



1 Florida Clean Indoor Air Act; providing that  
2 penalties imposed under the act do not limit  
3 other actions by a law enforcement officer or  
4 state agency; amending s. 561.695, F.S.;  
5 conforming cross-references; providing a  
6 penalty for a vendor who knowingly makes a  
7 false statement on an annual compliance  
8 affidavit; eliminating provisions requiring a  
9 stand-alone bar to certify to the Division of  
10 Alcoholic Beverages and Tobacco of the  
11 Department of Business and Professional  
12 Regulation compliance with certain provisions  
13 of the Florida Clean Indoor Air Act; providing  
14 additional penalties for a third or subsequent  
15 violation of requirements applicable to a  
16 stand-alone bar; providing an effective date.

17  
18 Be It Enacted by the Legislature of the State of Florida:

19  
20 Section 1. Subsection (5) of section 386.203, Florida  
21 Statutes, is amended, present subsections (6) through (13) of  
22 that section are redesignated as subsections (7) through (14),  
23 respectively, and new subsections (6) and (15) are added to  
24 that section, to read:

25 386.203 Definitions.--As used in this part:

26 (5)(a) "Enclosed indoor workplace" means any place  
27 where one or more persons engages in work, and which place is  
28 predominantly or totally bounded on all sides and above by  
29 physical barriers, regardless of whether such barriers consist  
30 of or include, without limitation, uncovered openings;  
31 screened or otherwise partially covered openings; or open or

1 closed windows, jalousies, doors, or the like. A place is  
2 "predominantly" bounded by physical barriers during any time  
3 when both of the following conditions exist:

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

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

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

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

21 ~~(15)~~ "Proprietor or other person in charge of an  
22 enclosed indoor workplace" means:

23 ~~(a)~~ When the enclosed indoor workplace is rented to a  
24 tenant, the tenant or the tenant's employees or agents,  
25 without limiting the ultimate responsibility of the tenant to  
26 implement the policy regarding smoking prohibition, or

27 ~~(b)~~ When the enclosed indoor workplace is not rented  
28 to a tenant, the owner of the enclosed indoor workplace or  
29 that owner's employees or agents, without limiting the  
30 ultimate responsibility of the owner of the enclosed indoor  
31 workplace to implement the policy regarding smoking

1 prohibition in all enclosed indoor workplaces where (a) does  
2 not apply.

3           Section 2. Section 386.204, Florida Statutes, is  
4 amended to read:

5           386.204 Prohibition.--

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

8           (2) A proprietor or other person in charge of an  
9 enclosed indoor workplace may not permit smoking in that  
10 enclosed indoor workplace. If the proprietor or other person  
11 in charge of an enclosed indoor workplace observes smoking in  
12 that workplace or has been notified of observed smoking in  
13 that workplace in violation of this part, the proprietor or  
14 other person in charge of the enclosed indoor workplace shall  
15 request the violator to stop smoking and, if the violator does  
16 not comply, the proprietor or other person in charge of the  
17 enclosed indoor workplace shall require the violator to leave  
18 the premises. A proprietor or other person in charge of an  
19 enclosed indoor workplace who fails to comply with this  
20 subsection is subject to the procedures and penalties  
21 prescribed in ss. 386.207 and 561.695, as applicable.

22           Section 3. Section 386.2045, Florida Statutes, is  
23 amended to read:

24           386.2045 Enclosed indoor workplaces; specific  
25 exceptions.--Notwithstanding s. 386.204, tobacco smoking may  
26 be permitted in each of the following places:

27           (1) PRIVATE RESIDENCE.--A private residence whenever  
28 it is not being used commercially to provide child care, adult  
29 care, or health care, or any combination thereof as defined in  
30 s. 386.203(1).  
31

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

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

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

12           (5) SMOKING CESSATION PROGRAM, MEDICAL OR SCIENTIFIC  
13 RESEARCH.--An enclosed indoor workplace, to the extent that  
14 tobacco smoking is an integral part of a smoking cessation  
15 program approved by the department, or medical or scientific  
16 research conducted therein. Each room in which tobacco smoking  
17 is permitted must comply with the signage requirements in s.  
18 386.206.

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

24           (7) EXPRESSIVE ACTIVITY.--Any enclosed indoor  
25 workplace or public place to the extent that tobacco smoking  
26 is done upon a stage and done by the performers during the  
27 course of, and is a part of, a theatrical production.

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

30           386.205 Customs smoking rooms.--A customs smoking room  
31 may be designated by the person in charge of an airport

1 | in-transit lounge under the authority and control of the  
2 | Bureau of Customs and Border Protection of the United States  
3 | Department of Homeland Security. A customs smoking room may  
4 | only be designated in an airport in-transit lounge under the  
5 | authority and control of the Bureau of Customs and Border  
6 | Protection of the United States Department of Homeland  
7 | Security. A customs smoking room may not be designated in an  
8 | elevator, restroom, or any common area as defined by s.  
9 | 386.203. Each customs smoking room must conform to the  
10 | following requirements:

11 |       (1) Work, other than essential services defined in s.  
12 | 386.203(7) ~~s. 386.203(6)~~, must not be performed in the room at  
13 | any given time.

14 |       Section 5. Section 386.206, Florida Statutes, is  
15 | amended to read:

16 |       386.206 Posting of signs; requiring policies.--

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

27 |       (1)(2) The proprietor or other person in charge of an  
28 | enclosed indoor workplace must develop and implement a policy  
29 | regarding the smoking prohibitions established in this part.  
30 | The policy may include, but is not limited to, procedures to  
31 | be taken when the proprietor or other person in charge

1 witnesses or is made aware of a violation of s. 386.204 in the  
2 enclosed indoor workplace and must include a policy which  
3 prohibits an employee from smoking in the enclosed indoor  
4 workplace. In order to increase public awareness, the person  
5 in charge of an enclosed indoor workplace may, at his or her  
6 discretion, post "NO SMOKING" signs as deemed appropriate.

7 (2)~~(3)~~ The person in charge of an airport terminal  
8 that includes a designated customs smoking room must  
9 conspicuously post, or cause to be posted, signs stating that  
10 no smoking is permitted except in the designated customs  
11 smoking room located in the customs area of the airport. Each  
12 sign posted pursuant to this section must have letters of  
13 reasonable size that can be easily read. The color, design,  
14 and precise locations at which such signs are posted shall be  
15 left to the discretion of the person in charge of the  
16 premises.

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

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

30 Section 6. Section 386.208, Florida Statutes, is  
31 amended to read:

1           386.208 Penalties.--

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

7           (2) A law enforcement officer may issue a citation in  
8 such form as prescribed by a county or municipality to any  
9 person who violates the provisions of this part. Any such  
10 citation must contain:

11           (a) The date and time of issuance.

12           (b) The name and address of the person cited.

13           (c) The date and time the civil infraction was  
14 committed.

15           (d) The statute violated.

16           (e) The facts constituting the violation.

17           (f) The name and authority of the law enforcement  
18 officer.

19           (g) The procedure for the person to follow in order to  
20 pay the fine, contest the citation, or appear in court.

21           (h) The applicable range of the fine for the  
22 violation, which may not be more than \$100 for a first  
23 violation and not more than \$500 for each subsequent  
24 violation.

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

29           (4) If a person who violates s. 386.204, or any  
30 provision of this part, refuses to comply with the request of  
31 the proprietor or other person in charge of an enclosed indoor

1 workplace to stop smoking or otherwise comply with the  
2 provisions of this part, a law enforcement officer may remove  
3 the violator from the premises.

4 (5) This section does not limit any other action or  
5 remedy that is available to a proprietor or other person in  
6 charge of an enclosed indoor workplace and does not limit the  
7 authority of a law enforcement officer, the department, or the  
8 Division of Hotels and Restaurants and the Division of  
9 Alcoholic Beverages and Tobacco of the Department of Business  
10 and Professional Regulation to enforce the provisions of this  
11 part or any other rule, law, or ordinance.

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

14 561.695 Stand-alone bar enforcement; qualification;  
15 penalties.--

16 (1) The division shall designate as a stand-alone bar  
17 the licensed premises of a vendor that operates a business  
18 that meets the definition of a stand-alone bar in s.  
19 386.203(12) ~~s. 386.203(11)~~ upon receipt of the vendor's  
20 election to permit tobacco smoking in the licensed premises.

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

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

29 (b) Other than customary bar snacks as defined by rule  
30 of the division, the licensed vendor does not provide or serve  
31 food to a person on the licensed premises without requiring

1 | the person to pay a separately stated charge for food that  
2 | reasonably approximates the retail value of the food.

3 |       (c) The licensed vendor conspicuously posts signs at  
4 | each entrance to the establishment stating that smoking is  
5 | permitted in the establishment.

6 |  
7 | The division shall establish by rule the format of the  
8 | affidavit required by this subsection. A vendor shall not  
9 | knowingly make a false statement on the affidavit required by  
10 | this subsection. In addition to the penalties provided in  
11 | subsection (7), a person who knowingly makes a false statement  
12 | on the affidavit required by this subsection may be subject to  
13 | suspension or revocation of his or her alcoholic beverage  
14 | license under s. 561.29.

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

1           ~~(6)(7)~~ The Division of Alcoholic Beverages and Tobacco  
2 shall have the power to enforce the provisions of part II of  
3 chapter 386 and to audit a licensed vendor that operates a  
4 business that meets the definition of a stand-alone bar as  
5 provided in s. 386.203(12) ~~s. 386.203(11)~~ for compliance with  
6 this section.

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

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

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

17           (c) For the third or subsequent violation within 2  
18 years after the first violation, the vendor shall be subject  
19 to a fine of not less than \$500 or more than \$2,000, and any  
20 vendor that operates a business that meets the definition of a  
21 stand-alone bar as provided in s. 386.203(12) shall receive a  
22 suspension of the right to maintain a stand-alone bar in which  
23 tobacco smoking is permitted, not to exceed 30 days, and shall  
24 be subject to a fine of not less than \$500 or more than  
25 \$2,000; and

26           (d) For the fourth or subsequent violation, the vendor  
27 shall be subject to a fine of not less than \$500 or more than  
28 \$2,000, and any vendor that operates a business that meets the  
29 definition of a stand-alone bar as provided in s. 386.203(12)  
30 shall receive a 60-day suspension of the right to maintain a  
31 stand-alone bar in which tobacco smoking is permitted and

1 shall be subject to a fine of not less than \$500 or more than  
2 \$2,000 or revocation of the right to maintain a stand-alone  
3 bar in which tobacco smoking is permitted.

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

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6 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
7 COMMITTEE SUBSTITUTE FOR  
8 CS/SB 1308

- 9 - Defines "proprietor or other person in charge of an  
10 enclosed indoor workplace."  
11 - Adds smoking on stage during a theatrical production to  
12 s. 386.2045, F.S., exceptions to the indoor smoking ban.  
13 - Clarifies that knowingly making a false statement on an  
14 affidavit filed with the Division of Alcoholic Beverages  
15 and Tobacco may result in suspension or revocation of a  
16 license under s. 561.29, F.S.  
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