

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 Committee on Regulated Industries

BILL: SB 986

INTRODUCER: Senator Gruters

SUBJECT: Smoking in Public Places

DATE: January 16, 2026

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	Favorable
2. _____	_____	<u>AEG</u>	_____
3. _____	_____	<u>RC</u>	_____

I. Summary:

SB 986 revises the Florida Clean Air Act to prohibit the smoking or vaping of a marijuana product in a public place.

The bill defines the term “public place” to mean “a place to which the public has access, including, but not limited to, streets; sidewalks; highways; public parks; public beaches; and the common areas, both inside and outside, of schools, hospitals, government buildings, apartment buildings, office buildings, lodging establishments, restaurants, transportation facilities, and retail shops.”

The bill revises the definition for the term “smoking” to include the inhaling, exhaling, burning, carrying, or possessing any lighted marijuana product, including cigarettes, cigars, and any other lighted marijuana product.

The bill also revises the definition for the term “vape” or “vaping” to include to inhale or exhale vapor produced by a vapor-generating electronic device or to possess a vapor-generating electronic device while that device is actively employing an electronic, a chemical, or a mechanical means designed to produce vapor or aerosol from a marijuana product.

The bill prohibits the smoking or vaping of marijuana in a customs smoking room at any time. Under current law, smoking tobacco and vaping a nicotine product or any other substance is allowed in a designated custom room of an airport.

Under current law, individuals who violate the Florida Clean Air Act may be fined not more than \$100 for a first violation and not more than \$500 for a subsequent violation.

The bill takes effect July 1, 2026.

II. Present Situation:

The Florida Clean Indoor Air Act (act) in part II of ch. 386, F.S., regulates vaping and tobacco smoking in Florida. The legislative purpose of the act is to protect the public from the health hazards of secondhand tobacco smoke and to implement the Florida health initiative in s. 20, Art. X of the State Constitution.¹

Florida Constitution

Tobacco Smoking

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 “anyplace 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 persons 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 directed the Legislature to implement the “amendment in a manner consistent with its broad purpose and stated terms.” The amendment required that implementing legislation have an effective date of no later than July 1, 2003, and required that implementing legislation provide civil penalties for violations, provide for administrative enforcement, and require and authorize agency rules for implementation and enforcement. The amendment further provided that the Legislature may enact legislation more restrictive of tobacco smoking than that provided in the Florida Constitution.

Vaping

On November 6, 2018, the voters of Florida approved Amendment 9 to the Florida Constitution, to ban the use of vapor-generating electronic devices, such as electronic cigarettes (e-cigarettes), in enclosed indoor workplaces.² The use of e-cigarettes is commonly referred to as vaping.

Amendment 9 adds vapor-generating electronic devices to the current prohibition against tobacco smoking in enclosed indoor workplaces. The amendment makes exceptions for the same enclosed indoor workplace locations where tobacco smoking is permitted and further permits tobacco smoking and the use of vapor-generating electronic devices in a “vapor-generating electronic device retailer.”

The amendment defines a “vapor-generating electronic device retailer” to mean “any enclosed indoor workplace dedicated to or predominantly for the retail sale of vapor-generating electronic

¹ Section 386.202, F.S.

² Amendment 9 also bans offshore oil and natural gas drilling on lands beneath state waters. See FLA. CONST. art II, s. 7.

devices and components, parts, and accessories for such products, in which the sale of other products or services is merely incidental.”

A vapor-generating electronic device is defined as “any product that employs an electronic, a chemical, or a mechanical means capable of producing vapor or aerosol from a nicotine product or any other substance.” The definition includes electronic cigarettes, electronic cigars, electronic cigarillos, electronic pipes, and other similar devices or products, replacement cartridges for such devices, and other containers of a solution or other substance intended to be used with or within the devices.

Section 20, Art. X, Florida Constitution, as amended, directs the Legislature to implement the “amendment in a manner consistent with its broad purpose and stated terms.” The implementing legislation must have an effective date of no later than July 1 of the year following approval (July 1, 2019). 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 Legislature may enact legislation more restrictive of tobacco smoking or vaping than that provided in the State Constitution.

Under the amendment, local governments may adopt more restrictive local ordinances on the use of vapor-generating electronic devices.

Florida’s Clean Indoor Air Act

The Legislature implemented the smoking ban by enacting ch. 2003-398, Laws of Fla., which amended the act in part II of ch. 386, F.S., and created s. 561.695, F.S., of the Beverage Law. During the 2019 Regular Session, the Legislature amended part II of ch. 386, F.S., to ban the use of vapor-generating electronic devices, such as electronic cigarettes (e-cigarettes), in enclosed indoor workplaces.³

The act implements the constitutional amendment’s prohibition. Specifically, s. 386.204, F.S., prohibits smoking or vaping 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 not being used for certain commercial purposes;⁴ stand-alone bars;⁵ designated smoking rooms in hotels and other public lodging establishments;⁶ and retail tobacco shops, including businesses that manufacture, import, or distribute tobacco products and tobacco loose leaf dealers.⁷

The act permits smoking in a customs smoking room designated by the person in charge of an airport in-transit lounge under the authority and control of the Bureau of Customs and Border Protection of the United States Department of Homeland Security. A customs smoking room may be designated only in an airport in-transit lounge under the authority and control of the Bureau of Customs and Border Protection of the United States Department of Homeland

³ See ch. 2019-14, Laws of Fla.

⁴ Section 386.2045(1), F.S. See also definition of the term “private residence” in s. 386.203(1), F.S.

⁵ Section 386.2045(4), F.S. See also definition of the term “stand-alone bar” in s. 386.203(11), F.S.

⁶ Section 386.2045(3), F.S. See also definition of the term “designated guest smoking room” in s. 386.203(4), F.S.

⁷ Section 386.2045(2), F.S. See also definition of the term “retail tobacco shop” in s. 386.203(8), F.S.

Security, and may not be designated in an elevator, restroom, or any common area as defined by s. 386.203, F.S.

Section 386.203(11), F.S., defines the term smoking to mean inhaling, exhaling, burning, carrying, or possessing any lighted tobacco product, including cigarettes, cigars, pipe tobacco, and any other lighted tobacco product.

Section 386.203(13), F.S., defines the term “vape” or “vaping” to mean:

...to inhale or exhale vapor produced by a vapor-generating electronic device or to possess a vapor-generating electronic device while that device is actively employing an electronic, a chemical, or a mechanical means designed to produce vapor or aerosol from a nicotine product or any other substance. The term does not include the mere possession of a vapor-generating electronic device.

Section 386.203(14), F.S., defines the term “vapor” to mean aerosolized or vaporized nicotine or other aerosolized or vaporized substance produced by a vapor-generating electronic device or exhaled by the person using such a device.

Section 386.203(15), F.S., defines the term “vapor-generating electronic device” to mean:

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

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.⁸ 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 of not more than \$100 for a first violation and not more than \$500 for a subsequent violation.

⁸ The applicable penalties for violations by designated stand-alone bars are set forth in s. 561.695(8), F.S.

Smoking and Vaping Prohibited Near School Property

Section 386.212(1), F.S., prohibits smoking and vaping by any person under 21 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.

Any person issued a citation for a violation of this prohibition must be charged with 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 or anti-vaping “alternative to suspension” program.

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.

As an exception to the state’s preemption of smoking regulation, s. 386.209, F.S., permits:

- Counties and municipalities to restrict smoking within the boundaries of any public beaches and public parks that they own, except that they may not further restrict the smoking of unfiltered cigars;
- Municipalities to further restrict smoking within the boundaries of public beaches and public parks that are within its jurisdiction but are owned by the county, unless such restriction conflicts with a county ordinance, except that they may not further restrict the smoking of unfiltered cigars; and
- School districts to further restrict smoking by persons on school district property.

Section 386.209, F.S., adopts and implements the Florida Constitution’s grant of authority to local governments to adopt more restrictive local ordinances on the use of vapor-generating electronic devices.

Marijuana Smoking and Possession***Criminal Prohibitions***

Section 893.02(3), F.S., defines the term “cannabis” to mean all parts of any plant of the genus *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin.

The term “cannabis” does not include “marijuana,” as defined in s. 381.986, F.S., relating to the medical use of marijuana, if manufactured, possessed, sold, purchased, delivered, distributed, or dispensed, in conformance with s. 381.986, F.S. The term also does not include hemp as defined in s. 581.217, F.S., or industrial hemp as defined in s. 1004.4473, F.S.

Cannabis is a “Schedule I” controlled substance.⁹ A person who possesses cannabis commits a felony of the third degree, punishable as provided in s. 775.082, F.S., s. 775.083, F.S., or s. 775.084, F.S.¹⁰

However, a person who possesses of 20 grams or less of cannabis commits a misdemeanor of the first degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S.¹¹

A law enforcement officer may arrest without warrant any person who the officer has probable cause to believe is violating the provisions of this chapter relating to possession of cannabis.¹²

Medical Marijuana

On November 4, 2016, Amendment 2 was approved by the statewide electorate and established Article X, section 29 of the Florida Constitution. This section of the constitution became effective on January 3, 2017, and created several exemptions from criminal and civil liability for:

- Qualifying patients who medically use marijuana in compliance with the amendment;
- Physicians, solely for issuing physician certifications with reasonable care and in compliance with the amendment; and
- Medical Marijuana Treatment Centers (MMTCs) and their agents and employees for actions or conduct under the amendment and in compliance with rules promulgated by the DOH.

Subsequently, the Legislature passed SB 8-A in Special Session A of 2017.¹³ The bill revised the Compassionate Medical Cannabis Act of 2014¹⁴ in s. 381.986, F.S., to implement Article X, section 29 of the State Constitution.

For the purpose of the authorized medical use of marijuana under s. 381.986, F.S., the term “marijuana” is defined to mean:

...all parts of any plant of the genus *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin, including low-THC cannabis, which are dispensed from a medical marijuana treatment center for medical use by a qualified patient.

Section 381.986(1)(k), F.S., provides that the “medical use” of marijuana means the acquisition, possession, use, delivery, transfer, or administration of marijuana authorized by a physician certification. The term does not include:

- Possession, use, or administration of marijuana that was not purchased or acquired from a medical marijuana treatment center.

⁹ Section 893.03(1)(c)7., F.S.

¹⁰ Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed \$5,000. Section 775.084, F.S., provides additional penalties for habitual felony offenders.

¹¹ Section 893.13(2)(a)2., F.S.

¹² Section 893.13(6)(e), F.S.

¹³ Chapter 2017-232, Laws of Florida.

¹⁴ Chapter 2014-157, Laws of Florida.

- Possession, use, or administration of marijuana in the form of commercially produced food items other than edibles or of marijuana seeds.
- Use or administration of any form or amount of marijuana in a manner that is inconsistent with the qualified physician's directions or physician certification.
- Transfer of marijuana to a person other than the qualified patient for whom it was authorized or the qualified patient's caregiver on behalf of the qualified patient.
- Use or administration of marijuana in the following locations:
 - On any form of public transportation, except for low-THC cannabis not in a form for smoking.
 - In any public place, except for low-THC cannabis not in a form for smoking.
 - In a qualified patient's place of employment, except when permitted by his or her employer.
 - In a state correctional institution, as defined in s. 944.02, F.S., or a correctional institution, as defined in s. 944.241, F.S.
 - On the grounds of a preschool, primary school, or secondary school, except as provided in s. 1006.062, F.S.
 - In a school bus, a vehicle, an aircraft, or a motorboat, except for low-THC cannabis not in a form for smoking.
- The smoking of marijuana in an enclosed indoor workplace as defined in s. 386.203(5), F.S.

Section 381.986(12)(c), F.S., provides that a qualified patient¹⁵ who uses marijuana, not including low-THC cannabis, or a caregiver who administers marijuana, not including low-THC cannabis, in plain view of or in a place open to the general public; in a school bus, a vehicle, an aircraft, or a boat; or on the grounds of a school except as provided in s. 1006.062, F.S.,¹⁶ commits a misdemeanor of the first degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S.¹⁷

III. Effect of Proposed Changes:

Legislative Intent

The bill amends s. 386.202, F.S., relating to the legislative intent of the Florida Clean Air Act to provide that it is the intent of part II of ch. 386, F.S., to protect people from the hazards of secondhand marijuana smoke and vapor.

Definitions

The bill amends s. 386.203, F.S., to define the term “public place” to mean:
 ...a place to which the public has access, including, but not limited to,
 streets; sidewalks; highways; public parks; public beaches; and the
 common areas, both inside and outside, of schools, hospitals, government

¹⁵ Section 381.986(1)(m), F.S.

¹⁶ Section 1006.062, F.S., relates to the administration of medication and provision of medical services by district school board personnel.

¹⁷ Section 775.082, F.S., provides that a misdemeanor of the first degree is punishable by a term of imprisonment not to exceed one year. Section 775.083, F.S., provides that a misdemeanor of the first degree is punishable by a fine not to exceed \$1,000.

buildings, apartment buildings, office buildings, lodging establishments, restaurants, transportation facilities, and retail shops.

The bill revises the definition for the term “smoking” in s. 386.203(12), F.S., to include the inhaling, exhaling, burning, carrying, or possessing any lighted marijuana product, including cigarettes, cigars, and any other lighted marijuana product.

The bill revises the definition for the term “vape” or “vaping” in s. 386.203(14), F.S., to include to inhale or exhale vapor produced by a vapor-generating electronic device or to possess a vapor-generating electronic device while that device is actively employing an electronic, a chemical, or a mechanical means designed to produce vapor or aerosol from a marijuana product.

Prohibitions

The bill amends s. 386.204, F.S., to prohibit the smoking or vaping of a marijuana product in a public place.

The bill creates s. 386.205(6), F.S., to prohibit the smoking or vaping of marijuana in a customs smoking room at any time.

Effective Date

The bill takes effect July 1, 2026.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

- None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

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. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 386.202, 386.203, 386.204, 386.205, 561.695.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.