

By Senator Jones

13-858A-06

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

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

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28           Section 1. Subsection (5) of section 386.203, Florida  
29 Statutes, is amended, present subsections (7), (8), (9), (10),  
30 (11), (12), and (13) are redesignated as subsections (8), (9),  
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1 (10), (11), (12), (13), and (14), respectively, and a new  
2 subsection (7) is added to that section, to read:

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

4 (5) "Enclosed indoor workplace" means any place where  
5 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.

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

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

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

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

30 (7) "Person" has the same meaning as in s. 1.01(3).  
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1           Section 2. Section 386.204, Florida Statutes, is  
2 amended to read:

3           386.204 Prohibition.--Except as otherwise provided in  
4 s. 386.2045:

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

7           (2) A proprietor or other person in charge of an  
8 enclosed indoor workplace may not permit smoking in that  
9 enclosed indoor workplace.

10          Section 3. Subsections (2) and (4) of section  
11 386.2045, Florida Statutes, are amended to read:

12          386.2045 Enclosed indoor workplaces; specific  
13 exceptions.--Notwithstanding s. 386.204, tobacco smoking may  
14 be permitted in each of the following places:

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

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

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

25          386.206 Posting of signs; requiring policies.--

26          ~~(1) The person in charge of an enclosed indoor~~  
27 ~~workplace that prior to adoption of s. 20, Art. X of the State~~  
28 ~~Constitution was required to post signs under the requirements~~  
29 ~~of this section must continue to conspicuously post, or cause~~  
30 ~~to be posted, signs stating that smoking is not permitted in~~  
31 ~~the enclosed indoor workplace. Each sign posted pursuant to~~

1 ~~this section must have letters of reasonable size which can be~~  
2 ~~easily read. The color, design, and precise place of posting~~  
3 ~~of such signs shall be left to the discretion of the person in~~  
4 ~~charge of the premises.~~

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

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

26       (3)~~(4)~~ The proprietor or other person in charge of an  
27 enclosed indoor workplace where a smoking cessation program,  
28 medical research, or scientific research is conducted or  
29 performed must conspicuously post, or cause to be posted,  
30 signs stating that smoking is permitted for such purposes in  
31 designated areas in the enclosed indoor workplace. Each sign

1 | posted pursuant to this section must have letters of  
2 | reasonable size which can be easily read. The color, design,  
3 | and precise locations at which such signs are posted shall be  
4 | left to the discretion of the person in charge of the  
5 | premises.

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

8 | Section 5. Section 561.695, Florida Statutes, is  
9 | amended to read:

10 | 561.695 Stand-alone bar enforcement; qualification;  
11 | penalties.--

12 | (1) The division shall designate as a stand-alone bar  
13 | the licensed premises of a vendor that operates a business  
14 | that meets the definition of a stand-alone bar in s.  
15 | 386.203(12) ~~s. 386.203(11)~~ upon receipt of the vendor's  
16 | election to permit tobacco smoking in the licensed premises. A  
17 | vendor may not permit smoking in the licensed premises unless  
18 | it is designated as a stand-alone bar under this section.

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

28 | (3) Only the licensed vendor may provide or serve food  
29 | on the licensed premises of a stand-alone bar. Other than  
30 | customary bar snacks as defined by rule of the division, the  
31 | licensed vendor may not provide or serve food to a person on

1 | the licensed premises without requiring the person to pay a  
2 | separately stated charge for the food that reasonably  
3 | approximates the retail value of the food.

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

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

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

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

22 |         (c) The licensed vendor conspicuously posts signs at  
23 | each entrance to the establishment stating that smoking is  
24 | permitted in the establishment.

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26 | The division shall establish by rule the format of the  
27 | affidavit required by this subsection. A licensee may not  
28 | knowingly make a false statement on the affidavit required by  
29 | this subsection. In addition to the penalties provided in  
30 | subsection (7), a licensee who knowingly makes a false  
31 | statement on the affidavit required by this subsection may be

1 subject to suspension or revocation of his or her license to  
2 sell alcoholic beverages under s. 561.29.

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

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

26 (7)(8) Any vendor that operates a business that meets  
27 the definition of a stand-alone bar as provided in s.  
28 386.203(12) ~~s. 386.203(11)~~ who violates the provisions of this  
29 section or part II of chapter 386 shall be subject to the  
30 following penalties:  
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1 (a) For the first violation, the vendor shall be  
2 subject to a warning or a fine of up to \$500, or both;

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

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

12 (d) For the fourth or subsequent violation, the vendor  
13 shall receive a 60-day suspension of the right to maintain a  
14 stand-alone bar in which tobacco smoking is permitted and  
15 shall be subject to a fine of not less than \$500 or more than  
16 \$2,000 or revocation of the right to maintain a stand-alone  
17 bar in which tobacco smoking is permitted.

18 ~~(8)(9)~~ The division shall adopt rules governing the  
19 designation process, criteria for qualification, required  
20 recordkeeping, auditing, and all other rules necessary for the  
21 effective enforcement and administration of this section and  
22 part II of chapter 386. The division is authorized to adopt  
23 emergency rules pursuant to s. 120.54(4) to implement the  
24 provisions of this section.

25 Section 6. This act shall take effect July 1, 2006.  
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SENATE SUMMARY

Defines the term "person." Prohibits a person in charge of an enclosed indoor workplace from permitting smoking in that workplace. Deletes obsolete provisions requiring that signs be posted in an enclosed indoor workplace. Prohibits a vendor from permitting smoking in a licensed premises unless it is designated as a stand-alone bar. Provides a penalty for a licensee who knowingly makes a false statement on an affidavit of compliance. Deletes a provision that requires a stand-alone bar to certify to the Division of Alcoholic Beverages and Tobacco that it derives only a certain percentage of its gross revenue from the sale of food.

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