

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 548

INTRODUCER: Senators Clemens and Gaetz

SUBJECT: Use of Tobacco Products in Motor Vehicles

DATE: March 7, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Pre-meeting
2.			HP	
3.			RC	

I. Summary:

SB 548 prohibits smoking in a motor vehicle in which a child under 13 years of age is present.

A violation of this prohibition would result in a nonmoving traffic citation. The total amount of the fine, court costs, and other fees for a nonmoving violation varies by jurisdiction. For example, in Leon County, a nonmoving violation is a \$116 citation; in the City of Tallahassee, a non-moving violation is \$123 citation; and in Miami-Dade County a nonmoving violation is a \$129 citation.

The bill defines the term “smoking” as having the same meaning as under the Florida Clean Indoor Air Act.

The bill provides an effective date of October 1, 2015.

II. Present Situation:

Florida Uniform Traffic Control Law

The purpose of the “Florida Uniform Traffic Control Law” in ch. 316, F.S., is to make uniform traffic laws to apply throughout the state and its several counties and uniform traffic ordinances to apply in all municipalities.¹

Section 316.003(21), F.S., defines the term “motor vehicle” as a self-propelled vehicle not operated upon rails or guideway. The definition does not include bicycles, motorized scooters, electric personal assistive mobility devices, swamp buggies, or mopeds.

¹ Section 316.002, F.S.

The fine for a nonmoving traffic violation is \$30.² However, in addition to the stated fine, court costs and other fees must also be paid.³ The court cost for a nonmoving traffic infraction is \$18.⁴ The total amount of fine, court costs, and other fees varies by jurisdiction. For example, in Leon County, a nonmoving violation is a \$116 citation; in the City of Tallahassee, a non-moving violation is \$123 citation;⁵ and in Miami-Dade County a nonmoving violation is a \$129 citation.⁶

Smoking in Privately Owned Vehicles while Children are Present

Seven states⁷ and the Commonwealth of Puerto Rico have prohibited smoking in privately owned vehicles while children are present. The ages range from under 8 (Vermont) to under 18 (California and Oregon).⁸

According to the American Lung Association's affiliate in Oregon, the Environmental Protection Agency classifies secondhand smoke as a Group A carcinogen which causes cancer in humans.⁹ It also indicated that the U.S. Surgeon General that children exposed to secondhand smoke have increased risk for health problems.¹⁰

Florida Clean Indoor Air Act

The Florida Clean Indoor Air Act (act) in part II of ch. 386, F.S., regulates tobacco smoking 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.¹¹

Florida Constitution

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.”

² Section 318.18(2), F.S.

³ See ss. 318.18(11) - (22), F.S.

⁴ Section 318.18 (11)(a), F.S.

⁵ See *How do I figure out what I owe on my ticket?*, Frequently Asked Questions, Leon County Clerk of Court at: http://www.clerk.leon.fl.us/index.php?section=204&server&page=clerk_services/faqs/index.php&division=traffic (last visited March 7, 2015).

⁶ The fee schedule for the Miami-Dade County Clerk of Courts is available at: http://www.miami-dadeclerk.com/service_fee_schedule.asp#traffic (last visited March 7, 2015).

⁷ Arkansas, California, Louisiana, Maine, Oregon, Utah, and Vermont.

⁸ *Secondhand smoke, kids, and cars*, Campaign for Tobacco-Free Kids, June 2014.

www.tobaccofreekids.org/research/factsheets/pdf/0334.pdf (last visited March 9, 2015).

⁹ *Smoke-free Cars, Frequently Asked Questions*, American Lung Association in Oregon, September 2013.

www.lung.org/associations/states/oregon/assets/docs/smokefree-cars-for-kids-fact.pdf (last visited March 9, 2015).

¹⁰ *Id.*

¹¹ Section 386.202, F.S.

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.

Florida’s Clean Indoor Air Act

The Legislature implemented the smoking ban by enacting ch. 2003-398, L.O.F., effective July 1, 2003, which amended pt. 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. Specifically, s. 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 not being used for certain commercial purposes;¹² stand-alone bars;¹³ designated smoking rooms in hotels and other public lodging establishments;¹⁴ and retail tobacco shops, including businesses that manufacture, import, or distribute tobacco products and tobacco loose leaf dealers.¹⁵

Section 386.203(10), F.S., defines ‘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 386.207, 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.¹⁶ 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.

¹² Section 386.2045(1), F.S. *See also* definition of the term “private residence” in s. 386.203(1), F.S.

¹³ Section 386.2045(4), F.S. *See also* definition of the term “stand-alone bar” in s. 386.203(11), F.S.

¹⁴ Section 386.2045(3), F.S. *See also* definition of the term “designated guest smoking room” in s. 386.203(4), F.S.

¹⁵ Section 386.2045(2), F.S. *See also* definition of the term “retail tobacco shop” in s. 386.203(8), F.S.

¹⁶ The applicable penalties for violations by designated stand-alone bars are set forth in s. 561.695(8), F.S.

Smoking Prohibited Near School Property

Section 386.212(1), F.S., prohibits 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.

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 ch. 386, 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.¹⁷

If a person fails to comply with the directions on the citation, the person would waive his or her right to contest the citation and an order to show cause may be issued by the court.¹⁸

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 school districts to further restrict smoking by persons on school district property,

Regarding the issue of preemption, 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.¹⁹ 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 the 2011 amendment of s. 386.209, F.S.,²⁰ to authorize school districts 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:

The bill creates s. 316.6136, F.S., to prohibit persons from smoking in a motor vehicle in which a child under 13 years of age is present. This prohibition is not limited to the driver of the vehicle. It applies to all persons in the vehicle.

The bill provides that a person who violates this section commits a nonmoving violation, punishable as provided in ch. 318, F.S.

¹⁷ Section 386.212(3), F.S.

¹⁸ Section 386.212(4), F.S.

¹⁹ 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.

²⁰ Chapter 2011-108, L.O.F.

The bill defines the term “smoking” as having the same meaning as in s. 386.203, F.S.

The bill provides an effective date of October 1, 2015.

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:

Persons who violate the prohibition against smoking in a motor vehicle in which a child under 13 years of age is present may be subject to a nonmoving traffic citation. The total amount of the fine, court costs, and other fees for a nonmoving violation vary by jurisdiction. For example, in Leon County, a nonmoving violation is a \$116 citation; in the City of Tallahassee, a non-moving violation is \$123 citation; and in Miami-Dade County a nonmoving violation is a \$129 citation.²¹

C. Government Sector Impact:

Local governments may have an indeterminate increase in revenue from fines, court costs, and other fees collected from nonmoving violations arising from the prohibition in this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

²¹ *Supra*, notes 5 and 6.

VIII. Statutes Affected:

This bill creates section 316.6136 of the Florida Statutes.

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.

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