

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 1297  
**SPONSOR(S):** Sorensen  
**TIED BILLS:**

Indoor Smoking Places

**IDEN./SIM. BILLS:** SB 1348

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Business Regulation Committee</u>	<u>12 Y, 6 N</u>	<u>Shoemaker</u>	<u>Liepshutz</u>
2) <u>Commerce Council</u>	<u></u>	<u></u>	<u></u>
3) <u></u>	<u></u>	<u></u>	<u></u>
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**SUMMARY ANALYSIS**

At the November 2002 General Election, voters adopted Amendment No. 6, which amended Article X of the Florida Constitution by creating a new Section 20 to protect people from the health hazards of second-hand tobacco smoke by prohibiting workplace smoking. Accordingly, the 2003 Legislature enacted Chapter No. 2003-398, Laws of Florida, effective July 1, 2003, which amended Part II of Fla. Stat. Chapter 386 and created a new Fla. Stat. § 561.695 of the Beverage Law. Part of this legislation included a stand-alone bar exception where patrons would be allowed to smoke if the bar was a place of business where the service of food was merely incidental because the establishment “derive[d] no more than 10 percent of its gross revenue from the sale of food consumed on the licensed premises.”

This bill expands the definition of stand-alone bar in Fla. Stat. § 386.203 to include a “licensed premises that derives no more than 20 percent of its gross revenue from the sale of food consumed on the licensed premises” when “the licensed premises is located in a building that is individually listed in the National Register of Historic Places as defined in [Fla. Stat. §] 267.021. Essentially, this bill creates an exemption for licensed establishments located in a building listed individually on the National Register of Historic Places so that they can derive up to 20 percent of their gross revenue from the sale of food as opposed to the current 10 percent cap on the sale of food.

This bill is expected to have no fiscal impact on state and local governments and provides an effective date of July 1, 2005.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: The Department of Business and Professional Regulation and the Department of Health would need to amend their current rules to accommodate the provisions of this bill.

Safeguard individual liberty: This bill would allow patrons to smoke in stand-alone bars located in facilities individually registered on the National Register of Historic Places where they are currently unable to do so because the bar exceeds the current 10 percent food limitation.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

At the November 2002 General Election, voters adopted Amendment No. 6, which amended Article X of the Florida Constitution by creating a new Section 20. The vote on Amendment No. 6 was 3,501,161 in favor and 1,431,966 against (71.0% to 29.0%) and the stated purpose of this revision of the Constitution was to protect people from the health hazards of second-hand tobacco smoke by prohibiting workplace smoking.

The amendment required the Florida Legislature to enact implementing legislation no later than July 1, 2003, in a manner consistent with the amendment's broad purpose and stated terms. Accordingly, the Legislature enacted Chapter No. 2003-398, Laws of Florida, effective July 1, 2003, which amended Part II of Fla. Stat. Chapter 386 and created a new Fla. Stat. § 561.695 of the Beverage Law.<sup>1</sup> Part II of Fla. Stat. Chapter 386 constitutes the Florida Clean Indoor Air Act, and, as amended, implements the constitutional amendment's prohibition, adopts and implements the amendment's definitions, and adopts the amendment's exceptions. Further, the bill implemented exceptions to the prohibition on smoking in enclosed indoor workplaces for: public lodging establishments; private residences that are not being used commercially to provide child care, adult care, or health care; retail tobacco shops, including manufacturing, importing, distributing and leaf tobacco dealer activities; stand-alone bars; medical or scientific research and smoking cessation programs; airport customs smoking rooms; and qualifying membership associations.

One of the exceptions to the prohibition on smoking in enclosed indoor workplaces, the stand-alone bar provision, is found in Fla. Stat. § 561.695 and has three specific requirements. First, a stand alone bar must be "devoted during any time of operation predominantly or totally to serving alcoholic beverages, intoxicating beverages, or intoxicating liquors, or any combination thereof, for consumption on the licensed premises." Second, the serving of food, if any, must be "merely incidental" to the consumption of alcoholic beverages. Third, the business must not be "located within, [or] share any common entryway or common indoor area with, any other enclosed indoor workplace including any business for which the sale of food or any other product or service is more than an incidental source of gross revenue."

The important caveat of the stand-alone bar definition for the purposes of this bill is the requirement that the serving of food must be "merely incidental" to the consumption of alcoholic beverages. Fla. Stat. § 561.695(5) defines "merely incidental" as a limit that a stand-alone bar derive no more than 10 percent of its gross revenue from the sale of food. Further, Fla. Stat. § 561.695(5)(b) prohibits stand-alone bars from serving free-food, but does allow customary bar snacks to be served without charge.

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<sup>1</sup> Since the ban took effect on July 1, 2003, the Department of Business and Professional Regulation has received a steadily decreasing number of complaints each month and there appears to have been widespread compliance with the ban.

According to a study completed by the University of Florida, these regulations have had little impact on the economic viability of stand-alone bars and business appears to be status-quo as compared to pre-Amendment 6 revenues.<sup>2</sup>

### **Summary of Legislation**

This bill expands the definition of stand-alone bar in Fla. Stat. § 386.203 to include a “licensed premises that derives no more than 20 percent of its gross revenue from the sale of food consumed on the licensed premises” when “the licensed premises is located in a building that is individually listed in the National Register of Historic Places as defined in [Fla. Stat. §] 267.021. Essentially, this bill creates an exemption for licensed establishments located in a building listed individually on the National Register of Historic Places so that they can derive up to 20 percent of their gross revenue from the sale of food as opposed to the current 10 percent cap on the sale of food.

#### C. SECTION DIRECTORY:

**Section 1:** Amends Fla. Stat. § 386.203 to allow a building listed individually on the National Register of Historic Places to operate as a stand-alone bar if the establishment derives no more than 20 percent of its gross revenue from the sale of food consumed on the licensed premises.

**Section 2:** The bill does not make any changes to this section other than the fact that Fla. Stat. § 386.203 is referenced and this section has been revised in section 1.

**Section 3:** Amends Fla. Stat. § 386.2045 to conform to the proposed addition to the stand-alone bar definition set out in Fla. Stat. § 386.203.

**Section 4:** Provides an effective date of July 1, 2005.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

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<sup>2</sup> *The Economic Impact of Florida's Smoke-Free Workplace Law*, Bureau of Economic and Business Research, Warrington College of Business Administration, University of Florida, June 25, 2004. In fact, the study did not find evidence of any migration of dining from restaurants to taverns and bars where smoking is permitted because the sales data used from all eating and drink establishments as a whole could not detect such a migration.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Establishments that are currently barred from allowing patrons to smoke may experience increased revenue from patrons who will frequent their establishment if this bill is passed.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**