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CHAMBER ACTION

1 The Business Regulation Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

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

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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

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

386.203 Definitions.--As used in this part:

(5) "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, жалousies, doors, or the like.

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

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

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

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52 (b)~~(e)~~ The term does not include any facility owned or
 53 leased by and used exclusively for noncommercial activities
 54 performed by the members and guests of a membership association,
 55 including social gatherings, meetings, dining, and dances, if no
 56 person or persons are engaged in work as defined in subsection
 57 (13) ~~(12)~~.

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

59 Section 2. Section 386.204, Florida Statutes, is amended
 60 to read:

61 386.204 Prohibition.--Except as otherwise provided in s.
 62 386.2045:

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

65 (2) A proprietor or other person in charge of an enclosed
 66 indoor workplace may not permit smoking in that enclosed indoor
 67 workplace.

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

70 386.2045 Enclosed indoor workplaces; specific
 71 exceptions.--Notwithstanding s. 386.204, tobacco smoking may be
 72 permitted in each of the following places:

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

77 (4) STAND-ALONE BAR.--A business that meets the definition
 78 of a stand-alone bar as defined in s. 386.203 (12) ~~(11)~~ and that

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79 otherwise complies with all applicable provisions of the
80 Beverage Law and this part.

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

83 386.206 Posting of signs; requiring policies.--

84 ~~(1) The person in charge of an enclosed indoor workplace~~
85 ~~that prior to adoption of s. 20, Art. X of the State~~
86 ~~Constitution was required to post signs under the requirements~~
87 ~~of this section must continue to conspicuously post, or cause to~~
88 ~~be posted, signs stating that smoking is not permitted in the~~
89 ~~enclosed indoor workplace. Each sign posted pursuant to this~~
90 ~~section must have letters of reasonable size which can be easily~~
91 ~~read. The color, design, and precise place of posting of such~~
92 ~~signs shall be left to the discretion of the person in charge of~~
93 ~~the premises.~~

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

105 (2)~~(3)~~ The person in charge of an airport terminal that
106 includes a designated customs smoking room must conspicuously

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107 | post, or cause to be posted, signs stating that no smoking is
108 | permitted except in the designated customs smoking room located
109 | in the customs area of the airport. Each sign posted pursuant to
110 | this section must have letters of reasonable size that can be
111 | easily read. The color, design, and precise locations at which
112 | such signs are posted shall be left to the discretion of the
113 | person in charge of the premises.

114 | (3)~~(4)~~ The proprietor or other person in charge of an
115 | enclosed indoor workplace where a smoking cessation program,
116 | medical research, or scientific research is conducted or
117 | performed must conspicuously post, or cause to be posted, signs
118 | stating that smoking is permitted for such purposes in
119 | designated areas in the enclosed indoor workplace. Each sign
120 | posted pursuant to this section must have letters of reasonable
121 | size which can be easily read. The color, design, and precise
122 | locations at which such signs are posted shall be left to the
123 | discretion of the person in charge of the premises.

124 | ~~(5) The provisions of subsection (1) shall expire on July~~
125 | ~~1, 2005.~~

126 | Section 5. Section 561.695, Florida Statutes, is amended
127 | to read:

128 | 561.695 Stand-alone bar enforcement; qualification;
129 | penalties.--

130 | (1) The division shall designate as a stand-alone bar the
131 | licensed premises of a vendor that operates a business that
132 | meets the definition of a stand-alone bar in s. 386.203 (12)~~(11)~~
133 | upon receipt of the vendor's election to permit tobacco smoking
134 | in the licensed premises. A vendor may not permit smoking in the

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135 | licensed premises unless it is designated as a stand-alone bar
136 | under this section.

137 | (2) Upon this act becoming a law and until the annual
138 | renewal of a vendor's license, a licensed vendor who makes the
139 | required election under subsection (1) may permit tobacco
140 | smoking on the licensed premises and must post a notice of the
141 | ~~such~~ intention at the same location at which the vendor's
142 | current alcoholic beverage license is posted. The notice must
143 | ~~shall~~ affirm the vendor's intent to comply with the conditions
144 | and qualifications of a stand-alone bar imposed pursuant to part
145 | II of chapter 386 and the Beverage Law.

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

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

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

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

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

171 (c) The licensed vendor conspicuously posts signs at each
172 entrance to the establishment stating that smoking is permitted
173 in the establishment.

174

175 The division shall establish by rule the format of the affidavit
176 required by this subsection. A licensed vendor shall not
177 knowingly make a false statement on the affidavit required by
178 this subsection. In addition to the penalties provided in
179 subsection (7), a licensed vendor who knowingly makes a false
180 statement on the affidavit required by this subsection may be
181 subject to suspension or revocation of the vendor's alcoholic
182 beverage license under s. 561.29.

183 ~~(6) Every third year after the initial designation, on or~~
184 ~~before the licensee's annual license renewal, the licensed~~
185 ~~vendor must additionally provide to the division an agreed upon~~
186 ~~procedures report in a format established by rule of the~~
187 ~~department from a Florida certified public accountant that~~
188 ~~attests to the licensee's compliance with the percentage~~
189 ~~requirement of s. 386.203(11) for the preceding 36 month period.~~
190 ~~Such report shall be admissible in any proceeding pursuant to s.~~

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191 ~~120.57. This subsection does not apply to a stand-alone bar if~~
192 ~~the only food provided by the business, or in any other way~~
193 ~~present or brought onto the premises for consumption by patrons,~~
194 ~~is limited to nonperishable snack food items commercially~~
195 ~~prepackaged off the premises of the stand-alone bar and served~~
196 ~~without additions or preparation; except that a stand-alone bar~~
197 ~~may pop popcorn for consumption on its premises, provided that~~
198 ~~the equipment used to pop the popcorn is not used to prepare any~~
199 ~~other food for patrons.~~

200 (6)~~(7)~~ The Division of Alcoholic Beverages and Tobacco
201 shall have the power to enforce the provisions of part II of
202 chapter 386 and to audit a licensed vendor that operates a
203 business that meets the definition of a stand-alone bar as
204 provided in s. 386.203 (12)~~(11)~~ for compliance with this section.

205 (7)~~(8)~~ Any vendor that operates a business that meets the
206 definition of a stand-alone bar as provided in s.
207 386.203 (12)~~(11)~~ who violates the provisions of this section or
208 part II of chapter 386 shall be subject to the following
209 penalties:

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

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

215 (c) For the third or subsequent violation within 2 years
216 after the first violation, the vendor shall receive a suspension
217 of the right to maintain a stand-alone bar in which tobacco
218 smoking is permitted, not to exceed 30 days, and shall be

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219 | subject to a fine of not less than \$500 or more than \$2,000.†
220 | and

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

227 | (8)~~(9)~~ The division shall adopt rules governing the
228 | designation process, criteria for qualification, required
229 | recordkeeping, auditing, and all other rules necessary for the
230 | effective enforcement and administration of this section and
231 | part II of chapter 386. The division is authorized to adopt
232 | emergency rules pursuant to s. 120.54(4) to implement the
233 | provisions of this section.

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