

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 386.208, Florida Statutes, is
9 amended to read:

10 386.208 Penalties.--Any person who violates s.
11 386.204(1) ~~s. 386.204~~ commits a noncriminal violation as
12 defined in s. 775.08(3), punishable by a fine of not more than
13 \$100 for the first violation and not more than \$500 for each
14 subsequent violation. Jurisdiction shall be with the
15 appropriate county court.

16 Section 6. Section 561.695, Florida Statutes, is
17 amended to read:

18 561.695 Stand-alone bar enforcement; qualification;
19 penalties.--

20 (1) The division shall designate as a stand-alone bar
21 the licensed premises of a vendor that operates a business
22 that meets the definition of a stand-alone bar in s.
23 386.203(12) ~~s. 386.203(11)~~ upon receipt of the vendor's
24 election to permit tobacco smoking in the licensed premises. A
25 vendor may not permit smoking in the licensed premises unless
26 it is designated as a stand-alone bar under this section.

27 (2) Upon this act becoming a law and until the annual
28 renewal of a vendor's license, a licensed vendor who makes the
29 required election under subsection (1) may permit tobacco
30 smoking on the licensed premises and must post a notice of the
31 ~~such~~ intention at the same location at which the vendor's

1 current alcoholic beverage license is posted. The notice must
2 ~~shall~~ affirm the vendor's intent to comply with the conditions
3 and qualifications of a stand-alone bar imposed pursuant to
4 part II of chapter 386 and the Beverage Law.

5 (3) Only the licensed vendor may provide or serve food
6 on the licensed premises of a stand-alone bar. Other than
7 customary bar snacks as defined by rule of the division, the
8 licensed vendor may not provide or serve food to a person on
9 the licensed premises without requiring the person to pay a
10 separately stated charge for the food that reasonably
11 approximates the retail value of the food.

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

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

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

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

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1 (c) The licensed vendor conspicuously posts signs at
2 each entrance to the establishment stating that smoking is
3 permitted in the establishment.

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5 The division shall establish by rule the format of the
6 affidavit required by this subsection. A licensee may not
7 knowingly make a false statement on the affidavit required by
8 this subsection. In addition to the penalties provided in
9 subsection (7), a licensee who knowingly makes a false
10 statement on the affidavit required by this subsection may be
11 subject to suspension or revocation of his or her license to
12 sell alcoholic beverages under s. 561.29.

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

30 ~~(6)(7)~~ The Division of Alcoholic Beverages and Tobacco
31 shall have the power to enforce the provisions of part II of

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

5 ~~(7)(8)~~ Any vendor that operates a business that meets
6 the definition of a stand-alone bar as provided in s.
7 386.203(12) ~~s. 386.203(11)~~ who violates the provisions of this
8 section or part II of chapter 386 shall be subject to the
9 following penalties:

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

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

15 (c) For the third or subsequent violation within 2
16 years after the first violation, the vendor shall receive a
17 suspension of the right to maintain a stand-alone bar in which
18 tobacco smoking is permitted, not to exceed 30 days, and shall
19 be subject to a fine of not less than \$500 or more than
20 \$2,000; and

21 (d) For the fourth or subsequent violation, the vendor
22 shall receive a 60-day suspension of the right to maintain a
23 stand-alone bar in which tobacco smoking is permitted and
24 shall be subject to a fine of not less than \$500 or more than
25 \$2,000 or revocation of the right to maintain a stand-alone
26 bar in which tobacco smoking is permitted.

27 ~~(8)(9)~~ The division shall adopt rules governing the
28 designation process, criteria for qualification, required
29 recordkeeping, auditing, and all other rules necessary for the
30 effective enforcement and administration of this section and
31 part II of chapter 386. The division is authorized to adopt

1 emergency rules pursuant to s. 120.54(4) to implement the
2 provisions of this section.

3 Section 7. This act shall take effect July 1, 2006.
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5 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
6 COMMITTEE SUBSTITUTE FOR
7 Senate Bill 1536

8 The CS amends s. 386.208, F.S., to conform the cross-reference
9 to s. 386.204(1), F.S.
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