

1 A bill to be entitled
 2 An act relating to indoor smoking places; amending s.
 3 386.203, F.S.; defining the term "person" for purposes of
 4 the Florida Clean Indoor Air Act; amending s. 386.204,
 5 F.S.; prohibiting a proprietor or other person in charge
 6 of an enclosed indoor workplace from permitting smoking in
 7 that workplace; amending s. 386.2045, F.S.; conforming
 8 cross-references; amending s. 386.206, F.S.; deleting
 9 obsolete provisions requiring that signs be posted in an
 10 enclosed indoor workplace; amending s. 561.695, F.S.;
 11 conforming cross-references; prohibiting a vendor from
 12 permitting smoking in a licensed premises unless it is
 13 designated as a stand-alone bar; providing a penalty for a
 14 licensee who knowingly makes a false statement on an
 15 affidavit of compliance; deleting a provision requiring
 16 that a licensee operating a stand-alone bar certify to the
 17 Division of Alcoholic Beverages and Tobacco that it
 18 derives only a certain percentage of its gross revenue
 19 from the sale of food; providing an effective date.

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

22
 23 Section 1. Subsection (5) of section 386.203, Florida
 24 Statutes, is amended, present subsections (7) through (13) are
 25 renumbered as subsections (8) through (14), respectively, and a
 26 new subsection (7) is added to that section, to read:

27 386.203 Definitions.--As used in this part:

28 (5) "Enclosed indoor workplace" means any place where one

29 | or more persons engages in work, and which place is
 30 | predominantly or totally bounded on all sides and above by
 31 | physical barriers, regardless of whether such barriers consist
 32 | of or include, without limitation, uncovered openings; screened
 33 | or otherwise partially covered openings; or open or closed
 34 | windows, жалousies, doors, or the like.

35 | (a) A place is "predominantly" bounded by physical
 36 | barriers during any time when both of the following conditions
 37 | exist:

38 | ~~1.(a)~~ It is more than 50 percent covered from above by a
 39 | physical barrier that excludes rain. ~~and~~

40 | ~~2.(b)~~ More than 50 percent of the combined surface area of
 41 | its sides is covered by closed physical barriers. In calculating
 42 | the percentage of side surface area covered by closed physical
 43 | barriers, all solid surfaces that block air flow, except
 44 | railings, must be considered as closed physical barriers. This
 45 | section applies to all such enclosed indoor workplaces and
 46 | enclosed parts thereof without regard to whether work is
 47 | occurring at any given time.

48 | ~~(b)(e)~~ The term does not include any facility owned or
 49 | leased by and used exclusively for noncommercial activities
 50 | performed by the members and guests of a membership association,
 51 | including social gatherings, meetings, dining, and dances, if no
 52 | person or persons are engaged in work as defined in subsection
 53 | (13) ~~(12)~~.

54 | (7) "Person" has the same meaning as in s. 1.01(3).

55 | Section 2. Section 386.204, Florida Statutes, is amended
 56 | to read:

57 386.204 Prohibition.--Except as otherwise provided in s.
 58 386.2045:

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

61 (2) A proprietor or other person in charge of an enclosed
 62 indoor workplace may not permit smoking in that enclosed indoor
 63 workplace.

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

66 386.2045 Enclosed indoor workplaces; specific
 67 exceptions.--Notwithstanding s. 386.204, tobacco smoking may be
 68 permitted in each of the following places:

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

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

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

79 386.206 Posting of signs; requiring policies.--

80 ~~(1) The person in charge of an enclosed indoor workplace~~
 81 ~~that prior to adoption of s. 20, Art. X of the State~~
 82 ~~Constitution was required to post signs under the requirements~~
 83 ~~of this section must continue to conspicuously post, or cause to~~
 84 ~~be posted, signs stating that smoking is not permitted in the~~

85 ~~enclosed indoor workplace. Each sign posted pursuant to this~~
 86 ~~section must have letters of reasonable size which can be easily~~
 87 ~~read. The color, design, and precise place of posting of such~~
 88 ~~signs shall be left to the discretion of the person in charge of~~
 89 ~~the premises.~~

90 (1)~~(2)~~ The proprietor or other person in charge of an
 91 enclosed indoor workplace must develop and implement a policy
 92 regarding the smoking prohibitions established in this part. The
 93 policy may include, but is not limited to, procedures to be
 94 taken when the proprietor or other person in charge witnesses or
 95 is made aware of a violation of s. 386.204 in the enclosed
 96 indoor workplace and must include a policy which prohibits an
 97 employee from smoking in the enclosed indoor workplace. In order
 98 to increase public awareness, the person in charge of an
 99 enclosed indoor workplace may, at his or her discretion, post
 100 "NO SMOKING" signs as deemed appropriate.

101 (2)~~(3)~~ The person in charge of an airport terminal that
 102 includes a designated customs smoking room must conspicuously
 103 post, or cause to be posted, signs stating that no smoking is
 104 permitted except in the designated customs smoking room located
 105 in the customs area of the airport. Each sign posted pursuant to
 106 this section must have letters of reasonable size that can be
 107 easily read. The color, design, and precise locations at which
 108 such signs are posted shall be left to the discretion of the
 109 person in charge of the premises.

110 (3)~~(4)~~ The proprietor or other person in charge of an
 111 enclosed indoor workplace where a smoking cessation program,
 112 medical research, or scientific research is conducted or

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113 performed must conspicuously post, or cause to be posted, signs
 114 stating that smoking is permitted for such purposes in
 115 designated areas in the enclosed indoor workplace. Each sign
 116 posted pursuant to this section must have letters of reasonable
 117 size which can be easily read. The color, design, and precise
 118 locations at which such signs are posted shall be left to the
 119 discretion of the person in charge of the premises.

120 ~~(5) The provisions of subsection (1) shall expire on July~~
 121 ~~1, 2005.~~

122 Section 5. Section 561.695, Florida Statutes, is amended
 123 to read:

124 561.695 Stand-alone bar enforcement; qualification;
 125 penalties.--

126 (1) The division shall designate as a stand-alone bar the
 127 licensed premises of a vendor that operates a business that
 128 meets the definition of a stand-alone bar in s. 386.203 (12) ~~(11)~~
 129 upon receipt of the vendor's election to permit tobacco smoking
 130 in the licensed premises. A vendor may not permit smoking in the
 131 licensed premises unless it is designated as a stand-alone bar
 132 under this section.

133 (2) Upon this act becoming a law and until the annual
 134 renewal of a vendor's license, a licensed vendor who makes the
 135 required election under subsection (1) may permit tobacco
 136 smoking on the licensed premises and must post a notice of the
 137 ~~such~~ intention at the same location at which the vendor's
 138 current alcoholic beverage license is posted. The notice must
 139 ~~shall~~ affirm the vendor's intent to comply with the conditions
 140 and qualifications of a stand-alone bar imposed pursuant to part

141 II of chapter 386 and the Beverage Law.

142 (3) Only the licensed vendor may provide or serve food on
143 the licensed premises of a stand-alone bar. Other than customary
144 bar snacks as defined by rule of the division, the licensed
145 vendor may not provide or serve food to a person on the licensed
146 premises without requiring the person to pay a separately stated
147 charge for the food that reasonably approximates the retail
148 value of the food.

149 (4) A licensed vendor operating a stand-alone bar must
150 conspicuously post signs at each entrance to the establishment
151 stating that smoking is permitted in the establishment. The
152 color and design of the ~~such~~ signs shall be left to the
153 discretion of the person in charge of the premises.

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

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

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

167 (c) The licensed vendor conspicuously posts signs at each
168 entrance to the establishment stating that smoking is permitted

169 | in the establishment.

170 |
 171 | The division shall establish by rule the format of the affidavit
 172 | required by this subsection. A licensee may not knowingly make a
 173 | false statement on the affidavit required by this subsection. In
 174 | addition to the penalties provided in subsection (7), a licensee
 175 | who knowingly makes a false statement on the affidavit required
 176 | by this subsection may be subject to suspension or revocation of
 177 | his or her alcoholic beverage license under s. 561.29.

178 | ~~(6) Every third year after the initial designation, on or~~
 179 | ~~before the licensee's annual license renewal, the licensed~~
 180 | ~~vendor must additionally provide to the division an agreed upon~~
 181 | ~~procedures report in a format established by rule of the~~
 182 | ~~department from a Florida certified public accountant that~~
 183 | ~~attests to the licensee's compliance with the percentage~~
 184 | ~~requirement of s. 386.203(11) for the preceding 36-month period.~~
 185 | ~~Such report shall be admissible in any proceeding pursuant to s.~~
 186 | ~~120.57. This subsection does not apply to a stand alone bar if~~
 187 | ~~the only food provided by the business, or in any other way~~
 188 | ~~present or brought onto the premises for consumption by patrons,~~
 189 | ~~is limited to nonperishable snack food items commercially~~
 190 | ~~prepackaged off the premises of the stand alone bar and served~~
 191 | ~~without additions or preparation; except that a stand alone bar~~
 192 | ~~may pop popcorn for consumption on its premises, provided that~~
 193 | ~~the equipment used to pop the popcorn is not used to prepare any~~
 194 | ~~other food for patrons.~~

195 | (6)~~(7)~~ The Division of Alcoholic Beverages and Tobacco
 196 | shall have the power to enforce the provisions of part II of

197 chapter 386 and to audit a licensed vendor that operates a
 198 business that meets the definition of a stand-alone bar as
 199 provided in s. 386.203 (12) ~~(11)~~ for compliance with this section.

200 (7) ~~(8)~~ Any vendor that operates a business that meets the
 201 definition of a stand-alone bar as provided in s.
 202 386.203 (12) ~~(11)~~ who violates the provisions of this section or
 203 part II of chapter 386 shall be subject to the following
 204 penalties:

205 (a) For the first violation, the vendor shall be subject
 206 to a warning or a fine of up to \$500, or both. †

207 (b) For the second violation within 2 years after the
 208 first violation, the vendor shall be subject to a fine of not
 209 less than \$500 or more than \$2,000. †

210 (c) For the third or subsequent violation within 2 years
 211 after the first violation, the vendor shall receive a suspension
 212 of the right to maintain a stand-alone bar in which tobacco
 213 smoking is permitted, not to exceed 30 days, and shall be
 214 subject to a fine of not less than \$500 or more than \$2,000. †
 215 and

216 (d) For the fourth or subsequent violation, the vendor
 217 shall receive a 60-day suspension of the right to maintain a
 218 stand-alone bar in which tobacco smoking is permitted and shall
 219 be subject to a fine of not less than \$500 or more than \$2,000
 220 or revocation of the right to maintain a stand-alone bar in
 221 which tobacco smoking is permitted.

222 (8) ~~(9)~~ The division shall adopt rules governing the
 223 designation process, criteria for qualification, required
 224 recordkeeping, auditing, and all other rules necessary for the

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225 | effective enforcement and administration of this section and
226 | part II of chapter 386. The division is authorized to adopt
227 | emergency rules pursuant to s. 120.54(4) to implement the
228 | provisions of this section.

229 | Section 6. This act shall take effect July 1, 2006.