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A bill to be entitled  
 An act relating to indoor smoking places; amending s.  
 386.203, F.S.; revising the definition of "stand-alone  
 bar" to include a licensed premises that derives no more  
 than a specified amount of gross revenue from the sale of  
 food consumed on the licensed premises and that is located  
 in a building individually listed in the National Register  
 of Historic Places; reenacting s. 386.2045(4), F.S., which  
 permits tobacco smoking in stand-alone bars in compliance  
 with applicable provisions of the Florida Clean Indoor Air  
 Act and the Beverage Law, to incorporate the amendment to  
 s. 386.203, F.S., in a reference thereto; reenacting and  
 amending s. 561.695, F.S., relating to enforcement by the  
 Division of Alcoholic Beverages and Tobacco of the  
 Department of Business and Professional Regulation of  
 conditions and qualifications for designation as a stand-  
 alone bar, to conform; providing penalties; providing an  
 effective date.

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

Section 1. Subsection (11) of section 386.203, Florida  
 Statutes, is amended to read:

386.203 Definitions.--As used in this part:

(11) "Stand-alone bar" means any licensed premises 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

29 licensed premises; in which the serving of food, if any, is  
 30 merely incidental to the consumption of any such beverage; and  
 31 the licensed premises is not located within, and does not share  
 32 any common entryway or common indoor area with, any other  
 33 enclosed indoor workplace, including any business for which the  
 34 sale of food or any other product or service is more than an  
 35 incidental source of gross revenue. A place of business  
 36 constitutes a stand-alone bar in which the service of food is  
 37 merely incidental in accordance with this subsection if the  
 38 licensed premises derives no more than 10 percent of its gross  
 39 revenue from the sale of food consumed on the licensed premises.  
 40 However, a place of business remains a stand-alone bar in which  
 41 the service of food is merely incidental if the licensed  
 42 premises derives no more than 20 percent of its gross revenue  
 43 from the sale of food consumed on the licensed premises and the  
 44 licensed premises is located in a building that is individually  
 45 listed in the National Register of Historic Places as defined in  
 46 s. 267.021.

47 Section 2. For the purpose of incorporating the amendment  
 48 to section 386.203, Florida Statutes, in a reference thereto,  
 49 subsection (4) of section 386.2045, Florida Statutes, is  
 50 reenacted to read:

51 386.2045 Enclosed indoor workplaces; specific  
 52 exceptions.--Notwithstanding s. 386.204, tobacco smoking may be  
 53 permitted in each of the following places:

54 (4) STAND-ALONE BAR.--A business that meets the definition  
 55 of a stand-alone bar as defined in s. 386.203(11) and that  
 56 otherwise complies with all applicable provisions of the

57 Beverage Law and this part.

58 Section 3. Section 561.695, Florida Statutes, is reenacted  
59 and amended to read:

60 561.695 Stand-alone bar enforcement; qualification;  
61 penalties.--

62 (1) The division shall designate as a stand-alone bar the  
63 licensed premises of a vendor that operates a business that  
64 meets the definition of a stand-alone bar in s. 386.203(11) upon  
65 receipt of the vendor's election to permit tobacco smoking in  
66 the licensed premises.

67 (2) Upon this act becoming a law and until the annual  
68 renewal of a vendor's license, a licensed vendor who makes the  
69 required election under subsection (1) may permit tobacco  
70 smoking on the licensed premises and must post a notice of such  
71 intention at the same location at which the vendor's current  
72 alcoholic beverage license is posted. The notice shall affirm  
73 the vendor's intent to comply with the conditions and  
74 qualifications of a stand-alone bar imposed pursuant to part II  
75 of chapter 386 and the Beverage Law.

76 (3) Only the licensed vendor may provide or serve food on  
77 the licensed premises of a stand-alone bar. Other than customary  
78 bar snacks as defined by rule of the division, the licensed  
79 vendor may not provide or serve food to a person on the licensed  
80 premises without requiring the person to pay a separately stated  
81 charge for the food that reasonably approximates the retail  
82 value of the food.

83 (4) A licensed vendor operating a stand-alone bar must  
84 conspicuously post signs at each entrance to the establishment

85 | stating that smoking is permitted in the establishment. The  
 86 | color and design of such signs shall be left to the discretion  
 87 | of the person in charge of the premises.

88 |         (5) After the initial designation, to continue to qualify  
 89 | as a stand-alone bar the licensee must provide to the division  
 90 | annually, on or before the licensee's annual renewal date, an  
 91 | affidavit that certifies, with respect to the preceding 12-month  
 92 | period, the following:

93 |             (a) No more than 10 percent of the gross revenue of the  
 94 | business is from the sale of food consumed on the licensed  
 95 | premises or, if the licensed premises is located in a building  
 96 | that is individually listed in the National Register of Historic  
 97 | Places as defined in s. 267.021, no more than 20 percent of the  
 98 | gross revenue of the business is from the sale of food consumed  
 99 | on the licensed premises, as defined in s. 386.203(11).

100 |             (b) Other than customary bar snacks as defined by rule of  
 101 | the division, the licensed vendor does not provide or serve food  
 102 | to a person on the licensed premises without requiring the  
 103 | person to pay a separately stated charge for food that  
 104 | reasonably approximates the retail value of the food.

105 |             (c) The licensed vendor conspicuously posts signs at each  
 106 | entrance to the establishment stating that smoking is permitted  
 107 | in the establishment.

108 |  
 109 | The division shall establish by rule the format of the affidavit  
 110 | required by this subsection.

111 |         (6) Every third year after the initial designation, on or  
 112 | before the licensee's annual license renewal, the licensed

113 vendor must additionally provide to the division an agreed upon  
 114 procedures report in a format established by rule of the  
 115 department from a Florida certified public accountant that  
 116 attests to the licensee's compliance with the percentage  
 117 requirement of s. 386.203(11) for the preceding 36-month period.  
 118 Such report shall be admissible in any proceeding pursuant to s.  
 119 120.57. This subsection does not apply to a stand-alone bar if  
 120 the only food provided by the business, or in any other way  
 121 present or brought onto the premises for consumption by patrons,  
 122 is limited to nonperishable snack food items commercially  
 123 prepackaged off the premises of the stand-alone bar and served  
 124 without additions or preparation; except that a stand-alone bar  
 125 may pop popcorn for consumption on its premises, provided that  
 126 the equipment used to pop the popcorn is not used to prepare any  
 127 other food for patrons.

128 (7) The Division of Alcoholic Beverages and Tobacco shall  
 129 have the power to enforce the provisions of part II of chapter  
 130 386 and to audit a licensed vendor that operates a business that  
 131 meets the definition of a stand-alone bar as provided in s.  
 132 386.203(11) for compliance with this section.

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

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

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

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

147 (d) For the fourth or subsequent violation, the vendor  
 148 shall receive a 60-day suspension of the right to maintain a  
 149 stand-alone bar in which tobacco smoking is permitted and shall  
 150 be subject to a fine of not less than \$500 or more than \$2,000  
 151 or revocation of the right to maintain a stand-alone bar in  
 152 which tobacco smoking is permitted.

153 (9) The division shall adopt rules governing the  
 154 designation process, criteria for qualification, required  
 155 recordkeeping, auditing, and all other rules necessary for the  
 156 effective enforcement and administration of this section and  
 157 part II of chapter 386. The division is authorized to adopt  
 158 emergency rules pursuant to s. 120.54(4) to implement the  
 159 provisions of this section.

160 Section 4. This act shall take effect July 1, 2005.