

By the Committee on Innovation, Industry, and Technology

580-02188-19

20197012__

1 A bill to be entitled
2 An act relating to vaping; implementing s. 20, Art. X
3 of the State Constitution, as amended by Amendment 9
4 (2018); renaming part II of ch. 386, F.S.; expanding
5 its application to include vaping in indoor areas;
6 amending s. 386.202, F.S.; revising legislative
7 intent; amending s. 386.203, F.S.; defining and
8 redefining terms; amending s. 386.204, F.S.;
9 prohibiting vaping in an enclosed indoor workplace,
10 except as otherwise provided; amending s. 386.2045,
11 F.S.; providing exceptions to the prohibition against
12 vaping and smoking in an enclosed indoor workplace;
13 amending s. 386.205, F.S.; revising requirements for
14 customs smoking rooms; amending s. 386.206, F.S.;
15 requiring the proprietor or other person in charge of
16 an enclosed indoor workplace to develop and implement
17 a policy regarding specified smoking and vaping
18 prohibitions; authorizing the proprietor or other
19 person to post signs to indicate that smoking and
20 vaping are prohibited; requiring specified signs to be
21 posted in airport terminals and in enclosed indoor
22 workplaces under certain circumstances; amending s.
23 386.207, F.S.; making technical changes; reenacting s.
24 386.208, F.S., relating to penalties; amending s.
25 386.209, F.S.; clarifying that the preemption to the
26 state of the regulation of smoking does not preclude
27 the adoption of an ordinance on the use of vapor-
28 generating devices; amending s. 386.211, F.S.;
29 revising requirements for public announcements in mass

580-02188-19

20197012__

30 transportation terminals; amending s. 386.212, F.S.;

31 prohibiting vaping near school property; providing

32 civil penalties; amending s. 386.2125, F.S.;

33 authorizing the Department of Business and

34 Professional Regulation, in consultation with the

35 State Fire Marshal, to adopt certain rules; providing

36 requirements for assessing a vaping cessation program

37 for approval; amending s. 561.695, F.S.; conforming

38 provisions to changes made by the act to allow a

39 vendor that operates a stand-alone bar to authorize

40 tobacco smoking and vaping in the licensed premises;

41 providing requirements, enforcement, and penalties for

42 stand-alone bars that authorize vaping; providing an

43 effective date.

44

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

46

47 Section 1. Part II of chapter 386, Florida Statutes,

48 entitled "INDOOR AIR: TOBACCO SMOKE," is renamed "INDOOR AIR:

49 SMOKING AND VAPING."

50 Section 2. Section 386.202, Florida Statutes, is amended to

51 read:

52 386.202 Legislative intent.—The purpose of this part is to

53 protect people from the health hazards of secondhand tobacco

54 smoke and vapor and to implement the Florida health initiative

55 in s. 20, Art. X of the State Constitution. It is the intent of

56 the Legislature to not inhibit, or otherwise obstruct, medical

57 or scientific research, or smoking or vaping cessation programs

58 approved by the Department of Health.

580-02188-19

20197012__

59 Section 3. Present subsections (7), (8), (9), (10), (11),
60 and (12) of section 386.203, Florida Statutes, are redesignated
61 as subsections (8), (9), (10), (11), (12), and (17),
62 respectively, new subsections (7), (13), (14), (15), and (16)
63 are added to that section, and present subsections (4), (5), and
64 (13) of that section are amended, to read:

65 386.203 Definitions.—As used in this part:

66 (4) "Designated ~~smoking~~ guest rooms at public lodging
67 establishments" means the sleeping rooms and directly associated
68 private areas, such as bathrooms, living rooms, and kitchen
69 areas, if any, rented to guests for their exclusive transient
70 occupancy in public lodging establishments, including hotels,
71 motels, vacation rentals, transient apartments, transient
72 lodging establishments, roominghouses, boardinghouses, bed and
73 breakfast inns, and the like; and designated by the person or
74 persons having management authority over such public lodging
75 establishment as rooms in which smoking or vaping may be
76 authorized ~~permitted~~.

77 (5) "Enclosed indoor workplace" means any place where one
78 or more persons engages in work, and which place is
79 predominantly or totally bounded on all sides and above by
80 physical barriers, regardless of whether such barriers consist
81 of or include, without limitation, uncovered openings; screened
82 or otherwise partially covered openings; or open or closed
83 windows, жалousies, doors, or the like. A place is
84 "predominantly" bounded by physical barriers during any time
85 when both of the following conditions exist:

86 (a) It is more than 50 percent covered from above by a
87 physical barrier that excludes rain, and

580-02188-19

20197012__

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

96 ~~(c)~~

97 The term does not include any facility owned or leased by and
98 used exclusively for noncommercial activities performed by the
99 members and guests of a membership association, including social
100 gatherings, meetings, dining, and dances, if no person or
101 persons are engaged in work as defined in this section
102 ~~subsection (12)~~.

103 (7) "Membership association" means a charitable, nonprofit,
104 or veterans' organization that holds a current exemption under
105 s. 501(c) (3), (4), (7), (8), (10), or (19) or s. 501(d) of the
106 Internal Revenue Code.

107 (13) "Vape" or "vaping" means to inhale or exhale vapor
108 produced by a vapor-generating electronic device or to possess a
109 vapor-generating electronic device while that device is actively
110 employing an electronic, a chemical, or a mechanical means
111 designed to produce vapor or aerosol from a nicotine product or
112 any other substance.

113 (14) "Vapor" means aerosolized or vaporized nicotine or
114 other aerosolized or vaporized substance produced by a vapor-
115 generating electronic device or exhaled by the person using such
116 a device.

580-02188-19

20197012__

117 (15) "Vapor-generating electronic device" means any product
118 that employs an electronic, a chemical, or a mechanical means
119 capable of producing vapor or aerosol from a nicotine product or
120 any other substance, including, but not limited to, an
121 electronic cigarette, electronic cigar, electronic cigarillo,
122 electronic pipe, or other similar device or product, any
123 replacement cartridge for such device, and any other container
124 of a solution or other substance intended to be used with or
125 within an electronic cigarette, electronic cigar, electronic
126 cigarillo, electronic pipe, or other similar device or product.

127 (16) "Vapor-generating electronic device retailer" or
128 "retail vape shop" means any enclosed indoor workplace dedicated
129 to or predominantly for the retail sale of vapor-generating
130 electronic devices and components, parts, and accessories for
131 such products, in which the sale of other products or services
132 is merely incidental.

133 ~~(13) "Membership association" means a charitable,~~
134 ~~nonprofit, or veterans' organization that holds a current~~
135 ~~exemption under s. 501(c)(3), (4), (7), (8), (10), or (19) or s.~~
136 ~~501(d) of the Internal Revenue Code.~~

137 Section 4. Section 386.204, Florida Statutes, is amended to
138 read:

139 386.204 Prohibition.—A person may not smoke or vape in an
140 enclosed indoor workplace, except as otherwise provided in s.
141 386.2045.

142 Section 5. Section 386.2045, Florida Statutes, is amended
143 to read:

144 386.2045 Enclosed indoor workplaces; specific exceptions.—
145 Notwithstanding s. 386.204, tobacco smoking or vaping, or both,

580-02188-19

20197012__

146 may be authorized ~~permitted~~ in each of the following places:

147 (1) ~~Private residence.~~ A private residence whenever it is
148 not being used commercially to provide child care, adult care,
149 or health care, or any combination thereof as defined in s.
150 386.203(1).

151 (2) A retail tobacco shop. ~~An enclosed indoor workplace~~
152 ~~dedicated to or predominantly for the retail sale of tobacco,~~
153 ~~tobacco products, and accessories for such products, as defined~~
154 ~~in s. 386.203(8).~~

155 (3) A retail vape shop.

156 (4) ~~(3)~~ A designated ~~SMOKING GUEST ROOM.~~ A designated
157 ~~smoking~~ guest room at a public lodging establishment ~~as defined~~
158 ~~in s. 386.203(4).~~

159 (5) ~~(4)~~ A stand-alone bar. ~~A business that meets the~~
160 ~~definition of a stand-alone bar as defined in s. 386.203(11) and~~
161 ~~that otherwise~~ complies with all applicable provisions of the
162 Beverage Law and this part.

163 (6) ~~(5)~~ ~~SMOKING CESSATION PROGRAM, MEDICAL OR SCIENTIFIC~~
164 ~~RESEARCH.~~ An enclosed indoor workplace, to the extent that
165 tobacco smoking or vaping is an integral part of a smoking or
166 vaping cessation program approved by the department, or medical
167 or scientific research conducted therein. Each room in which
168 tobacco smoking or vaping, or both, are authorized ~~is permitted~~
169 must comply with the signage requirements in s. 386.206.

170 (7) ~~(6)~~ ~~Customs smoking room.~~ A customs smoking room in an
171 airport in-transit lounge under the authority and control of the
172 Bureau of Customs and Border Protection of the United States
173 Department of Homeland Security subject to the restrictions
174 contained in s. 386.205.

580-02188-19

20197012__

175 Section 6. Section 386.205, Florida Statutes, is amended to
176 read:

177 386.205 Customs smoking rooms.—A customs smoking room may
178 be designated by the person in charge of an airport in-transit
179 lounge under the authority and control of the Bureau of Customs
180 and Border Protection of the United States Department of
181 Homeland Security. A customs smoking room may ~~only~~ be designated
182 only in an airport in-transit lounge under the authority and
183 control of the Bureau of Customs and Border Protection of the
184 United States Department of Homeland Security. A customs smoking
185 room may not be designated in an elevator, restroom, or any
186 common area as defined by s. 386.203. Each customs smoking room
187 must conform to the following requirements:

188 (1) Work, other than essential services ~~defined in s.~~
189 ~~386.203(6)~~, may ~~must~~ not be performed in the room at any ~~given~~
190 time.

191 (2) Tobacco smoking and vaping are prohibited ~~must not be~~
192 ~~permitted in the room~~ while ~~any~~ essential services are being
193 performed in the room.

194 (3) Each customs smoking room must be enclosed by physical
195 barriers that are impenetrable by secondhand tobacco smoke and
196 vapor and must prevent the escape of the ~~secondhand tobacco~~
197 ~~smoke~~ and vapor into the enclosed indoor workplace.

198 (4) Each customs smoking room must exhaust tobacco smoke
199 and vapor directly to the outside and away from air intake
200 ducts, and be maintained under negative pressure, with respect
201 to surrounding spaces, sufficient to contain the ~~tobacco~~ smoke
202 and vapor within the room.

203 (5) Each customs smoking room must comply with the signage

580-02188-19

20197012__

204 requirements in s. 386.206.

205 Section 7. Section 386.206, Florida Statutes, is amended to
206 read:

207 386.206 Posting of signs; requiring policies.—

208 (1) The proprietor or other person in charge of an enclosed
209 indoor workplace must develop and implement a policy regarding
210 the smoking and vaping prohibitions established in this part.

211 The policy may include, but is not limited to, procedures to be
212 taken when the proprietor or other person in charge witnesses or
213 is made aware of a violation of s. 386.204 in the enclosed
214 indoor workplace and must include a policy which prohibits an
215 employee from smoking or vaping, or both, in the enclosed indoor
216 workplace. In order to increase public awareness, the person in
217 charge of an enclosed indoor workplace may, at his or her
218 discretion, post signs to indicate that smoking or vaping, or
219 both, are prohibited ~~“NO SMOKING” signs as deemed appropriate.~~

220 (2) The person in charge of an airport terminal that
221 includes a designated customs smoking room must conspicuously
222 post, or cause to be posted, signs stating that ~~no~~ smoking and
223 vaping are prohibited ~~is permitted~~ except in the designated
224 customs smoking room located in the customs area of the airport.
225 Each sign posted pursuant to this subsection ~~section~~ must have
226 letters of reasonable size which ~~that~~ can be easily read. The
227 color, design, and precise locations at which such signs are
228 posted shall be left to the discretion of the person in charge
229 of the premises.

230 (3) The proprietor or other person in charge of an enclosed
231 indoor workplace where a smoking or vaping cessation program,
232 medical research, or scientific research is conducted or

580-02188-19

20197012__

233 performed must conspicuously post, or cause to be posted, signs
234 stating that smoking or vaping, or both, as applicable, are
235 authorized ~~is permitted~~ for such purposes in designated areas in
236 the enclosed indoor workplace. Each sign posted pursuant to this
237 subsection ~~section~~ must have letters of reasonable size which
238 can be easily read. The color, design, and precise locations at
239 which such signs are posted shall be left to the discretion of
240 the person in charge of the premises.

241 Section 8. Section 386.207, Florida Statutes, is amended to
242 read:

243 386.207 Administration; enforcement; civil penalties.—

244 (1) The department or the Division of Hotels and
245 Restaurants or the Division of Alcoholic Beverages and Tobacco
246 of the Department of Business and Professional Regulation shall
247 enforce this part based upon each department's specific areas of
248 regulatory authority and to implement such enforcement shall
249 adopt, in consultation with the State Fire Marshal, rules
250 specifying procedures to be followed by enforcement personnel in
251 investigating complaints and notifying alleged violators and
252 rules specifying procedures by which appeals may be taken by
253 aggrieved parties.

254 (2) Public agencies responsible for the management and
255 maintenance of government buildings shall report observed
256 violations to the department. The State Fire Marshal shall
257 report to the department observed violations of this part found
258 during its periodic inspections conducted under its regulatory
259 authority.

260 (3) The department or the Division of Hotels and
261 Restaurants or the Division of Alcoholic Beverages and Tobacco

580-02188-19

20197012__

262 of the Department of Business and Professional Regulation, upon
263 notification of observed violations of this part, shall issue to
264 the proprietor or other person in charge of such enclosed indoor
265 workplace a notice to comply with this part. If the person fails
266 to comply within 30 days after receipt of the notice, the
267 department or the Division of Hotels and Restaurants or the
268 Division of Alcoholic Beverages and Tobacco of the Department of
269 Business and Professional Regulation shall assess against the
270 person a civil penalty ~~against the person~~ of not less than \$250
271 and not more than ~~to exceed~~ \$750 for the first violation and not
272 less than \$500 and not more than ~~to exceed~~ \$2,000 for each
273 subsequent violation. The imposition of the fine must be in
274 accordance with chapter 120. If a person refuses to comply with
275 this part, after having been assessed such penalty, the
276 department or the Division of Hotels and Restaurants or the
277 Division of Alcoholic Beverages and Tobacco of the Department of
278 Business and Professional Regulation may file a complaint in the
279 circuit court of the county in which the enclosed indoor
280 workplace is located to require compliance.

281 (4) All fine moneys collected pursuant to this section
282 shall be used by the department for children's medical services
283 programs pursuant to ~~the provisions of~~ part I of chapter 391.

284 Section 9. Section 386.208, Florida Statutes, is reenacted
285 to read:

286 386.208 Penalties.—Any person who violates s. 386.204
287 commits a noncriminal violation as defined in s. 775.08(3),
288 punishable by a fine of not more than \$100 for the first
289 violation and not more than \$500 for each subsequent violation.
290 Jurisdiction shall be with the appropriate county court.

580-02188-19

20197012__

291 Section 10. Section 386.209, Florida Statutes, is amended
292 to read:

293 386.209 Regulation of smoking preempted to state.—This part
294 expressly preempts regulation of smoking to the state and
295 supersedes any municipal or county ordinance on the subject;
296 however, school districts may further restrict smoking by
297 persons on school district property. This section does not
298 preclude the adoption of municipal or county ordinances that
299 impose more restrictive regulation on the use of vapor-
300 generating devices than is provided in this part.

301 Section 11. Section 386.211, Florida Statutes, is amended
302 to read:

303 386.211 Public announcements in mass transportation
304 terminals.—Announcements about the Florida Clean Indoor Air Act
305 shall be made regularly over public address systems in terminals
306 of public transportation carriers located in metropolitan
307 statistical areas with populations over 230,000 according to the
308 latest census. These announcements shall be made at least every
309 30 minutes and shall be made in appropriate languages. Each
310 announcement must include a statement to the effect that Florida
311 is a clean indoor air state and that smoking and vaping are
312 prohibited ~~is not allowed~~ except as provided in this part.

313 Section 12. Section 386.212, Florida Statutes, is amended
314 to read:

315 386.212 Smoking and vaping prohibited near school property;
316 penalty.—

317 (1) It is unlawful for any person under 18 years of age to
318 smoke tobacco or vape in, on, or within 1,000 feet of the real
319 property comprising a public or private elementary, middle, or

580-02188-19

20197012__

320 secondary school between the hours of 6 a.m. and midnight. This
321 section does not apply to any person occupying a moving vehicle
322 or within a private residence.

323 (2) A law enforcement officer may issue a citation in such
324 form as prescribed by a county or municipality to any person
325 violating ~~the provisions of~~ this section. Any such citation must
326 contain:

327 (a) The date and time of issuance.

328 (b) The name and address of the person cited.

329 (c) The date and time the civil infraction was committed.

330 (d) The statute violated.

331 (e) The facts constituting the violation.

332 (f) The name and authority of the law enforcement officer.

333 (g) The procedure for the person to follow to pay the civil
334 penalty, to contest the citation, or to appear in court.

335 (h) The applicable civil penalty if the person elects not
336 to contest the citation.

337 (i) The applicable civil penalty if the person elects to
338 contest the citation.

339 (3) Any person issued a citation pursuant to this section
340 shall be deemed to be charged with a civil infraction punishable
341 by a maximum civil penalty not to exceed \$25, or 50 hours of
342 community service or, where available, successful completion of
343 a school-approved anti-tobacco or anti-vaping "alternative to
344 suspension" program.

345 (4) Any person who fails to comply with the directions on
346 the citation shall be deemed to waive his or her right to
347 contest the citation and an order to show cause may be issued by
348 the court.

580-02188-19

20197012__

349 Section 13. Section 386.2125, Florida Statutes, is amended
350 to read:

351 386.2125 Rulemaking.—The department and the Department of
352 Business and Professional Regulation, may ~~shall~~, in consultation
353 with the State Fire Marshal, ~~have the authority to~~ adopt rules
354 pursuant to ss. 120.536(1) and 120.54 to implement the
355 provisions of this part within each agency's specific areas of
356 regulatory authority. Whenever assessing a smoking or vaping
357 cessation program for approval, the department shall consider
358 whether the smoking or vaping cessation program limits, to the
359 extent possible, any ~~the~~ potential for exposure to secondhand
360 tobacco smoke or vapor for, ~~if any, to~~ nonparticipants in the
361 enclosed indoor workplace.

362 Section 14. Section 561.695, Florida Statutes, is amended
363 to read:

364 561.695 Stand-alone bar enforcement; qualification;
365 penalties.—

366 (1) The division shall designate as a stand-alone bar the
367 licensed premises of a vendor that operates a business that
368 meets the definition of a stand-alone bar in s. 386.203 ~~s.~~
369 ~~386.203(11)~~ upon receipt of the vendor's election to authorize
370 ~~permit~~ tobacco smoking or vaping, or both, in the licensed
371 premises.

372 (2) ~~Upon this act becoming a law and until the annual~~
373 ~~renewal of a vendor's license,~~ A licensed vendor who makes the
374 required election under subsection (1) before the annual renewal
375 of its license may authorize ~~permit~~ tobacco smoking or vaping,
376 or both, on the licensed premises and must post a notice of such
377 intention at the same location at which the vendor's current

580-02188-19

20197012__

378 alcoholic beverage license is posted. The notice shall affirm
379 the vendor's intent to comply with the conditions and
380 qualifications of a stand-alone bar imposed pursuant to part II
381 of chapter 386 and the Beverage Law.

382 (3) Only the licensed vendor may provide or serve food on
383 the licensed premises of a stand-alone bar. Other than customary
384 bar snacks as defined by rule of the division, the licensed
385 vendor may not provide or serve food to a person on the licensed
386 premises without requiring the person to pay a separately stated
387 charge for the food that reasonably approximates the retail
388 value of the food.

389 (4) A licensed vendor operating a stand-alone bar must
390 conspicuously post signs at each entrance to the establishment
391 stating that smoking and vaping are authorized ~~is permitted~~ in
392 the establishment. The color and design of such signs shall be
393 left to the discretion of the person in charge of the premises.

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

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

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

580-02188-19

20197012__

407 (c) The licensed vendor conspicuously posts signs at each
408 entrance to the establishment stating that smoking or vaping, or
409 both, are authorized ~~is permitted~~ in the establishment.

410
411 The division shall establish by rule the format of the affidavit
412 required by this subsection. A licensed vendor shall not
413 knowingly make a false statement on the affidavit required by
414 this subsection. In addition to the penalties provided in
415 subsection (7), a licensed vendor who knowingly makes a false
416 statement on the affidavit required by this subsection may be
417 subject to suspension or revocation of the vendor's alcoholic
418 beverage license under s. 561.29.

419 (6) The Division of Alcoholic Beverages and Tobacco shall
420 have the power to enforce ~~the provisions of~~ part II of chapter
421 386 and to audit a licensed vendor that operates a business that
422 meets the definition of a stand-alone bar ~~as provided in s.~~
423 386.203 ~~s. 386.203(11)~~ for compliance with this section.

424 (7) Any vendor that operates a business that meets the
425 definition of a stand-alone bar ~~as provided in s. 386.203~~ which
426 ~~s. 386.203(11)~~ who violates ~~the provisions of~~ this section or
427 part II of chapter 386 is ~~shall be~~ subject to the following
428 penalties:

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

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

434 (c) For the third or subsequent violation within 2 years
435 after the first violation, the vendor shall receive a suspension

580-02188-19

20197012__

436 of the right to maintain a stand-alone bar in which tobacco
437 smoking or vaping, or both, are authorized ~~is permitted~~, not to
438 exceed 30 days, and shall be subject to a fine of not less than
439 \$500 or more than \$2,000; and

440 (d) For the fourth or subsequent violation, the vendor
441 shall receive a 60-day suspension of the right to maintain a
442 stand-alone bar in which tobacco smoking or vaping, or both, are
443 authorized ~~is permitted~~ and shall be subject to a fine of not
444 less than \$500 or more than \$2,000 or revocation of the right to
445 maintain a stand-alone bar in which tobacco smoking or vaping,
446 or both, are authorized ~~is permitted~~.

447 (8) The division shall adopt rules governing the
448 designation process, criteria for qualification, required
449 recordkeeping, auditing, and all other rules necessary for the
450 effective enforcement and administration of this section and
451 part II of chapter 386. The division is authorized to adopt
452 emergency rules pursuant to s. 120.54(4) to implement ~~the~~
453 ~~provisions of~~ this section.

454 Section 15. This act shall take effect July 1, 2019.