

By the Committees on Commerce and Consumer Services; Regulated Industries; and Senator Geller

577-2280-05

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 requiring that an application for historic
13 designation be submitted within a specified
14 period of time; amending s. 386.204, F.S.;
15 eliminating certain exceptions to the
16 prohibition against smoking in an enclosed
17 indoor workplace; prohibiting a proprietor or
18 person in charge of an enclosed indoor
19 workplace from permitting smoking in that
20 workplace; requiring that a proprietor or
21 person in charge of an enclosed indoor
22 workplace request a person who is smoking to
23 stop smoking or leave the premises; providing
24 penalties; amending s. 386.2045, F.S.;
25 conforming cross-references; permitting smoking
26 upon a stage as part of a theatrical
27 production; amending s. 386.205, F.S.;
28 conforming cross-references; amending s.
29 386.206, F.S.; deleting certain provisions made
30 obsolete by operation of law which require the
31 posting of signs in an enclosed indoor

1 workplace; amending s. 386.208, F.S.;
2 authorizing a law enforcement officer to issue
3 a citation to a person who violates the Florida
4 Clean Indoor Air Act; providing requirements
5 for the citation; providing that failure to
6 comply with a citation is deemed a waiver of
7 the right to contest the citation; authorizing
8 a law enforcement officer to remove a person
9 from the premises who is in violation of the
10 Florida Clean Indoor Air Act; providing that
11 penalties imposed under the act do not limit
12 other actions by a law enforcement officer or
13 state agency; amending s. 561.695, F.S.;
14 conforming cross-references; providing a
15 penalty for a licensee who knowingly makes a
16 false statement on an annual compliance
17 affidavit; eliminating provisions requiring a
18 stand-alone bar to certify to the Division of
19 Alcoholic Beverages and Tobacco of the
20 Department of Business and Professional
21 Regulation compliance with certain provisions
22 of the Florida Clean Indoor Air Act; providing
23 additional penalties for a third or subsequent
24 violation of requirements applicable to a
25 stand-alone bar; providing an effective date.

26
27 Be It Enacted by the Legislature of the State of Florida:

28
29 Section 1. Subsection (5) and present subsection (11)
30 of section 386.203, Florida Statutes, are amended, present
31 subsections (6) through (13) of that section are redesignated

1 as subsections (7) through (14), respectively, and a new
2 subsection (6) is added to that section, to read:

3 386.203 Definitions.--As used in this part:

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

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

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

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

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

30 (12)(11) "Stand-alone bar" means any licensed premises
31 devoted during any time of operation predominantly or totally

1 | to serving alcoholic beverages, intoxicating beverages, or
2 | intoxicating liquors, or any combination thereof, for
3 | consumption on the licensed premises; in which the serving of
4 | food, if any, is merely incidental to the consumption of any
5 | such beverage; and the licensed premises is not located
6 | within, and does not share any common entryway or common
7 | indoor area with, any other enclosed indoor workplace,
8 | including any business for which the sale of food or any other
9 | product or service is more than an incidental source of gross
10 | revenue. A place of business constitutes a stand-alone bar in
11 | which the service of food is merely incidental in accordance
12 | with this subsection if the licensed premises derives no more
13 | than 10 percent of its gross revenue from the sale of food
14 | consumed on the licensed premises. However, a place of
15 | business remains a stand-alone bar in which the service of
16 | food is merely incidental if the licensed premises derives no
17 | more than 20 percent of its gross revenue from the sale of
18 | food consumed on the licensed premises, the premises is
19 | licensed as a vendor as of July 1, 2005, and the licensed
20 | premises is located in a building that is individually listed
21 | in the National Register of Historic Places as defined in s.
22 | 267.021. An application to individually list the building in
23 | the National Register of Historic Places must have been
24 | submitted to the Department of State on or before 90 days
25 | after the effective date of this act.

26 | Section 2. Section 386.204, Florida Statutes, is
27 | amended to read:

28 | 386.204 Prohibition.--

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

31 |

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

15 Section 3. Subsections (2) and (4) of section
16 386.2045, Florida Statutes, are amended, and subsection (7) is
17 added to that section, to read:

18 386.2045 Enclosed indoor workplaces; specific
19 exceptions.--Notwithstanding s. 386.204, tobacco smoking may
20 be permitted in each of the following places:

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

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

29 (7) EXPRESSIVE ACTIVITY.--Any enclosed indoor
30 workplace or public place, to the extent that tobacco smoking
31

1 is done upon a stage and done by the performers during the
2 course of, and is a part of, the theatrical production.

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

5 386.205 Customs smoking rooms.--A customs smoking room
6 may be designated by the person in charge of an airport
7 in-transit lounge under the authority and control of the
8 Bureau of Customs and Border Protection of the United States
9 Department of Homeland Security. A customs smoking room may
10 only be designated in an airport in-transit lounge under the
11 authority and control of the Bureau of Customs and Border
12 Protection of the United States Department of Homeland
13 Security. A customs smoking room may not be designated in an
14 elevator, restroom, or any common area as defined by s.
15 386.203. Each customs smoking room must conform to the
16 following requirements:

17 (1) Work, other than essential services defined in s.
18 386.203(7) ~~s. 386.203(6)~~, must not be performed in the room at
19 any given time.

20 Section 5. Section 386.206, Florida Statutes, is
21 amended to read:

22 386.206 Posting of signs; requiring policies.--

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

1 ~~of such signs shall be left to the discretion of the person in~~
2 ~~charge of the premises.~~

3 (1)~~(2)~~ The proprietor or other person in charge of an
4 enclosed indoor workplace must develop and implement a policy
5 regarding the smoking prohibitions established in this part.
6 The policy may include, but is not limited to, procedures to
7 be taken when the proprietor or other person in charge
8 witnesses or is made aware of a violation of s. 386.204 in the
9 enclosed indoor workplace and must include a policy which
10 prohibits an employee from smoking in the enclosed indoor
11 workplace. In order to increase public awareness, the person
12 in charge of an enclosed indoor workplace may, at his or her
13 discretion, post "NO SMOKING" signs as deemed appropriate.

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

24 (3)~~(4)~~ The proprietor or other person in charge of an
25 enclosed indoor workplace where a smoking cessation program,
26 medical research, or scientific research is conducted or
27 performed must conspicuously post, or cause to be posted,
28 signs stating that smoking is permitted for such purposes in
29 designated areas in the enclosed indoor workplace. Each sign
30 posted pursuant to this section must have letters of
31 reasonable size which can be easily read. The color, design,

1 and precise locations at which such signs are posted shall be
2 left to the discretion of the person in charge of the
3 premises.

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

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

8 386.208 Penalties.--

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

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

18 (a) The date and time of issuance.

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

20 (c) The date and time the civil infraction was
21 committed.

22 (d) The statute violated.

23 (e) The facts constituting the violation.

24 (f) The name and authority of the law enforcement
25 officer.

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

28 (h) The applicable range of the fine for the
29 violation, which may not be more than \$100 for a first
30 violation and not more than \$500 for each subsequent
31 violation.

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

5 (4) If a person who violates s. 386.204, or any
6 provision of this part, refuses to comply with the request of
7 the proprietor or other person in charge of an enclosed indoor
8 workplace to stop smoking or otherwise comply with the
9 provisions of this part, a law enforcement officer may remove
10 the violator from the premises.

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

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

21 561.695 Stand-alone bar enforcement; qualification;
22 penalties.--

23 (1) The division shall designate as a stand-alone bar
24 the licensed premises of a vendor that operates a business
25 that meets the definition of a stand-alone bar in s.
26 386.203(12) ~~s. 386.203(11)~~ upon receipt of the vendor's
27 election to permit tobacco smoking in the licensed premises.

28 (5) After the initial designation, to continue to
29 qualify as a stand-alone bar the licensee must provide to the
30 division annually, on or before the licensee's annual renewal
31

1 date, an affidavit that certifies, with respect to the
2 preceding 12-month period, the following:

3 (a) No more than 10 percent of the gross revenue of
4 the business is from the sale of food consumed on the licensed
5 premises as defined in s. 386.203(12) or, if such licensed
6 premises is in a building that is individually listed in the
7 National Register of Historic Places as defined in s. 267.021,
8 no more than 20 percent of the gross revenue of the business
9 is from the sale of food consumed on the licensed premises ~~s.~~
10 ~~386.203(11).~~ However, a completed application to individually
11 list the building in the National Register of Historic Places
12 must have been submitted on or before 90 days after the
13 effective date of this act.

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

19 (c) The licensed vendor conspicuously posts signs at
20 each entrance to the establishment stating that smoking is
21 permitted in the establishment.

22
23 The division shall establish by rule the format of the
24 affidavit required by this subsection. A vendor shall not
25 knowingly make a false statement on the affidavit required by
26 this subsection. In addition to the penalties provided in
27 subsection (7), a person who knowingly makes a false statement
28 on the affidavit required by this subsection may be subject to
29 suspension or revocation of his or her alcoholic beverage
30 license under s. 561.29.

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

18 ~~(6)(7)~~ The Division of Alcoholic Beverages and Tobacco
19 shall have the power to enforce the provisions of part II of
20 chapter 386 and to audit a licensed vendor that operates a
21 business that meets the definition of a stand-alone bar as
22 provided in s. 386.203(12) ~~s. 386.203(11)~~ for compliance with
23 this section.

24 ~~(7)(8)~~ Any licensed vendor ~~that operates a business~~
25 ~~that meets the definition of a stand alone bar as provided in~~
26 ~~s. 386.203(11)~~ who violates the provisions of this section or
27 part II of chapter 386 shall be subject to the following
28 penalties:

29 (a) For the first violation, the vendor shall be
30 subject to a warning or a fine of up to \$500, or both;
31

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

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

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

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

23
24 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
25 COMMITTEE SUBSTITUTE FOR
26 CS/SB 1348

27 This committee substitute differs from the bill as filed in
28 that it limits the stand-alone bar "historical premise"
29 exemption created in this act to those qualified businesses
30 existing at the time of the effective date of the act.
31