

CHAMBER ACTION

1 The Commerce Council recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5
6 A bill to be entitled

7 An act relating to indoor smoking places; amending s.
8 386.203, F.S.; defining the term "person" for purposes of
9 the act; redefining the term "stand-alone bar" to include
10 a licensed premises that derives no more than a specified
11 amount of gross revenue from the sale of food consumed on
12 the licensed premises and that is located in a building
13 individually listed in the National Register of Historic
14 Places; providing that an application for historic
15 designation must be submitted within a specified period of
16 time; amending s. 386.204, F.S.; eliminating certain
17 exceptions to the prohibition against smoking in an
18 enclosed indoor workplace; prohibiting a proprietor or
19 person in charge of an enclosed indoor workplace from
20 permitting smoking in that workplace; requiring that a
21 proprietor or person in charge of an enclosed indoor
22 workplace request a person who is smoking to stop smoking
23 or leave the premises; providing penalties; amending s.

24 | 386.2045, F.S.; conforming cross references; amending s.
 25 | 386.205, F.S.; conforming a cross reference; amending s.
 26 | 386.206, F.S.; deleting certain provisions made obsolete
 27 | by operation of law which require the posting of signs in
 28 | an enclosed indoor workplace; amending s. 386.208, F.S.;
 29 | authorizing a law enforcement officer to issue a citation
 30 | to a person who violates the Florida Clean Indoor Air Act;
 31 | providing requirements for the citation; providing that
 32 | failure to comply with a citation is deemed a waiver of
 33 | the right to contest the citation; authorizing a law
 34 | enforcement officer to remove a person from the premises
 35 | who is in violation of the Florida Clean Indoor Air Act;
 36 | providing that penalties imposed under the act do not
 37 | limit other actions by a law enforcement officer or state
 38 | agency; amending s. 561.695, F.S.; conforming provisions
 39 | with respect to continued qualification as a stand-alone
 40 | bar; conforming cross references; providing a penalty for
 41 | a licensee who knowingly makes a false statement on an
 42 | annual compliance affidavit; eliminating provisions
 43 | requiring a stand-alone bar to certify to the Division of
 44 | Alcoholic Beverages and Tobacco of the Department of
 45 | Business and Professional Regulation compliance with
 46 | certain provisions of the Florida Clean Indoor Air Act;
 47 | providing additional penalties for a third or subsequent
 48 | violation within 2 years after a first violation of
 49 | requirements applicable to a stand-alone bar, and for a
 50 | fourth or subsequent violation; providing an effective
 51 | date.

HB 1297

2005
CS

52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79

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

Section 1. Subsection (5) and present subsection (11) of section 386.203, Florida Statutes, are amended, present subsections (6) through (13) of said section are redesignated as subsections (7) through (14), respectively, and a new subsection (6) is added to that section, to read:

386.203 Definitions.--As used in this part:

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

1.~~(a)~~ It is more than 50 percent covered from above by a physical barrier that excludes rain;7 and

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

HB 1297

2005
CS

80 ~~(b)(e)~~ The term does not include any facility owned or
 81 leased by and used exclusively for noncommercial activities
 82 performed by the members and guests of a membership association,
 83 including social gatherings, meetings, dining, and dances, if no
 84 person or persons are engaged in work as defined in subsection
 85 (13)~~(12)~~.

86 (6) "Person" has the same meaning as in s. 1.01(3).

87 ~~(12)(11)~~ "Stand-alone bar" means any licensed premises
 88 devoted during any time of operation predominantly or totally to
 89 serving alcoholic beverages, intoxicating beverages, or
 90 intoxicating liquors, or any combination thereof, for
 91 consumption on the licensed premises; in which the serving of
 92 food, if any, is merely incidental to the consumption of any
 93 such beverage; and the licensed premises is not located within,
 94 and does not share any common entryway or common indoor area
 95 with, any other enclosed indoor workplace, including any
 96 business for which the sale of food or any other product or
 97 service is more than an incidental source of gross revenue. A
 98 place of business constitutes a stand-alone bar in which the
 99 service of food is merely incidental in accordance with this
 100 subsection if the licensed premises derives no more than 10
 101 percent of its gross revenue from the sale of food consumed on
 102 the licensed premises. However, a place of business remains a
 103 stand-alone bar in which the service of food is merely
 104 incidental if the licensed premises derives no more than 20
 105 percent of its gross revenue from the sale of food consumed on
 106 the licensed premises and the licensed premises is located in a
 107 building that is individually listed in the National Register of

HB 1297

2005
CS

108 Historic Places as defined in s. 267.021. An application to
 109 individually list the building in the National Register of
 110 Historic Places must have been submitted to the Florida
 111 Department of State on or before 90 days after the effective
 112 date of this act.

113 Section 2. Section 386.204, Florida Statutes, is amended
 114 to read:

115 386.204 Prohibition.--

116 (1) A person may not smoke in an enclosed indoor
 117 workplace, ~~except as otherwise provided in s. 386.2045.~~

118 (2) A proprietor or other person in charge of an enclosed
 119 indoor workplace may not permit smoking in that enclosed indoor
 120 workplace. If the proprietor or other person in charge of an
 121 enclosed indoor workplace observes smoking in that workplace or
 122 has been notified of observed smoking in that workplace in
 123 violation of this part, the proprietor or other person in charge
 124 of the enclosed indoor workplace shall request the violator to
 125 stop smoking and, if the violator does not comply, the
 126 proprietor or other person in charge of the enclosed indoor
 127 workplace shall require the violator to leave the premises. A
 128 proprietor or other person in charge of an enclosed indoor
 129 workplace who fails to comply with this subsection is subject to
 130 the procedures and penalties prescribed in ss. 386.207 and
 131 561.695, as applicable.

132 Section 3. Subsections (2) and (4) of section 386.2045,
 133 Florida Statutes, are amended to read:

HB 1297

2005
CS

134 386.2045 Enclosed indoor workplaces; specific
135 exceptions.--Notwithstanding s. 386.204, tobacco smoking may be
136 permitted in each of the following places:

137 (2) RETAIL TOBACCO SHOP.--An enclosed indoor workplace
138 dedicated to or predominantly for the retail sale of tobacco,
139 tobacco products, and accessories for such products, as defined
140 in s. 386.203(9) ~~s. 386.203(8)~~.

141 (4) STAND-ALONE BAR.--A business that meets the definition
142 of a stand-alone bar as defined in s. 386.203(12) ~~s. 386.203(11)~~
143 and that otherwise complies with all applicable provisions of
144 the Beverage Law and this part.

145 Section 4. Subsection (1) of section 386.205, Florida
146 Statutes, is amended to read:

147 386.205 Customs smoking rooms.--A customs smoking room may
148 be designated by the person in charge of an airport in-transit
149 lounge under the authority and control of the Bureau of Customs
150 and Border Protection of the United States Department of
151 Homeland Security. A customs smoking room may only be designated
152 in an airport in-transit lounge under the authority and control
153 of the Bureau of Customs and Border Protection of the United
154 States Department of Homeland Security. A customs smoking room
155 may not be designated in an elevator, restroom, or any common
156 area as defined by s. 386.203. Each customs smoking room must
157 conform to the following requirements:

158 (1) Work, other than essential services defined in s.
159 386.203(7) ~~s. 386.203(6)~~, must not be performed in the room at
160 any given time.

HB 1297

2005
CS

161 Section 5. Section 386.206, Florida Statutes, is amended
162 to read:

163 386.206 Posting of signs; requiring policies.--

164 ~~(1) The person in charge of an enclosed indoor workplace~~
165 ~~that prior to adoption of s. 20, Art. X of the State~~
166 ~~Constitution was required to post signs under the requirements~~
167 ~~of this section must continue to conspicuously post, or cause to~~
168 ~~be posted, signs stating that smoking is not permitted in the~~
169 ~~enclosed indoor workplace. Each sign posted pursuant to this~~
170 ~~section must have letters of reasonable size which can be easily~~
171 ~~read. The color, design, and precise place of posting of such~~
172 ~~signs shall be left to the discretion of the person in charge of~~
173 ~~the premises.~~

174 (1)~~(2)~~ The proprietor or other person in charge of an
175 enclosed indoor workplace must develop and implement a policy
176 regarding the smoking prohibitions established in this part. The
177 policy may include, but is not limited to, procedures to be
178 taken when the proprietor or other person in charge witnesses or
179 is made aware of a violation of s. 386.204 in the enclosed
180 indoor workplace and must include a policy which prohibits an
181 employee from smoking in the enclosed indoor workplace. In order
182 to increase public awareness, the person in charge of an
183 enclosed indoor workplace may, at his or her discretion, post
184 "NO SMOKING" signs as deemed appropriate.

185 (2)~~(3)~~ The person in charge of an airport terminal that
186 includes a designated customs smoking room must conspicuously
187 post, or cause to be posted, signs stating that no smoking is
188 permitted except in the designated customs smoking room located

HB 1297

2005
CS

189 | in the customs area of the airport. Each sign posted pursuant to
 190 | this section must have letters of reasonable size that can be
 191 | easily read. The color, design, and precise locations at which
 192 | such signs are posted shall be left to the discretion of the
 193 | person in charge of the premises.

194 | (3)~~(4)~~ The proprietor or other person in charge of an
 195 | enclosed indoor workplace where a smoking cessation program,
 196 | medical research, or scientific research is conducted or
 197 | performed must conspicuously post, or cause to be posted, signs
 198 | stating that smoking is permitted for such purposes in
 199 | designated areas in the enclosed indoor workplace. Each sign
 200 | posted pursuant to this section must have letters of reasonable
 201 | size which can be easily read. The color, design, and precise
 202 | locations at which such signs are posted shall be left to the
 203 | discretion of the person in charge of the premises.

204 | ~~(5) The provisions of subsection (1) shall expire on July~~
 205 | ~~1, 2005.~~

206 | Section 6. Section 386.208, Florida Statutes, is amended
 207 | to read:

208 | 386.208 Penalties.--

209 | (1) Any person who violates s. 386.204 commits a
 210 | noncriminal violation as defined in s. 775.08(3), punishable by
 211 | a fine of not more than \$100 for the first violation and not
 212 | more than \$500 for each subsequent violation. Jurisdiction shall
 213 | be with the appropriate county court.

214 | (2) A law enforcement officer may issue a citation in such
 215 | form as prescribed by a county or municipality to any person who

216 violates the provisions of this part. Any such citation must
 217 contain:

- 218 (a) The date and time of issuance.
- 219 (b) The name and address of the person cited.
- 220 (c) The date and time the civil infraction was committed.
- 221 (d) The statute violated.
- 222 (e) The facts constituting the violation.
- 223 (f) The name and authority of the law enforcement officer.
- 224 (g) The procedure for the person to follow in order to pay
 225 the fine, contest the citation, or appear in court.
- 226 (h) The applicable range of the fine for the violation,
 227 which may not be more than \$100 for a first violation and not
 228 more than \$500 for each subsequent violation.

229 (3) Any person who fails to comply with the directions of
 230 the citation shall be deemed to have waived his or her right to
 231 contest the citation and the court may issue an order to show
 232 cause.

233 (4) If a person who violates s. 386.204, or any provision
 234 of this part, refuses to comply with the request of the
 235 proprietor or other person in charge of an enclosed indoor
 236 workplace to stop smoking or otherwise comply with the
 237 provisions of this part, a law enforcement officer may remove
 238 the violator from the premises.

239 (5) This section does not limit any other action or remedy
 240 that is available to a proprietor or other person in charge of
 241 an enclosed indoor workplace and does not limit the authority of
 242 a law enforcement officer, the department, or the Division of
 243 Hotels and Restaurants and the Division of Alcoholic Beverages

HB 1297

2005
CS

244 and Tobacco of the Department of Business and Professional
 245 Regulation to enforce the provisions of this part or any other
 246 rule, law, or ordinance.

247 Section 7. Subsections (1), (5), (6), (7), and (8) of
 248 section 561.695, Florida Statutes, are amended to read:

249 561.695 Stand-alone bar enforcement; qualification;
 250 penalties.--

251 (1) The division shall designate as a stand-alone bar the
 252 licensed premises of a vendor that operates a business that
 253 meets the definition of a stand-alone bar in s. 386.203(12) ~~s.~~
 254 ~~386.203(11)~~ upon receipt of the vendor's election to permit
 255 tobacco smoking in the licensed premises.

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

261 (a) No more than 10 percent of the gross revenue of the
 262 business is from the sale of food consumed on the licensed
 263 premises as defined in s. 386.203(12) ~~(11)~~ or, if such licensed
 264 premises is in a building that is individually listed in the
 265 National Register of Historic Places as defined in s. 267.021,
 266 no more than 20 percent of the gross revenue of the business is
 267 from the sale of food consumed on the licensed premises.
 268 However, an application to individually list the building in the
 269 National Register of Historic Places must have been submitted to
 270 the Florida Department of State on or before 90 days after the
 271 effective date of this act.

HB 1297

2005
CS

272 (b) Other than customary bar snacks as defined by rule of
 273 the division, the licensed vendor does not provide or serve food
 274 to a person on the licensed premises without requiring the
 275 person to pay a separately stated charge for food that
 276 reasonably approximates the retail value of the food.

277 (c) The licensed vendor conspicuously posts signs at each
 278 entrance to the establishment stating that smoking is permitted
 279 in the establishment.

280
 281 The division shall establish by rule the format of the affidavit
 282 required by this subsection. A vendor shall not knowingly make a
 283 false statement on the affidavit required by this subsection. In
 284 addition to the penalties provided in subsection (7), a person
 285 who knowingly makes a false statement on the affidavit required
 286 by this subsection may be subject to suspension or revocation of
 287 his or her alcoholic beverage license under s. 561.29.

288 ~~(6) Every third year after the initial designation, on or~~
 289 ~~before the licensee's annual license renewal, the licensed~~
 290 ~~vendor must additionally provide to the division an agreed upon~~
 291 ~~procedures report in a format established by rule of the~~
 292 ~~department from a Florida certified public accountant that~~
 293 ~~attests to the licensee's compliance with the percentage~~
 294 ~~requirement of s. 386.203(11) for the preceding 36-month period.~~
 295 ~~Such report shall be admissible in any proceeding pursuant to s.~~
 296 ~~120.57. This subsection does not apply to a stand-alone bar if~~
 297 ~~the only food provided by the business, or in any other way~~
 298 ~~present or brought onto the premises for consumption by patrons,~~
 299 ~~is limited to nonperishable snack food items commercially~~

HB 1297

2005
CS

300 ~~prepackaged off the premises of the stand-alone bar and served~~
 301 ~~without additions or preparation; except that a stand-alone bar~~
 302 ~~may pop popcorn for consumption on its premises, provided that~~
 303 ~~the equipment used to pop the popcorn is not used to prepare any~~
 304 ~~other food for patrons.~~

305 (6)~~(7)~~ The Division of Alcoholic Beverages and Tobacco
 306 shall have the power to enforce the provisions of part II of
 307 chapter 386 and to audit a licensed vendor that operates a
 308 business that meets the definition of a stand-alone bar as
 309 provided in s. 386.203~~(12)~~(11) for compliance with this section.

310 (7)~~(8)~~ Any licensed vendor ~~that operates a business that~~
 311 ~~meets the definition of a stand-alone bar as provided in s.~~
 312 ~~386.203(11)~~ who violates the provisions of this section or part
 313 II of chapter 386 shall be subject to the following penalties:

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

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

319 (c) For the third or subsequent violation within 2 years
 320 after the first violation, the vendor shall be subject to a fine
 321 of not less than \$500 or more than \$2,000, and any vendor that
 322 operates a business that meets the definition of a stand-alone
 323 bar as provided in s. 386.203(12) shall receive a suspension of
 324 the right to maintain a stand-alone bar in which tobacco smoking
 325 is permitted, not to exceed 30 days, and shall be subject to a
 326 fine of not less than \$500 or more than \$2,000; and

HB 1297

2005
CS

327 (d) For the fourth or subsequent violation, the vendor
328 shall be subject to a fine of not less than \$500 or more than
329 \$2,000, and any vendor that operates a business that meets the
330 definition of a stand-alone bar as provided in s. 386.203(12)
331 shall receive a 60-day suspension of the right to maintain a
332 stand-alone bar in which tobacco smoking is permitted and shall
333 be subject to a fine of not less than \$500 or more than \$2,000
334 or revocation of the right to maintain a stand-alone bar in
335 which tobacco smoking is permitted.

336 Section 8. This act shall take effect July 1, 2005.