

Bill No. SB 1348

Barcode 522400

CHAMBER ACTION

Senate

House

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The Committee on Regulated Industries (Geller) recommended the following amendment:

Senate Amendment (with title amendment)

On page 3, between lines 5 and 6,

insert:

Section 3. Subsection (5) of section 386.203, Florida Statutes, is amended, present subsections (6) through (13) of that 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, jalousies, doors, or the like. A place is "predominantly" bounded by physical barriers during any time

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1 when both of the following conditions exist:

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

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

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

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

19 Section 4. Section 386.204, Florida Statutes, is
20 amended to read:

21 386.204 Prohibition.--

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

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

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1 not comply, the proprietor or other person in charge of the
 2 enclosed indoor workplace shall require the violator to leave
 3 the premises. A proprietor or other person in charge of an
 4 enclosed indoor workplace who fails to comply with this
 5 subsection is subject to the procedures and penalties
 6 prescribed in ss. 386.207 and 561.695, as applicable.

7 Section 5. Subsections (2) and (4) of section
 8 386.2045, Florida Statutes, are amended to read:

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

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

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

20 Section 6. Subsection (1) of section 386.205, Florida
 21 Statutes, is amended to read:

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

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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 7. 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

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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 8. 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

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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

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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 9. 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 vendor shall not

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1 knowingly make a false statement on the affidavit required by
2 this subsection. In addition to the penalties provided in
3 subsection (7), a person who knowingly makes a false statement
4 on the affidavit required by this subsection may be subject to
5 suspension or revocation of his or her alcoholic beverage
6 license under s. 561.29, F.S.

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

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

30 ~~(7)(8)~~ Any licensed vendor ~~that operates a business~~
31 ~~that meets the definition of a stand-alone bar as provided in~~

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1 ~~s. 386.203(11)~~ who violates the provisions of this section or
2 part II of chapter 386 shall be subject to the following
3 penalties:

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

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

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

18 (d) For the fourth or subsequent violation, the vendor
19 shall be subject to a fine of not less than \$500 or more than
20 \$2,000, and any vendor that operates a business that meets the
21 definition of a stand-alone bar as provided in s. 386.203(12)
22 shall receive a 60-day suspension of the right to maintain a
23 stand-alone bar in which tobacco smoking is permitted and
24 shall be subject to a fine of not less than \$500 or more than
25 \$2,000 or revocation of the right to maintain a stand-alone
26 bar in which tobacco smoking is permitted.

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29 ===== T I T L E A M E N D M E N T =====

30 And the title is amended as follows:

31 On page 1, line 14, after the semicolon

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1 insert:

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

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

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