

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Judiciary Committee

BILL: CS/CS/SB 1430

INTRODUCER: Education Pre-K-12 Committee, Regulated Industries Committee, and Senator Altman

SUBJECT: Regulation of Smoking

DATE: April 22, 2011 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Fav/CS
2.	Harkey	Matthews	ED	Fav/CS
3.	Boland	Maclure	JU	Favorable
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

The bill provides an exception to the state’s preemption of smoking regulation to authorize district school boards to restrict smoking by persons on school district property.

This bill amends section 386.209, Florida Statutes.

II. Present Situation:

Smoking Prohibited Near School Property

Since 1996, s. 386.212(1), F.S., has prohibited smoking by any person under 18 years of age in, on, or within 1,000 feet of the real property comprising a public or private elementary, middle, or secondary school between the hours of 6 a.m. and midnight. The prohibition does not apply to any person occupying a moving vehicle or within a private residence.

Section 386.212(2), F.S., authorizes law enforcement officers to issue citations in the form as prescribed by a county or municipality to any person violating the provisions of s. 386.212, F.S., and prescribes the information that must be included in the citation.

The issuance of a citation under s. 386.212(2), F.S., constitutes a civil infraction punishable by a maximum civil penalty not to exceed \$25, or 50 hours of community service or, where available, successful completion of a school-approved anti-tobacco “alternative to suspension” program.¹

A person who fails to comply with the directions on the citation will be deemed to have waived his or her right to contest the citation, and an order to show cause may be issued by the court.²

After the voters approved an amendment to the Florida Constitution in 2002³ to prohibit smoking in the workplace, s. 386.212, F.S., was incorporated into the Florida Clean Indoor Air Act (act) in part II of ch. 386, F.S.⁴ The legislative purpose of the act, which regulates tobacco smoking in Florida, is to protect people from the health hazards of secondhand tobacco smoke and to implement the Florida health initiative in s. 20, Art. X of the State Constitution.⁵

Currently, smoking inside a school or other enclosed school board workplace is prohibited by the Clean Indoor Air Act. Persons under the age of 18 years are prohibited from smoking on property within 1,000 feet of a school between the hours of 6:00 a.m. and 12:00 a.m. Smoking by a person over the age of 18 years is not prohibited on school grounds, and smoking by a person of any age is not prohibited on other school property outside an enclosed workspace.

Florida’s Clean Indoor Air Act

Section 386.204, F.S., prohibits smoking in an enclosed indoor workplace, unless the act provides an exception. The act adopts and implements the amendment’s definitions and adopts the amendment’s exceptions for private residences whenever they are not being used for certain commercial purposes;⁶ stand-alone bars;⁷ designated smoking guest rooms in hotels and other

¹ Section 386.212(3), F.S.

² Section 386.212(4), F.S.

³ On November 5, 2002, the voters of Florida approved Amendment 6 to the State Constitution, which prohibits tobacco smoking in enclosed indoor workplaces. Codified as s. 20, Art. X, Florida Constitution, the amendment defines an “enclosed indoor workplace,” in part, as “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 ... without regard to whether work is occurring at any given time.” The amendment defines “work” as “any person’s providing any employment or employment-type service for or at the request of another individual or individuals or any public or private entity, whether for compensation or not, whether full or part-time, whether legally or not.” The amendment provides limited exceptions for private residences “whenever they are not being used commercially to provide child care, adult care, or health care, or any combination thereof”; retail tobacco shops; designated smoking guest rooms at hotels and other public lodging establishments; and stand-alone bars. The constitutional amendment directs the Legislature to implement the “amendment in a manner consistent with its broad purpose and stated terms.” The amendment requires that the implementing legislation have an effective date of no later than July 1, 2003, and requires that the implementing legislation must also provide civil penalties for violations; provide for administrative enforcement; and require and authorize agency rules for implementation and enforcement. The amendment further provides that the Legislature may enact legislation more restrictive of tobacco smoking than that provided in the Florida Constitution.

⁴ The Legislature implemented the smoking ban by enacting ch. 2003-398, L.O.F., effective July 1, 2003, which amended part II of ch. 386, F.S., and created s. 561.695, F.S., of the Beverage Law. The act, as amended, implements the constitutional amendment’s prohibition.

⁵ Section 386.202, F.S.

⁶ Section 386.2045(1), F.S. *See also* definition of the term “private residence” in s. 386.203(1), F.S.

⁷ Section 386.2045(4), F.S. *See also* definition of the term “stand-alone bar” in s. 386.203(11), F.S.

public lodging establishments;⁸ and retail tobacco shops, including businesses that manufacture, import or distribute tobacco products and tobacco loose leaf dealers.⁹

Section 386.207, F.S., provides for enforcement of the act by the Department of Health (DOH) and the Department of Business and Professional Regulation (DBPR) within each department's specific areas of regulatory authority. Sections 386.207(1) and 386.2125, F.S., grant rulemaking authority to the DOH and the DBPR and require that the departments consult with the State Fire Marshal during the rulemaking process.

Section 386.207(3), F.S., provides penalties for violations of the act by proprietors or persons in charge of an enclosed indoor workplace.¹⁰ The penalty for a first violation is a fine of not less than \$250 and not more than \$750. The act provides fines for subsequent violations in the amount of not less than \$500 and not more than \$2,000. Penalties for individuals who violate the act are provided in s. 386.208, F.S., which provides for a fine in the amount of not more than \$100 for a first violation and not more than \$500 for a subsequent violation. The penalty range for an individual violation is identical to the penalties for violations of the act before the implementation of the constitutional smoking prohibition.¹¹

Regulation of Smoking Preempted to State

Section 386.209, F.S., provides that the act expressly preempts regulation of smoking to the state and supersedes any municipal or county ordinance on the subject.

Regarding the issue of preemption, a recent Florida Attorney General Opinion concluded that the act precludes school districts from adopting tobacco-free campus policies that prohibit smoking outdoors on school grounds.¹² The Attorney General reasoned that s. 386.209, F.S., represents a clear expression of the legislative intent that the act preempts the field of smoking regulation. The Attorney General also noted that the prohibition against smoking near school property in s. 386.212, F.S., presented a clear expression of the legislative intent to preempt the regulation of smoking in any public places and, specifically, smoking on school property.

III. Effect of Proposed Changes:

The bill amends s. 386.209, F.S., to provide an exception to the state's preemption of smoking regulation to authorize district school boards to restrict smoking by persons on school district property.

⁸ Section 386.2045(3), F.S. *See also* definition of the term "designated smoking guest rooms" in s. 386.203(4), F.S.

⁹ Section 386.2045(2), F.S. *See also* definition of the term "retail tobacco shop" in s. 386.203(8), F.S.

¹⁰ The applicable penalties for violations by designated stand-alone bars are set forth in s. 561.695(7), F.S.

¹¹ *See* ss. 386.207 and 386.208, F.S. (2002).

¹² Op. Fla. Att'y Gen. 2010-53 (December 29, 2010), *available at* <http://www.myfloridalegal.com/ago.nsf/printview/1FA4896BFF72350B85257808007B1925> (last visited April 19, 2011). *See also* Op. Fla. Att'y Gen. 2005-63 (November 21, 2005), *available at* <http://www.myfloridalegal.com/ago.nsf/printview/876AC6F6B95DBF69852570C00075B510> (last visited April 19, 2011), opining that a municipality is preempted from regulating smoking in a public park other than as prescribed by the Legislature.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Education Pre-K-12 on April 14, 2011:

The committee substitute authorizes district school boards to restrict smoking by persons on school district property and does not limit the hours during which a prohibition would apply.

CS by Regulated Industries on March 16, 2011:

The committee substitute amends s. 386.209, F.S., to incorporate the exception provided in s. 386.212, F.S.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
