

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 Health Policy

BILL: CS/SB 258

INTRODUCER: Committee on Regulated Industries; and Senator Bradley and others

SUBJECT: Florida Clean Indoor Air Act

DATE: March 4, 2013 **REVISED:** 03/07/2013

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Fav/CS
2.	Looke	Stovall	HP	Fav/1 amendment
3.			CA	
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:

CS/SB 258 authorizes municipalities and counties to further restrict smoking above and beyond the provisions of chapter 386, F.S., at entrances to public indoor workplaces, outdoor areas of such workplaces, and on property owned or controlled by a municipality or county, including beaches, playgrounds, public parks, sports and recreation areas. Any county or municipal restriction must comply with the restrictions specified in the bill.

This bill substantially amends section 386.209, Florida Statutes.

II. Present Situation:

The Florida Clean Indoor Air Act (act) in part II of ch. 386, F.S., regulates the smoking of tobacco in Florida. The legislative purpose of the act 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.¹

¹ s. 386.202, F.S.

Florida Constitution

On November 5, 2002, Florida voters approved Amendment 6 to the State Constitution, which prohibits tobacco smoking in enclosed indoor workplaces. Section 20, Art. X of the Florida Constitution 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” and defines “work” as “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.” Section 20, Art. X of the Florida Constitution provides limited exceptions for private residences, retail tobacco shops, designated smoking guest rooms at hotels and other public lodging establishments, and stand-alone bars. Section 20, Art. X of the Florida Constitution also directs the Legislature to implement its provisions “in a manner consistent with its broad purpose and stated terms” and provides that the Legislature may enact legislation more restrictive of tobacco smoking than that provided in the Florida Constitution.

Florida’s Clean Indoor Air Act

In 2003, the Legislature implemented s. 20, Art. X of the Florida Constitution by enacting ch. 2003-398, L.O.F., which amended part II of ch. 386, F.S., to create the “Florida Clean Indoor Air Act.” The act implements the restrictions in s. 20, Art. X of the Florida Constitution and specifically prohibits smoking in an enclosed indoor workplace,² adopts and implements the amendment’s definitions and adopts the amendment’s exceptions for private residences whenever not being used for certain commercial purposes;³ stand-alone bars;⁴ designated smoking rooms in hotels and other public lodging establishments;⁵ and retail tobacco shops, including businesses that manufacture, import or distribute tobacco products and tobacco loose leaf dealers.⁶

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.⁷ A fine for a first violation must be no less than \$250 and no more than \$750 and fines for subsequent violations must be no less than \$500 and no more than \$2,000. Fines imposed on individuals range from up to \$100 for a first violation to up to \$500 for subsequent violations.⁸

² s. 386.204, F.S.

³ s. 386.2045(1), F.S. *See also* definition of the term “private residence” in s. 386.203(1), F.S.

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

⁵ s. 386.2045(3), F.S. *See also* definition of the term “designated guest smoking room” in s. 386.203(4), F.S.

⁶ s. 386.2045(2), F.S. *See also* definition of the term “retail tobacco shop” in s. 386.203(8), F.S.

⁷ The applicable penalties for violations by designated stand-alone bars are set forth in s. 561.695(8), F.S.

⁸ s. 386.208, F.S.

Smoking Prohibited Near School Property

Section 386.212(1), F.S., prohibits smoking by any person under the age of 18 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.

Enforcement

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, F.S., and prescribes the information that must be included in the citation.

Receiving a citation under s. 386.212(2), F.S., constitutes a civil infraction punishable by a maximum civil penalty of \$25, 50 hours of community service or, where available, successful completion of a school-approved anti-tobacco “alternative to suspension” program.⁹

If a person fails to comply with the directions on the citation, the person waives his or her right to contest the citation and an order to show cause may be issued by the court.¹⁰

Regulation of Smoking Preempted to State

The act expressly preempts regulation of smoking to the state and supersedes any municipal or county ordinance on the subject except that school districts are permitted to further restrict smoking on school district property.¹¹

A recent Florida Attorney General Opinion concluded that the St. Johns Water Management District could not adopt a regulation prohibiting smoking by all persons on district property.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 for indoor and outdoor smoking. The Attorney General noted that a 2011 amendment of s. 386.209, F.S.,¹³ expressly granted school districts authority to prohibit smoking on school district property and concluded that further legislative authorization would be required for the water management district to regulate smoking on its property.

III. Effect of Proposed Changes:

Section 1 amends s. 386.209, F.S., to authorize municipalities and counties to restrict smoking at entrances to public indoor workplaces, outdoor areas of such workplaces, and property owned or

⁹ s. 386.212(3), F.S.

¹⁰ s. 386.212(4), F.S.

¹¹ s. 386.209, F.S.,

¹² Fla. AGO 2011-15 (July 21, 2011). *See also*, Fla. AGO 2005-63 (November 21, 2005), which opined that a municipality is preempted from regulating smoking in a public park other than as prescribed by the Legislature.

¹³ Ch. 2011-108, L.O.F.

controlled by a municipality or county, including beaches, playgrounds,¹⁴ public parks, and sports and recreation areas. The county or municipal restriction must comply with the restrictions specified in the bill including:

- Restricted areas must be identified by “No Smoking” signs that delineate the area where smoking is restricted.
- Municipalities and counties must provide designated smoking areas and those areas must be identified by signs that delineate the areas where smoking is authorized.
- Municipalities and counties may only restrict smoking on sidewalks or other footpaths that are located within a beach, playground, public park, or sports and recreation area.
- Municipalities and counties may restrict smoking at entrances to an enclosed public indoor workplace for a distance of no more than 75 feet from the entrance or more than 75 feet from air intakes for HVAC systems, operable windows, vents, or other openings through which smoke may enter the workplace.
- Municipalities and counties cannot limit the ability of a person to authorize smoking to the extent not prohibited by ch. 386, F.S.
- Municipalities and counties may require, as a condition for a lease on property that it owns or controls, that smoking be prohibited on the property.
- Municipalities and counties must require law enforcement officers to warn any violator to stop smoking and to advise him or her of the penalties for a violation before issuing a citation. If the violator continues to smoke, the officer must then ask the person to leave the premises. If the person refuses to leave the premises, the law enforcement officer may issue the citation, punishable as provided in s. 386.208, F.S.¹⁵

The bill defines the term “public indoor workplace” as any enclosed area owned or controlled by a municipality or county which is public property used for public and governmental purposes and to which the public is invited or allowed. The definition includes, but is not limited to, administrative facilities, educational facilities, cultural and civic centers, healthcare facilities, and recreational facilities.

Section 2 provides an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹⁴ Section 775.215(1)(c), F.S., relating to residency restriction for persons convicted of certain sex offenses, defines the term “playground” to mean “a designated independent area in the community or neighborhood that is designated solely for children and has one or more play structures.”

¹⁵ S. 386.208, F.S., provides that a violation of this section is a noncriminal violation punishable by a fine of no more than \$100 for a first violation and no more than \$500 for subsequent violations.

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 by Regulated Industries Committee on February 21, 2013:

The committee substitute substantially amends the bill. It authorizes municipalities and counties to restrict smoking at entrances to public indoor workplaces, outdoor areas of such workplaces, and on property owned or controlled by a municipality or county, including beaches, playgrounds, public parks, sports and recreation areas, and walkways within those areas. The county or municipal restriction must comply with the restrictions specified in the bill including requirements for no smoking signs, designated smoking areas, restriction of smoking on leased property, and procedures for issuing citations by law enforcement. It includes a definition for “public indoor workplace.”

B. **Amendments:**

Barcode 731142 by Health Policy on March 7, 2013:

The amendment modifies provisions in the bill to prevent local governments from adding smoking restrictions to the lease of a business located on public property during the term of a pre-existing lease, or during lease renewal, without the lessee’s consent.