

1 A bill to be entitled
2 An act relating to the Florida Clean Indoor Air
3 Act; implementing s. 20, Art. X of the State
4 Constitution; reenacting s. 386.201, F.S.,
5 relating to a short title; amending s. 386.202,
6 F.S.; providing legislative intent and
7 findings; amending s. 386.203, F.S.; providing
8 definitions; amending s. 386.204, F.S.;
9 prohibiting smoking in certain places; creating
10 s. 386.2045, F.S.; establishing specific
11 exceptions where smoking is permitted; amending
12 s. 386.205, F.S.; providing for designated
13 smoking rooms in airport in-transit lounges;
14 amending s. 386.206, F.S.; providing
15 requirements for the posting of signs by
16 certain persons and in certain areas; amending
17 s. 386.207, F.S.; providing for enforcement of
18 the act by the Department of Business and
19 Professional Regulation and the Department of
20 Health; providing penalties; providing for the
21 use of moneys collected as fines under the act;
22 amending s. 386.208, F.S.; providing penalties;
23 reenacting s. 386.209, F.S., relating to
24 preemption by the state of the regulation of
25 smoking; amending s. 386.211, F.S.; providing
26 for announcements at certain facilities;
27 amending s. 386.212, F.S.; prohibiting smoking
28 near school property; creating s. 386.2125,
29 F.S.; requiring the Department of Health and
30 the Department of Business and Professional
31 Regulation to adopt rules; creating s. 561.695,

1 F.S.; providing for designation of stand-alone
 2 bars; providing for rulemaking; providing for
 3 enforcement; providing for penalties; providing
 4 for construction of the act in pari materia
 5 with laws enacted during the Regular Session of
 6 the Legislature; providing for severability;
 7 providing an effective date.

8
 9 Be It Enacted by the Legislature of the State of Florida:

10
 11 Section 1. Section 386.201, Florida Statutes, is
 12 amended to read:

13 386.201 Popular name ~~Short title~~.--This part may be
 14 cited by the popular name ~~as~~ the "Florida Clean Indoor Air
 15 Act."

16 Section 2. Section 386.202, Florida Statutes, is
 17 amended to read:

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

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

3 386.203 Definitions.--As used in this part:

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

11 (2) "Common area" means a hallway, corridor, lobby,
12 aisle, water fountain area, restroom, stairwell, entryway, or
13 conference room in a customs area of an airport terminal under
14 the authority and control of the Bureau of Customs and Border
15 Protection of the United States Department of Homeland
16 Security.

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

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

29 (5) "Enclosed indoor workplace" means any place where
30 one or more persons engages in work, and which place is
31 predominantly or totally bounded on all sides and above by

1 physical barriers, regardless of whether such barriers consist
2 of or include, without limitation, uncovered openings,
3 screened or otherwise partially covered openings; or open or
4 closed windows, жалousies, doors, or the like. A place is
5 "predominantly" bounded by physical barriers during any time
6 when both of the following conditions exist:

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

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

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

23 (6) "Essential services" means those services that are
24 essential to the maintenance of any enclosed indoor
25 room, including, but not limited to, janitorial services,
26 repairs, or renovations.

27 (7) "Physical barrier" includes an uncovered opening,
28 a screened or otherwise partially covered opening, or an open
29 or closed window, жалousie, or door.

30 (8) "Retail tobacco shop" means any enclosed indoor
31 workplace dedicated to or predominantly for the retail sale of

1 tobacco, tobacco products, and accessories for such products,
2 in which the sale of other products or services is merely
3 incidental. Any enclosed indoor workplace of a business that
4 manufactures, imports, or distributes tobacco products or of a
5 tobacco leaf dealer is a business dedicated to or
6 predominantly for the retail sale of tobacco and tobacco
7 products when, as a necessary and integral part of the process
8 of making, manufacturing, importing, or distributing a tobacco
9 product for the eventual retail sale of such tobacco or
10 tobacco product, tobacco is heated, burned, or smoked or a
11 lighted tobacco product is tested.

12 (9) "Second-hand smoke," also known as environmental
13 tobacco smoke (ETS), means smoke emitted from lighted,
14 smoldering, or burning tobacco when the smoker is not
15 inhaling; smoke emitted at the mouthpiece during puff drawing;
16 and smoke exhaled by the smoker.

17 (10)~~(4)~~ "Smoking" means inhaling, exhaling, burning,
18 carrying, or possessing any ~~possession of a~~ lighted tobacco
19 product, including cigarettes, cigars, pipe tobacco, and
20 cigarette, lighted cigar, lighted pipe, or any other lighted
21 tobacco product.

22 (11) "Stand-alone bar" means any licensed premises
23 devoted during any time of operation predominantly or totally
24 to serving alcoholic beverages, intoxicating beverages, or
25 intoxicating liquors, or any combination thereof, for
26 consumption on the licensed premises; in which the serving of
27 food, if any, is merely incidental to the consumption of any
28 such beverage; and the licensed premises is not located
29 within, and does not share any common entryway or common
30 indoor area with, any other enclosed indoor workplace,
31 including any business for which the sale of food or any other

1 product or service is more than an incidental source of gross
2 annual revenue. A place of business constitutes a stand-alone
3 bar in which the service of food is merely incidental in
4 accordance with this subsection if the licensed premises
5 derives no more than 10 percent of its annual gross revenue
6 from the sale of food consumed on the licensed premises.

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

18 (13) "Membership association" means a charitable,
19 nonprofit, or veterans' organization that holds a current
20 exemption under s. 501(c)(3), s. 501(c)(4), s. 501(c)(7), s.
21 501(c)(8), s. 501(c)(10), s. 501(c)(19), or s. 501(d) of the
22 Internal Revenue Code.

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

25 ~~(a) Government buildings;~~

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

29 ~~(c) Elevators;~~

30 ~~(d) Hospitals;~~

31 ~~(e) Nursing homes;~~

- 1 ~~(f) Educational facilities;~~
2 ~~(g) Public school buses;~~
3 ~~(h) Libraries;~~
4 ~~(i) Courtrooms;~~
5 ~~(j) Jury waiting and deliberation rooms;~~
6 ~~(k) Museums;~~
7 ~~(l) Theaters;~~
8 ~~(m) Auditoriums;~~
9 ~~(n) Arenas;~~
10 ~~(o) Recreational facilities;~~
11 ~~(p) Restaurants;~~
12 ~~(q) Retail stores, except a retail store the primary~~
13 ~~business of which is the sale of tobacco or tobacco related~~
14 ~~products;~~
15 ~~(r) Grocery stores;~~
16 ~~(s) Places of employment;~~
17 ~~(t) Health care facilities;~~
18 ~~(u) Day care centers; and~~
19 ~~(v) Common areas of retirement homes and condominiums.~~
20 ~~(2) "Government building" means any building or any~~
21 ~~portion of any building owned by or leased to the state or any~~
22 ~~political subdivision thereof and used for governmental~~
23 ~~purposes.~~
24 ~~(3) "Public meeting" means all meetings open to the~~
25 ~~public, including meetings of homeowner, condominium, or~~
26 ~~renter or tenant associations unless such meetings are held in~~
27 ~~a private residence.~~
28 ~~(5) "Smoking area" means any designated area meeting~~
29 ~~the requirements of ss. 386.205 and 386.206.~~
30
31

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

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

5 ~~(8) "Division" means the Division of Hotels and~~
6 ~~Restaurants of the Department of Business and Professional~~
7 ~~Regulation.~~

8 Section 4. Section 386.204, Florida Statutes, is
9 amended to read:

10 386.204 Prohibition.--A person may not smoke in an
11 enclosed indoor workplace, except as otherwise provided in s.
12 386.2045 a public place or at a public meeting except in
13 designated smoking areas. These prohibitions do not apply in
14 cases in which an entire room or hall is used for a private
15 function and seating arrangements are under the control of the
16 sponsor of the function and not of the proprietor or person in
17 charge of the room or hall.

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

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

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

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

31

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

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

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

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

20 Section 6. Section 386.205, Florida Statutes, is
21 amended to read:

22 386.205 Customs ~~Designation of~~ smoking rooms ~~areas~~.--

23 (1) A customs smoking room ~~areas~~ may be designated by
24 the person in charge of an airport in-transit lounge under the
25 authority and control of the Bureau of Customs and Border
26 Protection of the United States Department of Homeland
27 Security ~~a public place~~. A customs smoking room may only be
28 designated in an airport in-transit lounge under the authority
29 and control of the Bureau of Customs and Border Protection of
30 the United States Department of Homeland Security. A customs
31 smoking room may not be designated in an elevator, restroom,

1 or any common area as defined by s. 386.203. Each customs
2 smoking room must conform to the following requirements:

3 (a) Work, other than essential services defined in s.
4 386.203(6), must not be performed in the room at any given
5 time.

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

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

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

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

29 ~~(2)(a) A smoking area may not be designated in an~~
30 ~~elevator, school bus, public means of mass transportation~~
31 ~~subject only to state smoking regulation, restroom, hospital,~~

1 ~~doctor's or dentist's waiting room, jury deliberation room,~~
2 ~~county health department, day care center, school or other~~
3 ~~educational facility, or any common area as defined in s.~~
4 ~~386.203. However, a patient's room in a hospital, nursing~~
5 ~~home, or other health care facility may be designated as a~~
6 ~~smoking area if such designation is ordered by the attending~~
7 ~~physician and agreed to by all patients assigned to that room.~~

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

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

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

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

31

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

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

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

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

12 Section 7. Section 386.206, Florida Statutes, is
13 amended to read:

14 386.206 Posting of signs; requiring policies.--

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

30 (2) The proprietor or other person in charge of an
31 enclosed indoor workplace must develop and implement a policy

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

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

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

30 (5) The provisions of subsection (1) shall expire on
31 July 1, 2005.

1 Section 8. Section 386.207, Florida Statutes, is
2 amended to read:

3 386.207 Administration; enforcement; civil penalties;
4 ~~exemptions.--~~

5 (1) The department and the Department of Business and
6 Professional Regulation ~~or the division~~ shall enforce this
7 part ss. 386.205 and 386.206 and to implement such enforcement
8 shall adopt, in consultation with the State Fire Marshal,
9 rules specifying procedures to be followed by enforcement
10 personnel in investigating complaints and notifying alleged
11 violators, ~~rules defining types of cases for which exemptions~~
12 ~~may be granted,~~ and rules specifying procedures by which
13 appeals may be taken by aggrieved parties.

14 (2) Public agencies responsible for the management and
15 maintenance of government buildings shall report observed
16 violations to the department and the Department of Business
17 and Professional Regulation ~~or division~~. The State Fire
18 Marshal shall report to the department and the Department of
19 Business and Professional Regulation ~~or division~~ observed
20 violations of this part ss. 386.205 and 386.206 found during
21 its periodic inspections conducted under ~~pursuant to~~ its
22 regulatory authority. The department and the Department of
23 Business and Professional Regulation ~~or the division~~, upon
24 notification of observed violations of this part ss. 386.205
25 ~~and 386.206~~, shall issue to the proprietor or other person in
26 charge of such enclosed indoor workplace ~~public place~~ a notice
27 to comply with this part ss. 386.205 and 386.206. If the ~~such~~
28 person fails to comply within 30 days after receipt of the
29 ~~such~~ notice, the department or the Department of Business and
30 Professional Regulation ~~division~~ shall assess a civil penalty
31 against the person of not less than \$250 and ~~him or her~~ not to

1 exceed ~~\$750~~\$100 for the first violation and not less than
2 \$500 and not to exceed ~~\$2,000~~\$500 for each subsequent
3 violation. The imposition of the such fine must ~~shall~~ be in
4 accordance with ~~the provisions of~~ chapter 120. If a person
5 refuses to comply with this part ~~ss. 386.205 and 386.206~~,
6 after having been assessed such penalty, the department or the
7 Department of Business and Professional Regulation ~~division~~
8 may file a complaint in the circuit court of the county in
9 which the enclosed indoor workplace ~~such public place~~ is
10 located to require compliance.

11 ~~(3) A person may request an exemption from ss. 386.205~~
12 ~~and 386.206 by applying to the department or the division. The~~
13 ~~department or the division may grant exemptions on a~~
14 ~~case-by-case basis where it determines that substantial good~~
15 ~~faith efforts have been made to comply or that emergency or~~
16 ~~extraordinary circumstances exist.~~

17 ~~(3)(4)~~ All fine moneys collected pursuant to this
18 section shall be used by the department for children's medical
19 services programs pursuant to the provisions of part I of
20 chapter 391.

21 Section 9. Section 386.208, Florida Statutes, is
22 amended to read:

23 386.208 Penalties.--Any person who violates s. 386.204
24 commits a noncriminal violation as defined ~~provided for~~ in s.
25 775.08(3), punishable by a fine of not more than \$100 for the
26 first violation and not more than \$500 for each subsequent
27 violation. Jurisdiction shall be with the appropriate county
28 court.

29 Section 10. Section 386.209, Florida Statutes, is
30 reenacted to read:

31

1 386.209 Regulation of smoking preempted to
2 state.--This part expressly preempts regulation of smoking to
3 the state and supersedes any municipal or county ordinance on
4 the subject.

5 Section 11. Section 386.211, Florida Statutes, is
6 amended to read:

7 386.211 Public announcements in mass transportation
8 terminals.--Announcements about the Florida Clean Indoor Air
9 Act shall be made regularly over public address systems in
10 terminals of public transportation carriers located in
11 metropolitan statistical areas with populations over 230,000
12 according to the latest census. These announcements shall be
13 made at least every 30 minutes and shall be made in
14 appropriate languages. Each announcement must ~~shall~~ include a
15 statement to the effect that Florida is a clean indoor air
16 state and that smoking is not allowed except as provided in
17 this part ~~only in designated areas~~.

18 Section 12. Section 386.212, Florida Statutes, is
19 reenacted and amended to read:

20 386.212 Smoking prohibited near school property;
21 penalty.--

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

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

- 1 (a) The date and time of issuance.
- 2 (b) The name and address of the person cited.
- 3 (c) The date and time the civil infraction was
4 committed.
- 5 (d) The statute violated.
- 6 (e) The facts constituting the violation.
- 7 (f) The name and authority of the law enforcement
8 officer.
- 9 (g) The procedure for the person to follow to pay the
10 civil penalty, to contest the citation, or to appear in court.
- 11 (h) The applicable civil penalty if the person elects
12 not to contest the citation.
- 13 (i) The applicable civil penalty if the person elects
14 to contest the citation.
- 15 (3) Any person issued a citation pursuant to this
16 section shall be deemed to be charged with a civil infraction
17 punishable by a maximum civil penalty not to exceed \$25, or 50
18 hours of community service or, where available, successful
19 completion of a school-approved anti-tobacco "alternative to
20 suspension" program.
- 21 (4) Any person who fails to comply with the directions
22 on the citation shall be deemed to waive his or her right to
23 contest the citation and an order to show cause may be issued
24 by the court.
- 25 Section 13. Section 386.2125, Florida Statutes, is
26 created to read:
- 27 386.2125 Rulemaking.--The department and the
28 Department of Business and Professional Regulation, shall, in
29 consultation with the State Fire Marshal, have the authority
30 to adopt rules pursuant to ss. 120.536(1) and 120.54 to
31 implement the provisions of this part.

1 Section 14. Section 561.695, Florida Statutes, is
2 created to read:

3 561.695 Stand-alone bar enforcement; penalties.--

4 (1) The division shall designate as a stand-alone bar
5 in which tobacco smoking is permitted the licensed premises of
6 a vendor that operates a business that meets the definition of
7 a stand-alone bar in s. 386.203(11) upon receipt of the
8 vendor's election to permit tobacco smoking in the licensed
9 premises.

10 (2) Only the licensed vendor may provide or serve food
11 on the licensed premises of a stand-alone bar. Other than
12 customary bar snacks as defined by rule of the Department of
13 Business and Professional Regulation, the licensed vendor may
14 not provide or serve food to a person on the licensed premises
15 without requiring the person to pay a separately stated charge
16 for the food that reasonably approximates the retail value of
17 the food.

18 (3) The Division of Alcoholic Beverages and Tobacco
19 shall have the power to enforce the provisions of part II of
20 chapter 386 and to audit a vendor that operates a business
21 that meets the definition of a stand-alone bar as provided in
22 s. 386.203(11).

23 (4) The division shall adopt rules required for the
24 effective enforcement and administration of this section and
25 part II of chapter 386. The division is authorized to adopt
26 emergency rules pursuant to s. 120.54(4) to implement the
27 provisions of this section.

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

1 (a) For the first violation the vendor shall be
2 subject to a warning;

3 (b) For the second violation within a two year period
4 of the first violation the vendor shall be subject to a fine
5 of \$500 to \$2000;

6 (c) For the third violation within a two year period
7 of the first violation the vendor shall be subject to a 30 day
8 suspension of the right to maintain a stand-alone bar in which
9 tobacco smoking is permitted;

10 (d) For the fourth subsequent violation the vendor
11 shall be subject to a 60 day suspension of the right to
12 maintain a stand-alone bar in which tobacco smoking is
13 permitted; and

14 (e) For the fifth subsequent violation the vendor
15 shall be subject to a revocation of the right to maintain a
16 stand-alone bar in which tobacco smoking is permitted.

17 (6) On or after July 1, 2003, a vendor operating a
18 business intending to be designated as a stand-alone bar as
19 provided in this section shall post a notice of such intention
20 at the same location where the vendor's current alcoholic
21 beverage license is posted. The notice shall affirm the
22 vendor's intent to comply with the conditions and
23 qualifications of a stand-alone bar imposed pursuant to part
24 II of chapter 386, and the Beverage Law. The vendor must have
25 received the stand-alone bar designation in order to allow
26 smoking in the enclosed indoor workplace.

27 Section 15. If any provision of this act or the
28 application thereof to any person or circumstance is held
29 invalid, the invalidity shall not affect other provisions or
30 applications of the act which can be given effect without the
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1 invalid provision or application, and to this end the
2 provisions of this act are declared severable.

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

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

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