

1 conforming cross-references; delaying the
2 application of provisions requiring a
3 stand-alone bar to certify to the Division of
4 Alcoholic Beverages and Tobacco of the
5 Department of Business and Professional
6 Regulation compliance with certain provisions
7 of the Florida Clean Indoor Air Act; providing
8 additional penalties for a third or subsequent
9 violation of requirements applicable to a
10 stand-alone bar; providing an effective date.

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12 Be It Enacted by the Legislature of the State of Florida:

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

19 386.203 Definitions.--As used in this part:

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

29 1.(a) It is more than 50 percent covered from above by
30 a physical barrier that excludes rain;7 and
31

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

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

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

16 Section 2. Section 386.204, Florida Statutes, is
17 amended to read:

18 386.204 Prohibition.--

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

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

1 enclosed indoor workplace who fails to comply with this
2 subsection is subject to the procedures and penalties
3 prescribed in ss. 386.207 and 561.695, as applicable.

4 Section 3. Subsections (2) and (4) of section
5 386.2045, Florida Statutes, are amended to read:

6 386.2045 Enclosed indoor workplaces; specific
7 exceptions.--Notwithstanding s. 386.204, tobacco smoking may
8 be permitted in each of the following places:

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

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

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

19 386.205 Customs smoking rooms.--A customs smoking room
20 may be designated by the person in charge of an airport
21 in-transit lounge under the authority and control of the
22 Bureau of Customs and Border Protection of the United States
23 Department of Homeland Security. A customs smoking room may
24 only be designated in an airport in-transit lounge under the
25 authority and control of the Bureau of Customs and Border
26 Protection of the United States Department of Homeland
27 Security. A customs smoking room may not be designated in an
28 elevator, restroom, or any common area as defined by s.
29 386.203. Each customs smoking room must conform to the
30 following requirements:
31

1 (1) Work, other than essential services defined in s.
2 386.203(7) ~~s. 386.203(6)~~, must not be performed in the room at
3 any given time.

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

6 386.206 Posting of signs; requiring policies.--

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

17 (1)(2) The proprietor or other person in charge of an
18 enclosed indoor workplace must develop and implement a policy
19 regarding the smoking prohibitions established in this part.
20 The policy may include, but is not limited to, procedures to
21 be taken when the proprietor or other person in charge
22 witnesses or is made aware of a violation of s. 386.204 in the
23 enclosed indoor workplace and must include a policy which
24 prohibits an employee from smoking in the enclosed indoor
25 workplace. In order to increase public awareness, the person
26 in charge of an enclosed indoor workplace may, at his or her
27 discretion, post "NO SMOKING" signs as deemed appropriate.

28 (2)(3) The person in charge of an airport terminal
29 that includes a designated customs smoking room must
30 conspicuously post, or cause to be posted, signs stating that
31 no smoking is permitted except in the designated customs

1 smoking room located in the customs area of the airport. Each
2 sign posted pursuant to this section must have letters of
3 reasonable size that can be easily read. The color, design,
4 and precise locations at which such signs are posted shall be
5 left to the discretion of the person in charge of the
6 premises.

7 ~~(3)(4)~~ The proprietor or other person in charge of an
8 enclosed indoor workplace where a smoking cessation program,
9 medical research, or scientific research is conducted or
10 performed must conspicuously post, or cause to be posted,
11 signs stating that smoking is permitted for such purposes in
12 designated areas in the enclosed indoor workplace. Each sign
13 posted pursuant to this section must have letters of
14 reasonable size which can be easily read. The color, design,
15 and precise locations at which such signs are posted shall be
16 left to the discretion of the person in charge of the
17 premises.

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

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

22 386.208 Penalties.--

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

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

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

1 and Professional Regulation to enforce the provisions of this
2 part or any other rule, law, or ordinance.

3 Section 7. Subsection (1), paragraph (a) of subsection
4 (5), and subsections (6), (7), and (8) of section 561.695,
5 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
22 The division shall establish by rule the format of the
23 affidavit required by this subsection.

24 (6) Commencing on July 1, 2007, and continuing every
25 third year after the initial designation, on or before the
26 licensee's annual license renewal, the licensed vendor must
27 additionally provide to the division an agreed upon procedures
28 report in a format established by rule of the department from
29 a Florida certified public accountant that attests to the
30 licensee's compliance with the percentage requirement of s.
31 386.203(12) ~~s. 386.203(11)~~ for the preceding 36-month period.

1 Such report shall be admissible in any proceeding pursuant to
2 s. 120.57. This subsection does not apply to a stand-alone bar
3 if the only food provided by the business, or in any other way
4 present or brought onto the premises for consumption by
5 patrons, is limited to nonperishable snack food items
6 commercially prepackaged off the premises of the stand-alone
7 bar and served without additions or preparation; except that a
8 stand-alone bar may pop popcorn for consumption on its
9 premises, provided that the equipment used to pop the popcorn
10 is not used to prepare any other food for patrons.

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

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

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

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

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

1 suspension of the right to maintain a stand-alone bar in which
2 tobacco smoking is permitted, not to exceed 30 days, and shall
3 be subject to a fine of not less than \$500 or more than
4 \$2,000; and

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

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

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17 SENATE SUMMARY

18 Revises various provisions of the Florida Clean Indoor
19 Air Act. Requires that a proprietor or person in charge
20 of an enclosed indoor workplace request a person who is
21 smoking to stop smoking or leave the premises. Provides
22 penalties. Authorizes a law enforcement officer to issue
23 a citation to a person who violates the Florida Clean
24 Indoor Air Act. Provides that failure to comply with a
25 citation is deemed a waiver of the right to contest the
26 citation. Authorizes a law enforcement officer to remove
27 a person who is in violation of the Florida Clean Indoor
28 Air Act from the premises. Effective July 1, 2007,
29 requires stand-alone bars to periodically certify
30 compliance with the Florida Clean Indoor Air Act to the
31 Division of Alcoholic Beverages and Tobacco of the
Department of Business and Professional Regulation. (See
bill for details.)