



1 A bill to be entitled

2 An act relating to the Florida Clean Indoor Air Act;
3 implementing s. 20, Art. X of the State Constitution;
4 amending s. 386.201, F.S., providing a popular name;
5 amending s. 386.202, F.S.; providing legislative intent;
6 amending s. 386.203, F.S.; providing definitions; amending
7 s. 386.204, F.S.; prohibiting smoking in an enclosed
8 indoor workplace; creating s. 386.2045, F.S.; establishing
9 specific exceptions to the prohibition against smoking in
10 an enclosed indoor workplace; amending s. 386.205, F.S.;
11 providing for designated customs smoking rooms in airport
12 in-transit lounges; providing requirements with respect
13 thereto; amending s. 386.206, F.S.; providing for
14 continuation of requirements with respect to the posting
15 of signs stating that smoking is not permitted in an
16 enclosed indoor workplace; requiring the proprietor or
17 person in charge of an enclosed indoor workplace to
18 develop and implement a policy regarding smoking
19 prohibitions; providing requirements with respect to
20 posting of signs at an airport terminal that includes a
21 designated customs smoking room and an enclosed indoor
22 workplace where a smoking cessation program or medical or
23 scientific research is conducted or performed; providing
24 for expiration of such provisions; amending s. 386.207,
25 F.S.; providing for enforcement of the Florida Clean
26 Indoor Act by the Department of Health, the Division of
27 Hotels and Restaurants of the Department of Business and
28 Professional Regulation, and the Division of Alcoholic
29 Beverages and Tobacco of the Department of Business and
30 Professional Regulation; increasing penalties; eliminating



31 exemptions; amending s. 386.208, F.S.; providing
 32 penalties; reenacting s. 386.209, F.S., which preempts
 33 regulation of smoking to the state; amending s. 386.211,
 34 F.S., relating to public announcements in mass
 35 transportation terminals, to conform; reenacting and
 36 amending s. 386.212, F.S., which prohibits any person
 37 under 18 years of age from smoking tobacco in, on, or
 38 within 1,000 feet of the real property comprising a public
 39 or private elementary, middle, or secondary school and
 40 provides penalties therefor; creating s. 386.2125, F.S.;
 41 requiring the Department of Health and the Department of
 42 Business and Professional Regulation to adopt rules;
 43 creating s. 561.695, F.S.; providing for designation of
 44 stand-alone bars by the Division of Alcoholic Beverages
 45 and Tobacco of the Department of Business and Professional
 46 Regulation; providing procedure, requirements, and
 47 restrictions with respect to such designation; providing
 48 for rulemaking; providing for enforcement; providing
 49 penalties; providing severability; providing for
 50 construction of the act in pari materia with laws enacted
 51 during the 2003 Regular Session of the Legislature;
 52 providing an effective date.

53
 54 Be It Enacted by the Legislature of the State of Florida:

55
 56 Section 1. Section 386.201, Florida Statutes, is amended
 57 to read:

58 386.201 Popular name ~~Short title~~.--This part may be cited
 59 by the popular name as the "Florida Clean Indoor Air Act."

60 Section 2. Section 386.202, Florida Statutes, is amended



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61 to read:

62 386.202 Legislative intent.--The purpose of this part is
 63 to protect people from the public health hazards of second-hand,
 64 ~~comfort, and environment by creating areas in public places and~~
 65 ~~at public meetings that are reasonably free from tobacco smoke~~
 66 and to implement the Florida health initiative in s. 20, Art. X
 67 of the State Constitution by providing a uniform statewide
 68 maximum code. It is the intent of the Legislature to not
 69 inhibit, or otherwise obstruct, medical or scientific research
 70 or smoking-cessation programs approved by the Department of
 71 Health. This part shall not be interpreted to require the
 72 designation of smoking areas. However, it is the intent of the
 73 Legislature to discourage the designation of any area within a
 74 government building as a smoking area.

75 Section 3. Section 386.203, Florida Statutes, is amended
 76 to read:

77 386.203 Definitions.--As used in this part:

78 (1) "Commercial" use of a private residence means any time
 79 during which the owner, lessee, or other person occupying or
 80 controlling the use of the private residence is furnishing in
 81 the private residence, or causing or allowing to be furnished in
 82 the private residence, child care, adult care, or health care,
 83 or any combination thereof, and receiving or expecting to
 84 receive compensation therefor.

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

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



91 (4) "Designated smoking guest rooms at public lodging
92 establishments" means the sleeping rooms and directly associated
93 private areas, such as bathrooms, living rooms, and kitchen
94 areas, if any, rented to guests for their exclusive transient
95 occupancy in public lodging establishments, including hotels,
96 motels, resort condominiums, transient apartments, transient
97 lodging establishments, rooming houses, boarding houses, resort
98 dwelling, bed and breakfast inns, and the like; and designated
99 by the person or persons having management authority over such
100 public lodging establishment as rooms in which smoking may be
101 permitted.

102 (5) "Enclosed indoor workplace" means any place where one
103 or more persons engages in work, and which place is
104 predominantly or totally bounded on all sides and above by
105 physical barriers, regardless of whether such barriers consist
106 of or include, without limitation, uncovered openings, screened
107 or otherwise partially covered openings; or open or closed
108 windows, jalousies, doors, or the like. A place is
109 "predominantly" bounded by physical barriers during any time
110 when both of the following conditions exist:

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

113 (b) More than 50 percent of the combined surface area of
114 its sides is covered by closed physical barriers. In
115 calculating the percentage of side surface area covered by
116 closed physical barriers, all solid surfaces that block air
117 flow, except railings, must be considered as closed physical
118 barriers. This section applies to all such enclosed indoor
119 workplaces and enclosed parts thereof without regard to whether
120 work is occurring at any given time.



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

126 (6) "Essential services" means those services that are
127 essential to the maintenance of any enclosed indoor room,
128 including, but not limited to, janitorial services, repairs, or
129 renovations.

130 (7) "Physical barrier" includes an uncovered opening, a
131 screened or otherwise partially covered opening, or an open or
132 closed window, jalousie, or door.

133 (8) "Retail tobacco shop" means any enclosed indoor
134 workplace dedicated to or predominantly for the retail sale of
135 tobacco, tobacco products, and accessories for such products, in
136 which the sale of other products or services is merely
137 incidental. Any enclosed indoor workplace of a business that
138 manufactures, imports, or distributes tobacco products or of a
139 tobacco leaf dealer is a business dedicated to or predominantly
140 for the retail sale of tobacco and tobacco products when, as a
141 necessary and integral part of the process of making,
142 manufacturing, importing, or distributing a tobacco product for
143 the eventual retail sale of such tobacco or tobacco product,
144 tobacco is heated, burned, or smoked or a lighted tobacco
145 product is tested.

146 (9) "Second-hand smoke," also known as environmental
147 tobacco smoke (ETS), means smoke emitted from lighted,
148 smoldering, or burning tobacco when the smoker is not inhaling;
149 smoke emitted at the mouthpiece during puff drawing; and smoke
150 exhaled by the smoker.



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151 ~~(10)(4)~~ "Smoking" means inhaling, exhaling, burning,
 152 carrying, or possessing any possession of a lighted tobacco
 153 product, including cigarettes, cigars, pipe tobacco, and
 154 cigarette, lighted cigar, lighted pipe, or any other lighted
 155 tobacco product.

156 (11) "Stand-alone bar" means any licensed premises devoted
 157 during any time of operation predominantly or totally to serving
 158 alcoholic beverages, intoxicating beverages, or intoxicating
 159 liquors, or any combination thereof, for consumption on the
 160 licensed premises; in which the serving of food, if any, is
 161 merely incidental to the consumption of any such beverage; and
 162 the licensed premises is not located within, and does not share
 163 any common entryway or common indoor area with, any other
 164 enclosed indoor workplace, including any business for which the
 165 sale of food or any other product or service is more than an
 166 incidental source of gross revenue. A place of business
 167 constitutes a stand-alone bar in which the service of food is
 168 merely incidental in accordance with this subsection if the
 169 licensed premises derives no more than 10 percent of its gross
 170 revenue from the sale of food consumed on the licensed premises.

171 (12) "Work" means any person's providing any employment or
 172 employment-type service for or at the request of another
 173 individual or individuals or any public or private entity,
 174 whether for compensation or not, whether full or part time,
 175 whether legally or not. "Work" includes, without limitation, any
 176 such service performed by an employee, independent contractor,
 177 agent, partner, proprietor, manager, officer, director,
 178 apprentice, trainee, associate, servant, volunteer, and the
 179 like. The term does not include noncommercial activities
 180 performed by members of a membership association.



181 (13) "Membership association" means a charitable,
 182 nonprofit, or veterans' organization that holds a current
 183 exemption under s. 501(c)(3), s. 501(c)(4), s. 501(c)(7), s.
 184 501(c)(8), s. 501(c)(10), s. 501(c)(19), or s. 501(d) of the
 185 Internal Revenue Code.

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

- 188 ~~(a) Government buildings;~~
- 189 ~~(b) Public means of mass transportation and their~~
 190 ~~associated terminals not subject to federal smoking regulation;~~
- 191 ~~(c) Elevators;~~
- 192 ~~(d) Hospitals;~~
- 193 ~~(e) Nursing homes;~~
- 194 ~~(f) Educational facilities;~~
- 195 ~~(g) Public school buses;~~
- 196 ~~(h) Libraries;~~
- 197 ~~(i) Courtrooms;~~
- 198 ~~(j) Jury waiting and deliberation rooms;~~
- 199 ~~(k) Museums;~~
- 200 ~~(l) Theaters;~~
- 201 ~~(m) Auditoriums;~~
- 202 ~~(n) Arenas;~~
- 203 ~~(o) Recreational facilities;~~
- 204 ~~(p) Restaurants;~~
- 205 ~~(q) Retail stores, except a retail store the primary~~
 206 ~~business of which is the sale of tobacco or tobacco related~~
 207 ~~products;~~
- 208 ~~(r) Grocery stores;~~
- 209 ~~(s) Places of employment;~~
- 210 ~~(t) Health care facilities;~~



211 ~~(u) Day care centers; and~~
 212 ~~(v) Common areas of retirement homes and condominiums.~~
 213 ~~(2) "Government building" means any building or any~~
 214 ~~portion of any building owned by or leased to the state or any~~
 215 ~~political subdivision thereof and used for governmental~~
 216 ~~purposes.~~

217 ~~(3) "Public meeting" means all meetings open to the~~
 218 ~~public, including meetings of homeowner, condominium, or renter~~
 219 ~~or tenant associations unless such meetings are held in a~~
 220 ~~private residence.~~

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

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

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

227 ~~(8) "Division" means the Division of Hotels and~~
 228 ~~Restaurants of the Department of Business and Professional~~
 229 ~~Regulation.~~

230 Section 4. Section 386.204, Florida Statutes, is amended
 231 to read:

232 386.204 Prohibition.--A person may not smoke in an
 233 enclosed indoor workplace, except as otherwise provided in s.
 234 386.2045 ~~a public place or at a public meeting except in~~
 235 ~~designated smoking areas. These prohibitions do not apply in~~
 236 ~~eases in which an entire room or hall is used for a private~~
 237 ~~function and seating arrangements are under the control of the~~
 238 ~~sponsor of the function and not of the proprietor or person in~~
 239 ~~charge of the room or hall.~~

240 Section 5. Section 386.2045, Florida Statutes, is created



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241 to read:

242 386.2045 Enclosed indoor workplaces; specific
243 exceptions.--Notwithstanding s. 386.204, tobacco smoking may be
244 permitted in each of the following places:

245 (1) PRIVATE RESIDENCE.--A private residence whenever it is
246 not being used commercially to provide child care, adult care,
247 or health care, or any combination thereof as defined in s.
248 386.203(1).

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

253 (3) DESIGNATED SMOKING GUEST ROOM.--A designated smoking
254 guest room at a public lodging establishment as defined in s.
255 386.203(4).

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

260 (5) SMOKING-CESSATION PROGRAM, MEDICAL OR SCIENTIFIC
261 RESEARCH.--An enclosed indoor workplace, to the extent that
262 tobacco smoking is an integral part of a smoking-cessation
263 program approved by the department, or medical or scientific
264 research conducted therein. Each room in which tobacco smoking
265 is permitted must comply with the signage requirements in s.
266 386.206.

267 (6) CUSTOMS SMOKING ROOM.--A customs smoking room in an
268 airport in-transit lounge under the authority and control of the
269 Bureau of Customs and Border Protection of the United States
270 Department of Homeland Security subject to the restrictions



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271 contained in s. 386.205.

272 Section 6. Section 386.205, Florida Statutes, is amended
273 to read:

274 386.205 Customs ~~Designation of~~ smoking rooms ~~areas~~.--

275 (1) A customs smoking room ~~areas~~ may be designated by the
276 person in charge of an airport in-transit lounge under the
277 authority and control of the Bureau of Customs and Border
278 Protection of the United States Department of Homeland Security
279 ~~a public place~~. A customs smoking room may only be designated in
280 an airport in-transit lounge under the authority and control of
281 the Bureau of Customs and Border Protection of the United States
282 Department of Homeland Security. A customs smoking room may not
283 be designated in an elevator, restroom, or any common area as
284 defined by s. 386.203. Each customs smoking room must conform to
285 the following requirements:

286 (a) Work, other than essential services defined in s.
287 386.203(6), must not be performed in the room at any given time.

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

290 (c) Each customs smoking room must be enclosed by physical
291 barriers that are impenetrable by second-hand tobacco smoke and
292 prevent the escape of second-hand tobacco smoke into the
293 enclosed indoor workplace.

294 (d) Each customs smoking room must exhaust tobacco smoke
295 directly to the outside and away from air intake ducts, and be
296 maintained under negative pressure, with respect to surrounding
297 spaces, sufficient to contain tobacco smoke within the room.

298 (e) Each customs smoking room must comply with the signage
299 requirements in s. 386.206. ~~If a smoking area is designated,~~
300 existing physical barriers and ventilation systems shall be used



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301 ~~to minimize smoke in adjacent nonsmoking areas. This provision~~
302 ~~shall not be construed to require fixed structural or other~~
303 ~~physical modifications in providing these areas or to require~~
304 ~~operation of any existing heating, ventilating, and air-~~
305 ~~conditioning system (HVAC system) in any manner which decreases~~
306 ~~its energy efficiency or increases its electrical demand, or~~
307 ~~both, nor shall this provision be construed to require~~
308 ~~installation of new or additional HVAC systems.~~

309 ~~(2)(a) A smoking area may not be designated in an~~
310 ~~elevator, school bus, public means of mass transportation~~
311 ~~subject only to state smoking regulation, restroom, hospital,~~
312 ~~doctor's or dentist's waiting room, jury deliberation room,~~
313 ~~county health department, day care center, school or other~~
314 ~~educational facility, or any common area as defined in s.~~
315 ~~386.203. However, a patient's room in a hospital, nursing home,~~
316 ~~or other health care facility may be designated as a smoking~~
317 ~~area if such designation is ordered by the attending physician~~
318 ~~and agreed to by all patients assigned to that room.~~

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

322 ~~(3) In a workplace where there are smokers and nonsmokers,~~
323 ~~employers shall develop, implement, and post a policy regarding~~
324 ~~designation of smoking and nonsmoking areas. Such a policy shall~~
325 ~~take into consideration the proportion of smokers and~~
326 ~~nonsmokers. Employers who make reasonable efforts to develop,~~
327 ~~implement, and post such a policy shall be deemed in compliance.~~
328 ~~An entire area may be designated as a smoking area if all~~
329 ~~workers routinely assigned to work in that area at the same time~~
330 ~~agree. With respect to the square footage in any public place as~~



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331 ~~described in subsection (4), this square footage shall not~~
332 ~~include private office work space which is not a common area as~~
333 ~~defined in s. 386.203(6) and which is ordinarily inaccessible to~~
334 ~~the public.~~

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

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

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

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

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

350 ~~(6) Each state agency may adopt rules for administering~~
351 ~~this section which take into consideration the provisions of~~
352 ~~this part.~~

353 Section 7. Section 386.206, Florida Statutes, is amended
354 to read:

355 386.206 Posting of signs; requiring policies.--

356 (1) The person in charge of an enclosed indoor workplace
357 that prior to adoption of s. 20, Art. X of the State
358 Constitution was required to post signs under the requirements
359 of this section must continue to a public place shall
360 conspicuously post, or cause to be posted, in any area



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361 ~~designated as a smoking area~~ signs stating that smoking is not
362 permitted in the enclosed indoor workplace ~~such area~~. Each sign
363 posted pursuant to this section must ~~shall~~ have letters of
364 reasonable size which can be easily read. The color, design, and
365 precise place of posting of such signs shall be left to the
366 discretion of the person in charge of the premises. ~~In order to~~
367 ~~increase public awareness, the person in charge of a public~~
368 ~~place may, at his or her discretion, also post "NO SMOKING~~
369 ~~EXCEPT IN DESIGNATED AREAS" signs as appropriate.~~

370 (2) The proprietor or other person in charge of an
371 enclosed indoor workplace must develop and implement a policy
372 regarding the smoking prohibitions established in this part.
373 The policy may include, but is not limited to, procedures to be
374 taken when the proprietor or other person in charge witnesses or
375 is made aware of a violation of s. 386.204 in the enclosed
376 indoor workplace and must include a policy which prohibits an
377 employee from smoking in the enclosed indoor workplace. In order
378 to increase public awareness, the person in charge of an
379 enclosed indoor workplace may, at his or her discretion, post
380 "NO SMOKING" signs as deemed appropriate.

381 (3) The person in charge of an airport terminal that
382 includes a designated customs smoking room must conspicuously
383 post, or cause to be posted, signs stating that no smoking is
384 permitted except in the designated customs smoking room located
385 in the customs area of the airport. Each sign posted pursuant to
386 this section must have letters of reasonable size that can be
387 easily read. The color, design, and precise locations at which
388 such signs are posted shall be left to the discretion of the
389 person in charge of the premises.

390 (4) The proprietor or other person in charge of an



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391 enclosed indoor workplace where a smoking cessation program,
392 medical research, or scientific research is conducted or
393 performed must conspicuously post, or cause to be posted, signs
394 stating that smoking is permitted for such purposes in
395 designated areas in the enclosed indoor workplace. Each sign
396 posted pursuant to this section must have letters of reasonable
397 size which can be easily read. The color, design, and precise
398 locations at which such signs are posted shall be left to the
399 discretion of the person in charge of the premises.

400 (5) The provisions of subsection (1) shall expire on July
401 1, 2005.

402 Section 8. Section 386.207, Florida Statutes, is amended
403 to read:

404 386.207 Administration; enforcement; civil penalties;
405 ~~exemptions.--~~

406 (1) The department or the Division of Hotels and
407 Restaurants or the Division of Alcoholic Beverages and Tobacco
408 of the Department of Business and Professional Regulation ~~or the~~
409 ~~division~~ shall enforce this part based upon each department's
410 specific areas of regulatory authority ~~ss. 386.205 and 386.206~~
411 and to implement such enforcement shall adopt, in consultation
412 with the State Fire Marshal, rules specifying procedures to be
413 followed by enforcement personnel in investigating complaints
414 and notifying alleged violators, ~~rules defining types of cases~~
415 ~~for which exemptions may be granted,~~ and rules specifying
416 procedures by which appeals may be taken by aggrieved parties.

417 (2) Public agencies responsible for the management and
418 maintenance of government buildings shall report observed
419 violations to the department ~~or division~~. The State Fire Marshal
420 shall report to the department ~~or division~~ observed violations



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421 of this part ~~ss. 386.205 and 386.206~~ found during its periodic
 422 inspections conducted under ~~pursuant to~~ its regulatory
 423 authority.

424 (3) The department or the Division of Hotels and
 425 Restaurants or the Division of Alcoholic Beverages and Tobacco
 426 of the Department of Business and Professional Regulation ~~or the~~
 427 ~~division~~, upon notification of observed violations of this part
 428 ~~ss. 386.205 and 386.206~~, shall issue to the proprietor or other
 429 person in charge of such enclosed indoor workplace ~~public place~~
 430 a notice to comply with this part ~~ss. 386.205 and 386.206~~. If
 431 the ~~such~~ person fails to comply within 30 days after receipt of
 432 the ~~such~~ notice, the department or the Division of Hotels and
 433 Restaurants or the Division of Alcoholic Beverages and Tobacco
 434 of the Department of Business and Professional Regulation
 435 ~~division~~ shall assess a civil penalty against the person of not
 436 less than \$250 and ~~him or her~~ not to exceed \$750 ~~\$100~~ for the
 437 first violation and not less than \$500 and not to exceed \$2,000
 438 ~~\$500~~ for each subsequent violation. The imposition of the ~~such~~
 439 fine must ~~shall~~ be in accordance with ~~the provisions of~~ chapter
 440 120. If a person refuses to comply with this part ~~ss. 386.205~~
 441 ~~and 386.206~~, after having been assessed such penalty, the
 442 department or the Division of Hotels and Restaurants or the
 443 Division of Alcoholic Beverages and Tobacco of the Department of
 444 Business and Professional Regulation ~~division~~ may file a
 445 complaint in the circuit court of the county in which the
 446 enclosed indoor workplace ~~such public place~~ is located to
 447 require compliance.

448 ~~(3) A person may request an exemption from ss. 386.205 and~~
 449 ~~386.206 by applying to the department or the division. The~~
 450 ~~department or the division may grant exemptions on a case-by-~~



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451 ~~ease basis where it determines that substantial good faith~~
 452 ~~efforts have been made to comply or that emergency or~~
 453 ~~extraordinary circumstances exist.~~

454 (3)~~(4)~~ All fine moneys collected pursuant to this section
 455 shall be used by the department for children's medical services
 456 programs pursuant to the provisions of part I of chapter 391.

457 Section 9. Section 386.208, Florida Statutes, is amended
 458 to read:

459 386.208 Penalties.--Any person who violates s. 386.204
 460 commits a noncriminal violation as defined ~~provided for~~ in s.
 461 775.08(3), punishable by a fine of not more than \$100 for the
 462 first violation and not more than \$500 for each subsequent
 463 violation. Jurisdiction shall be with the appropriate county
 464 court.

465 Section 10. Section 386.209, Florida Statutes, is
 466 reenacted to read:

467 386.209 Regulation of smoking preempted to state.--This
 468 part expressly preempts regulation of smoking to the state and
 469 supersedes any municipal or county ordinance on the subject.

470 Section 11. Section 386.211, Florida Statutes, is amended
 471 to read:

472 386.211 Public announcements in mass transportation
 473 terminals.--Announcements about the Florida Clean Indoor Air Act
 474 shall be made regularly over public address systems in terminals
 475 of public transportation carriers located in metropolitan
 476 statistical areas with populations over 230,000 according to the
 477 latest census. These announcements shall be made at least every
 478 30 minutes and shall be made in appropriate languages. Each
 479 announcement must ~~shall~~ include a statement to the effect that
 480 Florida is a clean indoor air state and that smoking is not



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481 allowed except as provided in this part only in designated
 482 areas.

483 Section 12. Section 386.212, Florida Statutes, is
 484 reenacted and amended to read:

485 386.212 Smoking prohibited near school property;
 486 penalty.--

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

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

- 497 (a) The date and time of issuance.
- 498 (b) The name and address of the person cited.
- 499 (c) The date and time the civil infraction was committed.
- 500 (d) The statute violated.
- 501 (e) The facts constituting the violation.
- 502 (f) The name and authority of the law enforcement officer.
- 503 (g) The procedure for the person to follow to pay the
 504 civil penalty, to contest the citation, or to appear in court.
- 505 (h) The applicable civil penalty if the person elects not
 506 to contest the citation.
- 507 (i) The applicable civil penalty if the person elects to
 508 contest the citation.

509 (3) Any person issued a citation pursuant to this section
 510 shall be deemed to be charged with a civil infraction punishable



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511 by a maximum civil penalty not to exceed \$25, or 50 hours of
512 community service or, where available, successful completion of
513 a school-approved anti-tobacco "alternative to suspension"
514 program.

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

519 Section 13. Section 386.2125, Florida Statutes, is created
520 to read:

521 386.2125 Rulemaking.--The department and the Department of
522 Business and Professional Regulation, shall, in consultation
523 with the State Fire Marshal, have the authority to adopt rules
524 pursuant to ss. 120.536(1) and 120.54 to implement the
525 provisions of this part within each agency's specific areas of
526 regulatory authority. Whenever assessing a smoking cessation
527 program for approval, the department shall consider whether the
528 smoking cessation program limits to the extent possible the
529 potential for exposure to second-hand tobacco smoke, if any, to
530 nonparticipants in the enclosed indoor workplace.

531 Section 14. Section 561.695, Florida Statutes, is created
532 to read:

533 561.695 Stand-alone bar enforcement; qualification;
534 penalties.--

535 (1) The division shall designate as a stand-alone bar the
536 licensed premises of a vendor that operates a business that
537 meets the definition of a stand-alone bar in s. 386.203(11) upon
538 receipt of the vendor's election to permit tobacco smoking in
539 the licensed premises.

540 (2) Upon this act becoming a law and until the annual



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541 renewal of a vendor's license, a licensed vendor who makes the
542 required election under subsection (1) may permit tobacco
543 smoking on the licensed premises and must post a notice of such
544 intention at the same location at which the vendor's current
545 alcoholic beverage license is posted. The notice shall affirm
546 the vendor's intent to comply with the conditions and
547 qualifications of a stand-alone bar imposed pursuant to part II
548 of chapter 386 and the Beverage Law.

549 (3) Only the licensed vendor may provide or serve food on
550 the licensed premises of a stand-alone bar. Other than
551 customary bar snacks as defined by rule of the division, the
552 licensed vendor may not provide or serve food to a person on the
553 licensed premises without requiring the person to pay a
554 separately stated charge for the food that reasonably
555 approximates the retail value of the food.

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

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

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

569 (b) Other than customary bar snacks as defined by rule of
570 the division, the licensed vendor does not provide or serve food



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571 to a person on the licensed premises without requiring the
572 person to pay a separately stated charge for food that
573 reasonably approximates the retail value of the food.

574 (c) The licensed vendor conspicuously posts signs at each
575 entrance to the establishment stating that smoking is permitted
576 in the establishment.

577
578 The division shall establish by rule the format of the affidavit
579 required by this subsection.

580 (6) Every third year after the initial designation, on or
581 before the licensee's annual license renewal, the licensed
582 vendor must additionally provide to the division an agreed upon
583 procedures report in a format established by rule of the
584 department from a Florida certified public accountant that
585 attests to the licensee's compliance with the percentage
586 requirement of s. 386.203(11) for the preceding 36-month period.
587 Such report shall be admissible in any proceeding pursuant to s.
588 120.57. This subsection does not apply to a stand-alone bar if
589 the only food provided by the business, or in any other way
590 present or brought onto the premises for consumption by patrons,
591 is limited to nonperishable snack food items commercially
592 prepackaged off the premises of the stand-alone bar and served
593 without additions or preparation; except that a stand-alone bar
594 may pop popcorn for consumption on its premises, provided that
595 the equipment used to pop the popcorn is not used to prepare any
596 other food for patrons.

597 (7) The Division of Alcoholic Beverages and Tobacco shall
598 have the power to enforce the provisions of part II of chapter
599 386 and to audit a licensed vendor that operates a business that
600 meets the definition of a stand-alone bar as provided in s.



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601 386.203(11) for compliance with this section.

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

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

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

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

616 (d) For the fourth or subsequent violation, the vendor
617 shall receive a 60-day suspension of the right to maintain a
618 stand-alone bar in which tobacco smoking is permitted and shall
619 be subject to a fine of not less than \$500 or more than \$2,000
620 or revocation of the right to maintain a stand-alone bar in
621 which tobacco smoking is permitted.

622 (9) The division shall adopt rules governing the
623 designation process, criteria for qualification, required
624 recordkeeping, auditing, and all other rules necessary for the
625 effective enforcement and administration of this section and
626 part II of chapter 386. The division is authorized to adopt
627 emergency rules pursuant to s. 120.54(4) to implement the
628 provisions of this section.

629 Section 15. If any provision of this act or the
630 application thereof to any person or circumstance is held



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631 invalid, the invalidity shall not affect other provisions or
632 applications of the act which can be given effect without the
633 invalid provision or application, and to this end the provisions
634 of this act are declared severable.

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

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