

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.; providing and
8 revising definitions; 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 regulation of

26 | vaping is not preempted by the state; amending s.
27 | 386.211, F.S.; revising requirements for public
28 | announcements in mass transportation terminals;
29 | amending s. 386.212, F.S.; prohibiting vaping near
30 | school property; providing civil penalties; amending
31 | s. 386.2125, F.S.; authorizing the Department of
32 | Business and Professional Regulation, in consultation
33 | with the State Fire Marshal, to adopt certain rules;
34 | providing requirements for assessing a vaping
35 | cessation program for approval; amending s. 561.695,
36 | F.S.; conforming provisions to changes made by the act
37 | to allow a vendor that operates a stand-alone bar to
38 | authorize tobacco smoking and vaping in the licensed
39 | premises; providing requirements, enforcement, and
40 | penalties for stand-alone bars that authorize vaping;
41 | providing an effective date.

42 |
43 | Be It Enacted by the Legislature of the State of Florida:

44 |
45 | Section 1. Part II of chapter 386, Florida Statutes,
46 | entitled "INDOOR AIR: TOBACCO SMOKE," is renamed "INDOOR AIR:
47 | SMOKING AND VAPING."

48 | Section 2. Section 386.202, Florida Statutes, is amended
49 | to read:

50 | 386.202 Legislative intent.—The purpose of this part is to

51 protect people from the health hazards of secondhand tobacco
52 smoke and vapor and to implement the Florida health initiative
53 in s. 20, Art. X of the State Constitution. It is the intent of
54 the Legislature to not inhibit, or otherwise obstruct, medical
55 or scientific research or smoking or vaping cessation programs
56 approved by the Department of Health.

57 Section 3. Subsections (7), (8), (9), (10), (11), (12),
58 and (13) of section 386.203, Florida Statutes, are renumbered as
59 subsections (8), (9), (10), (11), (12), (17), and (7),
60 respectively, subsection (4) and paragraph (c) of subsection (5)
61 are amended, and new subsections (13), (14), (15), and (16) are
62 added to that section, to read:

63 386.203 Definitions.—As used in this part:

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

75 (5) "Enclosed indoor workplace" means any place where one

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

84 | (c) The term does not include any facility owned or leased
 85 | by and used exclusively for noncommercial activities performed
 86 | by the members and guests of a membership association, including
 87 | social gatherings, meetings, dining, and dances, if no person or
 88 | persons are engaged in work as defined in this section
 89 | ~~subsection (12)~~.

90 | (13) "Vape" or "vaping" means to inhale or exhale vapor
 91 | produced by a vapor-generating electronic device or to possess a
 92 | vapor-generating electronic device while that device is actively
 93 | employing an electronic, a chemical, or a mechanical means
 94 | designed to produce vapor or aerosol from a nicotine product or
 95 | any other substance.

96 | (14) "Vapor" means aerosolized or vaporized nicotine or
 97 | other aerosolized or vaporized substance produced by a vapor-
 98 | generating electronic device or exhaled by the person using such
 99 | a device.

100 | (15) "Vapor-generating electronic device" means any

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101 product that employs an electronic, a chemical, or a mechanical
102 means capable of producing vapor or aerosol from a nicotine
103 product or any other substance, including, but not limited to,
104 an electronic cigarette, electronic cigar, electronic cigarillo,
105 electronic pipe, or other similar device or product; any
106 replacement cartridge for such device; and any other container
107 of solution or other substance intended to be used with or
108 within an electronic cigarette, electronic cigar, electronic
109 cigarillo, electronic pipe, or other similar device or product.

110 (16) "Vapor-generating electronic device retailer" or
111 "retail vape shop" means any enclosed indoor workplace dedicated
112 to or predominantly for the retail sale of vapor-generating
113 electronic devices and components, parts, and accessories for
114 such products, in which the sale of other products or services
115 is merely incidental.

116 Section 4. Section 386.204, Florida Statutes, is amended
117 to read:

118 386.204 Prohibition.—A person may not smoke or vape in an
119 enclosed indoor workplace, except as otherwise provided in s.
120 386.2045.

121 Section 5. Section 386.2045, Florida Statutes, is amended
122 to read:

123 386.2045 Enclosed indoor workplaces; specific exceptions.—
124 Notwithstanding s. 386.204, tobacco smoking or vaping may be
125 authorized ~~permitted~~ in each of the following places:

126 (1) ~~PRIVATE RESIDENCE.~~—A private residence whenever it is
 127 not being used commercially to provide child care, adult care,
 128 or health care, or any combination thereof as defined in s.
 129 386.203 ~~s. 386.203(1)~~.

130 (2) A retail tobacco shop. ~~RETAIL TOBACCO SHOP.~~ An
 131 ~~enclosed indoor workplace dedicated to or predominantly for the~~
 132 ~~retail sale of tobacco, tobacco products, and accessories for~~
 133 ~~such products, as defined in s. 386.203(8).~~

134 (3) A retail vape shop.

135 (4) ~~(3) DESIGNATED SMOKING GUEST ROOM.~~—A designated smoking
 136 guest room at a public lodging establishment ~~as defined in s.~~
 137 ~~386.203(4).~~

138 (5) ~~(4) STAND-ALONE BAR.~~—A business that meets the
 139 definition of a stand-alone bar ~~as defined in s. 386.203(11)~~ and
 140 that otherwise complies with all applicable provisions of the
 141 Beverage Law and this part.

142 (6) ~~(5) SMOKING CESSATION PROGRAM, MEDICAL OR SCIENTIFIC~~
 143 ~~RESEARCH.~~—An enclosed indoor workplace, to the extent that
 144 tobacco smoking or vaping is an integral part of a smoking or
 145 vaping cessation program approved by the department, or medical
 146 or scientific research conducted therein. Each room in which
 147 tobacco smoking or vaping is authorized ~~permitted~~ must comply
 148 with the signage requirements in s. 386.206.

149 (7) ~~(6) CUSTOMS SMOKING ROOM.~~—A customs smoking room in an
 150 airport in-transit lounge under the authority and control of the

151 Bureau of Customs and Border Protection of the United States
152 Department of Homeland Security subject to the restrictions
153 contained in s. 386.205.

154 Section 6. Section 386.205, Florida Statutes, is amended
155 to read:

156 386.205 Customs smoking rooms.—A customs smoking room may
157 be designated by the person in charge of an airport in-transit
158 lounge under the authority and control of the Bureau of Customs
159 and Border Protection of the United States Department of
160 Homeland Security. A customs smoking room may only be designated
161 in an airport in-transit lounge under the authority and control
162 of the Bureau of Customs and Border Protection of the United
163 States Department of Homeland Security. A customs smoking room
164 may not be designated in an elevator, restroom, or any common
165 area as defined by s. 386.203. Each customs smoking room must
166 conform to the following requirements:

167 (1) Work, other than essential services defined in s.
168 386.203 ~~s. 386.203(6)~~, may ~~must~~ not be performed in the room at
169 any ~~given~~ time.

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

173 (3) Each customs smoking room must be enclosed by physical
174 barriers that are impenetrable by secondhand tobacco smoke and
175 vapor and must prevent the escape of the ~~secondhand tobacco~~

176 | smoke and vapor into the enclosed indoor workplace.

177 | (4) Each customs smoking room must exhaust tobacco smoke
178 | and vapor directly to the outside and away from air intake
179 | ducts, and be maintained under negative pressure, with respect
180 | to surrounding spaces, sufficient to contain the ~~tobacco~~ smoke
181 | and vapor within the room.

182 | (5) Each customs smoking room must comply with the signage
183 | requirements in s. 386.206.

184 | Section 7. Section 386.206, Florida Statutes, is amended
185 | to read:

186 | 386.206 Posting of signs; requiring policies.—

187 | (1) The proprietor or other person in charge of an
188 | enclosed indoor workplace must develop and implement a policy
189 | regarding the smoking and vaping prohibitions established in
190 | this part. The policy may include, but is not limited to,
191 | procedures to be taken when the proprietor or other person in
192 | charge witnesses or is made aware of a violation of s. 386.204
193 | in the enclosed indoor workplace and must include a policy which
194 | prohibits an employee from smoking or vaping in the enclosed
195 | indoor workplace. In order to increase public awareness, the
196 | person in charge of an enclosed indoor workplace may, at his or
197 | her discretion, post signs to indicate that smoking or vaping is
198 | prohibited ~~"NO SMOKING" signs as deemed appropriate.~~

199 | (2) The person in charge of an airport terminal that
200 | includes a designated customs smoking room must conspicuously

201 post, or cause to be posted, signs stating that ~~no~~ smoking and
202 vaping are prohibited ~~is permitted~~ except in the designated
203 customs smoking room located in the customs area of the airport.
204 Each sign posted pursuant to this subsection ~~section~~ must have
205 letters of reasonable size which ~~that~~ can be easily read. The
206 color, design, and precise locations at which such signs are
207 posted shall be left to the discretion of the person in charge
208 of the premises.

209 (3) The proprietor or other person in charge of an
210 enclosed indoor workplace where a smoking or vaping cessation
211 program, medical research, or scientific research is conducted
212 or performed must conspicuously post, or cause to be posted,
213 signs stating that smoking or vaping is authorized ~~permitted~~ for
214 such purposes in designated areas in the enclosed indoor
215 workplace. Each sign posted pursuant to this subsection ~~section~~
216 must have letters of reasonable size which can be easily read.
217 The color, design, and precise locations at which such signs are
218 posted shall be left to the discretion of the person in charge
219 of the premises.

220 Section 8. Section 386.207, Florida Statutes, is amended
221 to read:

222 386.207 Administration; enforcement; civil penalties.—

223 (1) The department or the Division of Hotels and
224 Restaurants or the Division of Alcoholic Beverages and Tobacco
225 of the Department of Business and Professional Regulation shall

226 enforce this part based upon each department's specific areas of
227 regulatory authority and to implement such enforcement shall
228 adopt, in consultation with the State Fire Marshal, rules
229 specifying procedures to be followed by enforcement personnel in
230 investigating complaints and notifying alleged violators and
231 rules specifying procedures by which appeals may be taken by
232 aggrieved parties.

233 (2) Public agencies responsible for the management and
234 maintenance of government buildings shall report observed
235 violations to the department. The State Fire Marshal shall
236 report to the department observed violations of this part found
237 during its periodic inspections conducted under its regulatory
238 authority.

239 (3) The department or the Division of Hotels and
240 Restaurants or the Division of Alcoholic Beverages and Tobacco
241 of the Department of Business and Professional Regulation, upon
242 notification of observed violations of this part, shall issue to
243 the proprietor or other person in charge of such enclosed indoor
244 workplace a notice to comply with this part. If the person fails
245 to comply within 30 days after receipt of the notice, the
246 department or the Division of Hotels and Restaurants or the
247 Division of Alcoholic Beverages and Tobacco of the Department of
248 Business and Professional Regulation shall assess against the
249 person a civil penalty ~~against the person~~ of not less than \$250
250 and not more than ~~to exceed~~ \$750 for the first violation and not

251 less than \$500 and not more than ~~to exceed~~ \$2,000 for each
252 subsequent violation. The imposition of the fine must be in
253 accordance with chapter 120. If a person refuses to comply with
254 this part, after having been assessed such penalty, the
255 department or the Division of Hotels and Restaurants or the
256 Division of Alcoholic Beverages and Tobacco of the Department of
257 Business and Professional Regulation may file a complaint in the
258 circuit court of the county in which the enclosed indoor
259 workplace is located to require compliance.

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

263 Section 9. Section 386.208, Florida Statutes, is reenacted
264 to read:

265 386.208 Penalties.—Any person who violates s. 386.204
266 commits a noncriminal violation as defined in s. 775.08(3),
267 punishable by a fine of not more than \$100 for the first
268 violation and not more than \$500 for each subsequent violation.
269 Jurisdiction shall be with the appropriate county court.

270 Section 10. Section 386.209, Florida Statutes, is amended
271 to read:

272 386.209 Regulation of smoking preempted to state.—This
273 part expressly preempts regulation of smoking to the state and
274 supersedes any municipal or county ordinance on the subject;
275 however, school districts may further restrict smoking by

276 persons on school district property. This section does not
277 preclude the adoption of municipal or county ordinances that
278 impose more restrictive regulation on vaping than is provided in
279 this part.

280 Section 11. Section 386.211, Florida Statutes, is amended
281 to read:

282 386.211 Public announcements in mass transportation
283 terminals.—Announcements about the Florida Clean Indoor Air Act
284 shall be made regularly over public address systems in terminals
285 of public transportation carriers located in metropolitan
286 statistical areas with populations over 230,000 according to the
287 latest census. These announcements shall be made at least every
288 30 minutes and shall be made in appropriate languages. Each
289 announcement must include a statement to the effect that Florida
290 is a clean indoor air state and that smoking and vaping are
291 prohibited ~~is not allowed~~ except as provided in this part.

292 Section 12. Section 386.212, Florida Statutes, is amended
293 to read:

294 386.212 Smoking and vaping prohibited near school
295 property; penalty.—

296 (1) It is unlawful for any person under 18 years of age to
297 smoke tobacco or vape in, on, or within 1,000 feet of the real
298 property comprising a public or private elementary, middle, or
299 secondary school between the hours of 6 a.m. and midnight. This
300 section does not apply to any person occupying a moving vehicle

301 or within a private residence.

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

- 306 (a) The date and time of issuance.
- 307 (b) The name and address of the person cited.
- 308 (c) The date and time the civil infraction was committed.
- 309 (d) The statute violated.
- 310 (e) The facts constituting the violation.
- 311 (f) The name and authority of the law enforcement officer.
- 312 (g) The procedure for the person to follow to pay the
 313 civil penalty, to contest the citation, or to appear in court.
- 314 (h) The applicable civil penalty if the person elects not
 315 to contest the citation.
- 316 (i) The applicable civil penalty if the person elects to
 317 contest the citation.

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

324 (4) Any person who fails to comply with the directions on
 325 the citation shall be deemed to waive his or her right to

326 | contest the citation and an order to show cause may be issued by
327 | the court.

328 | Section 13. Section 386.2125, Florida Statutes, is amended
329 | to read:

330 | 386.2125 Rulemaking.—The department and the Department of
331 | Business and Professional Regulation, shall, in consultation
332 | with the State Fire Marshal, have the authority to adopt rules
333 | pursuant to ss. 120.536(1) and 120.54 to implement the
334 | provisions of this part within each agency's specific areas of
335 | regulatory authority. Whenever assessing a smoking or vaping
336 | cessation program for approval, the department shall consider
337 | whether the smoking or vaping cessation program limits, to the
338 | extent possible, any ~~the~~ potential for exposure to secondhand
339 | tobacco smoke or vapor, ~~if any~~, to nonparticipants in the
340 | enclosed indoor workplace.

341 | Section 14. Section 561.695, Florida Statutes, is amended
342 | to read:

343 | 561.695 Stand-alone bar enforcement; qualification;
344 | penalties.—

345 | (1) The division shall designate as a stand-alone bar the
346 | licensed premises of a vendor that operates a business that
347 | meets the definition of a stand-alone bar in s. 386.203 ~~s.~~
348 | ~~386.203(11)~~ upon receipt of the vendor's election to authorize
349 | ~~permit~~ tobacco smoking or vaping in the licensed premises.

350 | (2) ~~Upon this act becoming a law and until the annual~~

351 ~~renewal of a vendor's license,~~ A licensed vendor who makes the
352 required election under subsection (1) before the annual renewal
353 of its license may authorize ~~permit~~ tobacco smoking or vaping on
354 the licensed premises and must post a notice of such intention
355 at the same location at which the vendor's current alcoholic
356 beverage license is posted. The notice shall affirm the vendor's
357 intent to comply with the conditions and qualifications of a
358 stand-alone bar imposed pursuant to part II of chapter 386 and
359 the Beverage Law.

360 (3) Only the licensed vendor may provide or serve food on
361 the licensed premises of a stand-alone bar. Other than customary
362 bar snacks as defined by rule of the division, the licensed
363 vendor may not provide or serve food to a person on the licensed
364 premises without requiring the person to pay a separately stated
365 charge for the food that reasonably approximates the retail
366 value of the food.

367 (4) A licensed vendor operating a stand-alone bar must
368 conspicuously post signs at each entrance to the establishment
369 stating that smoking or vaping is authorized ~~permitted~~ in the
370 establishment. The color and design of such signs shall be left
371 to the discretion of the person in charge of the premises.

372 (5) After the initial designation, to continue to qualify
373 as a stand-alone bar, the licensee must provide to the division
374 annually, on or before the licensee's annual renewal date, an
375 affidavit that certifies, with respect to the preceding 12-month

376 | period, the following:

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

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

385 | (c) The licensed vendor conspicuously posts signs at each
 386 | entrance to the establishment stating that smoking or vaping is
 387 | authorized ~~permitted~~ in the establishment.

388 |
 389 | The division shall establish by rule the format of the affidavit
 390 | required by this subsection. A licensed vendor shall not
 391 | knowingly make a false statement on the affidavit required by
 392 | this subsection. In addition to the penalties provided in
 393 | subsection (7), a licensed vendor who knowingly makes a false
 394 | statement on the affidavit required by this subsection may be
 395 | subject to suspension or revocation of the vendor's alcoholic
 396 | beverage license under s. 561.29.

397 | (6) The Division of Alcoholic Beverages and Tobacco shall
 398 | have the power to enforce ~~the provisions of~~ part II of chapter
 399 | 386 and to audit a licensed vendor that operates a business that
 400 | meets the definition of a stand-alone bar ~~as provided~~ in s.

401 386.203 ~~s. 386.203(11)~~ for compliance with this section.

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

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

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

412 (c) For the third or subsequent violation within 2 years
413 after the first violation, the vendor shall receive a suspension
414 of the right to maintain a stand-alone bar in which tobacco
415 smoking or vaping is authorized ~~permitted~~, not to exceed 30
416 days, and shall be subject to a fine of not less than \$500 or
417 more than \$2,000; and

418 (d) For the fourth or subsequent violation, the vendor
419 shall receive a 60-day suspension of the right to maintain a
420 stand-alone bar in which tobacco smoking or vaping is authorized
421 ~~permitted~~ and shall be subject to a fine of not less than \$500
422 or more than \$2,000 or revocation of the right to maintain a
423 stand-alone bar in which tobacco smoking or vaping is authorized
424 ~~permitted~~.

425 (8) The division shall adopt rules governing the

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426 designation process, criteria for qualification, required
427 recordkeeping, auditing, and all other rules necessary for the
428 effective enforcement and administration of this section and
429 part II of chapter 386. The division is authorized to adopt
430 emergency rules pursuant to s. 120.54(4) to implement ~~the~~
431 ~~provisions of~~ this section.

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