases in which an entire room or hall is used for a private~~
 165 ~~function and seating arrangements are under the control of the~~
 166 ~~sponsor of the function and not of the proprietor or person in~~
 167 ~~charge of the room or hall.~~

168 (1) Private residences when not being used for commercial
 169 purposes as defined in s. 386.203(5).

170 (2) Retail tobacco shops as defined in s. 386.203(6).

171 (3) Designated smoking guest rooms at public lodging
 172 establishments as defined in s. 386.203(7).

173 Section 5. Section 386.206, Florida Statutes, is amended
 174 to read:

175 386.206 Posting of signs; requiring policies.--

176 (1) The person in charge of an enclosed indoor workplace
 177 that prior to adoption of s. 20, Art. X of the State

178 Constitution was required to post signs under the requirements



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179 of this section must continue to a public place shall
 180 conspicuously post, or cause to be posted, in any area
 181 designated as a smoking area signs stating that smoking is not
 182 permitted in the indoor workplace such area. Each sign posted
 183 pursuant to this section must ~~shall~~ have letters of reasonable
 184 size which can be easily read. The color, design, and precise
 185 place of posting of such signs shall be left to the discretion
 186 of the person in charge of the premises. ~~In order to increase~~
 187 ~~public awareness, the person in charge of a public place may, at~~
 188 ~~his or her discretion, also post "NO SMOKING EXCEPT IN~~
 189 ~~DESIGNATED AREAS" signs as appropriate.~~

190 (2) The proprietor or other person in charge of an
 191 enclosed indoor workplace must develop and implement a policy
 192 regarding the smoking prohibitions established in this part.
 193 The policy may include, but is not limited to, procedures to be
 194 taken when the proprietor or other person in charge witnesses or
 195 is made aware of a violation of s. 386.204 in the enclosed
 196 indoor workplace and must include a policy which prohibits an
 197 employee from smoking in the enclosed indoor workplace.

198 (3) The provisions of subsection (1) shall expire on July
 199 1, 2005.

200 Section 6. Section 386.207, Florida Statutes, is amended
 201 to read:

202 386.207 Administration; enforcement; civil penalties;
 203 exemptions.--

204 (1) The department or the division shall enforce s. ss.
 205 ~~386.205 and 386.206~~ and to implement such enforcement shall
 206 adopt, in consultation with the State Fire Marshal, rules
 207 specifying procedures to be followed by enforcement personnel in
 208 investigating complaints and notifying alleged violators, ~~rules~~



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209 ~~defining types of cases for which exemptions may be granted,~~ and
210 rules specifying procedures by which appeals may be taken by
211 aggrieved parties.

212 (2) Public agencies responsible for the management and
213 maintenance of government buildings shall report observed
214 violations to the department or division. The State Fire Marshal
215 shall report to the department or division observed violations
216 of s. ss. 386.205 and 386.206 found during its periodic
217 inspections of enclosed indoor workplaces conducted pursuant to
218 its regulatory authority. The department or the division, upon
219 notification of observed violations of s. ss. 386.205 and
220 386.206, shall issue to the proprietor or other person in charge
221 of such enclosed indoor workplace ~~public place~~ a notice to
222 comply with s. ss. 386.205 and 386.206. If such person fails to
223 comply within 30 days after receipt of such notice, the
224 department or the division shall assess a civil penalty against
225 him or her not to exceed \$100 for the first violation and not to
226 exceed \$500 for each subsequent violation. The imposition of
227 such fine shall be in accordance with the provisions of chapter
228 120. If a person refuses to comply with s. ss. 386.205 and
229 386.206, after having been assessed such penalty, the department
230 or the division may file a complaint in the circuit court of the
231 county in which such public place is located to require
232 compliance.

233 ~~(3) A person may request an exemption from ss. 386.205 and~~
234 ~~386.206 by applying to the department or the division. The~~
235 ~~department or the division may grant exemptions on a case-by-~~
236 ~~case basis where it determines that substantial good faith~~
237 ~~efforts have been made to comply or that emergency or~~
238 ~~extraordinary circumstances exist.~~



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239 (3)~~(4)~~ All fine moneys collected pursuant to this section
 240 shall be used by the department for children's medical services
 241 programs pursuant to the provisions of part I of chapter 391.

242 Section 7. Section 386.208, Florida Statutes, is amended
 243 to read:

244 386.208 Penalties.--Any person who violates s. 386.204
 245 commits a noncriminal violation as defined ~~provided for~~ in s.
 246 775.08(3), punishable by a fine of not more than \$100 for the
 247 first violation and not more than \$500 for each subsequent
 248 violation. Jurisdiction shall be with the appropriate county
 249 court.

250 Section 8. Section 386.209, Florida Statutes, is reenacted
 251 to read:

252 386.209 Regulation of smoking preempted to state.--This
 253 part expressly preempts regulation of smoking to the state and
 254 supersedes any municipal or county ordinance on the subject.

255 Section 9. Section 386.211, Florida Statutes, is amended
 256 to read:

257 386.211 Public announcements in mass transportation
 258 terminals.--Announcements about the Florida Clean Indoor Air Act
 259 shall be made regularly over public address systems in terminals
 260 of public transportation carriers located in metropolitan
 261 statistical areas with populations over 230,000 according to the
 262 latest census. These announcements shall be made at least every
 263 30 minutes and shall be made in appropriate languages. Each
 264 announcement shall include a statement to the effect that
 265 Florida is a clean indoor air state and that smoking is
 266 prohibited in enclosed indoor workplaces ~~allowed only in~~
 267 ~~designated areas~~.



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268 Section 10. Section 386.212, Florida Statutes, is
 269 reenacted to read:

270 386.212 Smoking prohibited near school property;
 271 penalty.--

272 (1) It is unlawful for any person under 18 years of age to
 273 smoke tobacco in, on, or within 1,000 feet of the real property
 274 comprising a public or private elementary, middle, or secondary
 275 school between the hours of 6 a.m. and midnight. This section
 276 shall not apply to any person occupying a moving vehicle or
 277 within a private residence.

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

- 282 (a) The date and time of issuance.
- 283 (b) The name and address of the person cited.
- 284 (c) The date and time the civil infraction was committed.
- 285 (d) The statute violated.
- 286 (e) The facts constituting the violation.
- 287 (f) The name and authority of the law enforcement officer.
- 288 (g) The procedure for the person to follow to pay the
 289 civil penalty, to contest the citation, or to appear in court.
- 290 (h) The applicable civil penalty if the person elects not
 291 to contest the citation.

292 (i) The applicable civil penalty if the person elects to
 293 contest the citation.

294 (3) Any person issued a citation pursuant to this section
 295 shall be deemed to be charged with a civil infraction punishable
 296 by a maximum civil penalty not to exceed \$25, or 50 hours of
 297 community service or, where available, successful completion of



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298 a school-approved anti-tobacco "alternative to suspension"
299 program.

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

304 Section 11. Section 386.205, Florida Statutes, is
305 repealed.

306 Section 12. If any provision of this act or the
307 application thereof to any person or circumstance is held
308 invalid, the invalidity shall not affect other provisions or
309 applications of the act which can be given effect without the
310 invalid provision or application, and to this end the provisions
311 of this act are declared severable.

312 Section 13. This act shall take effect July 1, 2003.