

By the Committee on Regulated Industries

580-1696-05

1                                   A bill to be entitled  
2           An act relating to the Florida Clean Indoor Air  
3           Act; amending s. 386.203, F.S.; defining the  
4           term "person" for purposes of the act; amending  
5           s. 386.204, F.S.; eliminating certain  
6           exceptions to the prohibition against smoking  
7           in an enclosed indoor workplace; prohibiting a  
8           proprietor or person in charge of an enclosed  
9           indoor workplace from permitting smoking in  
10          that workplace; requiring that a proprietor or  
11          person in charge of an enclosed indoor  
12          workplace request a person who is smoking to  
13          stop smoking or leave the premises; providing  
14          penalties; amending ss. 386.2045 and 386.205,  
15          F.S.; conforming cross-references; amending s.  
16          386.206, F.S.; deleting certain provisions made  
17          obsolete by operation of law which require the  
18          posting of signs in an enclosed indoor  
19          workplace; amending s. 386.208, F.S.;  
20          authorizing a law enforcement officer to issue  
21          a citation to a person who violates the Florida  
22          Clean Indoor Air Act; providing requirements  
23          for the citation; providing that failure to  
24          comply with a citation is deemed a waiver of  
25          the right to contest the citation; authorizing  
26          a law enforcement officer to remove a person  
27          from the premises who is in violation of the  
28          Florida Clean Indoor Air Act; providing that  
29          penalties imposed under the act do not limit  
30          other actions by a law enforcement officer or  
31          state agency; amending s. 561.695, F.S.;

1 conforming cross-references; providing a  
2 penalty for a licensee who knowingly makes a  
3 false statement on an annual compliance  
4 affidavit; eliminating provisions requiring a  
5 stand-alone bar to certify to the Division of  
6 Alcoholic Beverages and Tobacco of the  
7 Department of Business and Professional  
8 Regulation compliance with certain provisions  
9 of the Florida Clean Indoor Air Act; providing  
10 additional penalties for a third or subsequent  
11 violation of requirements applicable to a  
12 stand-alone bar; providing an effective date.  
13

14 Be It Enacted by the Legislature of the State of Florida:  
15

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

21 386.203 Definitions.--As used in this part:

22 (5)(a) "Enclosed indoor workplace" means any place  
23 where one or more persons engages in work, and which place is  
24 predominantly or totally bounded on all sides and above by  
25 physical barriers, regardless of whether such barriers consist  
26 of or include, without limitation, uncovered openings;  
27 screened or otherwise partially covered openings; or open or  
28 closed windows, jalousies, doors, or the like. A place is  
29 "predominantly" bounded by physical barriers during any time  
30 when both of the following conditions exist:  
31

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

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

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

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

18           Section 2. Section 386.204, Florida Statutes, is  
19 amended to read:

20           386.204 Prohibition.--

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

23           ~~(2)~~ A proprietor or other person in charge of an  
24 enclosed indoor workplace may not permit smoking in that  
25 enclosed indoor workplace. If the proprietor or other person  
26 in charge of an enclosed indoor workplace observes smoking in  
27 that workplace or has been notified of observed smoking in  
28 that workplace in violation of this part, the proprietor or  
29 other person in charge of the enclosed indoor workplace shall  
30 request the violator to stop smoking and, if the violator does  
31 not comply, the proprietor or other person in charge of the

1 enclosed indoor workplace shall require the violator to leave  
2 the premises. A proprietor or other person in charge of an  
3 enclosed indoor workplace who fails to comply with this  
4 subsection is subject to the procedures and penalties  
5 prescribed in ss. 386.207 and 561.695, as applicable.

6 Section 3. Subsections (2) and (4) of section  
7 386.2045, Florida Statutes, are amended to read:

8 386.2045 Enclosed indoor workplaces; specific  
9 exceptions.--Notwithstanding s. 386.204, tobacco smoking may  
10 be permitted in each of the following places:

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

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

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

21 386.205 Customs smoking rooms.--A customs smoking room  
22 may be designated by the person in charge of an airport  
23 in-transit lounge under the authority and control of the  
24 Bureau of Customs and Border Protection of the United States  
25 Department of Homeland Security. A customs smoking room may  
26 only be designated in an airport in-transit lounge under the  
27 authority and control of the Bureau of Customs and Border  
28 Protection of the United States Department of Homeland  
29 Security. A customs smoking room may not be designated in an  
30 elevator, restroom, or any common area as defined by s.  
31

1 386.203. Each customs smoking room must conform to the  
2 following requirements:

3 (1) Work, other than essential services defined in s.  
4 386.203(7) ~~s. 386.203(6)~~, must not be performed in the room at  
5 any given time.

6 Section 5. Section 386.206, Florida Statutes, is  
7 amended to read:

8 386.206 Posting of signs; requiring policies.--

9 ~~(1) The person in charge of an enclosed indoor  
10 workplace that prior to adoption of s. 20, Art. X of the State  
11 Constitution was required to post signs under the requirements  
12 of this section must continue to conspicuously post, or cause  
13 to be posted, signs stating that smoking is not permitted in  
14 the enclosed indoor workplace. Each sign posted pursuant to  
15 this section must have letters of reasonable size which can be  
16 easily read. The color, design, and precise place of posting  
17 of such signs shall be left to the discretion of the person in  
18 charge of the premises.~~

19 (1)(2) The proprietor or other person in charge of an  
20 enclosed indoor workplace must develop and implement a policy  
21 regarding the smoking prohibitions established in this part.  
22 The policy may include, but is not limited to, procedures to  
23 be taken when the proprietor or other person in charge  
24 witnesses or is made aware of a violation of s. 386.204 in the  
25 enclosed indoor workplace and must include a policy which  
26 prohibits an employee from smoking in the enclosed indoor  
27 workplace. In order to increase public awareness, the person  
28 in charge of an enclosed indoor workplace may, at his or her  
29 discretion, post "NO SMOKING" signs as deemed appropriate.

30 (2)(3) The person in charge of an airport terminal  
31 that includes a designated customs smoking room must

1 conspicuously post, or cause to be posted, signs stating that  
2 no smoking is permitted except in the designated customs  
3 smoking room located in the customs area of the airport. Each  
4 sign posted pursuant to this section must have letters of  
5 reasonable size that can be easily read. The color, design,  
6 and precise locations at which such signs are posted shall be  
7 left to the discretion of the person in charge of the  
8 premises.

9 ~~(3)(4)~~ The proprietor or other person in charge of an  
10 enclosed indoor workplace where a smoking cessation program,  
11 medical research, or scientific research is conducted or  
12 performed must conspicuously post, or cause to be posted,  
13 signs stating that smoking is permitted for such purposes in  
14 designated areas in the enclosed indoor workplace. Each sign  
15 posted pursuant to this section must have letters of  
16 reasonable size which can be easily read. The color, design,  
17 and precise locations at which such signs are posted shall be  
18 left to the discretion of the person in charge of the  
19 premises.

20 ~~(5) The provisions of subsection (1) shall expire on~~  
21 ~~July 1, 2005.~~

22 Section 6. Section 386.208, Florida Statutes, is  
23 amended to read:

24 386.208 Penalties.--

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

30 (2) A law enforcement officer may issue a citation in  
31 such form as prescribed by a county or municipality to any

1 person who violates the provisions of this part. Any such  
2 citation must contain:  
3       (a) The date and time of issuance.  
4       (b) The name and address of the person cited.  
5       (c) The date and time the civil infraction was  
6 committed.  
7       (d) The statute violated.  
8       (e) The facts constituting the violation.  
9       (f) The name and authority of the law enforcement  
10 officer.  
11       (g) The procedure for the person to follow in order to  
12 pay the fine, contest the citation, or appear in court.  
13       (h) The applicable range of the fine for the  
14 violation, which may not be more than \$100 for a first  
15 violation and not more than \$500 for each subsequent  
16 violation.  
17       (3) Any person who fails to comply with the directions  
18 of the citation shall be deemed to have waived his or her  
19 right to contest the citation and the court may issue an order  
20 to show cause.  
21       (4) If a person who violates s. 386.204, or any  
22 provision of this part, refuses to comply with the request of  
23 the proprietor or other person in charge of an enclosed indoor  
24 workplace to stop smoking or otherwise comply with the  
25 provisions of this part, a law enforcement officer may remove  
26 the violator from the premises.  
27       (5) This section does not limit any other action or  
28 remedy that is available to a proprietor or other person in  
29 charge of an enclosed indoor workplace and does not limit the  
30 authority of a law enforcement officer, the department, or the  
31 Division of Hotels and Restaurants and the Division of

1 Alcoholic Beverages and Tobacco of the Department of Business  
2 and Professional Regulation to enforce the provisions of this  
3 part or any other rule, law, or ordinance.

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

6 561.695 Stand-alone bar enforcement; qualification;  
7 penalties.--

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

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

18 (a) No more than 10 percent of the gross revenue of  
19 the business is from the sale of food consumed on the licensed  
20 premises as defined in s. 386.203(12) ~~s. 386.203(11)~~.

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

26 (c) The licensed vendor conspicuously posts signs at  
27 each entrance to the establishment stating that smoking is  
28 permitted in the establishment.

29  
30 The division shall establish by rule the format of the  
31 affidavit required by this subsection. A licensee who



1 knowingly makes a false statement on this affidavit may be  
2 subject to revocation or suspension of his or her vendor's  
3 license under s. 561.29.

4 ~~(6) Every third year after the initial designation, on~~  
5 ~~or before the licensee's annual license renewal, the licensed~~  
6 ~~vendor must additionally provide to the division an agreed~~  
7 ~~upon procedures report in a format established by rule of the~~  
8 ~~department from a Florida certified public accountant that~~  
9 ~~attests to the licensee's compliance with the percentage~~  
10 ~~requirement of s. 386.203(11) for the preceding 36 month~~  
11 ~~period. Such report shall be admissible in any proceeding~~  
12 ~~pursuant to s. 120.57. This subsection does not apply to a~~  
13 ~~stand alone bar if the only food provided by the business, or~~  
14 ~~in any other way present or brought onto the premises for~~  
15 ~~consumption by patrons, is limited to nonperishable snack food~~  
16 ~~items commercially prepackaged off the premises of the~~  
17 ~~stand alone bar and served without additions or preparation;~~  
18 ~~except that a stand alone bar may pop popcorn for consumption~~  
19 ~~on its premises, provided that the equipment used to pop the~~  
20 ~~popcorn is not used to prepare any other food for patrons.~~

21 ~~(6)(7)~~ The Division of Alcoholic Beverages and Tobacco  
22 shall have the power to enforce the provisions of part II of  
23 chapter 386 and to audit a licensed vendor that operates a  
24 business that meets the definition of a stand-alone bar as  
25 provided in s. 386.203(12) ~~s. 386.203(11)~~ for compliance with  
26 this section.

27 ~~(7)(8)~~ Any licensed vendor ~~that operates a business~~  
28 ~~that meets the definition of a stand alone bar as provided in~~  
29 ~~s. 386.203(11)~~ who violates the provisions of this section or  
30 part II of chapter 386 shall be subject to the following  
31 penalties:

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

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

6 (c) For the third or subsequent violation within 2  
7 years after the first violation, the vendor shall be subject  
8 to a fine of not less than \$500 or more than \$2,000, and any  
9 vendor that operates a business that meets the definition of a  
10 stand-alone bar as provided in s. 386.203(12) shall receive a  
11 suspension of the right to maintain a stand-alone bar in which  
12 tobacco smoking is permitted, not to exceed 30 days, and shall  
13 be subject to a fine of not less than \$500 or more than  
14 \$2,000; and

15 (d) For the fourth or subsequent violation, the vendor  
16 shall be subject to a fine of not less than \$500 or more than  
17 \$2,000, and any vendor that operates a business that meets the  
18 definition of a stand-alone bar as provided in s. 386.203(12)  
19 shall receive a 60-day suspension of the right to maintain a  
20 stand-alone bar in which tobacco smoking is permitted and  
21 shall be subject to a fine of not less than \$500 or more than  
22 \$2,000 or revocation of the right to maintain a stand-alone  
23 bar in which tobacco smoking is permitted.

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

25  
26 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
27 COMMITTEE SUBSTITUTE FOR  
28 Senate Bill 1308

29 The committee substitute amends s. 561.695, F.S., to provide  
30 that an alcoholic beverage licensee is subject to revocation  
31 or suspension of its alcoholic beverage license under s.  
561.29, F.S., if the vendor knowingly makes false statement on  
the annual compliance affidavit.