

By the Committee on Regulated Industries; and Senator Geller

580-1945-05

1 A bill to be entitled
2 An act relating to indoor smoking places;
3 amending s. 386.203, F.S.; conforming a
4 cross-reference; defining the term "person" for
5 purposes of the act; redefining the term
6 "stand-alone bar" to include a licensed
7 premises that derives no more than a specified
8 amount of gross revenue from the sale of food
9 consumed on the licensed premises and that is
10 located in a building individually listed in
11 the National Register of Historic Places;
12 amending s. 386.204, F.S.; eliminating certain
13 exceptions to the prohibition against smoking
14 in an enclosed indoor workplace; prohibiting a
15 proprietor or person in charge of an enclosed
16 indoor workplace from permitting smoking in
17 that workplace; requiring that a proprietor or
18 person in charge of an enclosed indoor
19 workplace request a person who is smoking to
20 stop smoking or leave the premises; providing
21 penalties; amending s. 386.2045, F.S.;
22 conforming cross-references; permitting smoking
23 upon a stage as part of a theatrical
24 production; amending s. 386.205, F.S.;
25 conforming cross-references; amending s.
26 386.206, F.S.; deleting certain provisions made
27 obsolete by operation of law which require the
28 posting of signs in an enclosed indoor
29 workplace; amending s. 386.208, F.S.;
30 authorizing a law enforcement officer to issue
31 a citation to a person who violates the Florida

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

23
24 Be It Enacted by the Legislature of the State of Florida:

25
26 Section 1. Subsection (5) and present subsection (11)
27 of section 386.203, Florida Statutes, are amended, present
28 subsections (6) through (13) of that section are redesignated
29 as subsections (7) through (14), respectively, and a new
30 subsection (6) is added to that section, to read:

31 386.203 Definitions.--As used in this part:

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

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

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

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

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

27 (12)~~(11)~~ "Stand-alone bar" means any licensed premises
28 devoted during any time of operation predominantly or totally
29 to serving alcoholic beverages, intoxicating beverages, or
30 intoxicating liquors, or any combination thereof, for
31 consumption on the licensed premises; in which the serving of

1 food, if any, is merely incidental to the consumption of any
2 such beverage; and the licensed premises is not located
3 within, and does not share any common entryway or common
4 indoor area with, any other enclosed indoor workplace,
5 including any business for which the sale of food or any other
6 product or service is more than an incidental source of gross
7 revenue. A place of business constitutes a stand-alone bar in
8 which the service of food is merely incidental in accordance
9 with this subsection if the licensed premises derives no more
10 than 10 percent of its gross revenue from the sale of food
11 consumed on the licensed premises. However, a place of
12 business remains a stand-alone bar in which the service of
13 food is merely incidental if the licensed premises derives no
14 more than 20 percent of its gross revenue from the sale of
15 food consumed on the licensed premises and the licensed
16 premises is located in a building that is individually listed
17 in the National Register of Historic Places as defined in s.
18 267.021. A completed application to individually list the
19 building in the National Register of Historic Places must have
20 been submitted on or before 90 days after the effective date
21 of this act.

22 Section 2. Section 386.204, Florida Statutes, is
23 amended to read:

24 386.204 Prohibition.--

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

27 (2) A proprietor or other person in charge of an
28 enclosed indoor workplace may not permit smoking in that
29 enclosed indoor workplace. If the proprietor or other person
30 in charge of an enclosed indoor workplace observes smoking in
31 that workplace or has been notified of observed smoking in

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

10 Section 3. Subsections (2) and (4) of section
11 386.2045, Florida Statutes, are amended, and subsection (7) is
12 added to that section, to read:

13 386.2045 Enclosed indoor workplaces; specific
14 exceptions.--Notwithstanding s. 386.204, tobacco smoking may
15 be permitted in each of the following places:

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

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

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, the 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) or, if such licensed
29 premises is in a building that is individually listed in the
30 National Register of Historic Places as defined in s. 267.021,
31 no more than 20 percent of the gross revenue of the business

1 is from the sale of food consumed on the licensed premises s-
2 386.203(11). However, a completed application to individually
3 list the building in the National Register of Historic Places
4 must have been submitted on or before 90 days after the
5 effective date of this act.

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

11 (c) The licensed vendor conspicuously posts signs at
12 each entrance to the establishment stating that smoking is
13 permitted in the establishment.

14
15 The division shall establish by rule the format of the
16 affidavit required by this subsection. A vendor shall not
17 knowingly make a false statement on the affidavit required by
18 this subsection. In addition to the penalties provided in
19 subsection (7), a person who knowingly makes a false statement
20 on the affidavit required by this subsection may be subject to
21 suspension or revocation of his or her alcoholic beverage
22 license under s. 561.29.

23 ~~(6) Every third year after the initial designation, on~~
24 ~~or before the licensee's annual license renewal, the licensed~~
25 ~~vendor must additionally provide to the division an agreed~~
26 ~~upon procedures report in a format established by rule of the~~
27 ~~department from a Florida certified public accountant that~~
28 ~~attests to the licensee's compliance with the percentage~~
29 ~~requirement of s. 386.203(11) for the preceding 36 month~~
30 ~~period. Such report shall be admissible in any proceeding~~
31 ~~pursuant to s. 120.57. This subsection does not apply to a~~

1 ~~stand alone bar if the only food provided by the business, or~~
2 ~~in any other way present or brought onto the premises for~~
3 ~~consumption by patrons, is limited to nonperishable snack food~~
4 ~~items commercially prepackaged off the premises of the~~
5 ~~stand alone bar and served without additions or preparation;~~
6 ~~except that a stand alone bar may pop popcorn for consumption~~
7 ~~on its premises, provided that the equipment used to pop the~~
8 ~~popcorn is not used to prepare any other food for patrons.~~

9 ~~(6)(7)~~ The Division of Alcoholic Beverages and Tobacco
10 shall have the power to enforce the provisions of part II of
11 chapter 386 and to audit a licensed vendor that operates a
12 business that meets the definition of a stand-alone bar as
13 provided in s. 386.203(12) ~~s. 386.203(11)~~ for compliance with
14 this section.

15 ~~(7)(8)~~ Any licensed vendor ~~that operates a business~~
16 ~~that meets the definition of a stand alone bar as provided in~~
17 ~~s. 386.203(11)~~ who violates the provisions of this section or
18 part II of chapter 386 shall be subject to the following
19 penalties:

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

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

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

1 be subject to a fine of not less than \$500 or more than
2 \$2,000; and

3 (d) For the fourth or subsequent violation, the vendor
4 shall be subject to a fine of not less than \$500 or more than
5 \$2,000, and any vendor that operates a business that meets the
6 definition of a stand-alone bar as provided in s. 386.203(12)
7 shall receive a 60-day suspension of the right to maintain a
8 stand-alone bar in which tobacco smoking is permitted and
9 shall be subject to a fine of not less than \$500 or more than
10 \$2,000 or revocation of the right to maintain a stand-alone
11 bar in which tobacco smoking is permitted.

12 Section 8. This act shall take effect July 1, 2005.
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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 1348

4 The committee substitute (CS) amends s. 386.203, F.S., to
5 define the term "person."

6 The CS amends s. 561.695(5)(a), F.S., to permit stand-alone
7 bars to sell food up to 20% of their gross revenue if the
8 business is located in a registered building listed on the
9 National Register of Historic Places (NRHP). An application
10 to register the building in the NRHP must be filed on or
11 before 90 days after the effective date of this act.

12 The CS amends s. 386.204, F.S., to prohibit proprietors and
13 other persons in charge of an enclosed indoor workplace from
14 permitting employees or non-employees from smoking in the
15 workplace, and requires specific actions by such persons to
16 prevent tobacco smoking.

17 The CS amends s. 386.2045, F.S., to allow tobacco smoking on
18 stage by performers as part of a theatrical production. It
19 also conforms a cross-reference.

20 The CS amends s. 386.205, F.S., to conform a cross-reference.

21 The CS repeals subsections (1) and (5) of s. 206, F.S., which
22 under current law will expire July 1, 2005.

23 The CS amends s. 386.208, F.S., to provide that a law
24 enforcement officer may issue a citation for violations of the
25 smoking ban, and to specify the minimum information that the
26 citation must contain.

27 The CS amends s. 561.695, F.S., to repeal the requirement for
28 a procedures report from a CPA. It prohibits a licensee from
29 knowingly making a false statement on the annual certification
30 affidavit, and subjects violators to possible suspension or
31 revocation of their alcoholic beverage license. It also
corrects a cross-reference. It applies the penalties for
designated stand-alone bars to other alcoholic beverage
licensed businesses that violate the smoking ban.